

the same ; and in case of any machine, he shall fully explain the principle, and the several modes in which he has contemplated the application of that principle or character by which it may be distinguished from other inventions ; and shall particularly specify and point out the part, improvement, or combination, which he claims as his own invention or discovery. He shall, furthermore, accompany the whole with a drawing or drawings, and written references, where the nature of the case admits of drawings, or with specimens of ingredients, and of the composition of matter, sufficient in quantity for the purpose of experiment, where the invention or discovery is of a composition of matter ; which descriptions and drawings, signed by the inventor and attested by two witnesses, shall be filed in the Patent Office ; and he shall moreover furnish a model of his invention, in all cases which admit of a representation by model, of a convenient size to exhibit advantageously its several parts. The applicant shall also make oath or affirmation that he does verily believe that he is the original and first inventor or discoverer of the art, machine, composition, or improvement, for which he solicits a patent, and that he does not know or believe that the same was ever before known or used ; and also of what country he is a citizen ; which oath or affirmation may be made before any person authorized by law to administer oaths.

SECTION 7. *And be it further enacted,* That on the filing of any such application, description, and specification, and the payment of the duty hereinafter provided, the Commissioner shall make, or cause to be made, an examination of the alleged new invention or discovery ; and if, on any such examination, it shall not appear to the Commissioner that the same had been invented or discovered by any other person in this country prior to the alleged invention or discovery thereof by the applicant, or that it had been patented or described in any printed publication in this or any foreign country, or had been in public use or on sale with the applicant's consent or allowance prior to the application, if the Commissioner shall deem it to be sufficiently useful and important, it shall be his duty to issue a patent therefor. But whenever, on such examination, it shall appear

to the Commissioner that the applicant was not the original and first inventor, or discoverer thereof, or that any part of that which is claimed as new had before been invented or discovered, or patented, or described in any printed publication in this or any foreign country, as aforesaid, or that the description is defective and insufficient, he shall notify the applicant thereof, giving him, briefly, such information and references as may be useful in judging of the propriety of renewing his application, or of altering his specification, to embrace only that part of the invention or discovery which is new. In every such case, if the applicant shall elect to withdraw his application, relinquishing his claim to the model, he shall be entitled to receive back twenty dollars, part of the duty required by this act, on filing a notice in writing of such election in the Patent Office, a copy of which, certified by the Commissioner, shall be a sufficient warrant to the treasurer for paying back to the said applicant the said sum of twenty dollars. But if the applicant in such case shall persist in his claims for a patent, with or without any alteration in his specification, he shall be required to make oath or affirmation anew, in manner as aforesaid. And if the specification and claim shall not have been so modified as, in the opinion of the Commissioner, shall entitle the applicant to a patent, he may, on appeal, and upon request in writing, have the decision of a board of examiners, to be composed of three disinterested persons, who shall be appointed for that purpose by the Secretary of State, one of whom at least, to be selected, if practicable and convenient, for his knowledge and skill in the particular art, manufacture, or branch of science to which the alleged invention appertains; who shall be under oath or affirmation for the faithful and impartial performance of the duty imposed upon them by said appointment. Said board shall be furnished with a certificate in writing of the opinion and decision of the Commissioner, stating the particular grounds of his objection, and the part or parts of the invention which he considers as not entitled to be patented. And the said board shall give reasonable notice to the applicant, as well as to the Commissioner, of the time and place of their meeting, that they may have an opportunity of furnishing them

with such facts and evidence as they may deem necessary to a just decision ; and it shall be the duty of the Commissioner to furnish to the board of examiners such information as he may possess relative to the matter under their consideration. And on an examination and consideration of the matter by such board, it shall be in their power, or of a majority of them, to reverse the decision of the Commissioner, either in whole or in part, and their opinion being certified to the Commissioner, he shall be governed thereby in the further proceedings to be had on such application : *Provided however,* That before a board shall be instituted in any such case, the applicant shall pay to the credit of the treasury, as provided in the ninth section of this act, the sum of twenty-five dollars, and each of said persons so appointed shall be entitled to receive for his services in each case a sum not exceeding ten dollars, to be determined and paid by the Commissioner out of any moneys in his hands, which shall be in full compensation to the persons who may be so appointed, for their examination and certificate as aforesaid.

SECTION 8. *And be it further enacted,* That whenever an application shall be made for a patent which, in the opinion of the Commissioner, would interfere with any other patent for which an application may be pending, or with any unexpired patent which shall have been granted, it shall be the duty of the Commissioner to give notice thereof to such applicants, or patentees, as the case may be ; and if either shall be dissatisfied with the decision of the Commissioner on the question of priority of right or invention, on a hearing thereof, he may appeal from such decision, on the like terms and conditions as are provided in the preceding section of this act ; and the like proceedings shall be had, to determine which or whether either of the applicants is entitled to receive a patent as prayed for. But nothing in this act contained shall be construed to deprive an original and true inventor of the right to a patent for his invention, by reason of his having previously taken out letters-patent therefor in a foreign country, and the same having been published, at any time within six months next preceding the filing of his specification and drawings. And whenever the applicant shall request it, the patent shall take date from the time

of the filing of the specification and drawings, not however exceeding six months prior to the actual issuing of the patent ; and on like request, and the payment of the duty herein required, by any applicant, his specification and drawings shall be filed in the secret archives of the office until he shall furnish the model and the patent to be issued, not exceeding the term of one year, the applicant being entitled to notice of interfering applications.

SECTION 9. *And be it further enacted,* That before any application for a patent shall be considered by the Commissioner as aforesaid, the applicant shall pay into the treasury of the United States, or into the Patent Office, or into any of the deposit banks, to the credit of the treasury, if he be a citizen of the United States, or an alien, and shall have been resident in the United States for one year next preceding, and shall have made oath of his intention to become a citizen thereof, the sum of thirty dollars ; if a subject of the king of Great Britain, the sum of five hundred dollars ; and all other persons the sum of three hundred dollars ; for which payment duplicate receipts shall be taken, one of which to be filed in the office of the Treasurer. And the moneys received into the treasury under this act shall constitute a fund for the payment of the salaries of the officers and clerks herein provided for, and all other expenses of the Patent Office, and to be called the patent fund.

SECTION 10. *And be it further enacted,* That where any person hath made, or shall have made, any new invention, discovery, or improvement, on account of which a patent might by virtue of this act be granted, and such person shall die before any patent shall be granted therefor, the right of applying for and obtaining such patent shall devolve on the executor or administrator of such person, in trust for the heirs at law of the deceased, in case he shall have died intestate : but if otherwise, then in trust for his devisees, in as full and ample manner, and under the same conditions, limitations, and restrictions as the same was held, or might have been claimed or enjoyed by such person in his or her lifetime ; and when application for a patent shall be made by such legal representatives, the oath

or affirmation provided in the sixth section of this act shall be so varied as to be applicable to them.

SECTION 11. *And be it further enacted,* That every patent shall be assignable in law, either as to the whole interest, or any undivided part thereof, by any instrument in writing; which assignment, and also every grant and conveyance of the exclusive right, under any patent, to make and use, and to grant to others to make and use the thing patented within and throughout any specified part or portion of the United States, shall be recorded in the Patent Office within three months from the execution thereof, for which the assignee or grantee shall pay to the Commissioner the sum of three dollars.

SECTION 12. *And be it further enacted,* That any citizen of the United States, or alien, who shall have been a resident of the United States one year next preceding, and shall have made oath of his intention to become a citizen thereof, who shall have invented any new art, machine, or improvement thereof, and shall desire further time to make the same, may, on paying to the credit of the treasury, in manner as provided in the ninth section of this act, the sum of twenty dollars, file in the Patent Office a caveat, setting forth the design and purpose thereof, and its principal and distinguishing characteristics, and praying protection of his right till he shall have matured his invention; which sum of twenty dollars, in case the person filing such caveat shall afterwards take out a patent for the invention therein mentioned, shall be considered a part of the sum herein required for the same. And such caveat shall be filed in the confidential archives of the office, and preserved in secrecy. And if application shall be made by any other person within one year from the time of filing such caveat, for a patent of any invention with which it may in any respect interfere, it shall be the duty of the Commissioner to deposit the description, specifications, drawings, and model, in the confidential archives of the office, and to give notice, by mail, to the person filing the caveat, of such application, who shall, within three months after receiving the notice, if he would avail himself of the benefit of his caveat, file his description, specifications, drawings, and model; and if, in the opinion of

the Commissioner, the specifications of claim interfere with each other, like proceedings may be had in all respects as are in this act provided in the case of interfering applications: *Provided however*, That no opinion or decision of any board of examiners, under the provisions of this act, shall preclude any person, interested in favor of or against the validity of any patent which has been or may hereafter be granted, from the right to contest the same in any judicial court in any action in which its validity may come in question.

SECTION 13. *And be it further enacted*, That whenever any patent which has heretofore been granted, or which shall hereafter be granted, shall be inoperative, or invalid, by reason of a defective or insufficient description or specification, or by reason of the patentee claiming in his specification as his own invention more than he had or shall have a right to claim as new; if the error has or shall have arisen by inadvertency, accident, or mistake, and without any fraudulent or deceptive intention, it shall be lawful for the Commissioner, upon the surrender to him of such patent, and the payment of the further duty of fifteen dollars, to cause a new patent to be issued to the said inventor, for the same invention, for the residue of the period then unexpired for which the original patent was granted, in accordance with the patentee's corrected description and specification. And in case of his death, or any assignment by him made of the original patent, a similar right shall vest in his executors, administrators, or assignees. And the patent, so reissued, together with the corrected description and specification, shall have the same effect and operation in law, on the trial of all actions hereafter commenced for causes subsequently accruing, as though the same had been originally filed in such corrected form, before the issuing out of the original patent. And whenever the original patentee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery which shall have been invented or discovered by him subsequent to the date of his patent, he may, like proceedings being had in all respects as in the case of original applications, and on the payment of fifteen dollars as hereinbefore provided, have the same annexed to the

original description and specification ; and the Commissioner shall certify, on the margin of such annexed description and specification, the time of its being annexed and recorded ; and the same shall thereafter have the same effect in law, to all intents and purposes, as though it had been embraced in the original description and specification.

SECTION 14. *And be it further enacted,* That whenever, in any action for damages for making, using, or selling the thing whereof the exclusive right is secured by any patent heretofore granted, or by any patent which may hereafter be granted, a verdict shall be rendered for the plaintiff in such action, it shall be in the power of the court to render judgment for any sum above the amount found by such verdict as the actual damages sustained by the plaintiff, not exceeding three times the amount thereof, according to the circumstances of the case, with costs ; and such damages may be recovered by action on the case, in any court of competent jurisdiction, to be brought in the name or names of the person or persons interested, whether as patentees, assignees, or as grantees of the exclusive right within and throughout a specified part of the United States.

SECTION 15. *And be it further enacted,* That the defendant in any such action shall be permitted to plead the general issue, and to give this act and any special matter in evidence, of which notice in writing may have been given to the plaintiff or his attorney, thirty days before trial, tending to prove that the description and specification filed by the plaintiff does not contain the whole truth relative to his invention or discovery, or that it contains more than is necessary to produce the described effect ; which concealment or addition shall fully appear to have been made for the purpose of deceiving the public, or that the patentee was not the original and first inventor or discoverer of the thing patented, or of a substantial and material part thereof claimed as new, or that it had been described in some public work anterior to the supposed discovery thereof by the patentee, or had been in public use or on sale with the consent and allowance of the patentee before his application for a patent, or that he had surreptitiously or

unjustly obtained the patent for that which was in fact invented or discovered by another, who was using reasonable diligence in adapting and perfecting the same; or that the patentee, if an alien at the time the patent was granted, had failed and neglected, for the space of eighteen months from the date of the patent, to put and continue on sale to the public, on reasonable terms, the invention or discovery for which the patent issued; in either of which cases judgment shall be rendered for the defendant with costs. And whenever the defendant relies in his defence on the fact of a previous invention, knowledge, or use of the thing patented, he shall state, in his notice of special matter, the names and places of residence of those whom he intends to prove to have possessed a prior knowledge of the thing, and where the same had been used: *Provided however*, That whenever it shall satisfactorily appear that the patentee, at the time of making his application for the patent, believed himself to be the first inventor or discoverer of the thing patented, the same shall not be held to be void 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. *And provided also*, That whenever the plaintiff shall fail to sustain his action on the ground that in his specification of claim is embraced more than that of which he was the first inventor, if it shall appear that the defendant had used or violated any part of the invention justly and truly specified and claimed as new, it shall be in the power of the court to adjudge and award as to costs, as may appear to be just and equitable.

SECTION 16. *And be it further enacted*, That whenever there shall be two interfering patents, or whenever a patent on application shall have been refused on an adverse decision of a board of examiners, on the ground that the patent applied for would interfere with an unexpired patent previously granted, any person interested in any such patent, either by assignment or otherwise, in the one case, and any such applicant in the other case, may have remedy by bill in equity;



and the court having cognizance thereof, on notice to adverse parties, and other due proceedings had, may adjudge and declare either the patents void in the whole or in part, or inoperative or invalid in any particular part or portion of the United States, according to the interest which the parties to such suit may possess in the patent or the inventions patented, and may also adjudge that such applicant is entitled, according to the principles and provisions of this act, to have and receive a patent for his invention, as specified in his claim, or for any part thereof, as the fact of priority of right or invention shall in any such case be made to appear. And such adjudication, if it be in favor of the right of such applicant, shall authorize the Commissioner to issue such patent, on his filing a copy of the adjudication, and otherwise complying with the requisitions of this act. *Provided however,* That no such judgment or adjudication shall affect the rights of any person except the parties to the action and those deriving title from or under them subsequent to the rendition of such judgment.

SECTION 17. *And be it further enacted,* That all actions, suits, controversies, and cases arising under any law of the United States, granting or confirming to inventors the exclusive right to their inventions or discoveries, shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the power and jurisdiction of a circuit court; which courts shall have power, upon a bill in equity filed by any party aggrieved, in any such case, to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any inventor as secured to him by any law of the United States, on such terms and conditions as said courts may deem reasonable: *Provided however,* That from all judgments and decrees from any such court rendered in the premises, a writ of error or appeal, as the case may require, shall lie to the Supreme Court of the United States, in the same manner and under the same circumstances as is now provided by law in other judgments and decrees of circuit courts, and in all other cases in which the court shall deem it reasonable to allow the same.

SECTION 18. *And be it further enacted,* That whenever any patentee of an invention or discovery shall desire an extension of his patent beyond the term of its limitation, he may make application therefor, in writing, to the Commissioner of the Patent Office, setting forth the grounds thereof; and the Commissioner shall, on the applicant's paying the sum of forty dollars to the credit of the treasury, as in the case of an original application for a patent, cause to be published in one or more of the principal newspapers in the city of Washington, and in such other paper or papers as he may deem proper, published in the section of country most interested adversely to the extension of the patent, a notice of such application and of the time and place when and where the same will be considered, that any person may appear and show cause why the extension should not be granted. And the Secretary of State, the Commissioner of the Patent Office, and the Solicitor of the Treasury shall constitute a board to hear and decide upon the evidence produced before them both for and against the extension, and shall sit for that purpose at the time and place designated in the published notice thereof. The patentee shall furnish to said board a statement, in writing, under oath, of the ascertained value of the invention, and of his receipts and expenditures, sufficiently in detail to exhibit a true and faithful account of loss and profit in any manner accruing to him from and by reason of said invention. And if, upon a hearing of the matter, it shall appear to the full and entire satisfaction of said board, having due regard to the public interest therein, that it is just and proper that the term of the patent should be extended, by reason of the patentee, without neglect or fault on his part, having failed to obtain, from the use and sale of his invention, a reasonable remuneration for the time, ingenuity, and expense bestowed upon the same, and the introduction thereof into use, it shall be the duty of the Commissioner to renew and extend the patent, by making a certificate thereon of such extension, for the term of seven years from and after the expiration of the first term; which certificate, with a certificate of said board of their judgment

and opinion as aforesaid, shall be entered on record in the Patent Office; and thereupon the said patent shall have the same effect in law as though it had been originally granted for the term of twenty-one years. And the benefit of such renewal shall extend to assignees and grantees of the right to use the thing patented, to the extent of their respective interests therein: *Provided however*, That no extension of a patent shall be granted after the expiration of the term for which it was originally issued.

SECTION 19. *And be it further enacted*, That there shall be provided for the use of said office, a library of scientific works and periodical publications, both foreign and American, calculated to facilitate the discharge of the duties hereby required of the chief officers therein, to be purchased under the direction of the Committee of the Library of Congress. And the sum of fifteen hundred dollars is hereby appropriated for that purpose, to be paid out of the patent fund.

SECTION 20. *And be it further enacted*, That it shall be the duty of the Commissioner to cause to be classified and arranged, in such rooms or galleries as may be provided for that purpose, in suitable cases, when necessary for their preservation, and in such manner as shall be conducive to a beneficial and favorable display thereof, the models and specimens of compositions and of fabrics and other manufactures and works of art, patented or unpatented, which have been, or shall hereafter be, deposited in said office. And said rooms or galleries shall be kept open during suitable hours for public inspection.

SECTION 21. *And be it further enacted*, That all acts and parts of acts heretofore passed on this subject be, and the same are hereby repealed: *Provided however*, That all actions and processes in law or equity sued out prior to the passage of this act may be prosecuted to final judgment and execution, in the same manner as though this act had not been passed, excepting and saving the application to any such action of the provisions of the fourteenth and fifteenth sections of this act, so far as they may be applicable thereto; *And provided also*, That all applications or petitions for patents, pending at the time of the

passage of this act, in cases where the duty has been paid, shall be proceeded with and acted on in the same manner as though filed after the passage hereof.

APPROVED July 4, 1836.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

### PATENT ACT OF 1837.

5 STATUTES AT LARGE, 191.

An Act in addition to the act to promote the progress of science and useful arts.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any person who may be in possession of, or in any way interested in, any patent for an invention, discovery, or improvement, issued prior to the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirty-six, or in an assignment of any patent, or interest therein, executed and recorded prior to the said fifteenth day of December, may, without charge, on presentation or transmission thereof to the Commissioner of Patents, have the same recorded anew in the Patent Office, together with the descriptions, specifications of claim and drawings annexed or belonging to the same; and it shall be the duty of the Commissioner to cause the same, or any authenticated copy of the original record, specification, or drawing which he may obtain, to be transcribed and copied into books of record to be kept for that purpose; and wherever a drawing was not originally annexed to the patent and referred to in the specification, any drawing produced as a delineation of the invention, being verified by oath in such manner as the Commissioner shall require, may be transmitted and placed on file, or copied as aforesaid, together with certificate of the oath; or such drawings may be made in the office, under the direction of the Commissioner, in conformity with the specification. And it shall be the duty of the Commissioner to take such measures as may be advised and determined by the Board of Commissioners provided for in the

fourth section of this act, to obtain the patents, specifications, and copies aforesaid, for the purpose of being so transcribed and recorded. And it shall be the duty of each of the several clerks of the judicial courts of the United States, to transmit as soon as may be, to the Commissioner of the Patent Office, a statement of all the authenticated copies of patents, descriptions, specifications, and drawings of inventions and discoveries made and executed prior to the aforesaid fifteenth day of December, which may be found on the files of his office; and also to make out and transmit to said Commissioner, for record as aforesaid, a certified copy of every such patent, description, specification, or drawing, which shall be specially required by said Commissioner.

SECTION 2. *And be it further enacted,* That copies of such record and drawings, certified by the Commissioner, or, in his absence, by the chief clerk, shall be *prima facie* evidence of the particulars of the invention and of the patent granted therefor in any judicial court of the United States, in all cases where copies of the original record or specification and drawings would be evidence, without proof of the loss of such originals; and no patent issued prior to the aforesaid fifteenth day of December shall, after the first day of June next, be received in evidence in any of the said courts in behalf of the patentee or other person who shall be in possession of the same, unless it shall have been so recorded anew, and a drawing of the invention, if separate from the patent, verified as aforesaid, deposited in the Patent Office; nor shall any written assignment of any such patent, executed and recorded prior to the said fifteenth day of December, be received in evidence in any of the said courts in behalf of the assignee or other person in possession thereof, until it shall have been so recorded anew.

SECTION 3. *And be it further enacted,* That whenever it shall appear to the Commissioner that any patent was destroyed by the burning of the Patent Office building on the aforesaid fifteenth day of December, or was otherwise lost prior thereto, it shall be his duty, on application therefor by the patentee or other person interested therein, to issue a new patent for the same invention or discovery, bearing the date of the original

patent, with his certificate thereon that it was made and issued pursuant to the provisions of the third section of this act, and shall enter the same of record : *Provided however*, That before such patent shall be issued the applicant therefor shall deposit in the Patent Office a duplicate, as near as may be, of the original model, drawings, and description, with specification of the invention or discovery, verified by oath, as shall be required by the Commissioner ; and such patent, and copies of such drawings and descriptions, duly certified, shall be admissible as evidence in any judicial court of the United States, and shall protect the rights of the patentee, his administrators, heirs, and assigns, to the extent only in which they would have been protected by the original patent and specification.

SECTION 4. *And be it further enacted*, That it shall be the duty of the Commissioner to procure a duplicate of such of the models, destroyed by fire on the aforesaid fifteenth day of December, as were most valuable and interesting, and whose preservation would be important to the public ; and such as would be necessary to facilitate the just discharge of the duties imposed by law on the Commissioner in issuing patents, and to protect the rights of the public and of patentees in patented inventions and improvements : *Provided*, That a duplicate of such models may be obtained at a reasonable expense : *And provided also*, That the whole amount of expenditure for this purpose shall not exceed the sum of one hundred thousand dollars. And there shall be a temporary board of Commissioners, to be composed of the Commissioner of the Patent Office and two other persons to be appointed by the President, whose duty it shall be to consider and determine upon the best and most judicious mode of obtaining models of suitable construction ; and also to consider and determine what models may be procured in pursuance of, and in accordance with, the provisions and limitations in this section contained. And said commissioners may make and establish all such regulations, terms, and conditions, not inconsistent with law, as in their opinion may be proper and necessary to carry the provisions of this section into effect, according to its true intent.

SECTION 5. *And be it further enacted,* That, whenever a patent shall be returned for correction and reissue under the thirteenth section of the act to which this is additional, and the patentee shall desire several patents to be issued for distinct and separate parts of the thing patented, he shall first pay, in manner and in addition to the sum provided by that act, the sum of thirty dollars for each additional patent so to be issued : *Provided however,* That no patent made prior to the aforesaid fifteenth day of December shall be corrected and reissued until a duplicate of the model and drawing of the thing as originally invented, verified by oath as shall be required by the Commissioner, shall be deposited in the Patent Office :

Nor shall any addition of an improvement be made to any patent heretofore granted, nor any new patent be issued for an improvement made in any machine, manufacture, or process, to the original inventor, assignee, or possessor of a patent therefor, nor any disclaimer be admitted to record, until a duplicate model and drawing of the thing originally intended, verified as aforesaid, shall have been deposited in the Patent Office, if the Commissioner shall require the same ; nor shall any patent be granted for an invention, improvement, or discovery, the model or drawing of which shall have been lost, until another model and drawing, if required by the Commissioner, shall, in like manner, be deposited in the Patent Office.

