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FOREIGN PATENT AND TRADEMARK LAWS

7589

A COMPARATIVE STUDY

WITH

TABULAR STATEMENTS OF ESSENTIAL FEATURES OF SUCH LAWS

TOGETHER WITH

THE TEXT OF THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY CONCLUDED AT PARIS, MARCH 20, 1883, AS AMENDED, WITH NOTES THEREON, AND OTHER CONVENTIONS AND TREATIES OF THE UNITED STATES RELATING TO PATENTS AND TRADEMARKS

BY

ARTHUR P. GREELEY

ASSISTANT COMMISSIONER OF PATENTS

MEMBER OF COMMISSION TO REVISE PATENT AND TRADEMARK LAWS OF THE UNITED STATES
APPOINTED UNDER ACT OF CONGRESS APPROVED JUNE 4, 1898
MEMBER OF AMERICAN BAR ASSOCIATION

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GENERAL

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PREFACE.

THE general principles of the United States patent law may be presumed to be understood by American inventors. Full and correct information as to the conditions under which valid patents for their inventions may be obtained is accessible to every one, and it is even possible for an inventor himself to secure protection for his invention, though in attempting to do so without the assistance of a skillful and experienced attorney he runs great risks of finding the patent he may have secured practically worthless so far as real protection for his invention is concerned. The question whether it is advisable to secure protection for his invention in foreign countries is one which naturally presents itself to the inventor, even if it is not urged upon him by those who are eager to act as his agents in obtaining such patents, not always, it is to be feared, with his interests at heart. In determining the question, it is important for the inventor to have at least a general idea of the essential features of foreign patent laws, particularly of the conditions under which, in each of the countries in which he may consider it advisable to protect his invention, a valid patent may be obtained and be kept in force throughout the term for which it may be granted, in order that he may, on the one hand, take care to make application for patent before his right to a patent has been forfeited by disclosure of the invention and, on the other hand, may not uselessly spend his money in filing applications on which it is certain that patents either cannot be granted, or, if granted, are necessarily invalid and worthless. Unfortunately, such information as to foreign patent laws is not generally accessible, and such as may be found in even standard compilations of foreign patent

laws, such as Carpmael's Patent Laws of the World[1] or Abbott's Patent Laws of All Nations,[2] however correct at the date of publication, cannot now be relied on by reason of the many and radical changes made in recent years in such laws. Even the laws as published from time to time in the Official Gazette of the Patent Office are of little value, and may seriously mislead, unless it be known with certainty which of them are laws at present in force and which are now obsolete.

What has been said of foreign patent laws applies with equal force to trade-mark laws. The protection of trade-marks in foreign countries is of even more importance to the manufacturer or merchant who is seeking to gain and maintain a footing in foreign markets than protection for his invention abroad is to the inventor, and information as to the trade-mark laws of foreign countries is even more difficult to obtain, there being, so far as I can ascertain, no general compilation of such laws published in the English language.

The study of foreign patent and trade-mark laws which is here presented was made primarily for use in connection with the work of the Commission appointed under a recent Act of Congress to revise the patent and trade-mark laws. It is hoped that it may prove of value to inventors and owners of trade-marks as presenting general information not easily obtained, and may prove a convenient hand-book for the patent solicitor by enabling him to answer readily many of the questions asked of him by clients regarding foreign patents and trademarks, without the necessity for a long and sometimes unsatisfactory examination of the text of the laws.

It is not, of course, intended to be relied on to enable inventors or owners of trade-marks to attempt themselves to secure protection for their inventions or registration of their trade-marks abroad. On the contrary, it will be apparent from consideration of the facts presented that the difficulties to be overcome in securing protection in foreign countries, either for inventions or trade-marks, are much greater than

[1] London, 1885. [2] Washington, 1886.

are met with in securing such protection in this country, and are practically insurmountable without the assistance of skilled and experienced attorneys. In fact, in not a few of the most important countries it is impossible for a non-resident to secure a patent or the registration of a trade-mark except through a representative residing in the country.

The text of the various laws relied on is indicated in the list of countries having patent laws, § 5, and of countries having trade mark laws, § 140. The rules of practice of the several countries as to both patents and trade-marks relied on are, so far as possible, those found in official publications of the several countries, those found in the Recueil Général,[1] the Propriété Industrielle,[2] and as to trade-marks those found in Marafy's Dictionnaire.[3] Among other publications consulted from which information of value has been secured are; on the patent law of Great Britain, Frost's Patent Law and Practice;[4] on the French patent law, Mainié's Brevets d' Invention,[5] and Huard and Pelletier's Brevets d' Invention;[6] on the German patent law, Hopkins' Handbook of the German Patent Law;[7] on the trade-mark law of Great Britain, Sebastian's Law of Trade-marks,[8] and on foreign patent and trade-mark laws generally, Richards' Patents and Trademarks,[9] the American Corporation Legal Manual,[10] Haddan's Inventors' Adviser,[11] and the Annuaire Farjas.[12]

Washington, July, 1899.

[1] Recueil Général de la législation et des traites concernant la propriété industrielle, Berne, 1896, published by the International Bureau for the Protection o Industrial Property. 2 vols.

[2] Published monthly at Berne. The official organ of the International Union.

[3] International Dictionnaire de la Propriété Industrielle, by Maillard de Marafy, Paris, 1890. 6 vols.

[4] London, 1891.

[5] Noveau Traité des Brevets d' Invention, Paris, 1896. 2 Vols.

[6] Repertoire de Législation et de Jurisprudence en matiére de Brevets d' Invention. Paris, 1885.

[7] Berlin, 1849.

[8] 3d edition. London, 1890.

[9] New York, Richards & Co., 1894, supplement, 1898.

[10] Plainfield, N J., 1899.

[11] London, 1898.

[12] Annuaire Farjas pour les Inventeurs. Paris, 1899.

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PART I.

PATENT LAWS.

CHAPTER I.

OF PATENT LAWS IN GENERAL.

Sec. 1. Of the recognition of the importance of patent laws.

While it is now generally recognized throughout the civilized world that the progress of industrial interests, agricultural as well as manufacturing, may be most effectively promoted by securing to inventors for limited times the exclusive right to their respective inventions and discoveries,[1] the recognition of this fact has come but slowly, and it is to the United States more perhaps than to any other nation that its present recognition is due, the United States being not *only* one of the first nations to adopt a general law providing for the granting of patents for invention,[2] being preceded in this matter by one nation only, Great Britain,[3] but through the remarkable development of its industries, particularly in recent years, affording a demonstration of the benefit of such a law which has been most impressive and effective.

Up to a comparatively recent period many, even of the more important countries, either had no laws providing for the grant of patents for inventions or had laws under which the inventor, particularly if a foreigner, could obtain a patent

[1] Constitution of the United States, Article I, Sec. 3.

[2] Law of 1790 of the United States.

[3] Statute of Monopolies of 1623 of England.

only with the greatest difficulty and more as a favor from the Crown than as the recognition of a right. The idea that a patent may be granted or refused or even cancelled at the will of the sovereign still remains in many foreign laws, even in some of very recent adoption, the provision that the sovereign may, if deemed for the interest of the public, declare the invention free to be used by any one on making such compensation to the patentee as may be deemed just,[1] and the provision that the patentee may under certain circumstances be compelled to license others to use his invention,[2] being found in many of these laws; but in practice the right of an applicant, who presents a new and useful invention and complies with all the requirements of the law, to receive a patent is admitted in all countries which are of industrial importance.

Sec. 2. Of the expiration of the rights granted by the patent. Forfeiture.

The idea that the grant of a patent for a new invention is in some way in derogation of the rights of others, and that it is for the interest of the public that the invention should be made free to any one to use at as early a date as possible, is not yet wholly overcome, even in the United States. In hardly any foreign country is the patentee permitted to enjoy undisturbed the rights granted to him throughout the term for which his patent is nominally granted, but must, on pain of forfeiture of his rights, comply strictly with hard conditions as to payment of taxes, working, non-importation, and the like, with the result that comparatively few patents fail to become forfeited before the expiration of the term. In the United States, while a patent once granted is not liable to forfeiture for any cause, the disposition to consider that the public interest demands that every technicality of the law should be taken advantage of against the patentee, particularly in the construction placed on the claims of his patent,

[1] See § 89. [2] See § 90.

has, it is to be feared, too often resulted in depriving a meritorious inventor of the protection to which he was justly entitled.

Sec. 3. Recent changes in foreign patent laws.

A distinct tendency toward a more just recognition of the rights of the inventor is noticeable in the laws adopted within the past ten or fifteen years Many of the foreign countries have within this period wholly rewritten their patent laws, and with hardly an exception the changes have been in the direction of greater liberality towards the inventor than would have been thought posssible a few years ago.

Sec. 4. The technical character of patent laws.

While this tendency in the direction of greater liberality towards inventors is clearly apparent, it must be recognized that all patent laws are necessarily extremely technical in character, since they are not intended to permit the inventor to secure a monopoly for anything which may fairly be considered to be in the possession of the public, either before the date of his invention or before the date of his application for patent. The inventor is, under the patent laws of all countries, required to exercise the utmost diligence in filing his application before any legal presumption of abandonment of his invention to the public can arise, and his application in order to be effective to secure the grant of a valid patent, must be made in strict compliance with the letter of the law. The conditions under which a valid patent may be granted are widely different under the laws of the different countries, and the requirements as to formalities necessary to be observed in filing applications also differ widely. An invention patentably new in one country may at the same time be unpatentable for lack of novelty in another country, and a specification properly drawn for one country, with claims which may be necessary .to adequately protect the invention in one country, may be very far from a proper specification

to be filed in another country, and claims necessary in one country may be seriously objectionable in the other.

It is impossible to here consider in detail the requirements of the different countries in the matter of the form of the specifications. Such matters must, by those who seek patents in foreign countries, be left to the experienced judgment of those accustomed to preparing applications in the several countries and familiar not only with the laws, but with the practice as determined by the administrative and judicial decisions of the particular country. What is here presented has to do rather with the conditions under which the inventor is, if his application is properly prepared in conformity with such requirements, under the law entitled to obtain a valid patent.

CHAPTER II.

PATENT LAWS AT PRESENT IN FORCE.

Sec. 5. Countries which have patent laws with dates of the laws at present in force.

The following countries provide by law for the grant of patents for inventions generally and prescribe the conditions under which an application for patent may be made and a valid patent secured under which the owner of the invention may be protected in the exclusive use of the invention for a definite term of years. The date of the law at present in force and that of all important amendments is given, with a reference to the most accessible publications in which the full text of the law, or a reliable translation of that text into English, if the original is in another language, may be found.

Argentine Republic, Law of October 11, 1864. (Abbott.) (Carpmael.)

Austria, Law of June 11, 1897. (Prop. Indus. 1897.)

Bahama Islands,* Law of May 23, 1889, amended March 3, 1890, and June 5, 1891. (Carpmael Sup.)

Barbados,* Law of December 12, 1883. (Abbott.) (Carpmael.)

Belgium, Law of May 24, 1854, amended March 27, 1857, (4 O. G., 263,) (Abbott,) (Carpmael,) amended July 5, 1884.

Bolivia, Law of May 8, 1858.

Brazil, Law of October 14, 1882, (23 O. G., 193.) (Abbott.) (Carpmael.)

British Guiana,* Law of July 17, 1861, revised 1895. (Carpmael Sup.)

British Honduras,* Law of September 10, 1862. (Abbott.) (Carpmael).

* British Colonies.

British New Guinea,* Law of 1842.[1]

British North Borneo,* Law of March 17, 1887.[2]

British South Africa,* (Rhodesia, Mashonaland and Matabeleland,) Law of July 6, 1897.[3] (Carpmael Sup.)

Canada,* Law of June 14, 1872, (2 O. G., 31,) (Abbott,) (Carpmael,) amended July 9, 1892, (65 O. G., 137,) and April 1, 1893. (Carpmael Sup.)

Cape Colony,* Law of 1860, (20 O. G., 1167.) (Abbott.) (Carpmael.)

Ceylon,* Law of November 21, 1892. (78 O. G., 1433.) (Carpmael Sup.)

Chili, Law of September 9, 1840, amended August 1, 1851, amended August 16, 1856, amended July 25, 1872. (Abbott,) (Carpmael,) amended January 20, 1883.