And in all such cases, as well as in those which may arise under the third section of this act, the question of compensation for such models and drawings shall be subject to the judgment and decision of the Commissioners, provided for in the fourth section, under the same limitations and restrictions as are therein prescribed.

SECTION 6. *And be it further enacted,* That any patent hereafter to be issued may be made and issued to the assignee or assignees of the inventor or discoverer, the assignment thereof being first entered of record, and the application therefor being duly made, and the specification duly sworn to by the inventor. And in all cases hereafter, the applicant for a patent shall be held to furnish duplicate drawings, when-

ever the case admits of drawings, one of which to be deposited in the office, and the other to be annexed to the patent, and considered a part of the specification.

SECTION 7. *And be it further enacted*, That, whenever any patentee shall have, through inadvertence, accident, or mistake, made his specification of claim too broad, claiming more than that of which he was the original or first inventor, some material or substantial part of the thing patented being truly and justly his own, any such patentee, his administrators, executors, and assigns, whether of the whole or of a sectional interest therein, may make disclaimer of such parts of the thing patented as the disclaimant shall not claim 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, on payment by the person disclaiming in manner as other patent duties are required by law to be paid, of the sum of ten dollars. And such disclaimer shall thereafter be taken and considered as part of the original specification, to the extent of the interest which shall be possessed in the patent or right secured thereby, by the disclaimant, and by those claiming by or under him subsequent to the record thereof. But no such disclaimer shall affect any action pending at the time of its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing the same.

SECTION 8. *And be it further enacted*, That, whenever application shall be made to the Commissioner for any addition of a newly discovered improvement to be made to an existing patent, or whenever a patent shall be returned for correction and reissue, the specification of claim annexed to every such patent shall be subject to revision and restriction, in the same manner as are original applications for patents; the Commissioner shall not add any such improvement to the patent in the one case, nor grant the reissue in the other case, until the applicant shall have entered a disclaimer, or altered his specification of claim in accordance with the decision of the Commissioner; and in all such cases, the applicant, if dissatisfied with such decision, shall have the same remedy, and be entitled to



the benefit of the same privileges and proceedings as are provided by law in the case of original applications for patents.

SECTION 9. *And be it further enacted*, any thing in the fifteenth section of the act to which this is additional to the contrary notwithstanding, That, whenever by mistake, accident, or inadvertence, and without any wilful default or intent to defraud or mislead the public, any patentee shall have in his specification claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the first and original inventor, and shall have no legal or just right to claim the same, in every such case the patent shall be deemed good and valid for so much of the invention or discovery as shall be truly and *bonâ fide* his own; *Provided*, It shall be a material and substantial part of the thing patented, and be definitely distinguishable from the other parts so claimed without right as aforesaid. And every such patentee, his executors, administrators, and assigns, whether of the whole, or of a sectional interest therein, shall be entitled to maintain a suit at law or in equity on such patent for any infringement of such part of the invention or discovery as shall be *bonâ fide* his own as aforesaid, notwithstanding the specification may embrace more than he shall have any legal right to claim. But, in every such case in which a judgment or verdict shall be rendered for the plaintiff, he shall not be entitled to recover costs against the defendant, unless he shall have entered at the Patent Office, prior to the commencement of the suit, a disclaimer of all that part of the thing patented which was so claimed without right. *Provided however*, That no person bringing any such suit shall be entitled to the benefits of the provisions contained in this section, who shall have unreasonably neglected or delayed to enter at the Patent Office a disclaimer as aforesaid.

SECTION 10. *And be it further enacted*, That the Commissioner is hereby authorized and empowered to appoint agents, in not exceeding twenty of the principal cities or towns in the United States as may best accommodate the different sections of the country, for the purpose of receiving and forwarding to the Patent Office all such models, specimens of ingredients

and manufactures, as shall be intended to be patented or deposited therein, the transportation of the same to be chargeable to the patent fund.

SECTION 11. *And be it further enacted*, That, instead of one examining clerk, as provided by the second section of the act to which this is additional, there shall be appointed, in manner therein provided, two examining clerks, each to receive an annual salary of fifteen hundred dollars; and also, an additional copying clerk, at an annual salary of eight hundred dollars. And the Commissioner is also authorized to employ, from time to time, as many temporary clerks as may be necessary to execute the copying and draughting required by the first section of this act, and to examine and compare the records with the originals, who shall receive not exceeding seven cents for every page of one hundred words, and for drawings and comparison of records with originals, such reasonable compensation as shall be agreed upon or prescribed by the Commissioner.

SECTION 12. *And be it further enacted*, That, wherever the application of any foreigner for a patent shall be rejected and withdrawn for want of novelty in the invention, pursuant to the seventh section of the act to which this is additional, the certificate thereof of the Commissioner shall be a sufficient warrant to the treasurer to pay back to such applicant two thirds of the duty he shall have paid into the treasury on account of such application.

SECTION 13. *And be it further enacted*, That in all cases in which an oath is required by this act, or by the act to which this is additional, if the person of whom it is required shall be conscientiously scrupulous of taking an oath, affirmation may be substituted therefor.

SECTION 14. *And be it further enacted*, That all moneys paid into the treasury of the United States for patents and for fees for copies furnished by the Superintendent of the Patent Office prior to the passage of the act to which this is additional, shall be carried to the credit of the patent fund created by said act; and the moneys constituting said fund shall be, and the same are hereby, appropriated for the payment of the salaries

of the officers and clerks provided for by said act, and all other expenses of the Patent Office, including all the expenditures provided for by this act ; and also for such other purposes as are or may be hereafter specially provided for by law. And the Commissioner is hereby authorized to draw upon said fund, from time to time, for such sums as shall be necessary to carry into effect the provisions of this act, governed, however, by the several limitations herein contained. And it shall be his duty to lay before Congress, in the month of January, annually, a detailed statement of the expenditures and payments by him made from said fund ; And it shall also be his duty to lay before Congress, in the month of January, annually, a list of all patents which shall have been granted during the preceding year, designating, under proper heads, the subjects of such patents, and furnishing an alphabetical list of the patentees, with their places of residence ; and he shall also furnish a list of all patents which shall have become public property during the same period ; together with such other information of the state and condition of the Patent Office as may be useful to Congress or the public.

APPROVED March 3, 1837.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

## PATENT ACT OF 1839.

5 STATUTES AT LARGE, 353.

An Act in addition to “ An act to promote the progress of the useful arts.”

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there shall be appointed, in manner provided in the second section of the act to which this is additional, two assistant examiners, each to receive an annual salary of twelve hundred and fifty dollars.

SECTION 2. *And be it further enacted,* That the Commissioner be authorized to employ temporary clerks to do any necessary transcribing, whenever the current business of the office requires

it; *Provided however*, That instead of salary, a compensation shall be allowed, at a rate not greater than is charged for copies now furnished by the office.

SECTION 3. *And be it further enacted*, That the Commissioner is hereby authorized to publish a classified and alphabetical list of all patents granted by the Patent Office previous to said publication, and retain one hundred copies for the Patent Office and nine hundred copies to be deposited in the library of Congress, for such distribution as may be hereafter directed; and that one thousand dollars, if necessary, be appropriated, out of the patent fund, to defray the expense of the same.

SECTION 4. *And be it further enacted*, That the sum of three thousand six hundred and fifty-nine dollars and twenty-two cents be, and is hereby, appropriated from the patent fund, to pay for the use and occupation of rooms in the City Hall by the Patent Office.

SECTION 5. *And be it further enacted*, That the sum of one thousand dollars be appropriated from the patent fund, to be expended under the direction of the Commissioner, for the purchase of necessary books for the library of the Patent Office.

SECTION 6. *And be it further enacted*, That no person shall be debarred from receiving a patent for any invention or discovery, as provided in the act approved on the fourth day of July, one thousand eight hundred and thirty-six, to which this is additional, by reason of the same having been patented in a foreign country more than six months prior to his application: *Provided*, That the same shall not have been introduced into public and common use in the United States, prior to the application for such patent: *And provided also*, That in all cases every such patent shall be limited to the term of fourteen years from the date of publication of such foreign letters-patent.

SECTION 7. *And be it further enacted*, That every person or corporation who has, or shall have, purchased or constructed any newly invented machine, manufacture, or composition of matter, prior to the application by the inventor or discoverer for a patent, shall be held to possess the right to use, and vend to others to be used, the specific machine, manufacture, or

composition of matter so made or purchased, without liability therefor to the inventor, or any other person interested in such invention ; and no patent shall be held to be invalid, by reason of such purchase, sale, or use prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public ; or that such purchase, sale, or prior use has been for more than two years prior to such application for a patent.

SECTION 8. *And be it further enacted,* That so much of the eleventh section of the above recited act as requires the payment of three dollars to the Commissioner of Patents for recording any assignment, grant, or conveyance of the whole or any part of the interest or right under any patent, be, and the same is hereby, repealed ; and all such assignments, grants, and conveyances shall, in future, be recorded, without any charge whatever.

SECTION 10. *And be it further enacted,* That the provisions of the sixteenth section of the before-recited act shall extend to all cases where patents are refused for any reason whatever, either by the Commissioner of Patents or by the Chief Justice of the District of Columbia, upon appeals from the decision of said Commissioner, as well as where the same shall have been refused on account of, or by reason of, interference with a previously existing patent ; and in all cases where there is no opposing party, a copy of the bill shall be served upon the Commissioner of Patents, when the whole of the expenses of the proceeding shall be paid by the applicant, whether the final decision shall be in his favor or otherwise.

SECTION 11. *And be it further enacted,* That in all cases where an appeal is now allowed by law from the decision of the Commissioner of Patents to a board of examiners, provided for in the seventh section of the act to which this is additional, the party, instead thereof, shall have a right to appeal to the Chief Justice of the district court of the United States for the District of Columbia, by giving notice thereof to the Commissioner, and filing in the Patent Office, within such time as the Commissioner shall appoint, his reasons of appeal specifically set forth in writing, and also paying into the Patent Office, to

the credit of the patent fund, the sum of twenty-five dollars. And it shall be the duty of said Chief Justice, on petition, to hear and determine all such appeals, and to revise such decisions in a summary way, on the evidence produced before the Commissioner, at such early and convenient time as he may appoint, first notifying the Commissioner of the time and place of hearing, whose duty it shall be to give notice thereof to all parties who appear to be interested therein, in such manner as said judge shall prescribe. The Commissioner shall also lay before the said judge all the original papers and evidence in the case, together with the grounds of his decision, fully set forth in writing, touching all the points involved by the reasons of appeal, to which the revision shall be confined. And at the request of any party interested, or at the desire of the judge, the Commissioner and the examiners in the Patent Office may be examined under oath, in explanation of the principles of the machine or other thing for which a patent, in such case is prayed for. And it shall be the duty of said judge, after a hearing of any such case, to return all the papers to the Commissioner, with a certificate of his proceedings and decision, which shall be entered of record in the Patent Office; and such decision, so certified, shall govern the further proceedings of the Commissioner in such case: *Provided however*, That no opinion or decision of the judge in any such case shall preclude any person interested in favor or against the validity of any patent which has been or may, hereafter be granted from the right to contest the same in any judicial court, in any action in which its validity may come in question.

SECTION 12. *And be it further enacted*, That the Commissioner of Patents shall have power to make all such regulations, in respect to the taking of evidence to be used in contested cases before him, as may be just and reasonable. And so much of the act to which this is additional, as provides for a board of examiners, is hereby repealed.

SECTION 13. *And be it further enacted*, That there be paid annually, out of the patent fund, to the said Chief Justice, in consideration of the duties herein imposed, the sum of one hundred dollars.

APPROVED March 3, 1839.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

### PATENT ACT OF 1842.

5 STATUTES AT LARGE, 543.

An Act in addition to an act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Treasurer of the United States be, and he hereby is, authorized to pay back, out of the patent fund, any sum or sums of money, to any person who shall have paid the same into the Treasury, or to any receiver or depositary to the credit of the Treasurer, as for fees accruing at the Patent Office through mistake, and which are not provided to be paid by existing laws, certificate thereof being made to the said Treasurer by the Commissioner of Patents.

SECTION 2. *And be it further enacted,* That the third section of the act of March, eighteen hundred and thirty-seven, which authorizes the renewing of patents lost prior to the fifteenth of December, eighteen hundred and thirty-six, is extended to patents granted prior to said fifteenth day of December, though they may have been lost subsequently: *Provided however,* The same shall not have been recorded anew under the provisions of said act.

SECTION 3. *And be it further enacted,* That any citizen or citizens, or alien or aliens, having resided one year in the United States, and taken the oath of his or their intention to become a citizen or citizens, who by his, her, or their own industry, genius, efforts, and expense, may have invented or produced any new and original design for a manufacture, whether of metal or other material or materials, or any new and original design for the printing of woollen, silk, cotton, or other fabrics, or any new and original design for a bust, statue, or bas-relief or composition in alto or basso relievo, or any new

and original impression or ornament, or to be placed on any article of manufacture, the same being formed in marble or other material, or any new and useful pattern, or print, or picture, to be either worked into or worked on, or printed or painted or cast or otherwise fixed on, any article of manufacture, or any new and original shape or configuration of any article of manufacture not known or used by others before his, her, or their invention or production thereof, and prior to the time of his, her, or their application for a patent therefor, and who shall desire to obtain an exclusive property or right therein to make, use, and sell and vend the same, or copies of the same, to others, by them to be made, used, and sold, may make application in writing to the Commissioner of Patents expressing such desire, and the Commissioner, on due proceedings had, may grant a patent therefor, as in the case now of application for a patent: *Provided*, That the fee in such cases, which by the now existing laws would be required of the particular applicant, shall be one half the sum, and that the duration of said patent shall be seven years, and that all the regulations and provisions which now apply to the obtaining or protection of patents not inconsistent with the provisions of this act shall apply to applications under this section.

SECTION 4. *And be it further enacted*, That the oath required for applicants for patents may be taken, when the applicant is not, for the time being, residing in the United States, before any minister, plenipotentiary, *chargé 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 such applicant may be.

SECTION 5. *And be it further enacted*, That if any person or persons shall paint or print or mould, cast, carve, or engrave, or stamp, upon anything made, used, or sold, by him, for the sole making or selling which he hath not or shall not have obtained letters-patent, the name or any imitation of the name of any other person who hath or shall have obtained letters-patent for the sole making and vending of such thing, without consent of such patentee, or his assigns or legal representatives; or if any person, upon any such thing not having



been purchased from the patentee, or some person who purchased it from or under such patentee, or not having the license or consent of such patentee, or his assigns or legal representatives, shall write, paint, print, mould, cast, carve, engrave, stamp, or otherwise make or affix the word "patent," or the words "letters-patent," or the word "patentee," or any word or words of like kind, meaning, or import, with the view or intent of imitating or counterfeiting the stamp, mark, or other device, of the patentee, or shall affix the same, or any word, stamp, or device, of like import, on any unpatented article, for the purpose of deceiving the public, he, she, or they, so offending, shall be liable for such offence to a penalty of not less than one hundred dollars, with costs, to be recovered by action in any of the circuit courts of the United States, or in any of the district courts of the United States having the powers and jurisdiction of a circuit court; one half of which penalty, as recovered, shall be paid to the patent fund, and the other half to any person or persons who shall sue for the same.

SECTION 6. *And be it further enacted,* That all patentees and assignees of patents hereafter granted are hereby required to stamp, engrave, or cause to be stamped or engraved, on each article vended, or offered for sale, the date of the patent; and if any person or persons, patentees, or assignees, shall neglect to do so, he, she, or they shall be liable to the same penalty, to be recovered and disposed of in the manner specified in the foregoing fifth section of this act.

APPROVED August 29, 1842.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

## PATENT ACT OF 1848.

9 STATUTES AT LARGE, 231.

An Act to provide additional Examiners in the Patent Office, and for other Purposes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress as-*

*sembled*, That there shall be appointed, in the manner provided in the second section of the act entitled "An Act to promote the progress of useful arts, and to repeal all acts and parts of acts heretofore made for that purpose," approved July fourth, eighteen hundred and thirty-six, two principal examiners, and two assistant examiners, in addition to the number of examiners now employed in the Patent Office; and that hereafter each of the principal examiners employed in the Patent Office shall receive an annual salary of twenty-five hundred dollars, and each of the assistant examiners an annual salary of fifteen hundred dollars: *Provided*, That the power to extend patents, now vested in the board composed of the Secretary of State, Commissioner of Patents, and Solicitor of the Treasury, by the eighteenth section of the act approved July fourth, eighteen hundred and thirty-six, respecting the Patent Office, shall hereafter be vested solely in the Commissioner of Patents; and when an application is made to him for the extension of a patent according to said eighteenth section, and sixty days' notice given thereof, he shall refer the case to the principal examiner having charge of the class of inventions to which said case belongs, who shall make full report to said Commissioner of the said case, and particularly whether the invention or improvement secured in the patent was new and patentable when patented; and thereupon the said Commissioner shall grant or refuse the extension of said patent, upon the same principles and rules that have governed said board; but no patent shall be extended for a longer term than seven years.

SECTION 2. *And be it further enacted*, That hereafter the Commissioner of Patents shall require a fee of one dollar for recording any assignment, grant, or conveyance of the whole or any part of the interest in letters-patent, or power of attorney, or license to make or use the thing patented, when such instrument shall not exceed three hundred words; the sum of two dollars when it shall exceed three hundred and shall not exceed one thousand words; and the sum of three dollars when it shall exceed one thousand words; which fees shall in all cases be paid in advance.

SECTION 3. *And be it further enacted*, That there shall be

appointed in manner aforesaid, two clerks, to be employed in copying and recording, and in other services in the Patent Office, who shall each be paid a salary of one thousand two hundred dollars per annum.

SECTION 4. *And be it further enacted*, That the Commissioner of Patents is hereby authorized to send by mail, free of postage, the annual reports of the Patent Office, in the same manner in which he is empowered to send letters and packages relating to the business of the Patent Office.

APPROVED May 27, 1848.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

#### PATENT ACT OF 1849.

9 STATUTES AT LARGE, 395.

Section 2 of the Act entitled "An Act to establish the Home Department, and to provide for the Treasury Department an Assistant Secretary of the Treasury and a Commissioner of the Customs."

SECTION 2. *And be it further enacted*, That the Secretary of the Interior shall exercise and perform all the acts of supervision and appeal in regard to the office of Commissioner of Patents, now exercised by the Secretary of State ; and the said Secretary of the Interior shall sign all requisitions for the advance or payment of money out of the Treasury on estimates or accounts, subject to the same adjustment or control now exercised on similar estimates or accounts by the First or Fifth Auditor and First Comptroller of the Treasury.

APPROVED March 3, 1849.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

#### PATENT ACT OF 1852.

10 STATUTES AT LARGE, 75.

An Act in addition to "An Act to Promote the Progress of the Useful Arts."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That appeals provided for in the eleventh section of the act entitled An Act in addition to an act to promote the progress of the useful arts, approved March the third, eighteen hundred and thirty-nine, may also be made to either of the assistant judges of the Circuit Court of the District of Columbia, and all the powers, duties, and responsibilities imposed by the aforesaid act, and conferred upon the chief judge, are hereby imposed and conferred upon each of the said assistant judges.

SECTION 2. *And be it further enacted,* That in case appeals shall be made to the said chief judge, or to either of the said assistant judges, the Commissioner of Patents shall pay to such chief judge or assistant judge the sum of twenty-five dollars, required to be paid by the appellant into the Patent Office by the eleventh section of said act, on said appeal.

SECTION 3. *And be it further enacted,* That section thirteen of the aforesaid act, approved March the third, eighteen hundred and thirty-nine, is hereby repealed.

APPROVED August 30, 1852.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

## PATENT ACT OF FEBRUARY 18, 1861.

12 STATUTES AT LARGE, 130.

An Act to extend the right of appeal from the decisions of Circuit Courts to the Supreme Court of the United States.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from all judgments and decrees of any Circuit Court rendered in any action, suit, controversy, or case, at law or in equity, arising under any law of the United States granting or confirming to authors the exclusive right to their respective writings, or to inventors the exclusive right to their inventions or discoveries, a writ of error or appeal, as the case may require, shall lie, at the instance of either party, to the Supreme Court of the United States, in the same manner and

under the same circumstances as is now provided by law in other judgments and decrees of such circuit courts, without regard to the sum or value in controversy in the action.

APPROVED February 18, 1861.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

### PATENT ACT OF MARCH 2, 1861.

12 STATUTES AT LARGE, 246.

An Act in Addition to "An Act to promote the Progress of the useful Arts."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Commissioner of Patents may establish rules for taking affidavits and depositions required in cases pending in the Patent Office, and such affidavits and depositions may be taken before any justice of the peace, or other officer authorized by law to take depositions to be used in the courts of the United States, or in the State courts of any State where such officer shall reside; and in any contested case pending in the Patent Office it shall be lawful for the clerk of any court of the United States for any district or Territory, and he is hereby required, upon the application of any party to such contested case, or the agent or attorney of such party, to issue subpoenas for any witnesses residing or being within the said district or Territory, commanding such witnesses to appear and testify before any justice of the peace, or other officer as aforesaid, residing within the said district or Territory, at any time and place in the subpoena to be stated; and if any witness, after being duly served with such subpoena, shall refuse or neglect to appear, or, after appearing, shall refuse to testify (not being privileged from giving testimony), such refusal or neglect being proved to the satisfaction of any judge of the court whose clerk shall have issued such subpoena, said judge may thereupon proceed to enforce obedience to the process, or to punish the disobedience in like manner as any court of the United States may do in case of disobedience to process of subpoena ad testifican-

dum issued by such court ; and witnesses in such cases shall be allowed the same compensation as is allowed to witnesses attending the courts of the United States : *Provided*, That no witness shall be required to attend at any place more than forty miles from the place where the subpoena shall be served upon him to give a deposition under this law : *Provided also*, That no witness shall be deemed guilty of contempt for refusing to disclose any secret invention made or owned by him : *And provided further*, That no witness shall be deemed guilty of contempt for disobeying any subpoena directed to him by virtue of this act, unless his fees for going to, returning from, and one day's attendance at the place of examination, shall be paid or tendered to him at the time of the service of the subpoena.