Colombia, Law of May 13, 1869. (Abbott.) (Carpmael.)

Congo Free State, Law of October 29, 1886, (42 O. G., 202.)

Costa Rica, Law of June 26, 1896. (Prop. Indus. 1897.)

Denmark, Law of April 13, 1894. (68 O. G., 282.) (Carpmael Sup.)

Ecuador, Law of November 3, 1880. (46 O. G., 1397.) (Abbott.)

Fiji Islands,* Law of 1879. (Abbott.) (Carpmael.)

Finland, Law of January 21, 1898. (Prop. Indus. 1898.)

France, Law of July 5, 1844, amended May 23, 1856, (2 O. G., 565, 4 O. G., 343.) (Abbott,) (Carpmael,) amended May 23, 1868. (Annuaire Farjas, 1899.)

French Indo China,[4] Law of June 24, 1893. (Carpmael Sup.)

Germany,[5] Law of April 7, 1891. (55 O. G., 1826.) (Carpmael Sup.)

* British Colony or dependency.

[1] Substantially identical with the law of 1884 (amended 1886) of Queensland.

[2] " " " " " " 1871, of Straits Settlement.

[3] " " " " " " 1860 of Cape Colony.

[4] French possession. Law substantially identical with law of France.

[5] Germany has also a law for the protection of useful models (Gebrauchsmuster). Law of June 1, 1891. (57 O. G., 414.) See § 107.

Great Britain, Statute of Monopolies of 1623. (Abbott.) (Carpmael). Law of August 25, 1883, (25 O. G. 90,) (Abbott,) (Carpmael,) amended June 25, 1886, (32 O. G., 1127,) and December 24, 1888. (46 O. G., 1395.)

Guatemala, Law of December 17, 1897. (Prop. Indus. 1898.)

Hawaii,[1] Law of August 29, 1884. (32 O. G., 771,) (Abbott,) amended June 23, 1888, amended 1896.

Hong Kong,* Law of April 1, 1892. (Carpmael Sup.)

Hungary, Law of July 14, 1895. (Carpmael Sup.)

India,* (British), Law of March 16, 1888. (43 O. G., 1588.)

Italy, Law of October 30, 1859, amended January 31, 1864, (Abbott,) (Carpmael,) amended August 4, 1894, (Carpmael Sup.) amended January 16, 1898. (Prop. Indus. 1898.)

Jamaica,* Law of 1857, amended May 27, 1891. (58 O. G., 144.) (Carpmael Sup.)

Japan, Law of March 1, 1899.

Leeward Islands,* Laws of 1876 and 1878. (Abbott.) (Carpmael.)

Liberia, Law of December 23, 1864.[2] (20 O. G., 4.) (Abbott.) (Carpmael.)

Luxemburg, Law of June 30, 1881. (34 O. G., 341.) (Abbott.) (Carpmael.)

Malta,* Law of March 5, 1893, amended April 18, 1894. (Carpmael Sup.)

Mauritius,* Law of 1875. (Abbott.) (Carpmael.)

Mexico, Law of June 7, 1890, (57 O. G., 412,) amended June 22, 1896. (Carpmael Sup.)

Mysore. Law of 1894.[3]

Natal,* Law of 1870, (20 O. G., 1383,) amended 1871,

* British Colony or dependency.

[1] Annexed to the United States. Until further legislation, the Hawaiian patent law must be presumed to be still in force.

[2] May be regarded as practically obsolete, since but two patents have been granted under it up to present date.

[3] Substantially identical with the law of 1888 of India.

(Abbott), (Carpmael,) amended January 12, 1872, (Abbott), and 1884 (Abbott.)

Negri Sembilan,* Law of April 9, 1896. (Carpmael Sup.)

Newfoundland,* Title XV., Cap. LIV., Consolidated Statutes. (Abbott.) (Carpmael.)

New South Wales,* Law of December 6, 1852, (Abbott), (Carpmael), amended July 8, 1887, (45 O. G., 128,) amended November 16, 1896, amended December 10, 1897. (Carpmael Sup.)

New Zealand,* Law of September 2, 1889. (Carpmael Sup.)

Norway, Law of June 16, 1885. (33 O. G., 500.) (Abbott.)

Orange Free State, Law of 1888, (56 O. G., 398.) (Carpmael Sup.)

Perak,* Law of April 29, 1896. (Carpmael Sup.)

Peru, Law of January 28, 1869. (48 O. G., 1540,) (Abbott,) amended January 3, 1896, (75 O. G., 189.) (Carp. mael Sup.)

Portugal,[1] Law of December 15, 1894, (Carpmael Sup.), amended and finally adopted May 21, 1896. (Recueil Général.)

Queensland,* Law of October 13, 1884, (31 O. G., 122,) (Abbott), amended November 5, 1890. (Carpmael Sup.)

Russia, Law of May 20—June 1, 1896. (79 O. G., 2901,) (Carpmael Sup.)

St. Helena,* Law of 1872. (Abbott.) (Carpmael.)

Selangor,* Law of March 21, 1896. (Carpmael Sup.)

South African Republic, Law of 1897.

South Australia,* Law of December 21, 1877. (20 O. G., 1088.) (Abbott,) (Carpmael,) amended 1888. (44 O. G., 1510.)

Spain, Law of July 30, 1878. (26 O. G., 108.) (Abbott.) (Carpmael.) August 16, 1888 (Recueil Général).

Straits Settlements,* Law of 1871. (Abbott.) (Carpmael.)

Sweden, Law of May 16, 1884. (28 O. G., 1103.) (Ab-

* British Colony or dependency.

[1] The decree of May 21, 1892, concerning patents in the Portugese colonies, was suspended by decree of July 28, 1898.

bott,) (Carpmael,) amended April 14, 1893. (65 O. G., 1409,) amended March 26, 1897, and May 28, 1897. (Carpmael Sup.) amended May 7, 1898. (Prop. Indus, 1899.)

Switzerland, Law of June 29, 1888, (45 O. G., 233 and 1070, and 49 O. G., 1046,) amended March 13, 1893, (64 O. G., 1010.)

Tasmania,* Law of September 29, 1893. (Carpmael Sup.)

Trinidad and Tobago,* Law of November 19, 1894. (Carpmael Sup.)

Tunis,[1] Law of December 26, 1888. (49 O. G., 894.) (Carpmael Sup.)

Turkey, Law of March 2, 1880. (20 O. G., 2.) (Abbott.) (Carpmael.)

United States,[2] Revised Statutes of 1878, amended March 3, 1897, and February 28, 1899.

Uruguay, Law of November 11, 1885. (79 O. G., 2202.) (Abbott.)

Venezuela, Law of May 25, 1882. (35 O. G., 388.) (Abbott,) amended May 14, 1897, (Prop. Indus, 1898.)

Victoria, Law of November 25, 1889, (Carpmael Sup.), amended July 10, 1890. (61 O. G., 1313.)

Western Australia, Law of November 26, 1888, (48 O. G., 1535,) amended 1892, and October 10, 1894. (Carpmael Sup.)

NOTE.—In the above list O. G. refers to the Official Gazette of the United States Patent Office; *Abbott* refers to Abbott's Patent Laws of All Nations, Washington, 1886; *Carpmael* refers to Carpmael's Patent Laws of the World, London, 1885; *Carpmael Sup.* refers to the pamphlet supplements to Carpmael's Patent Laws of the World, published from time to time by the Institute of Patent Agents, London; *Recueil Général* and *Prop. Indus.* refer respectively to Recueil Général de la législation et des traités concernant la propriété industrielle, Berne, 1896, and

* British Colony or dependency.

[1] French Protectorate. Law substantially identical with the French law of 1844.

[2] As to the protection of patents in territory subject to military government by the military forces of the United States, (Cuba, Porto Rico and the Philippine Islands,) see order of Secretary of War, April 11, 1897, (87 O. G., 361,) and June 1, 1897, (87 O. G., 2123.)

La Propriété Industrielle, the official organ of the International Union for the Protection of Industrial Property (Berne, monthly,) published by the International Bureau of the Union.

Sec. 6. Patent laws of British Colonies and dependencies.

The patent laws of the colonies and dependencies of Great Britain named in the above list are, with the exception of the patent law of Canada,[1] based on the British law, those adopted prior to 1883 being based on and generally following closely the text of the British law of 1852 and those of the more important colonies in which material changes have been made since 1883 generally following closely the text of the British law of 1883. These colonies and dependencies are Bahama Islands, Barbados, British Guiana, British Honduras, British New Guinea, British North Borneo, British South Africa, Canada, Cape Colony, Ceylon, Fiji Islands, Hong Kong, India (British), Jamaica, Leeward Islands, Malta, Mauritius, Natal, Negri Sembilan, Newfoundland, New South Wales, New Zealand, Perak, Queensland, St. Helena, Selangor, South Australia, Straits Settlements, Tasmania, Trinidad and Tobago, Victoria and Western Australia. The laws of Orange Free State and South African Republic also follow closely the earlier British law.

The patent laws of Tunis and Turkey follow, so far as general provisions are concerned, the text of the French law.

Sec. 7. Protection of inventions by legislative grant.

In a number of countries other than those above named, protection for inventions may be obtained by special legislative or government grant. Such protection, whatever its effect, is hardly to be classed with that afforded by a general law, and is rather in the nature of a monopoly created by a government concession for commercial purposes.

In the list above given, in which patent laws are in force today, are found nearly all the countries of the world which are

[1] The patent law of Canada follows generally the patent law of the United States.

of industrial importance. But one country in the world, the Netherlands (Holland), which has once adopted a patent law is without such a law to-day. The recent date of so large a proportion of the laws given in the list is not to be understood as indicating, except in case of comparatively few and those not the more important, that these countries were without patent laws up to the date given. These new laws in the case of the older and more important countries take the plaec of laws which have been in force for many years.

CHAPTER III.

OF THE DIFFERENT SYSTEMS OF GRANTING PATENTS.

Sec. 8. The leading countries in number of patents granted.

The leading countries of the world in the extent and importance of their industrial and commercial interests are, besides the United States, Great Britain, Germany and France. These four countries were among the first of the countries of the world to appreciate the importance to the development of industries of recognizing the right of inventors to an exclusive property in their inventions, and to provide by general laws for the protection of this property right. Not only are these countries first in the number of patents for inventions granted, but so far in advance that the aggregate of patents granted by them up to the close of 1898 is more than two-thirds of all patents granted in the world, or 1,308,057 out of a total of 1,818,577.[1]

Sec. 9. Different patent systems. Points of difference.

In these four countries the various questions involved in the granting of patents for inventions have received the fullest and most careful consideration. Starting alike with the acceptance of the broad proposition that the progress of industrial development can be promoted by a recognition of the right of the possessor of a new invention to be protected for a term of years in the exclusive right to his invention, in consideration of the disclosure of that invention to the public,

[1] This total includes all patents granted of which the United States Patent Office is informed. The patents granted in the German states prior to the adoption of the German laws of 1877 are credited to Germany. If we include the British possessions with Great Britain, Belgium with France, and Austria-Hungary with Germany, we have a total of 1,672,202, or over nine-tenths of all patents granted.

and with the problem of how best to secure full protection for new inventions and at the same time avoid the grant of a monopoly for that which is old and in the possession of the public, these four countries have each developed a system of granting patents widely different from those developed in the others. The most important points of diference are in respect to the extent to which the probable validity of the patent should be determined in advance of its grant, in respect to what should constitute patentable novelty, who should be entitled to secure a patent, to what conditions the patentee should in the interest of the public be subjected during the term for which his patent is granted, and in what manner the patentee shall be entitled to enforce the rights granted him.

Sec. 10. Systems of granting patents. The United States system and the French system.

The first of these differences to be considered is the difference in the systems of granting patents. The most radical difference in system is that existing between the systems in force in the United States and in France.

Under the system in force in the United States, on the one hand, all applications are subjected to examination as to novelty and patentability, all which are found on examination to be patentable being allowed, and all which are found to be unpatentable being rejected. Under the system of France, on the other hand, the Patent Office is merely a registration office, no application being rejected which is presented in due form, whether or not a valid patent can be granted on it. Patents under this system are issued practically as soon as applied for.

Sec. 11. The English patent system. Opposition.

The system in force in Great Britain, commonly referred to as the English system, may be considered a modified registry system. There is no preliminary examination as to novelty, and while all applications which are in due form and

in which the invention is fairly described are, if unopposed, allowed to issue as patents, the question of the sufficiency of the description is examined into before allowance, and if found to be unsatisfactory in this respect the application cannot be proceeded with. An opportunity is given before the patent issues for the presentation by any person interested, of reasons why it should not issue, by publishing notice of the application and laying it open for public inspection for a period of two months. The issue of the patent may, however, be opposed only on certain grounds specified in the statute.

Sec. 12. Same. The provisional specification.

A characteristic feature of the English patent system is the provision by which the applicant is permitted to deposit with his application either a provisional or a complete specification. The provisional specification need contain nothing more than a clear indication of the nature of the invention. No patent can be granted on this provisional specification. It must be followed within nine months by the filing of the complete specification, which must clearly and fully describe the invention and the manner in which it is to be performed, and though it must correspond with the provisional specification, it may contain matter as regards the best mode of carrying out the invention which was not known to the inventor at the time of filing the provisional specification. In fact, it must contain such description of the best mode of carrying out the invention known to the applicant at the time of its filing.[2] If

[1] These grounds are, 1st, that the applicant obtained the invention from the person opposing, or from a person whom he represents; 2d, that the invention has been patented in Great Britain on an application of prior date; 3d, that the complete specification describes or claims an invention other than that described in the provisional specification, and that other invention forms the subject of an application filed by the person opposing in the interval between the filing of the provisional and complete specification—in other words, that the applicant has unwarrantably expanded his application to cover an invention of an application filed by the person opposing. (Patent &c., Act of 1883, Article II., as amended by Act of 1888.)

[2] Frost, Patent Law and Practice, page 190, and decisions there cited.

the invention is complete at the time the application is filed, a complete specification should be filed. For the American inventor whose invention is so far complete as to warrant the filing of an application for patent in the United States, the filing of a provisional application in Great Britain is in most cases unnecessary.

Sec. 13. The German patent system.

The system in force in Germany may be considered as a modified preliminary examination system. Under it applications are subjected to preliminary examination as to novelty and patentability, as in the United States, and all applications found on examination to be allowable are further subjected, before the patent issues, to publication for opposition, as under the English system.[1]

Sec. 14. The two principal systems of granting patents.

The two broad classes into which the patent systems of these four countries, as well as those of all other countries which have patent laws may be divided, are, first, those under which preliminary examination into the novelty and patentability of the inventions sought to be patented is made for the purpose of preventing the issuance of patents which are invalid on their face as being for inventions known to be old or inoperative and useless as applied for, of which the system of the United States may be taken as the type; and, second, those under which patents are issued on all applications as filed, whether the inventions claimed therein are new and patentable or old and not patentable, provided such applications are in proper form, and of these the system of France may be taken as the type.

[1] The grounds on which the grant of a patent may be opposed in Germany are, 1st, that the subject-matter is not patentable on account of lack of novelty, or because comprised in a class of inventions excluded from protection; and 2d, that the applicant obtained the invention from the person opposing the grant. (Law of 1891 of Germany, Article 24.)

Sec. 15. The equipment needed for making preliminary examinations.

Of the countries which have adopted the first of these systems, a comparatively small number have patent offices properly equipped with the material and with skilled examiners to attempt to make complete and exhaustive examinations as to the novelty of inventions. Proper equipment for making preliminary examinations as to novelty includes necessarily not only copies of all patents granted in all of the countries of the world, but a collection of practically all publications bearing upon the development of the industrial arts, in whatever language they may have been printed, as well as a force of examiners of sufficient skill and experience to properly classify and digest such material and make intelligent use of it in determining the novelty of the applications presented for examination. The material necessary is indicated by the statement that in the United States Patent Office there are used for purposes of examination not only copies of the 620,000 patents granted in the United States, but copies of 720,000 patents granted in foreign countries, as well as a scientific library of 72,000 volumes.

Sec. 16. The countries in which the preliminary examination system is in force.

The countries which can be said to have patent offices properly equipped to make anything like an exhaustive examination on the question of novelty are, besides the United States, Austria,[1] Canada, Denmark, Germany, Japan, Norway, Russia, Sweden and Switzerland.[2] In all of these except

[1] The law of 1897, of Austria, which provides for preliminary examination, went into force January 1, 1899.

[2] The laws of Hawaii and Liberia require such examination, but as the number of patents issued up the close of 1897 in Hawaii was but 148, and in Liberia but 2, it is hardly necessary to consider these countries, particularly as Hawaii being now annexed to the United States, it may be expected that United States patents will, in the near future, be granted to cover that country. Luxemburg may, in a sense, be said to belong among the countries which make preliminary examinations, since while patents are issued there without preliminary examination, such

Switzerland a patent is refused if the invention is found to be not patentably new. Under the Swiss law, the applicant is informed of the result of the examination and given an opportunity to amend if necessary; but if he does not do so, or insists that a patent issue, even though the invention is shown to be old, the patent cannot be refused. A similar plan is under consideration in Great Britain, and is likely to be adopted.[1]

Sec. 17. The preliminary examination as conducted in the several countries.

Under the laws of the United States, Canada, Japan and Russia, the preliminary examination is made by examiners connected with the patent office of the respective country, the application being kept secret until the issuance of the patent, the public having no notice of the application and no opportunity to oppose the issue of the patent.

Austria, Denmark, Norway and Sweden follow closely the system of Germany; the application in each of these countries, if found allowable on the examination made by the patent office,[2] being laid open to the public in order that persons interested in opposing the grant of a patent may present their reasons for such opposition.[3] Notice of the application, giving the name of the applicant, the title of the invention, and generally a statement sufficiently full to indicate its nature is published in the official patent office journal of the country, and full inspection of the application by interested

patents are in effect provisional merely and lapse unless within three months after issue applications for the same invention are filed in Germany, and are there found allowable and patents issued. (Article 15, of law of 1880.)

[1] See Propriété Industrielle, 1898, p. 163, and 1899, p. 40.

[2] In Germany and each of these countries, except Sweden, it is provided by law that experts not connected with the patent office may be called in consultation in the examination. (Article 14, of the German law of 1891, and corresponding articles of the laws of the other countries.)

[3] In Austria, opposition may be made, in addition to the grounds stated in the German law, (note § 14) on the ground that the person opposing and not the applicant is the originator of the invention. (Law of 1897, Article 58.) The same seems true in Norway. (Law of 1885, Article 19.)

parties is permitted. The period within which opposition must be made is generally two months from the first publication of the notice. If notice of opposition is filed, and this is done in Germany in nearly 20 per cent. of the cases in which applications are found allowable, hearings are had, and, after necessarily considerable delay, the application finally allowed, or rejected.[1]

Sec. 18. Preliminary examination in other countries.

While the above are all of the countries which provide for preliminary examination as to novelty by examiners connected with the Patent Office, the laws of Chili and Peru require applications to be referred for such examination to a commission of experts selected for the examination of the particular case.[2] Under the laws of Bolivia and Ecuador, reference to a commission for examination is required,[3] but it does not clearly appear to what extent such examination includes investigation of the question of novelty.

In certain other countries the laws appear to provide for the refusal of a patent for an invention known to be not new, but do not clearly indicate that any examination into the novelty is required. Countries having such provisions in their laws are Argentine Republic, Mauritius and Victoria.[4]

In the following countries the Government may, if deemed expedient, arbitrarily refuse the grant of a patent on any application, irrespective of the question of novelty: Bolivia, Chili, Ecuador, Guatemala, Japan, Negri Sembilan, Perak, Selangor and Spain.

[1] The same practice is followed in Victoria, where the examiner is required to report whether to the best of his knowledge the invention is new. (Article 9, law of 1889, of Victoria.)

[2] Article 2, law of 1840, of Chili; Article 4, law of 1896, of Peru. Under the law of Chili, (law of 1851,) the examiner is required to report also on the effect the patent, if granted, would have on the industries of the country.

[3] Article 12, law of 1880, of Ecuador, and corresponding article of law of 1858, of Bolivia.

[4] See note, § 17.

Sec. 19. The registration system. Countries in which it is in force.

The system of granting patents as applied for, without preliminary examination as to novelty or patentability, has been above stated to be in its simplest form the system provided for in the law of France. Under this system, there is no examination of the application, even as to the sufficiency of the description. The only ground for refusal of an application is that it is not regular in form. If the requirements as to form have been complied with, the patent is issued at once.

The registration system in its simplest form prevails in Belgium, Brazil,[1] France, Italy,[2] Luxemburg,[3] Portugal, Spain, Switzerland, as well as Argentine Republic,[4] Congo Free State, French Indo-China, Hong Kong,[5] Malta, New South Wales, St. Helena,[5] Uruguay, and Venezuela.

Sec. 20. The patent law of France. The practical working of the registration system.

The law of France, which may be taken as typical of the laws of these countries, expressly provides (Article 11, of the law of 1844,) that "patents applied for in due form will be delivered, without previous examination, at the risk and peril of the applicants, and without guarantee either as to the reality, novelty or merit of the invention, or the accuracy or exactness of the specification." The practical working of this law is indicated by the statement of the operation of the Patent Office for the year 1896.[6] This shows that during that year the number of applications for patents filed was 10,183; the number of patents issued was 9,830, 28 having been rejected as not in due form, 323 having been withdrawn by the

[1] See § 52 and note thereunder.
[2] See § 54 and note thereunder.
[3] See note, § 16, as to Luxemburg.
[4] See § 18 above.
[5] Under the laws of Hong Kong and St. Helena, patents are granted only to holders of patents granted in Great Britain, or their assigns.
[6] Propriété Industrielle, 1898, page 100.

applicants, and 2 remaining undecided. During the same year, 1,637 "patents of addition"[1] were applied for, of which 1,600 were issued, 35 being withdrawn and 2 only being rejected.

Sec. 21. Countries in which the English system prevails.

The modified registration system above referred to as the English system prevails in Great Britain and in nearly all of the British colonies and dependencies, the exceptions having been above noted, and in Colombia, Guatemala, Hungary, Mexico, Orange Free State, South African Republic and Tunis.

Under this system, notice of all applications which are accepted as being in conformity to the law is published in the official journal, and the applications are laid open to public inspection for a period of two months, to enable any person interested in opposing the grant of a patent to present his reasons for such opposition. If opposition is filed, a hearing is had and the patent refused or issued, in accordance with the decision on such hearing. In Great Britain, comparatively few oppositions are filed, the number in 1897 being but 227, the number of applications which were filed complete, or made complete subsequent to filing during the same year being 15,134.[2]

Sec. 22. The advantages of preliminary examination to the applicant.

It is very generally admitted, even by those who believe the registration system to be practically the better, that the preliminary examination system is theoretically the ideal patent system. The importance to the inventor of knowing that the patent granted to him is at least reasonably certain to be valid is admitted by every one, whether he is himself to make the patent the basis on which to build up a new industry, or is to attempt to dispose of his rights under the patent to others. It is in fact absolutely necessary for the inventor to

[1] See § 70.

[2] Propriété Industrielle, 1898, page 145.

be informed as to the probable validity of his patent before he can safely invest money in exploiting it, or before he can induce others to purchase his rights. If the application has not been subjected to preliminary examination prior to the grant of the patent, it is necessary for the patentee to have an examination made by experts at his own expense. Such examination is necessarily costly if made by an expert who is as well qualified to render an opininion on the novelty and validity of the patent as are the examiners of the Patent Office of the countries which make preliminary examinations, and the opinion of such an expert is no more conclusive than is the judgment of such examiners. And while patents granted after preliminary examinations are very often submitted to experts for opinion as to their validity, especially if suit for infringement is to be brought on them, they are recognized generally, even by the courts, as *prima facie* valid.[1]

Sec. 23. Amendment possible under the preliminary examination system.

But a more important difference exists in that the application, if rejected on the preliminary examination, is open to amendment, and claims which as presented are necessarily invalid by reason of their breadth may be so amended as to distinguish the new invention of the application from that which is old, so that the patent, if granted, may be valid and valuable though restricted in scope. The patent once granted is no longer open to amendment, and if not valid as it stands can not be made valid, even for the restricted invention to which the inventor may be justly entitled.[2] Friendly criticism of an application by expert examiners may obviously be of great benefit to the applicant, provided he can take

[1] While this is true of all other countries in which the preliminary examination system prevails, and was true of the United States up to 1879, it cannot, unfortunately, be said to be strictly true at present of the United States.