SECTION 2. *And be it further enacted*, That for the purposes of securing greater uniformity of action in the grant and refusal of letters-patent, there shall be appointed by the President, by and with the advice and consent of the Senate, three examiners in chief, at an annual salary of three thousand dollars each, to be composed of persons of competent legal knowledge and scientific ability, whose duty it shall be, on the written petition of the applicant for that purpose being filed, to revise and determine upon the validity of decisions made by examiners when adverse to the grant of letters-patent ; and also to revise and determine in like manner upon the validity of the decisions of examiners in interference cases, and when required by the Commissioner in applications for the extension of patents, and to perform such other duties as may be assigned to them by the Commissioner ; that from their decisions appeals may be taken to the Commissioner of Patents in person, upon payment of the fee hereinafter prescribed ; that the said examiners in chief shall be governed in their action by the rules to be prescribed by the Commissioner of Patents.

SECTION 3. *And be it further enacted*, That no appeal shall be allowed to the examiners in chief from the decisions of the primary examiners, except in interference cases, until after the application shall have been twice rejected ; and the second examination of the application by the primary examiner shall

not be had until the applicant, in view of the references given on the first rejection, shall have renewed the oath of invention, as provided for in the seventh section of the act entitled "An act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose," approved July fourth, eighteen hundred and thirty-six.

SECTION 4. *And be it further enacted,* That the salary of the Commissioner of Patents, from and after the passage of this act, shall be four thousand five hundred dollars per annum, and the salary of the chief clerk of the Patent Office shall be two thousand five hundred dollars, and the salary of the librarian of the Patent Office shall be eighteen hundred dollars.

SECTION 5. *And be it further enacted,* That the Commissioner of Patents is authorized to restore to the respective applicants, or when not removed by them, to otherwise dispose of such of the models belonging to rejected applications as he shall not think necessary to be preserved. The same authority is also given in relation to all models accompanying applications for designs. He is further authorized to dispense in future with models of designs when the design can be sufficiently represented by a drawing.

SECTION 6. *And be it further enacted,* That the tenth section of the act approved the third of March, eighteen hundred and thirty-seven, authorizing the appointment of agents for the transportation of models and specimens to the Patent Office, is hereby repealed.

SECTION 7. *And be it further enacted,* That the Commissioner is further authorized, from time to time, to appoint, in the manner already provided for by law, such an additional number of principal examiners, first assistant examiners, and second assistant examiners as may be required to transact the current business of the office with despatch, provided the whole number of additional examiners shall not exceed four of each class, and that the total annual expenses of the Patent Office shall not exceed the annual receipts.

SECTION 8. *And be it further enacted,* That the Commissioner may require all papers filed in the Patent Office, if not correctly, legibly, and clearly written, to be printed at the cost of

the parties filing such papers ; and for gross misconduct he may refuse to recognize any person as a patent agent, either generally or in any particular case ; but the reasons of the Commissioner for such refusal shall be duly recorded, and be subject to the approval of the President of the United States.

SECTION 9. *And be it further enacted*, That no money paid as a fee, on any application for a patent after the passage of this act, shall be withdrawn or refunded, nor shall the fee paid on filing a caveat be considered as part of the sum required to be paid on filing a subsequent application for a patent for the same invention. That the three months' notice given to any caveator, in pursuance of the requirements of the twelfth section of the act of July fourth, eighteen hundred and thirty-six, shall be computed from the day on which such notice is deposited in the post-office at Washington, with the regular time for the transmission of the same added thereto, which time shall be indorsed on the notice ; and that so much of the thirteenth section of the act of Congress, approved July fourth, eighteen hundred and thirty-six, as authorizes the annexing to letters-patent of the description and specification of additional improvements is hereby repealed, and in all cases where additional improvements would now be admissible, independent patents must be applied for.

SECTION 10. *And be it further enacted*, That all laws now in force fixing the rates of the Patent Office fees to be paid, and discriminating between the inhabitants of the United States and those of other countries, which shall not discriminate against the inhabitants of the United States, are hereby repealed, and in their stead the following rates are established :—

On filing each caveat, ten dollars.

On filing each original application for a patent, except for a design, fifteen dollars.

On issuing each original patent, twenty dollars.

On every appeal from the examiner in chief to the Commissioner, twenty dollars.

On every application for the reissue of a patent, thirty dollars.

On every application for the extension of a patent, fifty



dollars ; and fifty dollars in addition, on the granting of every extension.

On filing each disclaimer, ten dollars.

For certified copies of patents and other papers, ten cents per hundred words.

For recording every assignment, agreement, power of attorney, and other papers, of three hundred words or under, one dollar.

For recording every assignment, and other papers, over three hundred and under one thousand words, two dollars.

For recording every assignment or other writing, if over one thousand words, three dollars.

For copies of drawings, the reasonable cost of making the same.

SECTION 11. *And be it further enacted,* That any citizen or citizens, or alien or aliens, having resided one year in the United States, and taken the oath of his or their intention to become a citizen or citizens, who, by his, her, or their own industry, genius, efforts, and expense may have invented or produced any new and original design, or a manufacture, whether of metal or other material or materials, and original design for a bust, statue, or bas-relief, or composition in alto or basso relievo, or any new and original impression or ornament, or to be placed on any article of manufacture, the same being formed in marble or other material, or any new and useful pattern, or print, or picture, to be either worked into or worked on, or printed, or painted, or cast, or otherwise fixed on any article of manufacture, or any new and original shape or configuration of any article of manufacture, not known or used by others before his, her, or their invention or production thereof, and prior to the time of his, her, or their application for a patent therefor, and who shall desire to obtain an exclusive property or right therein to make, use, and sell, and vend the same, or copies of the same, to others, by them to be made, used, and sold, may make application, in writing, to the Commissioner of Patents, expressing such desire ; and the Commissioner, on due proceedings had, may grant a patent therefor, as in the case now of application for a patent, 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 : *Provided*, That the fee to be paid in such application shall be for the term of three years and six months, ten dollars, for seven years, fifteen dollars, and for fourteen years, thirty dollars : *And provided*, That the patentees of designs under this act shall be entitled to the extension of their respective patents for the term of seven years, from the day on which said patent shall expire, upon the same terms and restrictions as are now provided for the extension of letters-patent.

SECTION 12. *And be it further enacted*, That all applications for patents shall be completed and prepared for examination within two years after the filing of the petition, and in default thereof they shall be regarded as abandoned by the parties thereto ; unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable ; and all applications now pending shall be treated as if filed after the passage of this act, and all applications for the extension of patents shall be filed at least ninety days before the expiration thereof ; and notice of the day set for the hearing of the case shall be published, as now required by law, for at least sixty days.

SECTION 13. *And be it further enacted*, That in all cases where an article is made or vended by any person under the protection of letters-patent, it shall be the duty of such person to give sufficient notice to the public that said article is so patented, either by fixing thereon the word "patented," together with the day and year the patent was granted ; or when, from the character of the article patented, that may be impracticable, by enveloping one or more of the said articles, and affixing a label to the package, or otherwise attaching thereto a label on which the notice, with the date, is printed ; on failure of which, in any suit for the infringement of letters-patent by the party failing so to mark the article the right to which is infringed upon, no damage shall be recovered by the plaintiff, except on proof that the defendant was duly notified of the infringement, and continued after such notice to make

or vend the article patented. And the sixth section of the act entitled "An act in addition to an act to promote the progress of the useful arts," and so forth, approved the twenty-ninth day of August, eighteen hundred and forty-two, be, and the same is hereby, repealed.

SECTION 14. *And be it further enacted*, That the Commissioner of Patents be, and he is hereby, authorized to print, or in his discretion to cause to be printed, ten copies of the description and claims of all patents which may hereafter be granted, and ten copies of the drawings of the same, when drawings shall accompany the patents: *Provided*, The cost of printing the text of said descriptions and claims shall not exceed, exclusive of stationery, the sum of two cents per hundred words for each of said copies, and the cost of the drawing shall not exceed fifty cents per copy; one copy of the above number shall be printed on parchment to be affixed to the letters-patent; the work shall be under the direction, and subject to the approval, of the Commissioner of Patents, and the expense of the said copies shall be paid for out of the patent fund.

SECTION 15. *And be it further enacted*, That printed copies of the letters-patent of the United States, with the seal of the Patent Office affixed thereto and certified and signed by the Commissioner of Patents, shall be legal evidence of the contents of said letters-patent in all cases.

SECTION 16. *And be it further enacted*, That all patents hereafter granted shall remain in force for the term of seventeen years from the date of issue; and all extension of such patents is hereby prohibited.

SECTION 17. *And be it further enacted*, That all acts and parts of acts heretofore passed, which are inconsistent with the provisions of this act, be, and the same are hereby, repealed.

APPROVED March 2, 1861.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

## PATENT ACT OF 1862.

12 STATUTES AT LARGE, 583.

Section 4 of an Act making supplemental appropriations for sundry civil expenses, &c.

SECTION 4. For the fund of the Patent Office, fifty thousand eight hundred and fifty-five dollars and forty-nine cents, to supply a deficiency existing under the act of March second, eighteen hundred and sixty-one, entitled "An act in addition to an act to promote the progress of the useful arts": *Provided*, That the fourteenth section of said act be, and the same is hereby, repealed.

APPROVED July 16, 1862.

## PATENT ACT OF 1863.

12 STATUTES AT LARGE, 796.

An Act to amend an Act entitled "An Act to promote the Progress of the useful Arts."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That so much of section seven of the act entitled "An act to promote the progress of the useful arts," approved July fourth, eighteen hundred and thirty-six, as requires a renewal of the oath, be, and the same is hereby, repealed.

SECTION 2. *And be it further enacted*, That, whereas the falling off of the revenue of the Patent Office required a reduction of the compensation of the examiners and clerks, or other employees in the office, after the thirty-first day of August, eighteen hundred and sixty-one, that the Commissioner of Patents be, and he is hereby, authorized, whenever the revenue of the office will justify him in so doing, to pay them such sums, in addition to what they shall already have received, as will make their compensation the same as it was at that time.

SECTION 3. *And be it further enacted*, That every patent shall be dated as of a day not later than six months after the time at which it was passed and allowed, and notice thereof sent to the applicant or his agent. And if the final fee for

such patent be not paid within the said six months, the patent shall be withheld, and the invention therein described shall become public property as against the applicant therefor: *Provided*, That in all cases where patents have been allowed previous to the passage of this act, the said six months shall be reckoned from the date of such passage.

APPROVED March 3, 1863.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

### PATENT ACT OF 1864.

13 STATUTES AT LARGE, 194.

An Act amendatory of an Act to amend an Act entitled "An Act to promote the Progress of the Useful Arts," approved March three, eighteen hundred and sixty-three.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any person having an interest in an invention, whether as the inventor or assignee, for which a patent was ordered to issue upon the payment of the final fee, as provided in section three of an act approved March three, eighteen hundred and sixty-three, but who has failed to make payment of the final fee, as provided by said act, shall have the right to make the payment of such fee, and receive the patent withheld on account of the non-payment of said fee, provided such payment be made within six months from the date of the passage of this act: *Provided*, That nothing herein shall be so construed as to hold responsible in damages any persons who have manufactured or used any article or thing for which a patent, as aforesaid, was ordered to be issued.

APPROVED June 25, 1864.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

## PATENT ACT OF 1865.

13 STATUTES AT LARGE, 533.

An Act amendatory of "An Act to amend an Act entitled 'An Act to promote the Progress of the useful Arts,' approved March three, eighteen hundred and sixty-three."

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any persons having an interest in an invention, whether as inventor or assignee, for which a patent was ordered to issue upon the payment of the final fee, as provided in section three of an act approved March three, eighteen hundred and sixty-three, but who has failed to make payment of the final fee as provided in said act, shall have the right to make an application for a patent for his invention, the same as in the case of an original application, provided such application be made within two years after the date of the allowance of the original application: *Provided,* That nothing herein shall be so construed as to hold responsible in damages any persons who have manufactured or used any article or thing for which a patent aforesaid was ordered to issue. This act shall apply to all cases now in the Patent Office, and also to such as shall hereafter be filed. And all acts or parts of acts inconsistent with this act are hereby repealed.

APPROVED March 3, 1865.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

## PATENT STATUTE OF 1866.

14 STATUTES AT LARGE, 76.

An Act in Amendment of an Act to promote the Progress of the Useful Arts, and the Acts in Amendment of an Addition thereto.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That upon appealing for the first time from the decision of the primary examiner to the examiners-in-chief in the Patent

Office, the appellant shall pay a fee of ten dollars into the Patent Office, to the credit of the patent fund : and no appeal from the primary examiner to the examiners-in-chief shall hereafter be allowed until the appellant shall pay said fee.

APPROVED June 27, 1866.

Repealed July 8, 1870. 16 Statutes at Large, Chap. 230, Section 111, p. 216.

## CONSOLIDATED PATENT ACT OF 1870.

16 STATUTES AT LARGE, 198.

An Act to revise, consolidate, and amend the Statutes, relating to Patents and Copyrights.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there shall be attached to the Department of the Interior the office, heretofore established, known as the Patent Office, wherein all records, books, models, drawings, specifications, and other papers and things pertaining to patents shall be safely kept and preserved. [See Revised Statutes, Section 475.]

SECTION 2. *And be it further enacted,* That the officers and employees of said office shall continue to be : one commissioner of patents, one assistant commissioner, and three examiners-in-chief, to be appointed by the President, by and with the advice and consent of the Senate ; one chief clerk, one examiner in charge of interferences, twenty-two principal examiners, twenty-two first assistant examiners, twenty-two second assistant examiners, one librarian, one machinist, five clerks of class four, six clerks of class three, fifty clerks of class two, forty-five clerks of class one, and one messenger and purchasing clerk, all of whom shall be appointed by the Secretary of the Interior, upon nomination of the Commissioner of Patents. [See Revised Statutes, Section 476.]

SECTION 3. *And be it further enacted,* That the Secretary of the Interior may also appoint, upon like nomination, such additional clerks of classes two and one, and of lower grades, copyists of drawings, female copyists, skilled laborers, labor-

ers and watchmen, as may be from time to time appropriated for by Congress. [See Revised Statutes, Section 169.]

SECTION 4. *And be it further enacted*, That the annual salaries of the officers and employecs of the Patent Office shall be as follows :—

Of the commissioner of patents, four thousand five hundred dollars.

Of the assistant commissioner, three thousand dollars.

Of the examiners-in-chief, three thousand dollars each.

Of the chief clerk, two thousand five hundred dollars.

Of the examiner in charge of interferences, two thousand five hundred dollars.

Of the principal examiners, two thousand five hundred dollars each.

Of the first assistant examiners, one thousand eight hundred dollars each.

Of the second assistant examiners, one thousand six hundred dollars each.

Of the librarian, one thousand eight hundred dollars.

Of the machinist, one thousand six hundred dollars.

Of the clerks of class four, one thousand eight hundred dollars each.

Of the clerks of class three, one thousand six hundred dollars each.

Of the clerks of class two, one thousand four hundred dollars each.

Of the clerks of class one, one thousand two hundred dollars each.

Of the messenger and purchasing clerk, one thousand dollars.

Of laborers and watchmen, seven hundred and twenty dollars each.

Of the additional clerks, copyists of drawings, female copyists, and skilled laborers, such rates as may be fixed by the acts making appropriations for them. [See Revised Statutes, Sections 477, 440, and 167.]

SECTION 5. *And be it further enacted*, That all officers and employees of the Patent Office shall, before entering upon their duties, make oath or affirmation truly and faithfully to



execute the trusts committed to them. [See Revised Statutes, Sections 1756 and 1757.]

SECTION 6. *And be it further enacted*, That the commissioner and chief clerk, before entering upon their duties, shall severally give bond, with sureties, to the Treasurer of the United States, the former in the sum of ten thousand dollars, and the latter in the sum of five thousand dollars, conditioned for the faithful discharge of their duties, and that they will render to the proper officers of the treasury a true account of all money received by virtue of their office. [See Revised Statutes, Section 479.]

SECTION 7. *And be it further enacted*, That it shall be the duty of the commissioner, under the direction of the Secretary of the Interior, to superintend or perform all the duties respecting the granting and issuing of patents which herein are, or may hereafter be, by law directed to be done ; and he shall have charge of all books, records, papers, models, machines, and other things belonging to said office. [See Revised Statutes, Section 481.]

SECTION 8. *And be it further enacted*, That the commissioner may send and receive by mail, free of postage, letters, printed matter, and packages relating to the business of his office, including Patent Office reports. [See 19 Statutes at Large, Chap. 103, Section 5, p. 335 ; and 20 Statutes at Large, Chap. 180, Section 29, p. 362.]

SECTION 9. *And be it further enacted*, That the commissioner shall lay before Congress, in the month of January, annually, a report, giving a detailed statement of all moneys received for patents, for copies of records or drawings, or from any other source whatever ; a detailed statement of all expenditures for contingent and miscellaneous expenses ; a list of all patents which were granted during the preceding year, designating under proper heads the subjects of such patents ; an alphabetical list of the patentees, with their places of residence ; a list of all patents which have been extended during the year ; and such other information of the condition of the Patent Office as may be useful to Congress or the public. [See Revised Statutes, Section 494.]

SECTION 10. *And be it further enacted*, That the examiners-in-chief shall be persons of competent legal knowledge and scientific ability, whose duty it shall be, on the written petition of the appellant, to revise and determine upon the validity of the adverse decisions of examiners upon applications for patents, and for reissues of patents, and in interference cases; and when required by the commissioner, they shall hear and report upon claims for extensions, and perform such other like duties as he may assign them. [See Revised Statutes, Section 482.]

SECTION 11. *And be it further enacted*, That in case of the death, resignation, absence, or sickness of the commissioner, his duties shall devolve upon the assistant commissioner until a successor shall be appointed, or such absence or sickness shall cease. [See Revised Statutes, Sections 177, 178, and 179.]

SECTION 12. *And be it further enacted*, That the commissioner shall cause a seal to be provided for said office, with such device as the President may approve, with which all records or papers issued from said office, to be used in evidence, shall be authenticated. [See Revised Statutes, Section 478.]

SECTION 13. *And be it further enacted*, That the commissioner shall cause to be classified and arranged in suitable cases, in the rooms and galleries provided for that purpose, the models, specimens of composition, fabrics, manufactures, works of art, and designs, which have been or shall be deposited in said office; and said rooms and galleries shall be kept open during suitable hours for public inspection. [See Revised Statutes, Section 484.]

SECTION 14. *And be it further enacted*, That the commissioner may restore to the respective applicants such of the models belonging to rejected applications as he shall not think necessary to be preserved, or he may sell or otherwise dispose of them after the application has been finally rejected for one year, paying the proceeds into the treasury, as other patent moneys are directed to be paid. [See Revised Statutes, Section 485.]

SECTION 15. *And be it further enacted*, That there shall be purchased, for the use of said office, a library of such scien-

tific works and periodicals, both foreign and American, as may aid the officers in the discharge of their duties, not exceeding the amount annually appropriated by Congress for that purpose. [See Revised Statutes, Section 486.]

SECTION 16. *And be it further enacted*, That all officers and employes of the Patent Office shall be incapable, during the period for which they shall hold their appointments, to acquire or take, directly or indirectly, except by inheritance or bequest, any right or interest in any patent issued by said office. [See Revised Statutes, Section 480.]

SECTION 17. *And be it further enacted*, That 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 shall be duly recorded, and be subject to the approval of the Secretary of the Interior. [See Revised Statutes, Section 487.]

SECTION 18. *And be it further enacted*, That the commissioner may require all papers filed in the Patent Office, if not correctly, legibly and clearly written, to be printed at the cost of the party filing them. [See Revised Statutes, Section 488.]

SECTION 19. *And be it further enacted*, That the commissioner, subject to the approval of the Secretary of the Interior, may from time to time establish rules and regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office. [See Revised Statutes, Section 483.]

SECTION 20. *And be it further enacted*, That the commissioner may print or cause to be printed copies of the specifications of all letters-patent and of the drawings of the same, and copies of the claims of current issues, and copies of such laws, decisions, rules, regulations, and circulars as may be necessary for the information of the public. [See Revised Statutes, Sections 489, 490, and 491.]

SECTION 21. *And be it further enacted*, That all patents shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall be signed by the Secretary of the Interior and countersigned by the commissioner, and they shall be recorded, together with the specifica-

tion, in said office, in books to be kept for that purpose. [See Revised Statutes, Section 4883.]

SECTION 22. *And be it further enacted*, That every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the said invention or discovery throughout the United States and the Territories thereof, referring to the specification for the particulars thereof; and a copy of said specifications and of the drawings shall be annexed to the patent and be a part thereof. [See Revised Statutes, Section 4884.]

SECTION 23. *And be it further enacted*, That every patent shall 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 shall be withheld. [See Revised Statutes, Section 4885.]

SECTION 24. *And be it further enacted*, That 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 or used by others in this country, and not patented, or 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, may, upon payment of the duty required by law, and other due proceedings had, obtain a patent therefor. [See Revised Statutes, Section 4886.]

SECTION 25. *And be it further enacted*, That no person shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid, by reason of its having been first patented or caused to be patented in a foreign country: *Provided*, The same shall not have been introduced into public use in the United States for more than two years prior to the application, and 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. [See Revised Statutes, Section 4887.]

SECTION 26. *And be it further enacted,* That before any inventor or discoverer shall receive a patent for his invention or discovery, he shall make application therefor, in writing, to the commissioner, and shall file in the Patent Office a written description of the same, and of the manner and process of making, constructing, compounding, and using it, 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 ; and in case of a machine, he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle so as to distinguish it from other inventions ; and he shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery ; and said specification and claim shall be signed by the inventor and attested by two witnesses. [See Revised Statutes, Section 4888.]

SECTION 27. *And be it further enacted,* That when the nature of the case admits of drawings, the applicant shall furnish one copy signed by the inventor or his attorney in fact, and attested by two witnesses, which shall be filed in the Patent Office ; and a copy of said drawings, to be furnished by the Patent Office, shall be attached to the patent as part of the specification. [See Revised Statutes, Section 4889.]

SECTION 28. *And be it further enacted,* That when the invention or discovery is of a composition of matter, the applicant, if required by the commissioner, shall furnish specimens of ingredients and of the composition, sufficient in quantity for the purpose of experiment. [See Revised Statutes, Section 4890.]

SECTION 29. *And be it further enacted,* That in all cases which admit of representation by model, the applicant, if required by the commissioner, shall furnish one of convenient size to exhibit advantageously the several parts of his invention or discovery. [See Revised Statutes, Section 4891.]

SECTION 30. *And be it further enacted,* That the applicant.

shall 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; 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 said 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, *chargé 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. [See Revised Statutes, Section 4892.]

SECTION 31. *And be it further enacted*, That on the filing of any such application and the payment of the duty required by law, the commissioner shall cause an examination to be made of the alleged new invention or discovery; and if on such examination it shall appear that the claimant is justly entitled to a patent under the law, and that the same is sufficiently useful and important, the commissioner shall issue a patent therefor. [See Revised Statutes, Section 4893.]