[2] The provisions found in the laws of certain countries for restriction of the scope of the patent by disclaimer, while aimed to obviate this difficulty, are in practice far from satisfactory for the purpose.

advantage of such criticism to remedy the defects and insufficiencies pointed out. Such criticism as is given by expert examiners during the progress of the preliminary examination has often materially aided the applicant. After the grant of the patent, such criticism is no longer of advantage, since there is then no opportunity for amendment.

Sec. 24. The advantages of the preliminary examination system to the general public.

There is also under the preliminary examination system a distinct advantage to the general public in that the issue of patents for inventions which are old and well known and free to any one to make use of is for the most part prevented. Under the registration system, a patent may be obtained for an invention which may have been in common use for many years, and though the patent is invalid, the user of the invention may be put to the trouble and expense of either defending a suit for infringement or, as permitted in some countries, himself instituting proceedings for revocation of such patent. And after the invalidity of such patent has been shown, there is nothing to prevent the grant of another patent for the same invention.

Sec. 25. The practical operation of the preliminary examination system in Germany and the United States.

On the other hand, under the preliminary examination system the issuance of the patent is necessarily delayed, sometimes for many months, and it may and undoubtedly does happen that the preliminary examination results in the refusal of a patent for a meritorious and valuable invention. Beyond question, the practical value of the preliminary examination depends largely on the way it is carried out. For instance, the fact that while 18,347 applications for patent were filed in Germany during the year 1897, only 5,925 were held on the preliminary examination as there conducted to be allowable, and of these only 5,540 were finally allowed after publication

for opposition and issued as patents,[1] tends to show that the preliminary examination as thus conducted results too often in the refusal of patents for important inventions. Under the system as conducted in the United States, the result is materially different. For the year 1898 the number of applications filed was 35,842, the number of patents issued was 22,267, and there were in addition 4,368 applications allowed on the preliminary examination on which patents were withheld for non-payment of the final fee,[2] the percentage of allowances being nearly 75 per cent. for the year as against but little over 30 per cent. in Germany for 1897.

[1] Propriété Industrielle, 1898, page 145.

[2] Report of Commissioner of Patents for 1898.

CHAPTER IV.

OF THE QUESTION OF NOVELTY IN THE DIFFERENT COUNTRIES.

Sec. 26. Novelty necessary to validity under whatever system the patent may be granted.

Whether the patent be granted as applied for without preliminary examination as to the novelty and patentability of the invention, or after such examination, it will not be held valid by the courts of any country unless the invention covered by it was, when the application was filed, patentably new within the meaning of the law of the country in which it was granted. It is, therefore, of no value to an inventor to apply for, or even to secure, a patent, if at the date of filing of his application his invention did not satisfy the conditions of the law as to novelty.

The laws of the different countries do not agree as to what constitutes patentable novelty, but it may be stated as a general proposition that an invention is not patentably new within the meaning of the law of any country if, prior to the filing of an application for patent therefor, it has been disclosed to the public in that country. This general statement is, however, subject to exception, either generally or in certain cases, in nearly all countries.

Sec. 27. Effect of disclosure in a printed publication in any country. Patents granted in other countries.

Under the laws of many foreign countries an invention is not patentably new if prior to the day of filing of the application for patent it had been disclosed to the public in that country in any manner, either in a printed publication or otherwise, or had been disclosed prior to that date in a printed publication in any language in *any country*. This is the law

in Austria, Chili, Denmark, France, Germany, Guatemala, Hungary, Japan and Portugal,[1] the only cases in which this stringent rule does not apply in these countries being applications filed under and in strict conformity with the terms of the International Convention, signed in Paris in 1883, or under other conventions or treaties having similar provisions.[2]

Under the law of these countries even the description of the invention in a patent granted to the applicant in another country for the same invention, if published in print prior to the date of filing of the application, is sufficient to negative novelty and render the patent granted thereon invalid.[3] It follows that an inventor who has applied for and obtained a patent in the United States cannot thereafter, unless the circumstances permit of his filing an application under the International Convention, concluded at Paris, March 20, 1883, secure a valid patent in any of these countries, and even under such circumstances he can secure a valid patent only in the countries which are parties to that convention.[4]

The provision in the law of France and certain other countries that "the author of an invention or discovery already patented abroad may obtain a patent in France; but the duration of this patent must not exceed that of the patents previously granted abroad," would seem to be in conflict with the above statement.[5] But this has been repeatedly held by

[1] The law is the same in the Argentine Republic and Peru, but it is not understood that publication of a patent granted in another country prevents the grant of a patent to the same inventor in these countries.

[2] Of these countries, Denmark, France, Japan and Portugal are members of the International Union, and Germany has similar treaty relations with Austria-Hungary, Italy and Switzerland.

[3] The laws of Austria, Germany and Hungary provide that under certain conditions of reciprocity, official publication of a patent shall not be considered such publication as will bar the grant of a patent until three or six months from the date of publication, (Austria, Law of 1897, Art. 3; Germany, Law of 1891, Art. 2; Hungary, Law of 1895, Art. 5), but these provisions are not at present effective as to the United States.

[4] See Part II. for list of countries which are parties to the Convention.

[5] Law of 1844, of France, Art. 29.

the courts of France to permit of valid patents to be granted on inventions previously patented abroad only in case such previous patent had not at the date of application in France been published in print.[1] As in a number of countries it is not the practice to publish patents in full immediately upon their issue,[2] it is clear that an invention may be patentably new under the French law after it has been patented in one of these countries. As United States patents are printed and made accessible to the public on the day on which they are issued, they necessarily bar the grant of patents applied for thereafter in France.

Sec. 28. Disclosure in printed publication in any country. Printed copies of patents granted in other countries.

The same strict rule with respect to the effect of disclosure in a printed publication in *any country* prior to the filing of the application, with the provision that the official publication in print of a patent granted in another country to the applicant prior to the filing of the application, shall not prevent the grant of a valid patent on such application, prevails in the following countries: Belgium, Brazil, Finland, Italy, Mexico, Russia, Uruguay and Venezuela.[3]

Sec. 29. Disclosure in a printed publication made accessible to the public.

Disclosure of an invention in a printed publication in the English language, if accessible to the public in Great Britain prior to the date of filing of an application for patent in that country for the invention disclosed, is sufficient to prevent the grant of a valid patent on such application,[4] but disclosure in a printed publication in another country is not sufficient unless such printed publication was actually received in Great

[1] Mainié, Brevets d' Invention. Sec. 1736.

[2] See § 105.

[3] Argentine Republic and Peru should probably be included with the countries named. See note § 27.

[4] Frost, Patent Law and Practice, page 114, and decisions there cited.

Britain and made accessible to the public before the filing of the application.[1] A patent granted in another country, if printed, has precisely the same effect as any other printed publication.[2] Consequently, after a United States patent has been issued, and a copy of it, or a copy of the Official Gazette, if it contains a sufficient disclosure of the invention, has been received in Great Britain and been made accessible to the public, which means from six to ten or twelve days from the date of issue, the invention disclosed therein is no longer patentably new. A valid patent cannot be granted on an application filed thereafter. The only exception to this rule is in case of applications filed under the provisions of the International Convention.[3]

This rule with respect to the effect of disclosure in a printed publication made accessible to the public prevails also under the laws of Sweden, Switzerland, Liberia, the Bahama Islands, Barbados, New South Wales and Western Australia.

Sec. 30. Disclosure in printed publication made accessible to the public. Printed copies of patents granted in another country.

The same rule with respect to the effect of disclosure in a printed publication that prevails in Great Britain, with the provision that the publication in print of a patent granted to the applicant in another country, whether received in the country in which application is made or not before the date of filing of the application, shall not prevent the grant of a valid patent on such application, prevails under the laws of British Guiana, British Honduras, Canada, Cape Colony, Ceylon, India (British), Jamaica, Leeward Islands, Malta, Mauritius, Natal, Newfoundland, New Zealand, Orange Free State, Queensland, South African Republic, Tasmania and Victoria. But this provision with respect to the effect of the publication of a patent does not extend to applications filed more than one

[1] Same, page 116, and decisions there cited.

[2] Harris *vs.* Rothwell, L. R. 35, Ch. D., 416.

[3] See Part III.

year after the date of the patent in the following of the countries above mentioned: Canada, Ceylon, India (British), New Zealand, Queensland, Tasmania and Victoria.

Disclosure of an invention in a printed publication, even in the country in which the patent is sought, prior to the date of filing of the application, does not prevent the grant of a valid patent on such application in the United States, provided the application is filed within two years after such publication, or in Norway, if filed within six months.

Such disclosure, however long continued, whether in a patent or in other publication, does not appear to prevent the grant of a valid patent in British North Borneo, South Australia, or Straits Settlements.

Sec. 31. Effect of prior patent granted in the same country.

It is generally true that after an invention has been once patented in any country, whether the patent has been published or not, it is thereafter unpatentable to a subsequent applicant in that country. In none of the countries which have patent laws, except the United States and Japan, can a valid patent be granted for an invention for which a patent had already been granted in the country, unless it be shown that the applicant to whom the patent was granted obtained the invention from the later applicant and applied for the patent in fraud of his right, and even this is not permitted in any countries except Great Britain and certain of the British colonies and dependencies, Orange Free State and South African Republic. In such case the patent granted to the later applicant is in the nature of a substitute for the patent fraudulently obtained, which is revoked, and runs only for the remainder of the term for which the revoked patent was granted.

Under the law of Japan a later applicant may, by showing himself to be the prior inventor, secure a valid patent for the invention previously patented to another, the prior patent being revoked. But in such case the patent granted to the

later applicant runs only for the remainder of the term of the prior patent.

In the United States alone does the law permit the grant of a valid patent for the full term to a later applicant for an invention previously patented to another, and no other country grants a patent even for a limited term under such circumstances, except upon revocation of the earlier patent.

Sec. 32. Effect of prior foreign patent to a person other than the applicant.

Under the law of France an applicant is not prevented from securing a valid patent by the mere fact that the invention for which he seeks a patent had been, prior to the date of filing of his application in France, patented in another country to another person,[1] unless the patent had been published in print prior to the date of filing of the application in France. The same rule prevails in nearly all countries which grant patents, a patent granted in a foreign country, but not published in print, not being considered to affect the novelty of an application filed subsequently by an independent inventor. The only exceptions to this rule are presented by the laws of Belgium, Canada, Chili, Russia, and the United States. In Belgium and Russia, the foreign patent, if granted at any time prior to the filing of the application, negatives the novelty of the invention, and prevents the grant of a valid patent to any one but the inventor to whom the foreign patent was granted.[2] In Canada the foreign patent, if granted more than one year prior to the filing of the application in Canada, prevents the grant of a patent on such application.[3] In the United States the foreign patent, if granted more than two years prior to the filing of the application in the United States, prevents the grant of a patent.[4]

[1] See § 27.

[2] Law of 1854 of Belgium, Article 25. Law of 1896 of Russia, Article 4.

[3] Law of 1872 of Canada, Article 40.

[4] Revised Statutes of the United States, Sec. 4886, as amended March 3, 1897.

Sec. 33. Effect of prior foreign patent to the applicant. The United States law.

The fact that an inventor, after having filed an application for patent, subsequently, but before the grant of the patent applied for, obtains in another country a patent for the same invention, does not, in any country of the world which has patent laws, prevent the grant to him of a valid patent on such application, except in the United States, and it makes no difference when the application for the foreign patent was filed, nor does it make any difference whether such foreign patent was published in print or not.

Under the United States law,[1] if the foreign patent granted to the applicant for a United States patent, or to his legal representatives or assigns, was granted, whether published in print or not, on an application filed more than seven months prior to the filing of the application in the United States, a patent cannot be granted.[2]

The effect on an application for patent in one country of a patent granted to the same applicant in another country prior to the date of such application, if such prior patent be published in print prior to such application, has been above referred to.[3] If such prior patent is not published in print before such application is made, it does not under the laws of most countries prevent the grant of a valid patent on such application, though, as hereinafter noted,[4] it may have the effect of limiting the term of the patent granted.

Sec. 34. Effect of prior foreign patent to the applicant. Exceptions to the general rule.

The exceptions to this general rule are Canada, Chili, Spain,

[1] Act of March 3, 1897.