SECTION 32. *And be it further enacted*, That 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. [See Revised Statutes, Section 4894.]

SECTION 33. *And be it further enacted*, That patents may be granted and issued or reissued to the assignee of the inventor or discoverer, the assignment thereof being first entered of record in the Patent Office; but in such case the application for the patent shall be made and the specifications sworn to by the inventor or discoverer; and also, if he be living, in case of an application for reissue. [See Revised Statutes, Section 4895.]

SECTION 34. *And be it further enacted,* That when any person, having made any new invention or discovery for which a patent might have been granted, dies before a patent is granted, the right of applying for and obtaining the patent shall devolve on his executor or administrator, in trust for the heirs at law of the deceased, in case he shall have died intestate ; or if he shall have left a will, disposing of the same, then in trust for his devisees, in as full manner and on the same terms and conditions as the same might have been claimed or enjoyed by him in his lifetime ; and when the application shall be made by such legal representatives, the oath or affirmation required to be made shall be so varied in form that it can be made by them. [See Revised Statutes, Section 4896.]

SECTION 35. *And be it further enacted,* That any person who has an interest in an invention or discovery, whether as inventor, discoverer, or assignee, for which a patent was ordered to issue upon the payment of the final fee, but who has failed to make payment thereof within six months from the time at which it was passed and allowed, and notice thereof was sent to the applicant or his agent, shall have a right to make an application for a patent for such invention or discovery the same as in the case of an original application : *Provided,* That the second application be made within two years after the allowance of the original application. But no person shall be held responsible in damages for the manufacture or use of any article or thing for which a patent, as aforesaid, was ordered to issue, prior to the issue thereof : *And provided further,* That when an application for a patent has been rejected or withdrawn, prior to the passage of this act, the applicant shall have six months from the date of such passage to renew his application, or to file a new one ; and if he omit to do either, his application shall be held to have been abandoned. Upon the hearing of such renewed applications abandonment shall be considered as a question of fact. [See Revised Statutes, Section 4897.]

SECTION 36. *And be it further enacted,* That every patent or any interest therein shall be assignable in law, by an instru-

ment 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; and said assignment, grant, or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent Office within three months from the date thereof. [See Revised Statutes, Section 4898.]

SECTION 37. *And be it further enacted,* That every person who may have purchased of the inventor, or with his knowledge and consent may have constructed any newly invented or discovered machine, or other patentable article, prior to the application by the inventor or discoverer for a patent, or sold or used one so constructed, shall have the right to use, and vend to others to be used, the specific thing so made or purchased, without liability therefor. [See Revised Statutes, Section 4899.]

SECTION 38. *And be it further enacted,* That it shall be the duty of all patentees, and their assigns and legal representatives, and of all persons making or vending any patented article for or under them, to give sufficient notice to the public that the same is patented, either by fixing thereon the word "patented," together with the day and year the patent was granted; or when, from the character of the article, this cannot be done, by fixing to it or to the package wherein one or more of them is enclosed, a label containing the like notice; and in any suit for infringement, by the party failing so to mark, no damages shall be recovered by the plaintiff, except on proof that the defendant was duly notified of the infringement, and continued, after such notice, to make, use, or vend the article so patented. [See Revised Statutes, Section 4900.]

SECTION 39. *And be it further enacted,* That if any person shall, in any manner, mark upon any thing made, used, or sold by him for which he has not obtained a patent, the name or any imitation of the name of any person who has obtained a patent therefor, without the consent of such patentee, or his assigns or legal representatives; or shall in any manner mark



upon or affix to any such patented article the word "patent" or "patentee," or the words "letters-patent," or any word of like import, with intent to imitate or counterfeit the mark or device of the patentee, without having the license or consent of such patentee or his assigns or legal representatives; or shall in any manner mark upon or affix to any unpatented article the word "patent," or any word importing that the same is patented, for the purpose of deceiving the public, he shall be liable for every such offence to a penalty of not less than one hundred dollars, with costs; one moiety of said penalty to the person who shall sue for the same, and the other to the use of the United States, to be recovered by suit in any district court of the United States within whose jurisdiction such offence may have been committed. [See Revised Statutes, Section 4901.]

SECTION 40. *And be it further enacted,* That any citizen of the United States, who shall have made any new invention or discovery, and shall desire further time to mature the same, may, on payment of the duty required by law, file in the Patent Office a caveat setting forth the design thereof, and of its distinguishing characteristics, and praying protection of his right until he shall have matured his invention; and 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; and if application shall be made within the year by any other person for a patent with which such caveat would in any manner interfere, the commissioner shall deposit the description, specification, drawings, and model of such application in like manner in the confidential archives of the office, and give notice thereof, by mail, to the person filing the caveat, who, if he would avail himself of his caveat, shall file his description, specification, drawings, and model within three months from the time of placing said notice in the post-office in Washington, with the usual time required for transmitting it to the caveator added thereto, which time shall be indorsed on the notice. And an alien shall have the privilege herein granted, if he shall have resided in the United States one year next preceding the filing

of his caveat, and made oath of his intention to become a citizen. [See Revised Statutes, Section 4902.]

SECTION 41. *And be it further enacted*, That whenever, on examination, any claim for a patent is rejected for any reason whatever, the commissioner shall notify the applicant thereof, giving him briefly the reasons for such rejection, 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, the applicant shall persist in his claim for a patent, with or without altering his specifications, the commissioner shall order a re-examination of the case. [See Revised Statutes, Section 4903.]

SECTION 42. *And be it further enacted*, That whenever an application is made for a patent which, in the opinion of the commissioner, would interfere with any pending application, or with any unexpired patent, he shall give notice thereof to the applicants, or applicant and patentee, as the case may be, and shall direct the primary examiner to proceed to determine the question of priority of invention. And the commissioner may issue a patent to the party who shall be adjudged the prior inventor, unless the adverse party shall appeal from the decision of the primary examiner, or of the board of examiners-in-chief, as the case may be, within such time, not less than twenty days, as the commissioner shall prescribe. [See Revised Statutes, Section 4904.]

SECTION 43. *And be it further enacted*, That the commissioner may establish rules for taking affidavits and depositions required in cases pending in the Patent Office, and such affidavits and depositions may be taken before any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where the officer resides. [See Revised Statutes, Section 4905.]

SECTION 44. *And be it further enacted*, That the clerk of any court of the United States, for any district or territory wherein testimony is to be taken for use in any contested case pending in the Patent Office, shall, upon the application of any party thereto, or his agent or attorney, issue [a] subpoena for any witness residing or being within said district or terri-

tory, commanding him to appear and testify before any officer in said district or territory authorized to take depositions and affidavits, at any time and place in the subpoena stated ; and if any witness, after being duly served with such subpoena, shall neglect or refuse to appear, or after appearing shall refuse to testify, the judge of the court whose clerk issued the subpoena, may, on proof of such neglect or refusal, enforce obedience to the process, or punish the disobedience as in other like cases. [See Revised Statutes, Sections 4906 and 4908.]

SECTION 45. *And be it further enacted,* That every witness duly subpoenaed and in attendance shall be allowed the same fees as are allowed to witnesses attending the courts of the United States, but no witness shall be required to attend at any place more than forty miles from the place where the subpoena is served upon him, nor be deemed guilty of contempt for disobeying such subpoena, unless his fees and travelling expenses in going to, returning from, and one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena ; nor for refusing to disclose any secret invention or discovery made or owned by himself. [See Revised Statutes, Sections 4906, 4907, and 4908.]

SECTION 46. *And be it further enacted,* That 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 interference[s], in such case to the board of examiners-in-chief, having once paid the fee for such appeal provided by law. [See Revised Statutes, Section 4909.]

SECTION 47. *And be it further enacted,* That if such party is dissatisfied with the decision of the examiners-in-chief, he may, on payment of the duty required by law, appeal to the commissioner in person. [See Revised Statutes, Section 4910.]

SECTION 48. *And be it further enacted,* That if such party, except a party to an interference, is dissatisfied with the decision of the commissioner, he may appeal to the Supreme Court

of the District of Columbia, sitting in banc. [See Revised Statutes, Section 4911.]

SECTION 49. *And be it further enacted,* That when an appeal is taken to the Supreme Court of the District of Columbia, the appellant shall give notice thereof to the commissioner, and file in the Patent Office, within such time as the commissioner shall appoint, his reasons of appeal, specifically set forth in writing. [See Revised Statutes, Section 4912.]

SECTION 50. *And be it further enacted,* That it shall be the duty of said court, on petition, to hear and determine such appeal, and to revise the decision appealed from in a summary way, on the evidence produced before the commissioner, at such early and convenient time as the court may appoint, notifying the commissioner of the time and place of hearing; and the revision shall be confined to the points set forth in the reasons of appeal. And after hearing the case, the court shall return to the commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent Office, and govern the further proceedings in the case. But no opinion or decision of the court in any such case shall preclude any person interested from the right to contest the validity of such patent in any court wherein the same may be called in question. [See Revised Statutes, Section 4914.]

SECTION 51. *And be it further enacted,* That on receiving notice of the time and place of hearing such appeal, the commissioner shall notify all parties who appear to be interested therein in such manner as the court may prescribe. The party appealing shall lay before the court certified copies of all the original papers and evidence in the case, and the commissioner shall furnish it with the grounds of his decision, fully set forth in writing, touching all the points involved by the reasons of appeal. And at the request of any party interested, or of the court, the commissioner and the examiners may be examined under oath, in explanation of the principles of the machine or other thing for which a patent is demanded. [See Revised Statutes, Section 4913.]

SECTION 52. *And be it further enacted,* That whenever a patent on application is refused, for any reason whatever,

either by the commissioner or by the Supreme Court of the District of Columbia upon appeal from the commissioner, the applicant may have remedy by bill in equity ; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge that such applicant is entitled, according to law, to receive a patent for his invention, as specified in his claim, or for any part thereof, as the facts in the case may appear. And such adjudication, if it be in favor of the right of the applicant, shall authorize the commissioner to issue such patent, on the applicant filing in the Patent Office a copy of the adjudication, and otherwise complying with the requisitions of law. And in all cases where there is no opposing party a copy of the bill shall be served on the commissioner, and all the expenses of the proceeding shall be paid by the applicant, whether the final decision is in his favor or not. [See Revised Statutes, Section 4915.]

SECTION 53. *And be it further enacted,* That whenever any patent is inoperative or invalid, 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, if the error has arisen by inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, the commissioner shall, on the surrender of such a patent and the payment of the duty required by law, cause a new patent for the same invention, and in accordance with the corrected specification, to be issued to the patentee, or, in the case of his death or assignment of the whole or any undivided part of the original patent, to his executors, administrators, or assigns, for the unexpired part of the term of the original patent, the surrender of which shall take effect upon the issue of the amended patent ; and 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 a reissue for each of such reissued letters-patent. And the specifications and claim in every such case shall be subject to revision and restriction in the same manner as original applications are. And the patent so reissued, together with the corrected speci-

fication, shall have the effect and operation in law, on the trial of all actions for causes thereafter arising, as though the same had been originally filed in such corrected form ; 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. [See Revised Statutes, Section 4916.]

SECTION 54. *And be it further enacted*, That 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 duty required by law, make disclaimer of such parts of the thing patented as he 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 ; said 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 its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing it. [See Revised Statutes, Section 4917.]

SECTION 55. *And be it further enacted*, That all actions, suits, controversies, and cases arising under the patent laws of the United States shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of a circuit court, or by the Supreme Court of the District of Colum-

bia, or of any territory ; and the court shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable ; and upon a decree being rendered in any such case for an infringement, the *claimant* [complainant] shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby, and the court shall assess the same or cause the same to be assessed under its direction, and the court shall have the same powers to increase the same in its discretion that are given by this act to increase the damages found by verdicts in actions upon the case ; but all actions shall be brought during the term for which the letters-patent shall be granted or extended, or within six years after the expiration thereof. [See Revised Statutes, Section 629, ¶ 9, and Section 4921.]

SECTION 56. *And be it further enacted*, That a writ of error or appeal to the Supreme Court of the United States shall lie from all judgments and decrees of any circuit court, or of any district court exercising the jurisdiction of a circuit court, or of the Supreme Court of the District of Columbia, or of any Territory, in any action, suit, controversy, or case, at law or in equity, touching patent rights, in the same manner and under the same circumstances as in other judgments and decrees of such circuit courts, without regard to the sum or value in controversy. [See Revised Statutes, Section 699.]

SECTION 57. *And be it further enacted*, That written or printed copies of any records, books, papers, or drawings belonging to the Patent Office, and of letters-patent under the signature of the commissioner or acting commissioner, with the seal of office affixed, shall be competent evidence in all cases wherein the originals could be evidence, and any person making application therefor, and paying the fee required by law, shall have certified copies thereof. And copies of the specifications and drawings of foreign letters-patent, certified in like manner, shall be *primâ facie* evidence of the fact of the granting of such foreign letters-patent, and of the date

and contents thereof. [See Revised Statutes, Sections 892 and 893.]

SECTION 58. *And be it further enacted,* That whenever there shall be interfering patents, any person interested in any one of such interfering patents, or in the working of the invention claimed under either of such patents, may have relief against the interfering patentee, and all parties interested under him, by suit in equity against the owners of the interfering patent; and the court having cognizance thereof, as hereinbefore provided, on notice to adverse parties, and other due proceedings had according to the course of equity, may adjudge and declare either of the patents void in whole or in part, or inoperative, or invalid in any particular part of the United States, according to the interest of the parties in the patent or the invention patented. But no such judgment or adjudication shall affect the rights of any person except the parties to the suit and those deriving title under them subsequent to the rendition of such judgment. [See Revised Statutes, Section 4918.]

SECTION 59. *And be it further enacted,* That damages for the infringement of any patent may be recovered by action on the case in any circuit court of the United States, or district court exercising the jurisdiction of a circuit court, or in the Supreme Court of the District of Columbia, or of any Territory, in the name of the party interested, either as patentee, assignee, or grantee. And whenever in any such action a verdict shall be rendered for the plaintiff, the court may enter judgment thereon for any sum above the amount found by the verdict as the actual damages sustained, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs. [See Revised Statutes, Section 629, ¶ 9, and Section 4919.]

SECTION 60. *And be it further enacted,* That whenever, through inadvertence, accident, or mistake, and without any wil[l]ful default or intent to defraud or mislead the public, a patentee shall have (in his specification) claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the



original and first inventor or discoverer as aforesaid, every such patentee, his executors, administrators, and assigns, whether of the whole or any sectional interest in the patent, may maintain a suit at law or in equity, for the infringement of any part thereof, which was bonâ fide his own, provided it shall be a material and substantial part of the thing patented, and be definitely distinguishable from the parts so claimed, without right as aforesaid, notwithstanding the specifications may embrace more than that of which the patentee was the original or first inventor or discoverer. But in every such case in which a judgment or decree shall be rendered for the plaintiff, no costs shall be recovered unless the proper disclaimer has been entered at the Patent Office before the commencement of the suit; nor shall he be entitled to the benefits of this section if he shall have unreasonably neglected or delayed to enter said disclaimer. [See Revised Statutes, Section 4922.]

SECTION 61. *And be it further enacted,* That in any action for infringement the defendant may plead the general issue, and having given notice in writing to the plaintiff or his attorney, thirty days before, may prove on trial any one or more of the following special matters:—

First. That for the purpose of deceiving the public the description and specification filed by the patentee in the Patent Office was made to contain less than the whole truth relative to his invention or discovery, or more than is necessary to produce the desired effect; or,

Second. That he had surreptitiously or unjustly obtained the patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same; or,

Third. That it had been patented or described in some printed publication prior to his supposed invention or discovery thereof; or,

Fourth. That he was not the original and first inventor or discoverer of any material and substantial part of the thing patented; or,

Fifth. That it had been in public use or on sale in this

country, for more than two years before his application for a patent, or had been abandoned to the public.

And in notices as to proof of previous invention, knowledge, or use of the thing patented, the defendant shall state the names of patentees and the dates of their patents, and when granted, and the names and residences of the persons alleged to have invented, or to have had the prior knowledge of the thing patented, and where and by whom it had been used; and if any one or more of the special matters alleged shall be found for the defendant, judgment shall be rendered for him with costs. And the like defences may be pleaded in any suit in equity for relief against an alleged infringement; and proofs of the same may be given upon like notice in the answer of the defendant, and with the like effect. [See Revised Statutes, Section 4920.]

SECTION 62. *And be it further enacted,* That whenever it shall appear that the patentee, at the time of making his application for the patent, believed himself to be the original and first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery, or any part thereof, having been known or used in a foreign country, before his invention or discovery thereof, if it had not been patented or described in a printed publication. [See Revised Statutes, Section 4923.]

SECTION 63. *And be it further enacted,* That where the patentee of any invention or discovery, the patent for which was granted prior to the second day of March, eighteen hundred and sixty-one, shall desire an extension of his patent beyond the original term of its limitation, he shall make application therefor, in writing, to the commissioner, setting forth the reasons why such extension should be granted; and he shall also furnish a written statement under oath of the ascertained value of the invention or discovery, and of his receipts and expenditures on account thereof, sufficiently in detail to exhibit a true and faithful account of the loss and profit in any manner accruing to him by reason of said invention or discovery. And said application shall be filed not more than six months nor less than ninety days before the expiration of the

original term of the patent ; and no extension shall be granted after the expiration of said original term. [See Revised Statutes, Section 4924.]

SECTION 64. *And be it further enacted,* That upon the receipt of such application, and the payment of the duty required by law, the commissioner shall cause to be published in one newspaper in the city of Washington, and in such other papers published in the section of the country most interested adversely to the extension of the patent as he may deem proper, for at least sixty days prior to the day set for hearing the case, a notice of such application, and of the time and place when and where the same will be considered, that any person may appear and show cause why the extension should not be granted. [See Revised Statutes, Section 4925.]

SECTION 65. *And be it further enacted,* That on the publication of such notice, the commissioner shall refer the case to the principal examiner having charge of the class of inventions to which it belongs, who shall make to said commissioner a full report of the case, and particularly whether the invention or discovery was new and patentable when the original patent was granted. [See Revised Statutes, Section 4926.]

SECTION 66. *And be it further enacted,* That the commissioner shall, at the time and place designated in the published notice, hear and decide upon the evidence produced, both for and against the extension ; and if it shall appear to his satisfaction that the patentee, without neglect or fault on his part, has failed to obtain from the use and sale of his invention or discovery, a reasonable remuneration for the time, ingenuity, and expense bestowed upon it, and the introduction of it into use, and that it is just and proper, having due regard to the public interest, that the term of the patent should be extended, the said commissioner shall make a certificate thereon, renewing and extending the said patent for the term of seven years from the expiration of the first term, which certificate shall be recorded in the Patent Office, and thereupon the said patent shall have the same effect in law as though it had been originally granted for twenty-one years. [See Revised Statutes, Section 4927.]

SECTION 67. *And be it further enacted,* That the benefit of the extension of a patent shall extend to the assignees and grantees of the right to use the thing patented to the extent of their interest therein. [See Revised Statutes, Section 4928.]

SECTION 68. *And be it further enacted,* That the following shall be the rates for patent fees :—

On filing each original application for a patent, fifteen dollars.

On issuing each original patent, twenty dollars.

On filing each caveat, ten dollars.

On every application for the reissue of a patent, thirty dollars.

On filing each disclaimer, ten dollars.

On every application for the extension of a patent, fifty dollars.

On the granting of every extension of a patent, fifty dollars.

On an appeal for the first time from the primary examiners to the examiners-in-chief, ten dollars.

On every appeal from the examiners-in-chief to the commissioner, twenty dollars.

For certified copies of patents and other papers, ten cents per hundred words.

For recording every assignment, agreement, power of attorney, or other paper, of three hundred words or under, one dollar ; of over three hundred and under one thousand words, two dollars ; of over one thousand words, three dollars.

For copies of drawings, the reasonable cost of making them. [See Revised Statutes, Section 4934.]

SECTION 69. *And be it further enacted,* That patent 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. And all money received at the Patent Office, for any purpose, or from any source whatever, shall be paid into the treasury as received, without any deduction whatever ; and all disbursements for said office shall be made

by the disbursing clerk of the Interior Department. [See Revised Statutes, Sections 496 and 4935.]

SECTION 70. *And be it further enacted*, That the Treasurer of the United States is authorized to pay back any sum or sums of money to any person who shall have paid the same into the treasury, or to any receiver or depositary, to the credit of the treasurer, as for fees accruing at the Patent Office through mistake, certificate thereof being made to said treasurer by the Commissioner of Patents. [See Revised Statutes, Section 4936.]

SECTION 71. *And be it further enacted*, That any person 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 wool[1]en, 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, may, upon payment of the duty required by law, and other due proceedings had the same as in cases of inventions or discoveries, obtain a patent therefor. [See Revised Statutes, Section 4929.]

SECTION 72. *And be it further enacted*, That the commissioner may dispense with models of designs when the design can be sufficiently represented by drawings or photographs. [See Revised Statutes, Section 4930.]

SECTION 73. *And be it further enacted*, That patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant may, in his application, elect. [See Revised Statutes, Section 4931.]

SECTION 74. *And be it further enacted*, That patentees of designs issued prior to March two, eighteen hundred and sixty-one, shall be entitled to extension of their respective patents

for the term of seven years, in the same manner and under the same restrictions as are provided for the extension of patents for inventions or discoveries issued prior to the second day of March, eighteen hundred and sixty-one. [See Revised Statutes, Section 4932.]

SECTION 75. *And be it further enacted*, That the following shall be the rates of fees in design cases :—

For three years and six months, ten dollars.

For seven years, fifteen dollars.

For fourteen years, thirty dollars.

For all other cases in which fees are required, the same rates as in cases of inventions or discoveries. [See Revised Statutes, Section 4934.]

SECTION 76. *And be it further enacted*, That all the regulations and provisions which apply to the obtaining or protection of patents for inventions or discoveries, not inconsistent with the provisions of this act, shall apply to patents for designs. [See Revised Statutes, Section 4933.]

[Sections 77 to 110, inclusive, refer to trade-marks and copyrights, and not to patents.]

SECTION 111. *And be it further enacted*, That the acts and parts of acts set forth in the schedule of acts cited, hereto annexed, are hereby repealed, without reviving any acts or parts of acts repealed by any of said acts, or by any clause or provisions therein : *Provided, however*, That the repeal hereby enacted shall not affect, impair, or take away any right existing under any of said laws ; but all actions and causes of action, both in law or in equity, which have arisen under any of said laws, may be commenced and prosecuted, and if already commenced may be prosecuted to final judgment and execution, in the same manner as though this act had not been passed, excepting that the remedial provisions of this act shall be applicable to all suits and proceedings hereafter commenced : *And provided also*, That all applications for patents pending at the time of the passage of this act, in cases where the duty has been paid, shall be proceeded with and acted on in the same manner as though filed after the passage thereof : *And provided further*, That all offences which are defined

and punishable under any of said acts, and all penalties and forfeitures created thereby and incurred before this act takes effect, may be prosecuted, sued for, and recovered, and such offences punished according to the provision of said acts, which are continued in force for such purpose.

APPROVED July 8, 1870.

Repealed June 22, 1874. Revised Statutes, Title LXXIV.

### PATENT ACT OF MARCH 3, 1871.

16 STATUTES AT LARGE, 583.

An Act to amend an Act to revise, consolidate, and amend the Statutes relating to Patents and Copyrights.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That that part of section thirty-three of an act entitled "An act to revise, consolidate, and amend the statutes relating to patents and copyrights," approved July eighth, eighteen hundred and seventy, which requires that, in case of application by assignee or assignees for reissue of letters-patent, the application shall be made and the specification sworn to by the inventor or discoverer, if living, shall not be construed to apply to patents issued and assigned prior to July eighth, eighteen hundred and seventy.*

APPROVED March 3, 1871.

Repealed June 22, 1874. Revised Statutes, Title LXXIV.

### PATENT ACT OF MARCH 24, 1871.

17 STATUTES AT LARGE, 2.

An Act to further regulate the publication of the Specifications and Drawings of the Patent Office.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if, in the judgment of the joint committee on printing, the provisions of the joint resolution providing for publishing specifications and drawings of the Patent Office, approved January eleventh, eighteen hundred and seventy-one, can be*

performed under the direction of the Commissioner of Patents more advantageously than in the manner provided in said joint resolution, it shall be so done, under such limitations and conditions as the joint committee on printing may from time to time prescribe.

SECTION 2. That the price of the printed copies of specifications and drawings of patents, when uncertified, shall be determined by the Commissioner of Patents, ten cents being hereby fixed as the minimum, and fifty cents as the maximum price of the same ; certified copies to be sold at the price fixed by the patent act of eighteen hundred and seventy.

APPROVED March 24, 1871.

Repealed June 22, 1874. Revised Statutes, Title LXXIV.

## THE REVISED STATUTES

### RELATING TO PATENTS.

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|--|--|
| 440. Clerks and employés.                            | 491. Additional specifications and drawings.                   |
| 441. Secretary of the Interior.                      | 492. Lithographing and engraving.                              |
| 475. Establishment of the Patent Office.             | 493. Price of copies of specifications and drawings.           |
| 476. Officers and employés.                          | 494. Annual report of the Commissioner.                        |
| 477. Salaries.                                       | 496. Disbursements for Patent-Office.                          |
| 478. Seal.   | 629. Jurisdiction of Circuit Courts.                           |
| 479. Bonds of Commissioner and chief clerk.          | 699. Writs of error and appeals, without reference to amount.  |
| 480. Restrictions upon officers and employés.        | 892. Copies of records, &c., of Patent-Office.                 |
| 481. Duties of Commissioner.                         | 893. Copies of foreign letters-patent.                         |
| 482. Duties of examiners-in-chief.                   | 894. Printed copies of specifications and drawings of patents. |
| 483. Establishment of regulations.                   | 973. Costs where disclaimers are necessary.                    |
| 484. Arrangement and exhibition of models, &c.       | 4883. Patents, how issued, attested, and recorded.             |
| 485. Disposals of models on rejected applications.   | 4884. Their contents and duration.                             |
| 486. Library.  | 4885. Date of patent.  |
| 487. Patent-agents may be refused recognition.       | 4886. What inventions are patentable.                          |
| 488. Printing of papers filed.                       |  |
| 489. Printing copies of claims, laws, decisions, &c. |  |
| 490. Printing specifications and drawings.           |  |



4887. Patents for inventions previously patented abroad.
4888. Requisites of specification and claim.
4889. Drawings, when requisite.
4890. Specimens of ingredients, &c.
4891. Model, when requisite.
4892. Oath required from applicant.
4893. Examination and issuing patent.
4894. Limitation upon time of completing application.
4895. Patents granted to assignee.
4896. When, and on what oath, executor or administrator may obtain patent.
4897. Renewal of application in cases of failure to pay fees in season.
4898. Assignment of patents.
4899. Persons purchasing of inventor before application may use or sell the thing purchased.
4900. Patented articles must be marked as such.
4901. Penalty for falsely marking or labelling articles as patented.
4902. Filing and effect of caveats.
4903. Notice of rejection of claim for patent to be given to applicant.
4904. Interferences.
4905. Affidavits and depositions.
4906. Subpœnas to witnesses.
4907. Witness fees.
4908. Penalty for failing to attend or refusing to testify.
4909. Appeals from primary examiners to examiners-in-chief.
4910. From examiners-in-chief to Commissioner.
4911. From the Commissioner to the supreme court D. C.
4912. Notice of such appeal.
4913. Proceedings on appeal to supreme court.
4914. Determination of such appeal and its effect.
4915. Patents obtainable by bill in equity.
4916. Re-issue of defective patents.
4917. Disclaimer.
4918. Suits touching interfering patents.
4919. Suits for infringement; damages.
4920. Pleading and proof in actions for infringement.
4921. Power of courts to grant injunctions and estimate damages.
4922. Suit for infringement where specification is too broad.
4923. Patent not void on account of previous use in foreign country.
4924. Extension of patents granted prior to March 2, 1861.
4925. What notice of application for extension must be given.
4926. Applications for extension to whom to be referred.
4927. Commissioner to hear and decide the question of extension.
4928. Operation of extension.
4929. Patent for designs authorized.
4930. Models of designs.
4931. Duration of patents for designs.
4932. Extension of patents for designs.
4933. Patents for designs subject to general rules of patent-law.
4934. Fees in obtaining patents, &c.
4935. Mode of payment.
4936. Refunding.

SECTION 440. There shall also be in the Department of the Interior :

\* \* \* \* \*

In the Patent Office :

One chief clerk, at a salary of two thousand five hundred dollars a year.

One examiner in charge of interferences, at a salary of two thousand five hundred dollars a year.

One examiner in charge of trade-marks, at a salary of two thousand five hundred dollars a year.

Twenty-four principal examiners, at a salary of two thousand five hundred dollars a year each.

Twenty-four first assistant examiners, at a salary of one thousand eight hundred dollars a year each.

Twenty-four second assistant examiners (two of whom may be women), at a salary of one thousand six hundred dollars a year each.

Twenty-four third assistant examiners, at a salary of one thousand four hundred dollars a year each.

One librarian, at a salary of two thousand dollars a year.

One machinist, at a salary of one thousand six hundred dollars a year.

Three skilled draughtsmen, at a salary of one thousand two hundred dollars a year each.

Thirty-five copyists of drawings, at a salary of one thousand dollars a year each.

One messenger and purchasing clerk, at a salary of one thousand dollars a year.

One skilled laborer, at a salary of one thousand two hundred dollars a year.

Eight attendants in the model-room, at a salary of one thousand dollars a year each.

Eight attendants in the model-room, at a salary of nine hundred dollars a year each. [See prior patent statutes : Sections 2 and 3, 1870 ; Sections 4 and 7, 1861 ; Sections 1 and 3, 1848 ; Section 10, 1837 ; Section 2, 1836.]

SECTION 441. The Secretary of the Interior is charged with supervising all public business relating to \* \* \*

Fifth. Patents for inventions. [See prior patent statutes : Section 1, 1870 ; Section 2, 1849.]

SECTION 475. There shall be in the Department of the Interior an office known as the Patent-Office, where all records, books, models, drawings, specifications, and other papers and things pertaining to patents shall be safely kept and preserved. [See prior patent statutes : Section 1, 1870 ; Section 1, 1836.]

SECTION 476. There shall be in the Patent-Office a Commissioner of Patents, one Assistant Commissioner, and three examiners-in-chief, who shall be appointed by the President, by and with the advice and consent of the Senate. All other officers, clerks, and employés authorized by law for the Office shall be appointed by the Secretary of the Interior, upon the nomination of the Commissioner of Patents. [See prior patent statutes : Section 2, 1870 ; Section 2, 1861 ; Section 1, 1836.]

SECTION 477. The salaries of the officers mentioned in the preceding section shall be as follows :

The Commissioner of Patents, four thousand five hundred dollars a year.

The Assistant Commissioner of Patents, three thousand dollars a year.

Three examiners-in-chief, three thousand dollars a year each. [See prior patent statutes : Section 4, 1870 ; Sections 2 and 4, 1861 ; Section 11, 1837 ; Section 1, 1836.]

SECTION 478. The seal heretofore provided for the Patent-Office shall be the seal of the Office, with which letters-patent and papers issued from the Office shall be authenticated. [See prior patent statutes : Section 12, 1870 ; Section 4, 1836.]

SECTION 479. The Commissioner of Patents and the chief clerk, before entering upon their duties, shall severally give bond, with sureties, to the Treasurer of the United States, the former in the sum of ten thousand dollars, and the latter in the sum of five thousand dollars, conditioned for the faithful discharge of their respective duties, and that they shall render to the proper officers of the Treasury a true account of all money received by virtue of their offices. [See prior patent statutes : Section 6, 1870 ; Section 3, 1836.]

SECTION 480. All officers and employés of the Patent-Office shall be incapable, during the period for which they hold their appointments, to acquire or take, directly or indirectly, except by inheritance or bequest, any right or interest in any patent issued by the Office. [See prior patent statutes : Section 16, 1870.]

SECTION 481. The Commissioner of Patents, under the direction of the Secretary of the Interior, shall superintend or perform all duties respecting the granting and issuing of patents directed by law ; and he shall have charge of all books, records, papers, models, machines, and other things belonging to the Patent-Office. [See prior patent statutes : Section 7, 1870 ; Section 1, 1836.]

SECTION 482. The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, whose duty it shall be, on the written petition of the appellant, to revise and determine upon the validity of the adverse decisions of examiners upon applications for patents, and for re-issues of patents, and in interference cases ; and, when required by the Commissioner, they shall hear and report upon claims for extensions, and perform such other like duties as he may assign them. [See prior patent statutes : Section 10, 1870 ; Section 2, 1861.]

SECTION 483. The Commissioner of Patents, subject to the approval of the Secretary of the Interior, may from time to time establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent-Office. [See prior patent statutes : Section 19, 1870 ]

SECTION 484. The Commissioner of Patents shall cause to be classified and arranged in suitable cases, in the rooms and galleries provided for that purpose, the models, specimens of composition, fabrics, manufactures, works of art, and designs, which have been or shall be deposited in the Patent-Office ; and the rooms and galleries shall be kept open during suitable hours for public inspection. [See prior patent statutes : Section 13, 1870 ; Section 20, 1836.]

SECTION 485. The Commissioner of Patents may restore to the respective applicants such of the models belonging to

rejected applications as he shall not think necessary to be preserved, or he may sell or otherwise dispose of them after the application has been finally rejected for one year, paying the proceeds into the Treasury, as other patent-moneys are directed to be paid. [See prior patent statutes : Section 14, 1870 ; Section 5, 1861.]

SECTION 486. There shall be purchased for the use of the Patent-Office a library of such scientific works and periodicals, both foreign and American, as may aid the officers in the discharge of their duties, not exceeding the amount annually appropriated for that purpose. [See prior patent statute : Section 15, 1870.]

SECTION 487. For gross misconduct the Commissioner of Patents may refuse to recognize any person as a patent-agent, either generally or in any particular case ; but the reasons for such refusal shall be duly recorded, and be subject to the approval of the Secretary of the Interior. [See prior patent statute : Section 17, 1870.]

SECTION 488. The Commissioner of Patents may require all papers filed in the Patent-Office, if not correctly, legibly, and clearly written, to be printed at the cost of the party filing them. [See prior patent statutes : Section 18, 1870 ; Section 8, 1861.]

SECTION 489. The Commissioner of Patents may print, or cause to be printed, copies of the claims of current issues, and copies of such laws, decisions, regulations, and circulars as may be necessary for the information of the public. [See prior patent statute : Section 20, 1870.]

SECTION 490. The Commissioner of Patents is authorized to have printed, from time to time, for gratuitous distribution, not to exceed one hundred and fifty copies of the complete specifications and drawings of each patent hereafter issued, together with suitable indexes, one copy to be placed for free public inspection in each capitol of every State and Territory, one for the like purpose in the clerk's office of the district court of each judicial district of the United States, except when such offices are located in State or territorial capitols, and one in the Library of Congress, which copies shall be cer-

tified under the hand of the Commissioner and seal of the Patent-Office, and shall not be taken from the depositories for any other purpose than to be used as evidence. [See Joint Resolution No. 5, January 11, 1871, 16 Statutes at Large, 590.]

SECTION 491. The Commissioner of Patents is authorized to have printed such additional numbers of copies of specifications and drawings, certified as provided in the preceding section, at a price not to exceed the contract price for such drawings, for sale, as may be warranted by the actual demand for the same; and he is also authorized to furnish a complete set of such specifications and drawings to any public library which will pay for binding the same into volumes to correspond with those in the Patent-Office, and for the transportation of the same, and which shall also provide for proper custody for the same, with convenient access for the public thereto, under such regulations as the Commissioner shall deem reasonable. [See Joint Resolution No. 5, January 11, 1871, 16 Statutes at Large, 590.]

SECTION 492. The lithographing and engraving required by the two preceding sections shall be awarded to the lowest and best bidders for the interests of the Government, due regard being paid to the execution of the work, after due advertising by the Congressional Printer, under the direction of the Joint Committee on Printing; but the Joint Committee on Printing may empower the Congressional Printer to make immediate contracts for engraving, whenever, in their opinion, the exigencies of the public service will not justify waiting for advertisement and award; or if, in the judgment of the Joint Committee on Printing, the work can be performed under the direction of the Commissioner of Patents more advantageously than in the manner above prescribed, it shall be so done, under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe. [See Joint Resolution No. 5, January 11, 1871, 16 Statutes at Large, 590, and Section 1 of Patent Act of March 24, 1871.]

SECTION 493. The price to be paid for uncertified printed copies of specifications and drawings of patents shall be deter-

mined by the Commissioner of Patents, within the limits of ten cents as the minimum and fifty cents as the maximum price. [See prior patent statute : Section 1, March 24, 1871.]

SECTION 494. The Commissioner of Patents shall lay before Congress, in the month of January, annually, a report, giving a detailed statement of all moneys received for patents, for copies of records or drawings, or from any other source whatever ; a detailed statement of all expenditures for contingent and miscellaneous expenses ; a list of all patents which were granted during the preceding year, designating under proper heads the subjects of such patents ; an alphabetical list of all the patentees, with their places of residence ; a list of all patents which have been extended during the year ; and such other information of the condition of the Patent-Office as may be useful to Congress or the public. [See prior patent statutes : Section 9, 1870 ; Section 14, 1837 ; Section 1, July 3, 1832.]

SECTION 496. All disbursements for the Patent-Office shall be made by the disbursing clerk of the Interior Department. [See prior patent statutes : Section 69, 1870 ; Section 14, 1837.]

SECTION 629. The circuit courts shall have original jurisdiction, as follows : \* \* \*

Ninth. Of all suits at law or in equity arising under the patent or copyright laws of the United States. [See prior patent statutes : Section 55, 1870 ; Section 14, 1836 ; Section 1, 1819.]

SECTION 699. A writ of error may be allowed to review any final judgment at law, and an appeal shall be allowed from any final decree in equity hereinafter mentioned, without regard to the sum or value in dispute :

First. Any final judgment at law or final decree in equity of any circuit court, or of any district court acting as a circuit court, or of the Supreme Court of the District of Columbia, or of any Territory, in any case touching patent-rights or copyrights. [See prior patent statutes : Section 56, 1870 ; Section 1, February 18, 1861 ; Section 16, 1836 ; Section 1, 1819.]

SECTION 892. Written or printed copies of any records,

books, papers, or drawings belonging to the Patent-Office, and of letters-patent authenticated by the seal and certified by the Commissioner or Acting Commissioner thereof, shall be evidence in all cases wherein the originals could be evidence; and any person making application therefor, and paying the fee required by law, shall have certified copies thereof. [See prior patent statutes: Section 57, 1870; Section 15, March 2, 1861; Section 2, 1837; Section 4, 1836; Sections 3, 6, 1790.]

SECTION 893. Copies of the specifications and drawings of foreign letters-patent, certified as provided in the preceding section, shall be *prima-facie* evidence of the fact of the granting of such letters-patent, and of the date and contents thereof. [See prior patent statute: Section 57, 1870.]

SECTION 894. The printed copies of specifications and drawings of patents, which the Commissioner of Patents is authorized to print for gratuitous distribution, and to deposit in the capitols of the States and Territories, and in the clerk's offices of the district courts, shall, when certified by him and authenticated by the seal of his office, be received in all courts as evidence of all matters therein contained. [See Joint Resolution No. 5, January 11, 1871; 16 Statutes at Large, 590.]

SECTION 973. When judgment or decree is rendered for the plaintiff or complainant, in any suit at law or in equity, for the infringement of a part of a patent, in which it appears that the patentee, in his specification, claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor, no costs shall be recovered, unless the proper disclaimer, as provided by the patent-laws, has been entered at the Patent-Office before the suit was brought. [See Revised Statutes, Section 4922; and prior patent statutes: Section 60, 1870; Section 9, 1837; Section 15, 1836.]

SECTION 4883. All patents shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall be signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and they shall be recorded, together with the specifications, in the Patent Office, in books to be kept for that purpose. [See prior pat-



ent statutes : Section 21, 1870 ; Section 5, 1836 ; Section 1, 1793 ; Section 1, 1790.]

SECTION 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or 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, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof. [See prior patent statutes : Section 22, 1870 ; Section 16, 1861 ; Section 5, 1836 ; Section 1, 1793 ; Section 1, 1790.]

SECTION 4885. Every patent shall 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 is not paid within that period the patent shall be withheld. [See prior patent statutes : Section 23, 1870 ; Section 3, 1863 ; Section 8, 1836.]

SECTION 4886. 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 or used by others in this country, and not patented or 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, may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor. [See prior patent statutes : Section 24, 1870 ; Sections 6 and 7, 1836 ; Section 1, 1800 ; Section 1, 1793.]

SECTION 4887. No person shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid, by reason of its having been first patented or caused to be patented in a foreign country, unless the same has been introduced into public use in the United States for more than two years prior to the application. But every patent granted for an invention which has been previously patented in a

foreign country shall 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 term, and in no case shall it be in force more than seventeen years. [See prior patent statutes : Section 25, 1870 ; Section 6, 1839 ; Section 8, 1836.]

SECTION 4888. Before any inventor or discoverer shall receive a patent for his invention or discovery, he shall make application therefor, in writing, to the Commissioner of Patents, and shall file in the Patent-Office a written description of the same, and of the manner and process of making, constructing, compounding, and using it, 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 ; and in case of a machine, he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions ; and he shall particularly point out and distinctly claim, the part, improvement, or combination which he claims as his invention or discovery. The specification and claim shall be signed by the inventor and attested by two witnesses. [See prior patent statutes : Section 26, 1870 ; Section 6, 1836 ; Section 1, 1793 ; Section 2, 1790.]

SECTION 4889. When the nature of the case admits of drawings, the applicant shall furnish one copy, signed by the inventor or his attorney in fact, and attested by two witnesses, which shall be filed in the Patent-Office, and a copy of the drawing, to be furnished by the Patent-Office, shall be attached to the patent as a part of the specification. [See prior patent statutes : Section 27, 1870 ; Section 6, 1837 ; Section 6, 1836 ; Section 3, 1793.]

SECTION 4890. When the invention or discovery is of a composition of matter, the applicant, if required by the Commissioner, shall furnish specimens of ingredients and of the composition, sufficient in quantity for the purpose of experiment. [See prior patent statutes : Section 28, 1870 ; Section 6, 1836 ; Section 3, 1793.]

SECTION 4891. In all cases which admit of representation by model, the applicant, if required by the Commissioner, shall furnish a model of convenient size to exhibit advantageously the several parts of his invention or discovery. [See prior patent statutes : Section 29, 1870 ; Section 6, 1836 ; Section 3, 1793 ; Section 2, 1790.]

SECTION 4892. The applicant shall make oath 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 ; 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. Such oath 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, *chargé 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. [See prior patent statutes : Section 30, 1870 ; Section 4, 1842 ; Section 6, 1836 ; Section 3, 1793.]

SECTION 4893. On the filing of any such application and the payment of the fees required by law, the Commissioner of Patents shall cause an examination to be made of the alleged new invention or discovery ; and if on such examination it shall appear that the claimant is justly entitled to a patent under the law, and that the same is sufficiently useful and important, the Commissioner shall issue a patent therefor. [See prior patent statutes : Section 31, 1870 ; Section 7, 1836 ; Section 1, 1790.]

SECTION 4894. All applications for patents shall be completed and prepared for examination within two years after the filing of the application, 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 of Patents that such delay was unavoidable. [See prior patent statutes : Section 32, 1870 ; Section 12, 1861.]

SECTION 4895. Patents may be granted and issued or re-issued to the assignee of the inventor or discoverer ; but the assignment must first be entered of record in the Patent-Office. And in all cases of an application by an assignee for the use of a patent, the application shall be made and the specification sworn to by the inventor or discoverer ; and in all cases of an application for a re-issue of any patent, the application must be made and the corrected specification signed by the inventor or discoverer, if he is living, unless the patent was issued and the assignment made before the eighth day of July, eighteen hundred and seventy. [See prior patent statutes : Section 33, 1870 ; Section 6, 1837.]

SECTION 4896. When any person, having made any new invention or discovery for which a patent might have been granted, dies before a patent is granted, the right of applying for and obtaining the patent shall devolve on his executor or administrator, in trust for the heirs at law of the deceased, in case he shall have died intestate ; or if he shall have left a will, disposing of the same, then in trust for his devisees, in as full manner and on the same terms and conditions as the same might have been claimed or enjoyed by him in his life time ; and when the application is made by such legal representatives, the oath or affirmation required to be made shall be so varied in form that it can be made by them. [See prior patent statutes : Section 34, 1870 ; Section 10, 1836 ; Section 2, 1800.]

SECTION 4897. Any person who has an interest in an invention or discovery, whether as inventor, discoverer, or assignee, for which a patent was ordered to issue upon the payment of the final fee, but who fails to make payment thereof within six months from the time at which it was passed and allowed, and notice thereof was sent to the applicant or his agent, shall have a right to make an application for a patent for such invention or discovery the same as in the case of an original application. But such second application must be made within two years after the allowance of the original application. But no person shall be held responsible in damages for the manufacture or use of any article or thing for which a patent was

ordered to issue under such renewed application prior to the issue of the patent. And upon the hearing of renewed applications preferred under this section, abandonment shall be considered as a question of fact. [See prior patent statutes : Section 35, 1870 ; Section 1, 1865 ; Section 1, 1864.]