[2] It seems that an inventor who had applied for a patent abroad more than seven months before applying in the United States, would be denied even the opportunity to contest priority with another applicant who had not applied for patent abroad prior to the filing of the United States application, the application of the latter not being barred by the foreign patent granted the former, unless it was granted more than two years prior to the latter's application.

[3] See §§ 27 to 30.

[4] See § 82.

Uruguay and the United States. In Canada[1] and Uruguay[2] such prior foreign patent prevents the grant of a valid patent to the same inventor, only if granted more than one year prior to the filing of the application. In Chili it seems that no invention patented abroad before application in Chili is patentably new under the law.[3] In the United States, as above noted,[4] the date of the application controls.

In Spain[5] such foreign patent prevents the grant of a valid patent to the same inventor, only if granted more than two years prior to the filing of the application in Spain, and even if applied for within that time, a "patent of invention" for the full term cannot be granted, but only a "patent of importation" limited in term to ten years.

Sec. 35. Effect of prior public use or sale in the country. Exceptions to the general rule.

Disclosure of an invention to the public of any country by public use or sale of the invention in that country will, if prior to the date of filing of the application, prevent the grant of a valid patent for such invention in nearly all of the countries which have patent laws.[6]

The only countries in which the law permits the grant of a patent for an invention which has been, prior to the filing of an application for patent therefor, in public use in the country are the United States, Canada, Japan,[7] and certain British Colonies.[8] Under none of these laws is an invention which has been in public use for an unlimited period prior to the filing of the application permitted to be patented. The extent

[1] Law of 1892 of Canada, Sec. 1. [2] Law of 1885 of Uruguay, Article 2.

[3] Article 8 of the law of 1840 of Chili, which permitted the grant of patents under such circumstances, was repealed in 1872.

[4] See § 33. [5] Law of 1878 of Spain, Article 12.

[6] See §§ 48 and 49 as to effect of exhibition of inventions at International Exhibitions.

[7] Such use must not have been more than two years prior to the application, and must have been experimental only.

[8] These colonies are Ceylon, India, (British), British North Borneo, and Straits Settlements.

of public use permitted in the United States prior to the filing of an application for patent is two years.[1] In Canada the invention must not have been in public use for more than one year with the consent and allowance of the inventor.[2] In British North Borneo and Straits Settlements,[3] the invention must not have been in public use by the inventor or his servants for more than one year, and must not have been in use by any one else with the knowledge and consent of the inventor. Public use by any one else even without the knowledge and consent of the inventor, and in fraud of his right, if more than six months prior to the application, prevents the grant of a valid patent. In Ceylon[4] and India, (British)[5] public use by the inventor, or by others with his knowledge and consent prior to the application, prevents the grant of a valid patent, but public use by others without the knowledge and consent of the inventor, if not more than six months prior to the filing of the application, does not prevent the grant of such patent.

Sec. 36. Effect in certain countries of prior public use in any country.

Public use of an invention in the country or abroad prior to the filing of the application is, under the laws of Bolivia, Chili, Ecuador, Guatemala, Russia and Spain, sufficient to prevent the grant of a valid full term patent. In case the invention has not been in public use in the country prior to the filing of the application, a patent for a limited term, and under severe conditions of exploitation, may be granted in Bolivia and Ecuador,[6] but under the law of Chili no patent can be granted for an invention in public use in the country or abroad prior

[1] Revised Statutes of the United States, Sec. 4886.

[2] Law of 1872 of Canada, Article 6.

[3] Law of 1871 of Straits Settlements, Article 3.

[4] Law of 1892 of Ceylon, Article 20.

[5] Law of 1888 of India (British), Article 22.

[6] Law of 1880 of Ecuador, Articles 7, 8 and 9, and corresponding articles in the law of 1858 of Bolivia.

to the filing of the application in Chili.[1] Russia and Spain permit inventions in public use abroad to be patented, provided they are patented in a foreign country, and application for patent is made by the grantee of the foreign patent. The patent in Spain[2] must, however, be applied for within two years from the grant of the first foreign patent, and in Russia[3] before the invention has become known in the country through description in printed publication.

Sec. 37. Effect of the filing of the application.

While, as has been noted, it is generally required as a condition to the grant of a valid patent that the invention for which a patent is sought shall not have been disclosed to the public in any manner, either by printed publication or by use in public, prior to the date of filing of the application, it is universally true that the necessity for secrecy ceases as soon as the application is filed in the patent office of the country in which the patent is sought, even though the patent may not be actually issued until many months or even years thereafter. The inventor who has filed his application may without risk of thereby invalidating the patent which may be granted on such application, proceed at once to exploit his invention in any manner and to any extent that he may see fit by disclosure in printed publications, by exhibition in public, or by public use and sale.

Sec. 38. Effect of the International Convention on the question of novelty.

Under Article 4 of the International Convention, signed at Paris in 1883,[4] an application for patent regularly filed in one of the countries which have adhered to this Convention and are now members of the International Union formed thereunder, is considered, in effect, to be constructively filed in all of the

[1] Law of 1848 of Chili as amended 1872.

[2] Law of 1878 of Spain, Article 12.

[3] Law of 1896 of Russia, Article 4.

[4] See text of Convention, Part III.

countries on the same date, and the invention of the application may consequently be exploited at once by disclosure in printed publications, exhibition in public or public use and sale in any or all of the countries of the Union, without thereby invalidating the patent subsequently granted in any of these countries on an application subsequently filed, provided the application for the same invention is actually filed in each of the countries in which a patent is sought, within six months (seven months for countries over seas),[1] from the date of the original application.

Sec. 39. Effect of the International Convention on the question of novelty. Countries in which the International Convention is given full force and effect.

The International Convention is, so far as concerns this effect of the filing of an application in one of the countries of the Union, given full force and effect in all of the countries of the Union which have patent laws either by express provision of legislative enactment or by acceptance of the Convention by the Patent Offices and the courts as having the force of law, except only the United States.[2] A number of the colonies of Great Britain which have not expressly adhered to the Convention, provide by legislative enactment that an application filed in any one of the countries which are members of this Union shall have the effect above explained.[3] While the United States has not yet given to the Convention the force and effect of law, the law in force since many years before the adoption of the Convention permits disclosure of the invention in print or by public use or sale for a period of not more than two years prior to the filing of the application,[4] without affecting the validity of the patent granted on such application, so that so far as concerns the effect of disclosure subsequent to the filing of an application in a foreign country, the United

[1] See Article 4 of Convention, Part III.

[2] See note under Article 4 of Convention, Part III, and note under § 27.

[3] These colonies are Malta, New South Wales, Tasmania and Western Australia.

[4] Revised Statutes of the United States, Sec. 4886.

States law protects for a longer period than is required by the Convention.

Sec. 40. Effect of the International Convention on the question of novelty. Cases to which the provisions of the Convention do not apply.

It is to be understood that this provision of the Convention has no other effect so far as the question of novelty under the laws of the countries of the Union in which a patent is sought, than to give the applications filed within six (or seven) months from the filing of the application in the country of origin, the same status that an application for the same invention filed in each of these countries on such date would have had. That is to say, the effect of disclosure of the invention in a printed publication or any other fact which, under the law of any one of the several countries is sufficient to negative novelty and prevent the grant of a valid patent in that country, if it took place prior to the filing of the first application, is not avoided even though under the laws of the country in which the first application was filed, a valid patent may be then obtained. For instance, an invention which had been disclosed in a printed publication prior to, but not more than two years prior to the application may be patentable in the United States, but it has by the fact of such disclosure lost its novelty under the law of France, and its novelty is not restored by any provision of the Convention.

On the other hand, nothing in the Convention is to be taken as creating any bar to the grant of a valid patent in any country of the Union. The filing of the application in any country does not of itself prevent the grant of a valid patent in any country on an application filed at any time thereafter, provided the invention is not disclosed by publication in print or otherwise, and the exposure of the application to the public, required in countries above referred to, in order that the grant of a patent thereon may be opposed or even the actual grant of the patent does not, unless and until it is actually a printed publication, necessarily prevent the grant of a valid patent in any country in the Union, even in

France.[1] The only exception to this is made by the law of the United States which provides that the grant of a patent in a foreign country prevents the grant of a patent to the same inventor for the same invention on an application filed more than seven months after the date of filing of the application on which the foreign patent was granted.[2]

Sec. 41. Formal requirements to be complied with in filing applications under the International Convention.

The inventor who has filed an application for patent in the United States and desires thereafter to take advantage of the provisions of the International Convention to secure patents for the same invention in other countries of the Union, must file his application in each of the countries in which he desires to secure a patent, in accordance with the laws of the respective countries, complying also with the requirements of the respective countries in reference to applications filed under the provisions of the Convention.

The requirements in this regard, which are made by the several countries of the Union, are as follows:

Sec. 42. Formal requirements to be complied with in filing applications under the International Convention. Great Britain and British Colonies.

The application for patent in Great Britain under the Convention for an invention for which an application has been filed in the United States must be made in the name of the United States applicant, must contain a statement that such application has been made, and must specify all the foreign countries or British possessions in which application for the same invention has been made and the official dates of such applications. It must be accompanied by a copy of the specifications and drawings of the United States application, certified by the Commissioner of Patents, and a statutory declaration that the invention of the application is identical with the invention of the United States application.[3]

[1] Mainié, Brevets d'Invention, Sec. 1736.

[2] Revised Statutes of the United States, Sec. 4887, as amended March 3, 1897.

[3] Rules of March 31, 1890, of Great Britain, Articles 25 and 26.

Although the wording of the rules seems to require certified copies of the specification and drawings of the application *as filed*, certified copies of the specification and drawings as allowed, or if the patent has issued, a certified copy of the patent, is accepted by the British Patent Office as a compliance with the rules. This construction of the rules is in harmony with the views of the Conference of the Union at Brussels in 1897, in reference to the proposition of the United States for amendment of Article 4 of the Convention, to provide that the specification and claims as allowed should be taken as equivalent to the application as filed.[1] It was held by the Conference that the amendment was unnecessary, "since it is incontestable that the restrictions given to the original description during the preliminary examination cannot prejudice the right of priority as established by Article 4."

The statutory declaration above referred to must be made before a notary public or a British Consul.

The same requirements are made also by the British Colonies which have adhered to the Convention.

The patent granted in Great Britain on an application filed under the Convention for an invention for which an application has been previously filed in the United States takes the date of filing of the United States application, and its term begins to run from that date.[2] It is, therefore, not desirable to apply in Great Britain under the Convention if the invention at the date of filing the application there is patentably new under the British law.[3]

[1] Report of United States delegates, page 3.

[2] The law in New Zealand is the same (Law of 1889, Article 106); but in Queensland the patent dates from the date of protection in the foreign country (Law of 1884, Article 80). In both of these colonies the period of priority for patents is twelve months instead of the seven months of the Convention. Of the British Colonies which, though not members of the International Union, provide by law for the priority required by the Convention, all (Malta, New South Wales, Tasmania and Western Australia) follow the law of Great Britain as to the date given to the patent and, with the exception of Tasmania, which allows a period of priority of twelve months, allow only the seven months priority.

[3] In 1897 the number of applications filed in Great Britain for which the benefit of the International Convention was claimed was 271. (Propriété Industrielle, 1898, p. 148.)

Sec. 43. Formal requirements to be complied with in filing applications under the International Convention. Norway, Sweden, Denmark and Japan.

If application under the Convention is to be made in Norway or Sweden after application has been filed in the United States, the applicant should file a certified copy of the application as filed in the United States, or as there allowed, or a certified copy of the patent, if it has been issued, legalized by the legation or a consul of the country in which it is to be filed,[1] in order that the examiners of the Patent Office of the country may ascertain by examination whether or not there is agreement between the invention as applied for and as previously applied for in the United States. The documents filed must be accompanied by certified translations into the language of the country in which application is made.

Failure to file the documents required would probably not wholly deprive the applicant of the rights to which he is entitled under the provisions of the Convention, but would unquestionably interfere materially with his securing such rights as might be held to depend for their enforcement on proper notice to the patent office or the public.

The same documents which are necessary in Norway and Sweden would seem to be necessary in Denmark and in Japan.

In Sweden the patent granted on an application filed under the Convention takes the date of filing of the application filed in the foreign country; in Norway it takes the date of filing in Norway; in Denmark and Japan it takes the date of issue in the country.