SECTION 4898. 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. An assignment, grant, or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent-Office within three months from the date thereof. [See prior patent statutes : Section 36, 1870 ; Section 11, 1836 ; Section 4, 1793.]

SECTION 4899. Every person who purchases of the inventor or discoverer, or with his knowledge and consent constructs any newly invented or discovered machine, or other patentable article, prior to the application by the inventor or discoverer for a patent, or who sells or uses one so constructed, shall have the right to use, and vend to others to be used, the specific thing so made or purchased, without liability therefor. [See prior patent statutes : Section 37, 1870 ; Section 7, 1839.]

SECTION 4900. It shall be the duty of all patentees, and their assigns and legal representatives, and of all persons making or vending any patented article for or under them, to give sufficient notice to the public that the same is patented ; either by fixing thereon the word " patented," together with the day and year the patent was granted ; or when, from the character of the article, this cannot be done, by fixing to it, or to the package wherein one or more of them is inclosed, a label containing the like notice ; and in any suit for infringement, by the party failing so to mark, no damages shall be recovered by the plaintiff, except on proof that the defendant was duly notified of the infringement, and continued, after such notice, to make, use, or vend the article so patented. [See prior

patent statutes : Section 38, 1870 ; Section 13, 1861 ; Section 6, 1842.]

SECTION 4901. Every person who, in any manner, marks upon anything made, used, or sold by him for which he has not obtained a patent, the name or any imitation of the name of any person who has obtained a patent therefor without the consent of such patentee, or his assigns or legal representatives ; or

Who, in any manner, marks upon or affixes to any such patented article the word " patent " or " patentee," or the words " letters-patent," or any word of like import, with intent to imitate or counterfeit the mark or device of the patentee, without having the license or consent of such patentee or his assigns or legal representatives ; or

Who, in any manner, marks upon or affixes to any unpatented article the word " patent," or any word importing that the same is patented, for the purpose of deceiving the public, shall be liable, for every such offence, to a penalty of not less than one hundred dollars, with costs ; one half of said penalty to the person who shall sue for the same, and the other to the use of the United States, to be recovered by suit in any district court of the United States, within whose jurisdiction such offence may have been committed. [See prior patent statutes : Section 39, 1870 ; Section 5, 1842.]

SECTION 4902. Any citizen of the United States who makes any new invention or discovery, and desires further time to mature the same, may, on payment of the fees required by law, file in the Patent-Office a caveat setting forth the design thereof, and of its distinguishing characteristics, 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 ; and if application is made within the year by any other person for a patent with which such caveat would in any manner interfere, the Commissioner shall deposit the description, specification, drawings, and model of such application in like manner in the confidential archives of the office, and give notice thereof, by

mail, to the person by whom the caveat was filed. If such person desires to avail himself of his caveat, he shall file his description, specifications, drawings, and model within three months from the time of placing the notice in the post-office in Washington, with the usual time required for transmitting it to the caveator added thereto ; which time shall be indorsed on the notice. An alien shall have the privilege herein granted, 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. [See prior patent statutes : Section 40, 1870 ; Section 9, 1861 ; Section 12, 1836.]

SECTION 4903. Whenever, on examination, any claim for a patent is rejected, the Commissioner shall notify the applicant thereof, giving him briefly the reasons for such rejection, 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, the applicant persists in his claim for a patent, with or without altering his specifications, the Commissioner shall order a re-examination of the case. [See prior patent statutes : Section 41, 1870 ; Section 7, 1836.]

SECTION 4904. Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, he shall give notice thereof to the applicants, or applicant and patentee, as the case may be, and shall direct the primary examiner to proceed to determine the question of priority of invention. And the Commissioner may issue a patent to the party who is adjudged the prior inventor, unless the adverse party appeals from the decision of the primary examiner, or of the board of examiners-in-chief, as the case may be, within such time, not less than twenty days, as the Commissioner shall prescribe. [See prior patent statutes : Section 42, 1870 ; Section 8, 1836 ; Section 9, 1793.]

SECTION 4905. The Commissioner of Patents may establish rules for taking affidavits and depositions required in cases pending in the Patent-Office, and such affidavits and depositions may be taken before any officer authorized by law to take

depositions to be used in the courts of the United States, or of the State where the officer resides. [See prior patent statutes : Section 43, 1870 ; Section 1, March 3, 1861 ; Section 12, 1839.]

SECTION 4906. The clerk of any court of the United States, for any district or Territory wherein testimony is to be taken for use in any contested case pending in the Patent-Office, shall, upon the application of any party thereto, or of his agent or attorney, issue a subpoena for any witness residing or being within such district or Territory, commanding him to appear and testify before any officer in such district or Territory authorized to take depositions and affidavits, at any time and place in the subpoena stated. But no witness shall be required to attend at any place more than forty miles from the place where the subpoena is served upon him. [See prior patent statutes : Section 44, 1870 ; Section 1, 1861.]

SECTION 4907. Every witness duly subpoenaed and in attendance shall be allowed the same fees as are allowed to witnesses attending the courts of the United States. [See prior patent statutes : Section 45, 1870 ; Section 1, 1861.]

SECTION 4908. Whenever any witness, after being duly served with such subpoena, neglects or refuses to appear, or after appearing refuses to testify, the judge of the court whose clerk issued the subpoena may, on proof of such neglect or refusal, enforce obedience to the process, or punish the disobedience, as in other like cases. But no witness shall be deemed guilty of contempt for disobeying such subpoena, unless his fees and travelling expenses in going to, returning from, and one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena ; nor for refusing to disclose any secret invention or discovery made or owned by himself. [See prior patent statutes : Sections 44 and 45, 1870 ; Section 1, 1861.]

SECTION 4909. Every applicant for a patent or for the re-issue 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 the fee for such appeal. [See prior patent statutes : Section 46, 1870 ; Section 1, 1866.]

SECTION 4910. If such party is dissatisfied with the decision of the examiners-in chief, he may, on payment of the fee prescribed, appeal to the Commissioner in person. [See prior patent statutes : Section 47, 1870 ; Section 2, 1861.]

SECTION 4911. If such party, except a party to an interference, is dissatisfied with the decision of the Commissioner, he may appeal to the Supreme Court of the District of Columbia, sitting in banc. [See prior patent statutes : Section 48, 1870 ; Section 1, 1852 ; Section 11, 1839.]

SECTION 4912. When an appeal is taken to the Supreme Court of the District of Columbia, the appellant shall give notice thereof to the Commissioner, and file in the Patent-Office, within such time as the Commissioner shall appoint, his reasons of appeal, specifically set forth in writing. [See prior patent statute : Section 49, 1870.]

SECTION 4913. The court shall, before hearing such appeal, give notice to the Commissioner of the time and place of the hearing, and on receiving such notice the Commissioner shall give notice of such time and place in such manner as the court may prescribe, to all parties who appear to be interested therein. The party appealing shall lay before the court certified copies of all the original papers and evidence in the case, and the Commissioner shall furnish the court with the grounds of his decision, fully set forth in writing, touching all the points involved by the reasons of appeal. And at the request of any party interested, or of the court, the Commissioner and the examiners may be examined under oath, in explanation of the principles of the thing for which a patent is demanded. [See prior patent statute : Section 51, 1870.]

SECTION 4914. The court, on petition, shall hear and determine such appeal, and revise the decision appealed from in a summary way, on the evidence produced before the Commissioner, at such early and convenient time as the court may appoint ; and the revision shall be confined to the points set forth in the reasons of appeal. After hearing the case the court shall return to the Commissioner a certificate of its pro-

ceedings and decision, which shall be entered of record in the Patent-Office, and shall govern the further proceedings in the case. But no opinion or decision of the court in any such case shall preclude any person interested from the right to contest the validity of such patent in any court wherein the same may be called in question. [See prior patent statute : Section 50, 1870.]

SECTION 4915. Whenever a patent on application is refused, either by the Commissioner of Patents or by the Supreme Court of the District of Columbia upon appeal from the Commissioner, the applicant may have remedy by bill in equity ; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge that such applicant is entitled, according to law, to receive a patent for his invention, as specified in his claim, or for any part thereof, as the facts in the case may appear. And such adjudication, if it be in favor of the right of the applicant, shall authorize the Commissioner to issue such patent on the applicant filing in the Patent-Office a copy of the adjudication, and otherwise complying with the requirements of law. In all cases, where there is no opposing party, a copy of the bill shall be served on the Commissioner ; and all the expenses of the proceeding shall be paid by the applicant, whether the final decision is in his favor or not. [See Revised Statutes and prior patent statutes : Section 52, 1870 ; Section 10, 1839.]

SECTION 4916. Whenever any patent is inoperative or invalid, 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, if the error has arisen by inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, the Commissioner shall, on the surrender of such patent and the payment of the duty required by law, cause a new patent for the same invention, and in accordance with the corrected specification, to be issued to the patentee, or, in the case of his death or of an assignment of the whole or any undivided part of the original patent, then to his executors, administrators, or assigns, for the

unexpired part of the term of the original patent. Such surrender shall take effect upon the issue of the amended patent. 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 a re-issue for each of such re-issued letters-patent. The specifications and claim in every such case shall be subject to revision and restriction in the same manner as original applications are. Every patent so re-issued, together with the corrected specification, shall have the same effect and operation in law, on the trial of all actions for causes thereafter arising, as if the same had been originally filed in such corrected form; 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. [See prior patent statutes: Section 53, 1870; Sections 5 and 8, 1837; Section 13, 1836; Section 3, 1832.]

SECTION 4917. 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 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 its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing it. [See prior patent statutes : Section 54, 1870 ; Section 7, 1837.]

SECTION 4918. Whenever there are interfering patents, any person interested in any one of them, or in the working of the invention claimed under either of them, may have relief against the interfering patentee, and all parties interested under him, by suit in equity against the owners of the interfering patent ; and the court, on notice to adverse parties, and other due proceedings had according to the course of equity, may adjudge and declare either of the patents void in whole or in part, or inoperative, or invalid in any particular part of the United States, according to the interest of the parties in the patent or the invention patented. But no such judgment or adjudication shall affect the right of any person except the parties to the suit and those deriving title under them subsequent to the rendition of such judgment. [See prior patent statutes : Section 58, 1870 ; Section 16, 1836.]

SECTION 4919. Damages for the infringement of any patent may be recovered by action on the case, in the name of the party interested, either as patentee, assignee, or grantee. And whenever in any such action a verdict is rendered for the plaintiff, the court may enter judgment thereon for any sum above the amount found by the verdict as the actual damages sustained, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs. [See prior patent statutes : Section 55, 1870 ; Section 14, 1836 ; Section 3, 1800 ; Section 5, 1793 ; Section 4, 1790.]

SECTION 4920. In any action for infringement the defendant may plead the general issue, and having given notice in writing to the plaintiff or his attorney, thirty days before, may prove on trial any one or more of the following special matters :

First. That for the purpose of deceiving the public the description and specification filed by the patentee in the Patent-

Office was made to contain less than the whole truth relative to his invention or discovery, or more than is necessary to produce the desired effect ; or,

Second. That he had surreptitiously or unjustly obtained the patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same ; or,

Third. That it had been patented or described in some printed publication prior to his supposed invention or discovery thereof ; or,

Fourth. That he was not the original and first inventor or discoverer of any material and substantial part of the thing patented ; or,

Fifth. That it had been in public use or on sale in this country for more than two years before his application for a patent, or had been abandoned to the public.

And in notices as to proof of previous invention, knowledge, or use of the thing patented, the defendant shall state the names of patentees and the dates of their patents, and when granted, and the names and residences of the persons alleged to have invented, or to have had the prior knowledge of the thing patented, and where and by whom it had been used ; and if any one or more of the special matters alleged shall be found for the defendant, judgment shall be rendered for him with costs. And the like defences may be pleaded in any suit in equity for relief against an alleged infringement ; and proofs of the same may be given upon like notice in the answer of the defendant, and with the like effect. [See prior patent statutes : Section 61, 1870 ; Section 15, 1836 ; Section 6, 1793 ; Section 6, 1790.]

SECTION 4921. The several courts vested with jurisdiction of cases arising under the patent laws shall have power to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable ; and upon a decree being rendered in any such case for an infringement, the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the dam-

ages the complainant has sustained thereby ; and the court shall assess the same or cause the same to be assessed under its direction. And the court shall have the same power to increase such damages, in its discretion, as is given to increase the damages found by verdicts in actions in the nature of actions of trespass upon the case. [See prior patent statutes : Section 55, 1870 ; Section 17, 1836 ; Section 1, 1819.]

SECTION 4922. Whenever, through inadvertence, accident, or mistake, and without any willful default or intent to defraud or mislead the public, a patentee has, in his specification, claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor or discoverer, every such patentee, his executors, administrators, and assigns, whether of the whole or any sectional interest in the patent, may maintain a suit at law or in equity, for the infringement of any part thereof, which was bonâ fide his own, if it is a material and substantial part of the thing patented, and definitely distinguishable from the parts claimed without right, notwithstanding the specifications may embrace more than that of which the patentee was the first inventor or discoverer. But in every such case in which a judgment or decree shall be rendered for the plaintiff, no costs shall be recovered unless the proper disclaimer has been entered at the Patent-Office before the commencement of the suit. But no patentee shall be entitled to the benefits of this section if he has unreasonably neglected or delayed to enter a disclaimer. [See prior patent statutes : Section 60, 1870 ; Section 9, 1837.]

SECTION 4923. Whenever it appears that a patentee, at the time of making his application for the patent, believed himself to be the original and first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery, or any part thereof, having been known or used in a foreign country, before his invention or discovery thereof, if it had not been patented or described in a printed publication. [See prior patent statutes : Section 62, 1870 ; Section 15, 1836.]

SECTION 4924. Where the patentee of any invention or dis-

covery, the patent for which was granted prior to the second day of March, eighteen hundred and sixty-one, shall desire an extension of this patent beyond the original term of its limitation, he shall make application therefor, in writing, to the Commissioner of Patents, setting forth the reasons why such extension should be granted; and he shall also furnish a written statement under oath of the ascertained value of the invention or discovery, and of his receipts and expenditures on account thereof, sufficiently in detail to exhibit a true and faithful account of the loss and profit in any manner accruing to him by reason of the invention or discovery. Such application shall be filed not more than six months nor less than ninety days before the expiration of the original term of the patent; and no extension shall be granted after the expiration of the original term. [See prior patent statutes: Section 63, 1870; Section 1, 1848; Section 18, 1836; Section 2, July 3, 1832.]

SECTION 4925. Upon the receipt of such application, and the payment of the fees required by law, the Commissioner shall cause to be published in one newspaper in the city of Washington, and in such other papers published in the section of the country most interested adversely to the extension of the patent as he may deem proper, for at least sixty days prior to the day set for hearing the case, a notice of such application, and of the time and place when and where the same will be considered, that any person may appear and show cause why the extension should not be granted. [See prior patent statutes: Section 64, 1870; Section 18, 1836.]

SECTION 4926. Upon the publication of the notice of an application for an extension, the Commissioner shall refer the case to the principal examiner having charge of the class of inventions to which it belongs, who shall make the Commissioner a full report of the case, stating particularly whether the invention or discovery was new and patentable when the original patent was granted. [See prior patent statutes: Section 65, 1870; Section 1, 1848; Section 18, 1836.]

SECTION 4927. The Commissioner shall, at the time and place designated in the published notice, hear and decide upon the evidence produced, both for and against the extension;

and if it shall appear to the satisfaction of the Commissioner that the patentee, without neglect or fault on his part, has failed to obtain from the use and sale of his invention or discovery a reasonable remuneration for the time, ingenuity, and expense bestowed upon it, and the introduction of it into use, and that it is just and proper, having due regard to the public interest, that the term of the patent should be extended, the Commissioner shall make a certificate thereon, renewing and extending the patent for the term of seven years from the expiration of the first term. Such certificate shall be recorded in the Patent-Office; and thereupon such patent shall have the same effect in law as though it had been originally granted for twenty-one years. [See prior patent statutes: Section 56, 1870; Section 18, 1836.]

SECTION 4928. The benefit of the extension of a patent shall extend to the assignees and grantees of the right to use the thing patented, to the extent of their interest therein. [See prior patent statutes: Section 67, 1870; Section 18, 1836.]

SECTION 4929. 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 woollen, silk, cotton, or other fabrics; any new and original impression, ornament, patent, 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, may, upon payment of the fee prescribed, and other due proceedings had the same as in cases of inventions or discoveries, obtain a patent therefor. [See prior patent statutes: Section 71, 1870; Section 11, March 2, 1861; Section 3, 1842.]

SECTION 4930. The Commissioner may dispense with models of designs when the design can be sufficiently represented by drawings or photographs. [See prior patent statute: Section 72, 1870.]



SECTION 4931. Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant may, in his application, elect. [See prior patent statutes : Section 73, 1870 ; Section 11, 1861 ; Section 3, 1842.]

SECTION 4932. Patentees of designs issued prior to the second day of March, eighteen hundred and sixty-one, shall be entitled to extension of their respective patents for the term of seven years, in the same manner and under the same restrictions as are provided for the extension of patents for inventions or discoveries, issued prior to the second day of March, eighteen hundred and sixty-one. [See prior patent statutes : Section 74, 1870 ; Section 11, March 2, 1861.]

SECTION 4933. All the regulations and provisions which apply to obtaining or protecting patents for inventions or discoveries not inconsistent with the provisions of this Title, shall apply to patents for designs. [See prior patent statute : Section 76, 1870.]

SECTION 4934. The following shall be the rate for patent-fees :

On filing each original application for a patent, except in design cases, fifteen dollars.

On issuing each original patent, except in design cases, twenty dollars.

In design cases : For three years and six months, ten dollars ; for seven years, fifteen dollars ; for fourteen years, thirty dollars.

On filing each caveat, ten dollars.

On every application for the re-issue of a patent, thirty dollars.

On filing each disclaimer, ten dollars.

On every application for the extension of a patent, fifty dollars.

On the granting of every extension of a patent, fifty dollars.

On an appeal for the first time from the primary examiners to the examiners-in-chief, ten dollars.

On every appeal from the examiners-in-chief to the Commissioner, twenty dollars.

For certified copies of patents and other papers, including certified printed copies, ten cents per hundred words.

For recording every assignment, agreement, power of attorney, or other paper, of three hundred words or under, one dollar; of over three hundred and under one thousand words, two dollars; of over one thousand words, three dollars.

For copies of drawings, the reasonable cost of making them. [See prior patent statutes: Section 2, March 24, 1871; Sections 68 and 75, 1870; Section 1, 1866; Section 10, March 2, 1861; Section 2, 1848; Section 8, 1839; Sections 4, 9, 11, 1836; Section 11, 1793; Section 7, 1790.]

SECTION 4935. Patent-fees may be paid to the Commissioner of Patents, 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; and such officer shall give the depositor a receipt or certificate of deposit therefor. All money received at the Patent-Office, for any purpose, or from any source whatever, shall be paid into the Treasury as received, without any deduction whatever. [See prior patent statutes: Section 69, 1870; Section 14, 1837.]

SECTION 4936. The Treasurer of the United States is authorized to pay back any sum or sums of money to any person who has through mistake paid the same into the Treasury, or to any receiver or depositary, to the credit of the Treasury, as for fees accruing at the Patent-Office, upon a certificate thereof being made to the Treasurer by the Commissioner of Patents. [See prior patent statutes: Section 69, 1870; Section 1, 1842.]

APPROVED June 22, 1874.

## PATENT ACT OF FEBRUARY 16, 1875.

18 STATUTES AT LARGE, PART 3, 316.

Section 2 of an Act to facilitate the disposition of cases in the Supreme Court of the United States, and for other purposes.

SECTION 2. The said [circuit] courts, when sitting in equity

for the trial of patent causes, may empanel a jury of not less than five and not more than twelve persons, subject to such general rules in the premises, as may from time to time be made by the Supreme Court, and submit to them such questions of fact arising in such cause as such circuit court shall deem expedient ; and the verdict of such jury shall be treated and proceeded upon in the same manner and with the same effect as in the case of issues sent from chancery to a court of law and returned with such findings.

APPROVED February 16, 1875.

# FORMS OF PATENT PLEADINGS.

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## DECLARATION.

CIRCUIT COURT OF THE UNITED STATES,  
FOR THE DISTRICT OF CONNECTICUT.

OF THE SEPTEMBER TERM OF THE YEAR EIGHTEEN HUNDRED AND  
EIGHTY-THREE.

DISTRICT OF CONNECTICUT, ss.

THOMAS TRACY, of Hartford Connecticut, who is a citizen of the State of Connecticut, and of the United States, plaintiff in this suit, by John Jay his attorney, complains of the Eastern and Western Railroad Company, which is a corporation created and existing in due form of law in the States of Connecticut and Rhode Island, defendant, of a plea of trespass on the case.

For that, Samuel Sinclair, of New Haven Connecticut, before and at the time of his application for the hereinafter mentioned letters patent, was a citizen of the United States, and was the true original and first inventor of a certain new and useful apparatus, fully described in the specification of the letters patent hereinafter mentioned, and named therein an "Improved railroad car-brake," and which was not known or used in this country, and not patented or described in any printed publication in this or any foreign country, before his invention thereof; and was not

in public use or on sale more than two years prior to his application for letters patent of the United States therefor.

And for that, heretofore, to wit : on the first day of June, 1866, and before the issuing of the hereinafter mentioned letters patent, the said Samuel Sinclair, by an instrument in writing duly executed and delivered by him, and bearing date on the last named day, did assign to Rufus Russell, of Meriden Connecticut, all the right, title, and interest whatever in said invention ; and for that, said instrument in writing was duly recorded in the Patent Office on the tenth day of June, 1866.

And for that, on the sixteenth day of July, 1866, letters patent for said invention, in due form of law, were, on the application of said Samuel Sinclair, issued and delivered to said Rufus Russell, in the name of the United States of America, and under the seal of the Patent Office of the United States, and were signed by the Secretary of the Interior of the United States, and countersigned by the Commissioner of Patents ; and for that, said letters patent did grant to said Rufus Russell, his heirs or assigns, for the term of seventeen years, the exclusive right to make, use, and vend the said invention throughout the United States, and the Territories thereof.

And for that, the said letters patent were inoperative by reason of an insufficient specification ; which error arose from inadvertence, and without any fraudulent or deceptive intention ; and for that, the said Rufus Russell therefore duly surrendered said letters patent, whereupon the Commissioner of Patents, on the fifteenth day of October, 1866, caused new letters patent for the same invention, and in accordance with a corrected specification, to be issued to said Rufus Russell, for the unexpired part of the term of said original letters patent.

And for that, through mistake, and without any fraudulent or deceptive intention, the said Samuel Sinclair, in his application for the said original letters patent, claimed to be the true original and first inventor of a certain part of said apparatus of which he was not the first inventor, and which claim

was repeated in said reissue letters patent, and numbered "two" therein; and for that, the said Rufus Russell, without unreasonable delay, entered in the Patent Office, before the commencement of this suit, a disclaimer in writing of the said part covered by the said second claim of said reissue letters patent.