Sec. 44. Formal requirements to be complied with in filing applications under the International Convention. Switzerland.

If application under the Convention is to be made in Switzerland after application has been filed in the United States, the applicant should, in order to facilitate the ascertainment of his rights, file with his application the documents which establish those rights. He should also in his application refer to his previously filed United States application, stating its date,

[1] Rules of December 31, 1895, of Sweden, Article 5.

and if a patent has been granted thereon, the date of the patent.[1]

It is not required that the documents be certified, nor is it required that they include a copy of the application either as filed or as allowed. A certified copy of the face of the file wrapper of the United States application, showing the name of the applicant, title of the invention and date of filing would undoubtedly be all that is necessary.

Failure to file any of these documents or to refer to the previously filed application would not prevent the issuance of the patent, since patents may be issued on all applications which are in proper form, there being no preliminary examination in Switzerland,[2] nor would the patent so granted be held invalid because of such omission if the application was in fact filed in accordance with the provisions of the Convention. The burden of proof would, however, in such case be upon the owner of the patent to establish the fact of the filing of the previous application and its correspondence with the Swiss patent. The patent granted on such application takes the date of the filing of the application in Switzerland.

Sec. 45. Formal requirements to be complied with in filing applications under the International Convention. Portugal.

The inventor who has filed his application in the United States and desires to secure in Portugal the advantages provided for in the Convention, is required to file a document establishing the date at which the "delay of priority" begins that is, establishing the date of filing of such prior application.[3] A certified copy of the face of the file wrapper of the United States application showing the name of the applicant, title of the invention, date of filing, and serial number would, no doubt, fully satisfy this requirement.

If the United States patent has been issued and the patentee desires to have the Portuguese patent antedated, which

[1] Rules of November 10, 1896, of Switzerland, Article 6.

[2] Law of 1888 of Switzerland, Article 18. See § 16.

[3] Rules of March 28, 1895, of Portugal, Article 9.

is provided for in Article 29 of the law at present in force, he is required to file either the United States patent or a certified copy of it.[1]

In either case the certified copy should be accompanied by a certified translation in Portuguese.

Sec. 46. Formal requirements to be complied with in filing applications under the International Convention. Italy.

If application under the Convention is to be made in Italy for an invention for which an application has been previously filed in the United States and the applicant desires mention of the rights claimed under the Convention to be made in the patent, his application must contain a request therefor in prescribing form, and he must file with it his United States patent or a certified copy of it, if it has been issued, or if not, a certificate from the United States Patent Office containing the name and address of the applicant, title of the invention, and the precise date (year, month, day and hour), on which the application was filed.[2]

A certified copy of the face of the file wrapper of the United States application would undoubtedly satisfy this requirement.

It does not appear that failure to file such certified copy or certificate would deprive the applicant of the rights to which he would otherwise be entitled under the Convention, certainly it would not prevent the issuance of a patent on his application, since patents are issued in Italy without preliminary examination, but the patent as issued would not contain notice of his claim of such rights and lack of such notice would make it more difficult for him to enforce them.

The date given to the patent granted on an application filed under the Convention is the date of application in Italy.

Sec. 47. Formal requirements to be complied with in filing applications under the International Convention. Other countries of the Union.

In Belgium, Brazil, France, Spain and Tunis it is not re-

[1] Same. Article 10.

[2] Rules of January 16, 1898, of Italy, Article 4.

quired that any statement with respect to the application previously filed in the United States be made. Failure to make any reference to such application, since in these countries there is no preliminary examination as to novelty, patents being granted on all applications which are in proper form, does not prevent the issuance of the patent. A patent granted on an application filed in fact in accordance with the provisions of the Convention whether stated to be so filed or not would not be held invalid by reason of any fact which would otherwise negative the novelty of the invention arising subsequent to the filing of the application in the United States. It is, however, believed to be the better practice to make mention in filing the application of the United States application previously filed.[1]

Sec. 48. Effect of the International Convention on the question of novelty. Inventions shown at International Exhibitions.

Under Article 11 of the Convention[2] the countries which are members of the International Union agree to give a temporary protection to patentable inventions which are shown at International Exhibitions, which are officially recognized. This is in effect an agreement that such public exhibition of an invention prior to the filing of an application for patent therefor, shall not have the effect of so far destroying the novelty of the invention that a valid patent could not be granted on such application, if the application is filed within a reasonably short time from the first exhibition of the invention. Such a provision is of importance in those countries in which under the law any exhibition of an invention in public prior to the filing of the application would ordinarily deprive it of novelty and render it unpatentable.

The law of May 23, 1868, of France provides for such temporary protection on the filing of notice by the inventor, for a period terminating three months after the close of the ex-

[1] Propriété Industrielle, 1895, page 135.

[2] See text of Convention, Part III.

position. This notice must be filed within a month from the opening of the exhibition.

Similar laws providing for such protection have been adopted in the following countries which are members of the International Union: Brazil, Denmark, Great Britain with New Zealand and Queensland, Japan, Norway, Spain, Sweden, Switzerland and Tunis.[1] Of these countries notice prior to exhibition of the invention is required in all except Denmark, Norway and Sweden, and the usual term of such protection is six months from the first exhibition.

In the other countries of the Union, Belgium, Italy and Portugal, the provisions of this article of the Convention are given full force and effect, though no express legislation in respect thereto has been adopted. Notice though not required in these countries, as the laws are silent on the matter, should probably be given.

Sec. 49. Inventions shown at International Expositions. Countries not in the International Union which give the same temporary protection.

The following countries not now members of the Union have adopted legislation providing that such exhibition of an invention shall not deprive the invention of novelty to the extent of preventing the grant of a valid patent on an application filed within a reasonable time (usually six months) after the first exhibition: Austria, Finland, Mexico, and the British possessions of British New Guinea, Ceylon, India, (British) Tasmania, Victoria and Western Australia.

Sec. 50. Inventions shown at International Expositions. Extent of the temporary protection.

The United States,[2] which is a member of the Union, and Canada,[3] which is not, provide by law that public use for a

[1] See note under Article 11 of Convention, Part III.

[2] Revised Statutes of the United States, sec 4886.

[3] Law of 1872 of Canada, Article 6.

period not more than two years in the one country and not more than one year in the other prior to the filing of the application shall not defeat the novelty of the invention. This seems to be in effect the equivalent of such protection as is contemplated in this article of the Convention and provided for by the laws of the countries above considered.

It is generally understood that the provisions of this article of the Convention and the laws of the several countries above referred to extend not only to the protection of the exhibited invention, so far as its novelty might otherwise be affected by the exhibition considered as public use, but also to the effect of any disclosure of the invention in a printed publication during the period of this temporary protection.

CHAPTER V.

OF THE SUBJECT-MATTER FOR WHICH PATENTS MAY BE GRANTED.

Sec. 51. Inventions contrary to law or injurious to public health or morals not patentable.

The earliest general law on the subject of patents for inventions—the Statute of Monopolies, adopted in England in 1623—excludes from protection inventions which are "contrary to the law, or mischievous to the State by raising the prices of commodities at home, or hurt of trade, or generally inconvenient."[1] This is the law of Great Britain to-day. The laws of other countries differ in wording from this law, but are all in substantial agreement with it in excluding from protection, either expressly or by necessary implication, inventions the use of which is necessarily unlawful or injurious to public health or morals.

Sec.52. Patentable inventions. Abstract principles not patentable.

The same Statute of Monopolies permits the grant of patents for the "working and making of any manner of new manufacture,"[1] which, as construed by the courts of Great Britain, includes the classes of invention particularly specified in the United States law as proper subject-matter of invention,[2] and does not include anything beyond these classes, being construed to exclude those inventions which consist of mere abstract principles.

The laws of the British Colonies and dependencies follow the British and United States law in this regard, not excluding

[1] Statute of Monopolies of 1623, section 6.

[2] "Art, machine, manufacture or composition of matter." Revised Statutes of the United States, section 4886.

from protection any useful invention which falls within the term "manufacture" of the British law, or the terms "art, machine, manufacture or composition of matter" of the United States law. Substantially the same provisions are found in the laws of Belgium, Brazil,[1] Chili, Colombia, Congo Free State, Costa Rica, Guatemala, Hawaii, Liberia, Mexico, Orange Free State and South African Republic.

Sec. 53. Inventions excluded from protection. Medicines.

The other countries which have patent laws each exclude from protection one or more classes of invention which, under the laws of Great Britain and the United States, are patentable. The class of invention which, more than any other, is excluded from protection is that of medicines. Inventions which relate to medicines are excluded from protection in the following countries: Argentine Republic, Austria, Bolivia, Denmark, Ecuador, Finland, France, French Indo China, Germany, Hungary, Italy, Japan, Luxemburg, Norway, Peru, Portugal, Russia, Spain, Switzerland,[2] Sweden, Tunis, Turkey, Uruguay and Venezuela.

It is expressly provided that this exclusion does not extend to inventions relating to the processes of manufacture of medicines in the following of these countries: Austria, Denmark, Finland, Germany, Hungary, Italy, Luxemburg, Norway, Portugal, Sweden and Tunis. Russia excludes from protection inventions which relate even to apparatus for the manufacturing of medicines.

Sec. 54. Inventions excluded from protection. Foods.

Inventions relating to foods for human consumption are excluded from protection in the following countries: Austria,

[1] But inventions relating to medicines, food or chemical products, are subject to preliminary examination in Brazil.

[2] By the limitation of inventions for which patents may be granted to such as are represented by models.

Denmark, Finland, Germany, Japan, Luxemburg, Norway, Russia, Switzerland, Sweden and Tunis.[1]

It is expressly provided that this exclusion does not extend to inventions relating to the processes of manufacture of foods in the following countries: Austria, Finland, Germany, Hungary, Luxemburg, Norway, Russia, Sweden and Tunis.

Sec. 55. Inventions excluded from protection. Chemical products.

Chemical products of whatever kind are excluded from protection in the following countries: Austria,[2] Finland, Germany,[2] Hungary,[2] Japan,[2] Luxemburg, Russia and Switzerland.

In all of these countries, except Switzerland, inventions relating to chemical processes may be patented.

Sec. 56. Inventions excluded from protection. Inventions relating to war material, etc.

Inventions relating to war material may not be patented in Austria, Hungary, Japan, or Turkey, if opposed by the Govment.

Inventions relating to State monopolies (tobacco, salt and gun-powder) are not patentable in Austria.

[1] In Italy applications for inventions relating to beverages and foods are subject to preliminary examinations by the Board of Health. Law of 1864 of Italy, Article 37.

[2] Though in Austria, Germany, Hungary and Japan, if the invention in question in a suit for infringement relates to a process for producing a new substance, all substances of like nature are considered as having been made by the patented process until the contrary is proved. Law of 1897 of Austria, Articles 8 and 110; Law of 1891 of Germany, Article 35; Law of 1899 of Japan, Article 1; Law of 1894 of Hungary, Article 8.

CHAPTER VI.

OF THE PERSON TO WHOM THE PATENT MAY BE GRANTED.

Sec. 57. The inventor, though an alien, may apply for patent.

Up to a very recent period, an alien inventor was not permitted under the laws of certain countries to apply for and obtain a patent in his own name. There is nothing in any patent law at present in force, except that of Guatemala,[1] to prevent the actual inventor, whether a subject or citizen of the country, or an alien, from making application for and obtaining a valid patent for his invention in his own name. In very few countries, however, is the actual inventor required to make application, as in the United States and Canada, though a number of the more recent foreign laws require application to be made by the actual inventor, or some person acting for or deriving title from him.

Sec. 58. The inventor under the law of Great Britain and the British colonies. The inventor or importer.

Under the law of Great Britain, only the true and first inventor can obtain a valid patent, but the term "inventor" does not, as in the United States and Canada, necessarily mean the person who actually made the invention in the sense of creating it by his own inventive act, but includes also the person who imports into Great Britain an invention actually made by another,[2] either with or without the consent of the actual inventor.[3]

The less important of the British colonies and dependencies

[1] Under the law of Guatemala, patents may be granted only to citizens of the Republic or to foreigners who have resided in the country a year.

[2] Frost. Patent Law and Practice, page 18, and decisions there cited.

[3] Same. Page 272, and decisions there cited.

as a rule follow Great Britain in including the importer of the invention under the term "inventor," but the more important of them and most of those which have amended their laws, or adopted new laws, within recent years, restrict the term "inventor" to the actual inventor, and either require the application to be made by him or, in case of a non-resident, by some one authorized by him to make application, and do not permit applications to be made by an unauthorized importer of the invention.[1]

Sec. 59. The inventor under the laws of other countries—The actual inventor.

Under the laws of most other countries, the actual inventor is recognized as alone entitled to apply for and obtain a patent, but this right is not, as in the United States, Canada, Great Britain and the British Colonies, looked upon as personal to the inventor but as a transferrable right. The inventor may transfer this right by assignment, in which case his assignee may apply for and obtain the patent, or may authorize another person to apply. The person applying is not, as in the United States and Canada, required to make oath that he believes himself to be the inventor but is, from the fact that he shows by his application that he is in possession of a patentable invention, presumed to be the inventor or to derive title from him, and unless such applicant is shown to have taken the invention from the papers or apparatus of another person without permission, not only will the patent be granted to him but the patent so granted will be valid.[2] It therefore happens that in many of the foreign countries any person who has knowledge of an invention may apply for and obtain a valid patent therefor, unless it be shown that he applied in fraud of the rights of the person from whom he obtained such knowledge.

[1] See for instance, law of 1890 of Victoria, Article 7.

[2] See for instance, law of 1891 of Germany, Articles 3 and 10.

Sec. 60. The inventor under the United States law. The first inventor.

Under the United States law the inventor who applies for a patent must not only be an original inventor, but must be the *first* inventor.[1] An application which has been filed by an inventor who applied in good faith, believing himself to be not only an original inventor, but the first inventor, may be rejected, and a patent granted to a later applicant who has shown by satisfactory proof that in fact the invention was made by him before it was made by the other applicant.[2] If a patent has been granted to one applicant, and another shows by satisfactory proof that he made the invention before it was made by the patentee, a patent will be granted to such other applicant.[3] The patent granted to an inventor who was not in fact the first inventor, may for that reason be held invalid by the court.[4]

It is, however, held that in order to be entitled to a patent as against a later inventor, the first inventor must prove that he disclosed the invention to others in the United States whether it was made within the United States or abroad before any disclosure of the invention to others within the United States by the later inventor.[5]

The patent granted to the first inventor who applies in the United States, after a patent has been granted to an earlier applicant, is granted for the full term for which patents are granted under the law, and in granting such second patent, the earlier patent is not revoked, there being no provision in the United States law for revoking a patent once granted.[6] It therefore happens that two patents for the same invention, both on their face valid, but only one, the later one, in fact valid, may be in existence at the same time. The certainty

[1] Revised Statutes of the United States, Sec. 4920.

[2] Revised Statutes of the United States, Sec. 4904.

[3] Same. Sec. 4920. [4] Same. Sec. 9404.

[5] Robinson on Patents, Sec. 382, and decisions there cited.

[6] See § 84.

that the earlier patent would, if the action of the Patent Office in granting the second patent was properly taken, be held invalid, as not granted to the first inventor, alone prevents suits for infringement being brought on it.

Sec. 61. The inventor under the laws of Japan. The first inventor.

In but one other country, Japan, is it permitted under the law to grant a patent to the first inventor after a patent has been granted to another inventor who applied in good faith and without fraud, and in such case the second patent is granted not for the full term for which patents are granted under the law, but for the unexpired term only of the earlier patent and only after the earlier patent is formally revoked.[1]

Sec. 62. The question of originality between applicant and patentee. Great Britain.

Under the law of Great Britain any person who shows that he or any person through whom he claims was the true inventor of the invention included in the claim of a patent granted to another person and that such other person obtained a patent in fraud of his rights may have such patent revoked and a patent for such invention issued to himself. But such patent issued to the true inventor runs only for the unexpired term of the revoked patent.[2] Substantially the same provisions are found in the laws of the British Colonies and dependencies, except Canada and Newfoundland, and are found also in the laws of Orange Free State and South African Republic.

Sec. 63. The question of originality between applicant and patentee. Other countries.

In no country other than the above named does the law permit a second patent to be granted for the invention of a patent already granted even though such patent was obtained

[1] Law of 1899 of Japan, Articles 24 and 25.

[2] Law of 1883 of Great Britain, Sec. 26.

by fraud. In a number of countries, however, the patent in such case may be ordered to be transferred to the real inventor in fraud of whom it was applied for.[1]

Sec. 64. The question of priority between applicant and patentee.

Under the laws of all countries other than the United States and Japan, the *first* inventor who fails to apply for patent before another has applied for and obtained a patent for the same invention is without remedy except as above noted in case of fraud on the part of the prior applicant. He cannot apply for and obtain a valid patent, nor can he ask that the patent granted be transferred to him. His failure to file his application before his rival secured his patent is in all countries other than those named absolutely fatal to his right.

Sec. 65. The question of priority between applicants. Under the registration system.

Under the laws of most of the countries other than those named, the *first* inventor who fails to apply for a patent before another has applied for a patent for the same invention, even though the patent has not been granted, is also without remedy except in case of fraud on the part of the prior applicant.

In the countries which, like France, grant patents without preliminary examination, and without publication of the application for opposition, there is no opportunity for contesting the right of the prior applicant prior to the grant of the patent to him even in case of fraud. In these countries the prior inventor has no remedy except in case he can show that the patentee obtained the invention from him, in which case, as above pointed out, he may compel the transfer to him of the patent granted to such prior applicant.[2]

Sec. 66. The question of priority between applicants. Under the registration system where opposition is permitted.

In the countries in which, like Great Britain, while patents

[1] Mainié. Brevets d' Invention, Chapter 19, and decisions there cited.

[1] See § 63.

are granted without preliminary examination as to novelty, applications are published in order to give an opportunity for opposition, the prior inventor may, by showing, within the period during which the application is open for opposition, that the prior applicant obtained the invention from him, prevent the grant of a patent on such prior application, and by filing an application himself obtain a valid patent.[1] Except in Great Britain and the British Colonies and dependencies, Orange Free State and South African Republic, as above noted,[2] the prior inventor can, after the grant of a patent to another, himself secure a patent in any of these countries only by first securing revocation of the prior patent on the ground of fraud.

Sec. 67. The question of priority between applicants. Under the preliminary examination system.

In the countries in which applications are subjected to preliminary examination, the laws provide for the determination of the right to a patent between two or more applicants for the same invention. In Austria, Denmark, Germany, Hungary, Norway, Russia and Sweden, the right to a patent is determined absolutely by the date of filing, unless fraud on the part of the first applicant is shown, in which case the patent may be granted to the true inventor. Under the law of Russia, the only contest between applicants provided for is in the very unusual case of two applications for the same invention filed on the same day. In such case the rival applicants may have a patent issued to them jointly, or may have the question of the right to a patent determined by the courts.[3] In Canada[4] and Chili[5] the question of the right to a patent between rival applicants is determined by arbitrators appointed for that purpose, and the patent is granted to the applicant decided to be entitled thereto.

[1] Law of 1883 of Great Britain, Article 35.

[2] See § 62.

[3] Law of 1896 of Russia, Article 15.

[4] Law of 1872 of Canada, Article 43.

[5] Law of 1840 of Chili, Article 12.

In the United States[1] and Japan,[2] the right to a patent between rival applicants is determined by the Patent Office, subject to appeal to a court.

Sec. 68. Provisions of the International Convention respecting priority.

The effect given in the countries of the International Union to the filing of an application for patent in one of the countries of the Union, if followed by the filing by the same applicant within the "delay of priority," of applications in such other countries as regards the question of novelty, has already been considered.[3] Article 4 of the Convention[4] provides that not only shall the invention, so far as the disclosure is concerned, have the same status throughout the "delay of priority" that it would have had at the date of the first filing, so far as novelty is concerned, but that applications filed by the same applicants during this period, shall have the same status as the original application, so far as date of filing is concerned. Applications filed by others in any country, subsequent to the first filing of the application, are, if the rights afforded by the Convention are taken advantage of, treated in each of the countries of the Union, except only the United States,[5] precisely as though filed subsequently to the actual filing of an application under the Convention.

[1] Revised Statutes of the United States, Sec. 4904.

[2] Law of 1899 of Japan, Article 24.

[3] See §§ 38 to 50.

[4] See text of Convention, Part III.

[5] See note under Article 4 of Convention, Part III.

CHAPTER VII.

OF THE DIFFERENT KINDS OF PATENTS.

Sec. 69. Patents for improvements. The United States. Other countries.

Under the laws of the United States, no distinction, so far as the conditions of the grant are concerned, is made between patents for improvements upon inventions previously patented and patents for inventions which are radically new. The inventor in the one case is entitled to a patent for the full term for which patents may be granted precisely as in the other case, whether he is the grantee of the earlier patent or an independent inventor, and the patent for the improvement is not required to contain any reference to the earlier patent. The question whether the improvement can be used without infringing the claims of the earlier patent is not decided by the Patent Office, but is left to be determined by the courts.

Patents for improvements are to the same extent independent of the patents for the principal inventions to which they relate in Great Britain, all of the British colonies and dependencies (with the exception of Jamaica), Bolivia, Chili, Colombia, Ecuador, Hawaii, Liberia, Mysore, Orange Free State, Peru, South African Republic and Venezuela.

Sec. 70. Patents for improvements and certificates of addition.

Under the laws of the other countries, improvements made the patentee of the principal invention, and, in a few countries, improvements made by others may be patented by "certificate of addition" or as "patents of improvements," which refer to and are in effect made part of the principal patent and expire with it. These "certificates of addition" or "patents of improvement" are granted on payment of usually the

filing fee only, or at most a small additional fee, and are kept in force without further fees or taxes so long as the fees and taxes on the principal patent are paid—a material saving to the inventor, as the taxes to be paid to keep an independent patent in force are in most countries very heavy.[1]

The laws of the following countries permit improvements on patented inventions made by the patentee of the principal patent to be protected by these certificates of addition or patents of mprovement: Argentine Republic, Austria, Belgium, Brazil, Congo Free State, Costa Rica, Denmark, Finland, France, French Indo China, Germany, Guatemala, Hungary, Italy, Jamaica, Japan, Luxemburg, Mexico, Norway, Portugal, Russia, Spain, Sweden, Switzerland, Tunis, Turkey and Uruguay.

Sec. 71. Patents for improvements and certificates of addition. To whom granted.

This privilege is in all of these countries given only to the patentee or holder of the principal patent, except in Argentine Republic, Costa Rica, Russia and Uruguay, in which countries the same privilege is extended to others. But under the law of Argentine Republic the patentee is so far favored that the fees required to be paid by him are one-fourth only of the fees required for an independent patent, while one-half such fees is required of others. Under the law of Russia patents of improvement can be granted to others than the patentee of the principal patent only after the expiration of a year from the grant of such patent.

In most of these countries the patentee of the principal patent is not only favored by being permitted to protect improvements on payment of the small fees required for certificates of addition, but he is given for a certain period the exclusive right to patent improvements on the invention of the original patent, applications for improvements filed by others during such period being withheld until its expiration. This

[1] See § 85.

period is one year in Brazil, Costa Rica, France, Hungary, Russia, Tunis and Turkey. In Italy the period is six months.

In all of these countries the patentee of the principal patent may, if he choose, patent his improvement as an independent patent, in which case the usual fees for the grant of the patent and the usual taxes must be paid, the patent in such case not necessarily expiring with the principal patent.

Sec. 72. Dependent patents.

Under the laws of Austria,[1] Denmark,[2] Japan,[3] and Russia,[4] patents for improvements upon the invention of a patent previously granted may be granted as dependent patents, the fact of their dependence being determined by the Patent Office. Such patents are not, however, limited in term by the term of this original patent.

Sec. 73. Patents of importation.

The law of Belgium[5] and the laws of certain other countries provide for the grant of "patents of importation" for inventions which have been previously patented in another country. It does not, however, appear to be material whether in case of an invention previously patented in another country an application is made for a patent of importation or a patent of invention. The patent is not necessarily void because granted as a patent of invention,[6] though whether so granted or granted as a patent of importation, it expires with the expiration of the foreign patent. The patent of importation granted in Spain[7] is however, to be distinguished from the so-called patents of importation granted in other countries, as it is granted for a definite

[1] Law of 1897 of Austria, Article 4.

[2] Law of 1894 of Denmark, Article 2.

[3] Law of 1899 of Japan, Article 17.