And the plaintiff says, that the said Rufus Russell, before the committing of the grievances hereinafter mentioned, to wit: on the sixteenth day of September 1868, by a certain instrument in writing, duly executed and delivered by him, and bearing date on said last mentioned day, did grant to the said plaintiff, the entire right, title, and interest in and to the then unexpired portion of the term of said reissue patent, in and throughout the States of Connecticut and Rhode Island; which instrument in writing was recorded in the Patent Office on the thirty-first day of October, 1868.

And the plaintiff further says, that always hitherto, from the time of the execution of the said last mentioned instrument, up to the expiration of the said reissue letters patent, he has vended to others the right to make and use specimens of said apparatus, to his great advantage and profit.

Yet the defendant, well knowing the premises, but contriving to injure the plaintiff, heretofore, to wit: on and after the first day of January, 1869, and up to and on the sixteenth day of July, 1883, and during and within the term of seventeen years mentioned in said letters patent, and after the granting of said reissue letters patent, and after the execution of the said grant to the plaintiff, and before the bringing of this suit, and within those parts of the United States covered by the last mentioned grant, unlawfully, wrongfully, and injuriously, and with intent to deprive the plaintiff of the royalties which he might and otherwise would have derived from the sale of rights to make and use specimens of said apparatus, and without the license of the plaintiff or of the said Rufus Russell, and against the will of the plaintiff, did make, and did use, and did cause to be made, and did cause to be used, sundry specimens of said apparatus, and of machines which contained and employed substantially the invention covered by

said reissue letters patent after said disclaimer, in infringement of the said exclusive rights secured to the said Rufus Russell by the letters patent aforesaid, and granted by him to the said plaintiff, as hereinbefore set forth, and contrary to the statute of the United States in such cases made and provided; whereby the plaintiff has been and is greatly injured, and has been deprived of large royalties which he might and otherwise would have derived from the sale of rights to make and use specimens of said apparatus, and has sustained actual damages thereby to the amount of Three Thousand Dollars.

Wherefore, by force of the statutes of the United States, a right of action has accrued to the said plaintiff to recover the said actual damages, and such additional amount, not exceeding, in the whole, three times the amount of such actual damages, as the court may see fit to adjudge and order, besides costs.

Yet the defendant, though often requested so to do, has never paid the same, nor any part thereof, but has refused, and still refuses so to do, and therefore the plaintiff brings his suit.

JOHN JAY,  
*Attorney for the Plaintiff.*

PLEA IN BAR.

CIRCUIT COURT OF THE UNITED STATES,  
FOR THE DISTRICT OF CONNECTICUT.

THOMAS TRACY

v.

THE EASTERN AND WESTERN RAILROAD  
COMPANY.

*Trespass on the  
Case.*

And the said defendant, by Richard Ray its attorney,

comes and defends the wrong and injury when, etc., and says, that it is not guilty of the supposed grievances above laid to its charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff has above thereof complained against it. And of this the defendant puts itself upon the country.

And for a further plea in this behalf, the defendant says, that the apparatus covered by the reissue letters patent mentioned in the plaintiff's declaration, was not an invention when produced by the said Samuel Sinclair. And of this the defendant puts itself upon the country.

And for a further plea in this behalf, the defendant says, that the said apparatus was not novel when produced by the said Samuel Sinclair; for that, an apparatus substantially identical with it in character, was previously patented in letters patent of the United States, granted to Mason Montgomery, May 16, 1856; and for that, another like apparatus was previously described on page 777 of a certain printed book entitled "The Practical Railroad Carriage Builder," published in London, England, in the year 1858, by William Wright, of Paternoster Row; and for that, still another like apparatus was previously known and used by Nathan Norris, of Rochester New York, on the New York Central Railroad, in said Rochester, and elsewhere on said railroad in the State of New York, in the year 1859. And of this the defendant puts itself upon the country.

And for a further plea in this behalf, the defendant says, that said Samuel Sinclair actually abandoned his said alleged invention, before he made any application for letters patent therefor. And this the defendant is ready to verify.

And for a further plea in this behalf, the defendant says, that said alleged invention was in public use with the consent of said Samuel Sinclair, more than two years before he made any application for letters patent thereon. And of this the defendant puts itself upon the country.

And for a further plea in this behalf, the defendant says, that the alleged inoperativeness, of the original patent men-



tioned in said declaration, did not arise from inadvertence. And of this the defendant puts itself upon the country.

And for a further plea in this behalf, the defendant says, that the reissue letters patent mentioned in said declaration, are not for the same invention as the said original letters patent upon the surrender of which they were issued. And of this the defendant puts itself upon the country.

And for a further plea in this behalf, the defendant says, that before July 16, 1866, letters patent of the Empire of France were granted on said apparatus, to said Samuel Sinclair, for fourteen years from August 1, 1865. And this the defendant is ready to verify.

And for a further plea in this behalf, the defendant says, that, prior to January 1, 1869, the Eastern Railroad Company, and the Western Railroad Company, were separate corporations, created and existing in due form of law, in the States of Rhode Island and Connecticut, respectively; and that each had theretofore purchased, and then possessed, a license executed by said Rufus Russell, authorizing the licensee to make any convenient number of specimens of said apparatus, and to use the same upon the railroad of the licensee, and upon the railroad of any other like licensee, throughout the term of said reissue letters patent; and that on or about said January 1, 1869, the said Eastern Railroad Company and the said Western Railroad Company were lawfully consolidated into one corporation, to wit: this defendant; and that said defendant thereafter operated the said railroads of its said constituent corporations, and operated no railroad car brakes, nor any specimen of the said apparatus, elsewhere. And this the defendant is ready to verify.

RICHARD RAY,  
*Attorney for the Defendant.*

## REPLICATION.

CIRCUIT COURT OF THE UNITED STATES,  
FOR THE DISTRICT OF CONNECTICUT.

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THOMAS TRACY  
v.  
THE EASTERN AND WESTERN RAILROAD  
COMPANY.

---

*Trespass on the  
Case.*

And the said plaintiff, as to the said pleas of the said defendant by it above pleaded, of which it has put itself upon the country, doth the like.

And the plaintiff as to the said plea of the defendant, by it fourthly above pleaded, says that the said Samuel Sinclair did not actually abandon said invention before making any application for letters patent thereon. And of this the plaintiff puts himself upon the country.

And the plaintiff, as to the said plea of the defendant eighthly above pleaded, says that no letters patent of the Empire of France were granted to said Samuel Sinclair on said apparatus, before the granting of the original letters patent mentioned in said declaration. And of this the plaintiff puts himself upon the country.

And the plaintiff, as to the said plea of the defendant ninthly above pleaded, says that the licenses, mentioned in said plea, were had and obtained from the said Rufus Russell by the fraud and covin of the said alleged licensees, respectively. And this the plaintiff is ready to verify.

JOHN JAY,  
*Attorney for the Plaintiff.*

## REJOINDER.

CIRCUIT COURT OF THE UNITED STATES,  
FOR THE DISTRICT OF CONNECTICUT.

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THOMAS TRACY

v.

THE EASTERN AND WESTERN RAILROAD  
COMPANY.

---

*Trespass on the  
Case.*

And the said defendant, as to the said replication of the said plaintiff, to the said fourth and eighth pleas of the said defendant, and of which he hath put himself upon the country, doth the like.

And the defendant as to the replication of the plaintiff to the said ninth plea of the defendant, says that neither of the licenses mentioned in said plea was obtained from said Rufus Russell by the fraud or covin of the licensee mentioned therein. And of this the defendant puts itself upon the country.

RICHARD RAY,  
*Attorney for the Defendant.*

## SUR-REJOINDER.

CIRCUIT COURT OF THE UNITED STATES,  
FOR THE DISTRICT OF CONNECTICUT.

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THOMAS TRACY  
v.  
THE EASTERN AND WESTERN RAILROAD  
COMPANY.

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*Trespass on the  
Case.*

And the said plaintiff, as to the said rejoinder of the said defendant, and whereof it hath put itself upon the country, doth the like.

JOHN JAY,  
*Attorney for the Plaintiff.*

## BILL OF COMPLAINT.

CIRCUIT COURT OF THE UNITED STATES,  
FOR THE DISTRICT OF CONNECTICUT.

To the Judges of the Circuit Court of the United States, for  
the District of Connecticut.

IN EQUITY.

THOMAS TRACY, of Hartford Connecticut, who is a citizen of the State of Connecticut, and of the United States, brings this his bill into this court, against The Eastern and Western Railroad Company, which is a corporation created and existing in due form of law in the States of Connecticut and Rhode Island.

And thereupon your orator complains and says, on information and belief, that Samuel Sinclair, of New Haven Con-

necticut, before and at the time of his application for the hereinafter mentioned letters patent, was a citizen of the United States, and was the true original and first inventor of a certain new and useful apparatus, fully described in the specification of the letters patent hereinafter mentioned, and named therein an "Improved railroad car-brake," and which was not known or used in this country, and not patented or described in any printed publication in this or in any foreign country, before his invention thereof; and was not in public use or on sale more than two years prior to his application for letters patent of the United States therefor.

And your orator further shows unto your Honors, on information and belief, that on the first day of June, 1876, and before the issuing of the hereinafter mentioned letters patent, the said Samuel Sinclair, by an instrument in writing duly executed and delivered by him, and bearing date on the last named day, did assign to Rufus Russell, of Meriden Connecticut, all the right, title, and interest whatever in said invention; and that said instrument in writing was duly recorded in the Patent Office on the tenth day of June, 1876.

And your orator further shows, on information and belief, that on the sixteenth day of July, 1876, letters patent for said invention, in due form of law, were, on the application of said Samuel Sinclair, issued and delivered to said Rufus Russell, in the name of the United States of America, and under the seal of the Patent Office of the United States, and were signed by the Secretary of the Interior of the United States, and countersigned by the Commissioner of Patents; and that the said letters patent did grant to the said Rufus Russell, his heirs or assigns, for the term of seventeen years, the exclusive right to make, use, and vend the said invention throughout the United States, and the Territories thereof.

And your orator further shows, on information and belief, that said letters patent were inoperative by reason of an insufficient specification; and that the error arose from inadvertence, and without any fraudulent or deceptive intention; and that the said Rufus Russell therefore duly surrendered said letters patent, whereupon the Commissioner of Patents, on the

fifteenth day of October, 1876, caused new letters patent for the same invention, and in accordance with a corrected specification, to be issued to the said Rufus Russell, for the unexpired part of the term of said original letters patent.

And your orator further shows, on information and belief, that through mistake, and without any fraudulent or deceptive intention, the said Samuel Sinclair, in his application for said original letters patent, claimed to be the true original and first inventor of a certain part of the said apparatus of which he was not the first inventor, and which claim was repeated in said reissue letters patent and numbered "two" therein; and that the said Rufus Russell, without unreasonable delay, entered in the Patent Office, before the commencement of this suit, a disclaimer in writing of the said part covered by the said second claim of said reissue letters patent.

And your orator further shows, that the said Rufus Russell, on the sixteenth day of September, 1878, by a certain instrument in writing, duly executed and delivered by him, and bearing date on said last mentioned day, did grant to your orator the entire right, title, and interest, in and to the then unexpired portion of the term of said reissue letters patent, in and throughout the States of Connecticut and Rhode Island; and that said instrument in writing was recorded in the Patent Office on the thirty-first day of October, 1878.

And your orator further shows, on information and belief, that the said defendant, on and after the first day of January 1879, and up to the time of the commencement of this action, and during and within the term of seventeen years mentioned in said letters patent, and after the granting of said reissue letters patent, and within those parts of the United States covered by the said grant to your orator, unlawfully, wrongfully, and injuriously, and with intent to derive profits from making and using said apparatus, and to deprive your orator of the royalties which he might and otherwise would have derived from the sale of rights to make and use specimens thereof, and without the license of your orator, or of the said Rufus Russell, and against the will of your orator, did make, and did use, and did cause to be made, and did cause to be used, sundry specimens of said apparatus, and of machines

which contained and employed substantially the invention covered by said reissue letters patent after said disclaimer, in infringement of the said exclusive rights secured to the said Rufus Russell by the letters patent aforesaid, and granted by him to your orator as hereinbefore set forth ; but how many such specimens the defendant so made and used, or caused to be made and used, your orator is ignorant, and cannot set forth ; but your orator avers, on information and belief, that the defendant so made and used, and caused to be made and used, a large number thereof, and that it derived large profits therefrom, but to what amount your orator is ignorant and cannot set forth, and that your orator has been deprived of large royalties by reason of the aforesaid infringement of the defendant, and has thus incurred large damages thereby.

And your orator further shows, that he fears and has reason to fear, that unless the defendant is restrained by a writ of injunction issuing out of this Court, it will continue to make and to use numbers of specimens of said apparatus, and thereby will cause irreparable injury to your orator's aforesaid exclusive rights.

And your orator further shows, that the validity of the said reissue letters patent, has heretofore been uniformly affirmed, after strenuous litigation, by verdicts and judgments at law, and by final decrees in equity, in several of the Circuit Courts of the United States ; and that the railroad companies of the United States have long generally acquiesced in that validity.

And your orator prays your Honors to grant unto your orator a preliminary, and also a permanent writ of injunction, issuing out of and under the seal of this honorable Court, directed to the said Eastern and Western Railroad Company, and strictly enjoining it and its officers, agents, and employes, not to make, or use, or sell, nor cause to be made, or used, or sold, any railroad car or other machine or apparatus containing or employing the invention covered and secured by said reissue letters patent.

And your orator further prays, that the defendant, by a decree of this Court, may be compelled to account for, and pay over to your orator, all the profits which the defendant has derived or shall have derived from any making and using, or

from any using of any specimen of the apparatus covered and secured by said reissue letters patent ; and also that the defendant be decreed to pay all the damages which your orator has incurred, or shall have incurred, on account of the defendant's infringement of said reissue letters patent ; and also that the defendant be decreed to pay the costs of this suit ; and that your orator may have such further and other relief, as the equity of the case, or the statutes of the United States, may require, and to this Court may seem just.

To the end, therefore, that the defendant may, if it can, show why your orator should not have the relief hereby prayed, and may, under the oath of its proper officers, and according to the best and utmost of their knowledge, remembrance, information or belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, it is required to answer ; that is to say :

1. Whether, after the first day of January, eighteen hundred and seventy-nine, it made or used, or caused to be made or used, anywhere in Rhode Island or Connecticut, any specimen of any apparatus substantially like the invention covered and secured by the said reissue letters patent ; and if so, how many such specimens it so made, and how many it so used, and how long it used the same :

May it please your Honors to grant unto your orator a writ of *subpœna ad respondendum*, issuing out of and under the seal of this Honorable Court, and directed to the said The Eastern and Western Railroad Company, and commanding it to appear and make answer to this bill of complaint, and to perform and abide by such order and decree herein as to this Court shall seem just.

And your orator will ever pray.

THOMAS TRACY,  
*Complainant.*

JOHN JAY,  
*Solicitor for the Complainant.*

LUTHER LEARNED,  
*Of Counsel.*



The defendant, The Eastern and Western Railroad Company, is required to answer the interrogatory numbered 1.

JOHN JAY,  
*Solicitor for the Complainant.*

STATE OF CONNECTICUT, COUNTY OF HARTFORD, ss.

On this twenty-sixth day of June, 1883, before me personally appeared Thomas Tracy, and made oath that he has read the foregoing bill, subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be based on information and belief, and that as to those matters he believes it to be true.

L. S.

ARTHUR ANSON,  
*Notary Public.*

PLEA IN EQUITY.

CIRCUIT COURT OF THE UNITED STATES,  
FOR THE DISTRICT OF CONNECTICUT.

THOMAS TRACY

v.

THE EASTERN AND WESTERN RAILROAD  
COMPANY.

*In Equity.*

The plea of The Eastern and Western Railroad Company, defendant, to the bill of complaint of Thomas Tracy, complainant.

This defendant, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and

alleged to be true, in such manner and form as the same are thereby and therein set forth and alleged; for plea to the whole of said bill, says that, prior to January 1, 1879, the Eastern Railroad Company and the Western Railroad Company were separate corporations, created and existing in due form of law in the States of Rhode Island and Connecticut, respectively; and that each had theretofore purchased, and then possessed, a license executed by said Rufus Russell, authorizing the licensee to make any convenient number of specimens of said apparatus, and to use the same upon the railroad of the licensee, and the railroad of any other like licensee, throughout the term of said reissue letters patent; and that on or about the said January 1, 1879, the said Eastern Railroad Company, and the said Western Railroad Company, were lawfully consolidated into one corporation, to wit: this defendant; and that this defendant thereafter operated the said railroads of its said constituent corporations, and operated no railroad car-brakes, nor any specimen of the said apparatus, elsewhere.

All which statements this defendant doth aver to be true, and it pleads the said licenses to the said complainant's bill, and prays the judgment of this Honorable Court, whether it should be compelled to make any other or further answer to the said bill, and prays to be hence dismissed with its costs in this behalf sustained.

In witness whereof, the said defendant, The Eastern and Western Railroad Company, has hereunto affixed its corporate seal, and caused the same to be attested by Charles Clark, its secretary.

{ L. S. }

CHARLES CLARK,  
*Secretary.*

RICHARD RAY,  
*Solicitor and Counsel for the Defendant.*

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

RICHARD RAY,  
*Solicitor and Counsel for the Defendant.*

STATE OF CONNECTICUT, COUNTY OF HARTFORD, ss.

On this third day of September, 1883, before me personally appeared Charles Clark, and made oath that he has read the above plea, and knows the contents thereof, and that it is not interposed for delay, and that it is true in point of fact.

L. S.

ARTHUR ANSON,  
*Notary Public.*

ANSWER.

CIRCUIT COURT OF THE UNITED STATES,  
FOR THE DISTRICT OF CONNECTICUT.

THOMAS TRACY

v.

THE EASTERN AND WESTERN RAILROAD  
COMPANY.

*In Equity.*

The defendant, for answer to the bill of complaint of the complainant, answering, says :

The defendant admits, that it is a corporation created and existing in due form of law in the States of Connecticut and Rhode Island.

The defendant denies, on information and belief, that Samuel Sinclair was the true, original, and first inventor of the apparatus covered by the original letters patent mentioned in said bill ; and the defendant says, on information and belief, that said apparatus was not an invention when produced by said Samuel Sinclair ; and that it was not novel at that time, and that an apparatus substantially identical with it in

character was previously patented in letters patent of the United States, granted to Mason Montgomery, May 16, 1856; and that another like apparatus was previously described on page 777 of a certain printed book entitled "The Practical Railroad Carriage Builder," published in London, England, in the year 1858, by William Wright, of Paternoster Row; and that still another like apparatus was previously known and used by Nathan Norris, of Rochester New York, on the New York Central Railroad, in said Rochester, and elsewhere on said railroad, in the State of New York, in the year 1859.

And the defendant further says, on information and belief, that said Samuel Sinclair actually abandoned his said alleged invention, before he made any application for letters patent therefor.

And the defendant further says, on information and belief, that the said alleged invention was in public use more than two years before said Samuel Sinclair made any application for letters patent thereon.

And the defendant further says, that it has no knowledge whether the said Samuel Sinclair ever executed and delivered any instrument of assignment to Rufus Russell, purporting to convey the entire right, title, and interest in said alleged invention.

And the defendant further says, that it has no knowledge whether any original letters patent for said alleged invention, were ever issued and delivered to said Rufus Russell.

And the defendant denies, on information and belief, that any such letters patent were inoperative by reason of an insufficient specification; and that any such inoperativeness arose from inadvertence, and without fraudulent or deceptive intention.

The defendant further says, that it has no knowledge whether said Rufus Russell ever surrendered any such letters patent, or whether the Commissioner of Patents ever caused any reissue letters patent to be issued to said Russell for the unexpired part of the term of any such original letters patent.

And the defendant further says, on information and belief, that the alleged reissue letters patent mentioned in the com-

plainant's bill, are not for the same invention as the alleged original letters patent upon the surrender of which they are alleged in said bill to have been issued.

And the defendant further says, that it has no knowledge whether, through mistake, and without any fraudulent intention, the said Samuel Sinclair, in his application for said alleged original letters patent, claimed to be the true, original, and first inventor of a certain part of the said apparatus of which he was not the first inventor; or whether the said Rufus Russell, without unreasonable delay, entered in the Patent Office, before the commencement of this suit, a disclaimer in writing of any such part.

And the defendant further says, that it has no knowledge whether the said Rufus Russell ever executed and delivered any instrument of grant to the complainant, purporting to convey the entire right, title, and interest in and to the then unexpired portion of the term of said alleged reissue letters patent, in and throughout the States of Connecticut and Rhode Island.

And the defendant further says, on information and belief, that before July 16, 1876, letters patent of the empire of France were granted, on said apparatus, to said Samuel Sinclair, for fourteen years from August 1, 1875.

And the defendant denies, on information and belief, that it ever made or used, or caused to be made or used, any specimen of any apparatus covered by said reissue letters patent; and likewise denies that it ever derived any profit from any such making or using; and likewise denies that the defendant ever incurred any damage on account of any such transactions committed or caused to be committed by the defendant.

The defendant further says, that it has no knowledge whether the validity of any such alleged reissue patent has heretofore been uniformly affirmed, after strenuous litigation, by verdicts or judgments at law, or by final decrees in equity, in several of the Circuit Courts of the United States; but the defendant denies, on information and belief, that any such validity has been generally acquiesced in by the railroad companies of the United States.

All of which statements and defences this defendant is ready to aver, maintain, and prove, as this Honorable Court shall direct ; and it prays hence to be dismissed with its costs in this behalf sustained.

In witness whereof, the said defendant, The Eastern and Western Railroad Company, has hereunto affixed its corporate seal, and caused the same to be attested by Charles Clark, its Secretary.

L. S.

CHARLES CLARK,  
*Secretary.*

RICHARD RAY,  
*Solicitor and Counsel for the Defendant.*

STATE OF CONNECTICUT, COUNTY OF HARTFORD, ss.

On this first day of October, 1883, before me personally appeared Charles Clark, and made oath that he has read the foregoing answer, and knows the contents thereof ; and that the same is true of his own knowledge, except as to the matters which are therein admitted or stated to be based on information and belief, and as to those matters he believes it to be true.

L. S.

ARTHUR ANSON,  
*Notary Public.*

## REPLICATION IN EQUITY.

CIRCUIT COURT OF THE UNITED STATES,  
FOR THE DISTRICT OF CONNECTICUT.

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THOMAS TRACY

v.

THE EASTERN AND WESTERN RAILROAD  
COMPANY.

---

*In Equity.*

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this Honorable Court shall direct; and humbly prays, as in and by his said bill he hath already prayed.

JOHN JAY,  
*Solicitor for the Complainant.*

# RULES OF PRACTICE

FOR THE

COURTS OF EQUITY OF THE UNITED STATES.

IN FORCE OCTOBER 1, 1883.

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## PRELIMINARY REGULATIONS.

### RULE 1.

THE circuit courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers, and other pleadings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits.

### RULE 2.

The clerk's office shall be open, and the clerk shall be in attendance therein, on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course, and applied for, or had by the parties, or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

### RULE 3.

Any judge of the circuit court, as well in vacation as in term, may, at chambers, or on the rule-days at the clerk's office, make and direct all such interlocutory orders, rules, and



other proceedings, preparatory to the hearing of all causes upon their merits, in the same manner and with the same effect as the circuit court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and show cause to the contrary at the next rule-day thereafter, unless some other time is assigned by the judge for the hearing.

#### RULE 4.

All motions, rules, orders, and other proceedings made and directed at chambers, or on rule-days at the clerk's office, whether special or of course, shall be entered by the clerk in an order-book, to be kept at the clerk's office, on the day when they are made and directed; which book shall be open at all office hours to the free inspection of the parties in any suit in equity, and their solicitors. And, except in cases where personal or other notice is specially required or directed, such entry in the order-book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings entered in such order-book, touching any and all the matters in the suits to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city, the judges of the circuit court may, by rule, abridge the time for notice of rules, orders, or other proceedings not requiring personal service on the parties, in their discretion.

#### RULE 5.

All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees, for filing bills, answers, pleas, demurrers, and other pleadings; for making amendments to bills and answers; for taking bills *pro confesso*; for filing exceptions, and for other proceedings in the clerk's office which do not, by the

rules hereinafter prescribed, require any allowance or order of the court, or of any judge thereof, shall be deemed motions and applications, grantable of course by the clerk of the court. But the same may be suspended, or altered, or rescinded by any judge of the court, upon special cause shown.

#### RULE 6.

All motions for rules or orders and other proceedings, which are not grantable of course, or without notice, shall, unless a different time be assigned by a judge of the court, be made on a rule-day, and entered in the order-book, and shall be heard at the rule-day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any judge of the court *ex parte*, and granted, as if not objected to, or refused, in his discretion.

#### *Process.*

#### RULE 7.

The process of subpoena shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and, unless otherwise provided in these rules, or specially ordered by the circuit court, a writ of attachment, and if the defendant cannot be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

#### RULE 8.

Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the circuit court in suits at common law in actions of assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds, or other

documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound without further service to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of *non est inventus*, to compel obedience to the decree.

#### RULE 9.

When any decree or order is for the delivery of possession upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

#### RULE 10.

Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause; and every person, not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party in the cause.

#### *Service of Process.*

#### RULE 11.

No process of subpoena shall issue from the clerk's office in any suit in equity until the bill is filed in the office.

## RULE 12.

Whenever a bill is filed the clerk shall issue the process of subpoena thereon, as of course, upon the application of the plaintiff, which shall be returnable into the clerk's office the next rule-day, or the next rule-day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpoena shall be placed a memorandum, that the defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable; otherwise, the bill may be taken *pro confesso*. Where there are more than one defendant, a writ of subpoena may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife defendants, or a joint subpoena against all the defendants.

## RULE 13.

The service of all subpoenas shall be by a delivery of a copy thereof, by the officer serving the same, to the defendant personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some adult person who is a member or resident in the family.

## RULE 14.

Whenever any subpoena shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpoena, *toties quoties*, against such defendant, if he shall require it, until due service is made.

## RULE 15.

The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.

## RULE 16.

Upon the return of the subpoena as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

*Appearance.*

## RULE 17.

The appearance-day of the defendant shall be the rule-day to which the subpoena is made returnable, provided he has been served with the process twenty days before that day ; otherwise, his appearance-day shall be the next rule-day succeeding the rule-day when the process is returnable. The appearance of the defendant, either personally or by his solicitor, shall be entered in the order-book on the day thereof by the clerk.

*Bills Taken Pro Confesso.*

## RULE 18.

It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a judge of the court, upon motion for that purpose, to file his plea, demurrer, or answer to the bill, in the clerk's office, on the rule-day next succeeding that of entering his appearance. In default thereof, the plaintiff may, at his election, enter an order (as of course) in the order-book, that the bill be taken *pro confesso* ; and thereupon the cause shall be proceeded in *ex parte*, and the matter of the bill may be decreed by the court at any time after the expiration of thirty days from and after the entry of said order, if the same can be done without an answer, and is proper to be decreed ; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant, to compel an answer, and the defendant shall not, when arrested upon such process, be discharged therefrom, unless upon filing his answer, or otherwise complying with such order as the court or a judge thereof may direct, as to pleading to or

fully answering the bill, within a period to be fixed by the court or judge, and undertaking to speed the cause.

#### RULE 19.

When the bill is taken *pro confesso*, the court may proceed to a decree at any time after the expiration of thirty days from and after the entry of the order to take the bill *pro confesso*, and such decree rendered shall be deemed absolute, unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct, for the purpose of speeding the cause.

#### *Frame of Bills.*

#### RULE 20.

Every bill, in the introductory part thereof, shall contain the names, places of abode, and citizenship of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows: "To the judges of the circuit court of the United States for the district of ———: A. B., of ———, and a citizen of the State of ———, brings this his bill against C. D., of ———, and a citizen of the State of ———, and E. F., of ———, and a citizen of the State of ———. And thereupon your orator complains and says, that," &c.

#### RULE 21.

The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth

the matters or excuses which the defendant is supposed to intend to set up by way of defence to the bill ; also what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and the defendant is without any remedy at law ; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative or stating part of his bill, state and avoid, by counter-averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant, by way of defence or excuse, to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief ; and if an injunction, or a writ of *ne exeat regno* or any other special order pending the suit, is required, it shall also be specially asked for.

#### RULE 22.

If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties, by showing them to be without the jurisdiction of the court, or that they cannot be joined without ousting the jurisdiction of the court as to the other parties. And as to persons who are without the jurisdiction and may properly be made parties, the bill may pray that process may issue to make them parties to the bill if they should come within the jurisdiction.

#### RULE 23.

The prayer for process of subpoena in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the court may take order thereon as justice may require, upon the return of the process. If an injunction, or a writ of *ne exeat regno* or any other special order pending the suit, is asked for in the prayer for relief, that shall be sufficient without repeating the same in the prayer for process.

## RULE 24.

Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part that upon the instructions given to him and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

## RULE 25.

In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness, and directness in the allegations of bills and answers, the regular taxable costs for every bill and answer shall in no case exceed the sum which is allowed in the State court of chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

*Scandal and Impertinence in Bills.*

## RULE 26.

Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments, *in hæc verba*, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it does, it may on exceptions be referred to a master by any judge of the court for impertinence or scandal; and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court or a judge thereof shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all cost occasioned by the reference.

## RULE 27.

No order shall be made by any judge for referring any bill, answer, or pleading, or other matter or proceeding depending before the court for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the par-



ticular passages which are considered to be scandalous or impertinent ; nor unless the exceptions shall be filed on or before the next rule-day after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnecessary delay, procure the master to examine and report for the same on or before the next succeeding rule-day, or the master shall certify that further time is necessary for him to complete the examination.

### *Amendment of Bills.*

#### RULE 28.

The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill in any matters whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterward, such as filling blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point (as he may do of course), after a copy has been so taken, before any answer, or plea, or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall, without delay, furnish him a fair copy thereof free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish in like manner, to the defendant, a copy of the whole bill as amended ; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

#### RULE 29.

After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any judge of the court to amend his bill on or before the next succeeding rule-day, upon payment of costs or without payment of costs, as the court or a judge thereof may in his discretion direct. But after repli-

cation filed, the plaintiff shall not be permitted to withdraw it and to amend his bill, except upon a special order of a judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the judge for speeding the cause.

### RULE 30.

If the plaintiff, so obtaining an order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the clerk's office, on or before the next succeeding rule-day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

### *Demurrers and Pleas.*

### RULE 31.

No demurrer or plea shall be allowed to be filed to any bill, unless upon a certificate of counsel that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant that it is not interposed for delay ; and if a plea, that it is true in point of fact.

### RULE 32.

The defendant may, at any time before the bill is taken for confessed, or afterward with the leave of the court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part, and answer as to the residue ; but in every case in which the bill especially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea, and explicitly denying the fraud and combination, and the facts on which the charge is founded.

## RULE 33.

The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

## RULE 34.

If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period, unless the court shall be satisfied that the defendant had good ground in point of law or fact to interpose the same, and it was not interposed vexatiously or for delay. And upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule-day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done; in default whereof, the bill shall be taken against him, *pro confesso*, and the matter thereof proceeded in and decreed accordingly.

## RULE 35.

If, upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill upon such terms as it shall deem reasonable.

## RULE 36.

No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

## RULE 37.

No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

## RULE 38.

If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument, on the rule-day when the same is filed, or on the next succeeding rule-day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course, unless a judge of the court shall allow him further time for the purpose.

*Answers.*

## RULE 39.

The rule, that if a defendant submits to answer he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases by answer to insist upon all matters of defence (not being matters of abatement, or to the character of the parties, or matters of form) in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar, and an answer in support of such plea, touching the matters set forth in the bill, to avoid or repel the bar or defence. Thus, for example, a bona fide purchaser for a valuable consideration, without notice, may set up that defence by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

## RULE 40.

It shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so, to obtain a discovery.

## RULE 41.

The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other,

and numbered consecutively 1, 2, 3, &c. ; and the interrogatories which each defendant is required to answer shall be specified in a note at the foot of the bill, in the form or to the effect following, that is to say : "The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3, &c.;" and the office copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

If the complainant, in his bill, shall waive an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant, though under oath, except such part thereof as shall be directly responsive to such interrogatories, shall not be evidence in his favor, unless the cause be set down for hearing on bill and answer only ; but may nevertheless be used as an affidavit, with the same effect as heretofore, on a motion to grant or dissolve an injunction, or on any other incidental motion in the cause ; but this shall not prevent a defendant from becoming a witness in his own behalf under section 3 of the act of Congress of July 2d, 1864.

#### RULE 42.

The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note after the bill is filed, shall be considered and treated as an amendment of the bill.

#### RULE 43.

Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words "To the end therefore," there shall hereafter be used words in the form or to the effect following : "To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their

several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer; that is to say—

- “ 1. Whether, &c.  
 “ 2. Whether, &c.”

#### RULE 44.

A defendant shall be at liberty, by answer, to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill, from which he might have protected himself by demurrer.

#### RULE 45.

No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same, with or without the payment of costs, as the court, or a judge thereof, may in his discretion direct.

#### RULE 46.

In every case where an amendment shall be made after answer filed, the defendant shall put in a new or supplemental answer, on or before the next succeeding rule-day after that on which the amendment or amended bill is filed, unless the time is enlarged or otherwise ordered by a judge of the court; and upon his default the like proceedings may be had as in cases of an omission to put in an answer.

#### *Parties to Bills.*

#### RULE 47.

In all cases where it shall appear to the court that persons, who might otherwise be deemed necessary or proper parties to

the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may in their discretion proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

#### RULE 48.

Where the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the court in its discretion may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

#### RULE 49.

In all suits concerning real estate, which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, or the proceeds, or the rents and profits, in the same manner, and to the same extent, as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

#### RULE 50.

In suits to execute the trusts of a will, it shall not be necessary to make the heir-at-law a party; but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him.

## RULE 51.

In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court, as parties to a suit concerning such demand, all the persons liable thereto but the plaintiff may proceed against one or more of the persons severally liable.

## RULE 52.

Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only ; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order-book, in the form or to the effect following, that is to say : "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objections shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties. But the court, if it thinks fit, shall be at liberty to dismiss the bill.

## RULE 53.

If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties not having by plea or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the court (if it shall think fit) shall be at liberty to make a decree saving the rights of the absent parties.

*Nominal Parties to Bills.*

## RULE 54.

Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant,



the party, upon service of the subpoena upon him, need not appear and answer the bill, unless the plaintiff specially requires him so to do by the prayer of his bill; but he may appear and answer, at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer, he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.

#### RULE 55.

Whenever an injunction is asked for by the bill to stay proceedings at law, if the defendant do not enter his appearance and plead, demur, or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled as of course, upon motion without notice, to such injunction. But special injunctions shall be grantable only upon due notice to the other party by the court in term, or by a judge thereof in vacation, after a hearing, which may be *ex-parte*, if the adverse party does not appear at the time and place ordered. In every case where an injunction, either the common injunction or a special injunction, is awarded in vacation, it shall, unless previously dissolved by the judge granting the same, continue until the next term of the court, or until it is dissolved by some other order of the court.

#### *Bills of Revivor and Supplemental Bills.*

#### RULE 56.

Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same, which bill may be filed in the clerk's office at any time; and upon suggestion of the facts, the proper process of subpoena shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be

shown at the next rule-day which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

#### RULE 57.

Whenever any suit in equity shall become defective, from any event happening after the filing of the bill (as, for example, by change of interest in the parties), or for any other reason, a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any judge of the court on any rule-day, upon proper cause shown, and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto, on the next succeeding rule-day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a judge of the court.

#### RULE 58.

It shall not be necessary in any bill of revivor, or supplemental bill, to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

#### *Answers.*

#### RULE 59.

Every defendant may swear to his answer before any justice or judge of any court of the United States, or before any commissioner appointed by any circuit court to take testimony or depositions, or before any master in chancery appointed by any circuit court, or before any judge of any court of a State or Territory.

#### *Amendment of Answers.*

#### RULE 60.

After an answer is put in, it may be amended as of course, in any matter of form, or by filling up a blank, or correcting a date, or reference to a document or other small matter, and

be resworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication, or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defences, or qualifying or altering the original statements, except by special leave of the court or of a judge thereof, upon motion and cause shown after due notice to the adverse party, supported, if required, by affidavit. And in every case where leave is so granted, the court, or the judge granting the same, may, in his discretion, require that the same be separately engrossed, and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

### *Exceptions to Answers.*

#### RULE 61.

After an answer is filed on any rule-day, the plaintiff shall be allowed until the next succeeding rule-day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the court or a judge thereof; and if no exceptions shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

#### RULE 62.

When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had by two or more of the defendants separately, costs shall not be allowed for such separate answers or other proceedings, unless a master, upon reference to him, shall certify that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

#### RULE 63.

Where exceptions shall be filed to the answer for insufficiency within the period prescribed by these rules, if the defendant shall not submit to the same and file an amended answer on the next succeeding rule-day, the plaintiff shall forthwith

set them down for a hearing on the next succeeding rule-day thereafter before a judge of the court, and shall enter, as of course, in the order book, an order for that purpose. And if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient; provided, however, that the court, or any judge thereof, may, for good cause shown, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

#### RULE 64.

If, at the hearing the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto on the next succeeding rule-day; otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court, or of a judge thereof, upon his putting in such answer and complying with such other terms as the court or judge may direct.

#### RULE 65.

If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the court, or the judge thereof, at the hearing upon the exceptions.

### *Replication and Issue.*

#### RULE 66.

Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto on or before the next succeeding rule-day thereafter; and in all cases where the general replication is filed the cause shall be deemed to all intents and

purposes at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the court, or a judge thereof, shall, upon motion for cause shown, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

*Testimony—How Taken.*

RULE 67.

After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party taking out the same in the clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross-interrogatories are filed at the expiration of the time, the commission may issue *ex parte*. In all cases the commissioner or commissioners shall be named by the court, or by a judge thereof. And the presiding judge of any court exercising jurisdiction, either in term time or in vacation, may vest in the clerk of said court general power to name commissioners to take testimony in like manner.

Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court, the examiner to be furnished with a copy of the bill and answer, if any; and such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination, and re-examination, and which shall be conducted, as near as may be, in the mode now used in common-law courts. The depositions taken upon such oral examination shall be taken down in writing by the examiner in the form of narrative, unless he determines the

examination shall be by question and answer in special instances ; and when completed, shall be read over to the witness and signed by him in the presence of the parties or counsel, or such of them as may attend ; provided, if the witness shall refuse to sign the said deposition, then the examiner shall sign the same ; and the examiner may upon all examinations state any special matters to the court as he shall think fit ; and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the questions ; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

In case of refusal of witnesses to attend, to be sworn, or to answer any question put by the examiner or by counsel or solicitor, the same practice shall be adopted as is now practised with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

Notice shall be given by the respective counsel or solicitors, to the opposite counsel or solicitors, or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

When the examination of witnesses before the examiner is concluded, the original deposition, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the court, to be there filed of record in the same mode as prescribed in the thirtieth section of act of Congress, September 24th, 1789.

Testimony may be taken on commission in the usual way by written interrogatories, and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons satisfactory to the court or judge.

Where the evidence to be adduced in a cause is to be taken orally, as provided in the order passed at the December Term, 1861, amending the 67th General Rule, the court may, on motion of either party, assign a time within which the complainant shall take his evidence in support of the bill, and a time thereafter within which the defendant shall take his evidence

in defence, and a time thereafter within which the complainant shall take his evidence in reply ; and no further evidence shall be taken in the cause unless by agreement of the parties, or by leave of court first obtained on motion for cause shown.

#### RULE 68.

Testimony may also be taken in the cause, after it is at issue, by deposition, according to the acts of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission or by a new deposition taken under the acts of Congress, if a court or a judge thereof shall, under all the circumstances, deem it reasonable.

#### RULE 69.

Three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the court or a judge thereof shall, upon special cause shown by either party, enlarge the time ; and no testimony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions, containing the testimony, into the clerk's office, publication thereof may be ordered in the clerk's office, by any judge of the court, upon due notice to the parties, or it may be enlarged, as he may deem reasonable under all the circumstances. But, by consent of the parties, publication of the testimony may at any time pass in the clerk's office, such consent being in writing, and a copy thereof entered in the order-books, or indorsed upon the deposition or testimony.

#### *Testimony De Bene Esse.*

#### RULE 70.

After any bill filed, and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged and infirm, or going out of the country, or that any one of them is a single witness to a material fact, the clerk of

the court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners, as a judge of the court may direct, to take the examination of such witness or witnesses *de bene esse* upon giving due notice to the adverse party of the time and place of taking his testimony.

*Form of the Last Interrogatory.*

RULE 71.

The last interrogatory in the written interrogatories to take testimony now commonly in use, shall in the future be altered, and stated in substance thus: "Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

*Cross-Bill.*

RULE 72.

Where a defendant in equity files a cross-bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto, before the original plaintiff shall be compellable to answer the cross-bill. The answer of the original plaintiff to such cross-bill may be read and used by the party filing the cross-bill at the hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

*Reference to and Proceedings before Masters.*

RULE 73.

Every decree for an account of the personal estate of a testator or intestate shall contain a direction to the master, to whom it is referred to take the same, to inquire and state to the court what parts, if any, of such personal estate are out-



standing or undisposed of, unless the court shall otherwise direct.

#### RULE 74.

Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance, or for whose benefit, the reference is made, shall cause the same to be presented to the master for a hearing on or before the next rule-day succeeding the time when the reference was made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

#### RULE 75.

Upon every such reference it shall be the duty of the master, as soon as he reasonably can, after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the court, or a judge thereof, for an order to the master to speed the proceedings, and to make his report, and to certify to the court or judge the reasons for any delay.

#### RULE 76.

In the reports made by the master to the court no part of any state of facts, charge, affidavit, deposition, examination, or answer brought in or used before them shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer shall be identified, specified, and referred to, so as to inform the court what state of facts, charge, affidavit, deposition, examination, or answer were so brought in or used.

## RULE 77.

The master shall regulate all the proceedings in every hearing before him, upon every such reference ; and he shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference ; and also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto ; and also to examine an oath, *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the clerk's office, or by deposition, according to the acts of Congress, or otherwise, as hereinafter provided ; and also to direct the mode in which the matters requiring evidence shall be proved before him ; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.

## RULE 78.

Witnesses who live within the district may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpoena in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court ; and if any witness shall refuse to appear or to give evidence, it shall be deemed a contempt of the court, which, being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court. But nothing herein contained shall prevent the examination of witnesses *viva voce* when produced in open court, if the court shall, in its discretion, deem it advisable.

## RULE 79.

All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the accounts so brought in shall be at liberty to examine the accounting party, *viva voce*, or upon interrogatories in the master's office, or by deposition, as the master shall direct.

## RULE 80.

All affidavits, depositions, and documents which have been previously made, read, or used in the court, upon any proceeding in any cause or matter, may be used before the master.

## RULE 81.

The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examinations shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court, if necessary.

## RULE 82.

The circuit courts may appoint standing masters in chancery in their respective districts, both the judges concurring in the appointment; and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master in chancery for his services in any particular case, shall be fixed by the circuit court in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

*Exceptions to Report of Master.*

## RULE 83.

The master, as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk in the order-book. The parties shall have one month from the time of filing the report to file exceptions thereto; and if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule-day after the month is expired. If exceptions are filed, they shall stand for hearing before the court, if the court is then in session; or, if not, then at the next sitting of the court which shall be held thereafter by adjournment or otherwise.

## RULE 84.

And in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay costs to the other party, and for every exception allowed shall be entitled to costs; the costs to be fixed in each case by the court, by a standing rule of the circuit court.

*Decrees.*

## RULE 85.

Clerical mistakes in decrees, or decretal orders, or errors arising from any accidental slip or omission, may, at any time before an actual enrollment thereof, be corrected by order of the court or a judge thereof, upon petition, without the form or expense of a rehearing.

## RULE 86.

In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at

this term, and was argued by counsel ; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz.:'' [Here insert the decree or order.]

*Guardians and Prochein Amis.*

RULE 87.

Guardians *ad litem* to defend a suit may be appointed by the court, or by any judge thereof, for infants or other persons who are under guardianship, or otherwise incapable to sue for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami*; subject, however, to such orders as the court may direct for the protection of infants and other persons.

*Rehearing.*

RULE 88.

Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party, or by some other person. No rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.

RULE 89.

The circuit courts (both judges concurring therein) may make any other and further rules and regulations for the practice, proceedings, and process, *mesne* and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

## RULE 90.

In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit court shall be regulated by the present practice of the high court of chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local conveniences of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

## RULE 91.

Whenever, under these rules, an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof, make solemn affirmation to the truth of the facts stated by him.

## RULE 92.

In suits in equity for the foreclosure of mortgages in the circuit courts of the United States, or in any court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the 8th rule of this court regulating the equity practice, where the decree is solely for the payment of money.

## RULE 93.

When an appeal from a final decree in an equity suit, granting or dissolving an injunction, is allowed by a justice or judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending or modifying the injunction during the pendency of the appeal, upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party.

## RULE 94.

Every bill brought by one or more stockholders in a corporation, against the corporation and other parties, founded on

rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law; and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action.

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