[4] Law of 1896 of Russia, Article 20.

[5] Law of 1854 of Belgium, Article 1.

[6] This is well settled in Belgium and Italy by decisions of the courts.

[7] Law of 1878 of Spain, Article 12.

term of ten years instead of twenty years, the term for which patents of invention are granted.

Sec. 74. Patents of introduction.

"Patents of introduction" are granted in Bolivia, Ecuador and Spain. They are, however, hardly to be classed as patents for inventions, but rather as grants of monopolies to those who introduce industries known elsewhere but not before known in the country. They are limited in term to five years in Spain,[1] and to three, six or ten years in Bolivia and Ecuador,[2] according to the importance of the industry.

The patent of introduction in Spain does not give the grantee the right to prevent the importation from abroad of the article for which the patent was granted, but gives only a monopoly of manufacturing the article in Spain.[3]

Sec. 75. Provisional patents. Caveats.

Under the law of certain countries an inventor whose invention is incomplete, or who, for other reasons, is not prepared to file an application for patent may, by filing with the Patent Office such description of his invention as he is able at the time to give, secure what is sometimes termed provisional protection of such rights as he may subsequently show himself to be entitled to. The so-called provisional protection so secured is not to be confused with the right secured by the grant of a patent or even the provisional protection secured by the filing of an application for patent. The countries in which such protection is provided for by law are Argentine Republic, Brazil, Canada, Hawaii, South Australia and the United States. Under the law of Argentine Republic provisional patents may be obtained for the term of one year, renewable.[4] Their effect

[1] Law of 1878 of Spain, Article 12.

[2] Law of 1880 of Ecuador, Articles 7, 8 and 9 and corresponding Articles of the law of 1858 of Bolivia.

[3] Propriété Industrielle 1898, page 65.

[4] It is understood that these provisional patents are granted only to citizens of the Argentine Republic.

is to prevent, while they are in force, the grant of patents relating to the same invention without notice to the person who has obtained the provisional patent.[1] After notice such person has three months within which to oppose the grant of a patent to another. The caveat provided for by the laws of Canada,[2] South Australia[3] and the United States[4] appears to be in effect the same as the provisional patent of Argentine Republic, and, except as entitling the caveator to notice of applications filed by others, gives no protection even against the effect of disclosure of the invention by himself or others, or public use of the invention by himself or others, and does not even give him *prima facie* priority as against the subsequently filed application of which he is notified.

The provisional patent granted in Brazil[5] differs in effect from a caveat in that it protects the inventor who desires to experiment with his invention in public[6] against the effect of what would otherwise be such public use as would bar the grant of a patent. The certificate of provisional protection granted under the law of South Australia[7] has the same effect in that the holder may during twelve months use and publish the invention without prejudice to the patent subsequently granted to him. Under the law of Canada,[8] the inventor who has secured a foreign patent may on filing within three months from the date of issue of such foreign patent a notice of intention to apply for a patent in Canada secure certain rights, provided a patent is subsequently granted to him, against those who may have begun to manufacture his invention during that year.

[1] Law of 1864 of Argentine Republic, Article 37.

[2] Law of 1872 of Canada, Article 39.

[3] Law of 1877 of South Australia, Articles 46 and 47.

[4] Revised Statutes of the United States, Section 4902.

[5] Law of 1882 of Brazil, Article 2, Section 2.

[6] Undoubtedly the public in Brazil is meant.

[7] Law of 1887 of South Australia, Articles 3, 4 and 5.

[8] Law of 1892 of Canada, Article 1.

The protection afforded by the provisional patent or caveat, or notice of intention to file in these countries, is also to be distinguished from that afforded by the provisional patent granted under the law of Switzerland,[1] which is in effect an incomplete patent, wanting only the proof of the existence of a model of the invention. On filing such proof, the patent becomes complete.

Sec. 76. Provisional protection. Great Britain. Other countries.

Under the law of Great Britain and the British colonies and dependencies generally, with a few exceptions, the most important of which are Canada and Newfoundland, it is expressly provided that the applicant who files with his application for patent a provisional specification[2] shall be entitled on acceptance of his application to provisional protection. This is not to be understood as in any way equivalent to the protection given by the grant of a patent. It gives no right to sue for infringement and is not assignable. The precise meaning of this provisional protection is defined in the law,[3] and is in effect nothing more than the protection given in all other countries on the filing of an application for patent,[4] that is, protection from the effect of public use and publication of the invention which would, if prior to the date of application, be sufficient to deprive the invention of patentable novelty. It is less than the protection given on the acceptance of the complete specification,[5] which may be termed provisional, since while without effect if the patent is not granted, it is in effect the same protection that is given by the actual grant of the patent, though suit for infringement may not be brought until the patent is actually granted (sealed).

The provisional protection given in Austria,[6] Germany[7] and

[1] Law of 1888 of Switzerland, Article 16.

[2] See § 12.

[3] Law of 1883 of Great Britain, Article 14.

[4] See § 37.

[5] Law of 1883 of Great Britain, Article 15.

[6] Law of 1897 of Austria, Article 57.

[7] Law of 1891 of Germany, Article 23.

Hungary,[1] on the publication of the application for opposition, corresponds to the protection given in Great Britain on the acceptance of the complete specification, with the further provision in Austria[2] and Hungary[3] that suit for infringement may be brought at once without waiting for the actual grant of the patent.

[1] Law of 1895 of Hungary, Article 34.

[2] Law of 1897 of Austria, Article 106.

[3] Law of 1895 of Hungary, Article 49.

CHAPTER VIII.

OF THE DATE AND DURATION OF THE PATENT.

Sec. 77. The date at which the term of the patent begins to run. Date of grant.

The term for which patents are granted is not in all countries reckoned from the same date. Under the law of the United States, the term begins to run from the date of the actual issuance of the patent. The same is true of Argentine Republic, Bolivia, Canada, Colombia, Costa Rica, Denmark, Ecuador, Finland, Guatemala, Hawaii, Japan, Liberia, Mexico, Peru, Portugal, Russia, Spain, Uruguay and Venezuela.

Sec. 78. The date at which the term of the patent begins to run. Date of application.

The more general rule, however, is that the term begins to run from the date of filing of the application. This is the law in Belgium, Brazil, Congo Free State, France, French Indo China, Germany,[1] Great Britain, Hungary, Italy,[2] Luxemburg,[1] Mysore, Norway, Orange Free State and South African Republic, Sweden, Switzerland, Turkey and Tunis. The British Colonies and dependencies, except Canada, follow the law of Great Britain in this regard.

Under the law of Austria, the term begins to run from the date of the publication of the application in the Patent Journal (for opposition). Under the law of Chili, it begins from the expiration of a term set for the establishment of the industry.[3]

[1] In Germany and Luxemburg the term begins to run from the day after the filing.

[2] In Italy the term begins to run from the last day of March, June, September, or December next following the date of application.

[3] Law of 1840 of Chili, Article 14.

Sec. 79. Terms for which patents are granted.

The terms for which patents are granted vary from seven years to twenty years. In the Bahama Islands and Barbadoes, the term is seven years only, but may be extended. In Uruguay, the term is nine years. In Chili and Peru, the term is ten years. In Great Britain, the British Colonies and dependencies, with the exception of the Bahama Islands, Barbadoes and Canada, and in Mysore, Orange Free State and South African Republic, the term is fourteen years with usually a provision for an extension for seven years. In Argentine Republic, Austria, Bolivia, Brazil, Denmark, Ecuador, Finland, France, French Indo China, Germany, Guatemala, Hawaii, Hungary, Italy, Japan, Luxemburg, Norway, Russia, Sweden, Switzerland, Tunis, Turkey and Venezuela, the term is fifteen years. In the United States, the term is seventeen years. In Canada, the term is eighteen years. In Belgium, Colombia, Costa Rica, Congo Free State, Liberia, Mexico and Spain, the term is twenty years.

In many of these countries patents for shorter terms may be granted. In very few, except Great Britain and the British Colonies and dependencies, is there any provision for extension.

Sec. 80. Expiration of patent prior to expiration of the term for which granted. Forfeiture.

Not only are the patents which are granted in foreign countries for inventions previously patented in another country generally dependent for their continuance in force during the term for which they were granted on the continuance in force of such patents previously granted in other countries, but in practically all countries the continuance in force of [illegible]nts is dependent on the payment from time to time of [illegible]es[1] amounting in the aggregate to many times the fee required for the grant of a patent in the United States, and dependent also on the working of the invention in the country on a commercial scale.[2]

[1] See § 85. [2] See § 87.

Sec. 81. Countries in which patents are independent of prior foreign patents.

Under the present law of the United States, patents granted on applications filed subsequent to January 1, 1898, expire only with the expiration of the full term for which patents may be granted under the law. Patents issued on applications filed prior to January 1, 1898, at which date the act of March 3, 1897, took effect, if granted for inventions previously patented abroad expire, whether expressly so limited or not, with the expiration of the term of the foreign patent, or if more than one with the term of the one having the shortest term.[1] No payment of taxes is required to keep the patent in force, and if valid at the date of its issue, it is equally valid up to the end of the full term, without regard to what the owner of the patent may have done or failed to do subsequent to its issue.

In the following foreign countries a patent granted for an invention previously patented in another country is, as under the present law of the United States, independent of such previously granted patents, and does not expire with their expiration: Austria, Bolivia, Denmark, Ecuador, Finland, Germany, Great Britain (and the British Colonies and dependencies of Bahama Islands, Barbadoes, British New Guinea, Malta, Mauritius, New Zealand, Queensland, Tasmania, Trinidad, Victoria, and Western Australia), Hungary, Japan, Liberia, Luxemburg, Norway, Peru, Portugal, Spain,[2] Sweden, Switzerland, and Uruguay.[3]

Sec. 82. Countries in which patents expire with prior foreign patents.

In the following countries the patent granted for an inven-

[1] Revised Statutes of the United States, Sec. 4887. [2] See § 73.

[3] In these countries the conditions under which a patent may be granted for an invention previously patented in another country are generally different from those under which such a patent may be granted in the United States. In a number of them, if the patent previously granted in another country has been published in print, a patent cannot be granted. See § 27.

tion previously patented in another country expires with the expiration of the foreign patent, or if more than one with the first one to expire, whether such expiration be by revocation, forfeiture for non-payment of taxes, expiration of term, or any other cause: Argentine Republic, Brazil, Canada, Colombia, Costa Rica, France, French Indo China, Orange Free State, Russia, South African Republic, Tunis, Turkey and Venezuela, and the following British Colonies and dependencies: British Guiana, British Honduras, British North Borneo, Cape Colony, Ceylon, Fiji Islands, India (British), Jamaica, Leeward Islands, Natal, Newfoundland, South Australia, and Straits Settlements.

In Belgium, Congo Free State and Italy it is provided by law that the duration of such patent shall not exceed that of the foreign patent granted for the longest term. In Mexico the law limits such patent to the term of the foreign patent first granted.

Sec. 83. Provisions of the International Convention respecting the independence of patents.

At the Conference of the International Union held at Brussels in 1897, an amendment to the International Convention was adopted providing that patents heretofore granted in the different contracting states, as well as those hereafter granted, shall be independent of the patents obtained in other states.[1] This amendment has not yet been formally ratified by all the countries of the Union, and is consequently not as yet in force, but will doubtless be ratified at an early date. Under its provisions the expiration of the patent granted in one country for an invention whether by expiration of term, by forfeiture for non-payment of taxes, or for any other cause, will not cause the forfeiture of a patent later in date granted for the same invention in any other country of the International Union.

Sec. 84. Revocation of Patents. The United States. Other Countries.

There is no express provision under the laws of the United

[1] See Art. 4 *bis*, of Convention, Part III.

States for the revocation of a patent. In a suit for infringement, a patent may be held void in whole or in part, and while such decision is entitled to and will be given great weight in infringement suits subsequently brought against others, or in the jurisdiction of other courts, it is technically conclusive only in the jurisdiction in which it was rendered, and between the parties to the suit in which it was rendered.

Even in suits between interfering patents, in which the court may declare either of the patents void in whole or in part, or inoperative or invalid in any particular part of the United States, the judgment affects only the rights of parties to the suit,[1] and it does not appear that the decision declaring the patent void in whole or in part necessitates the cancellation of the letters patent, or prevents the patentee from bringing suit on such patent, though in certain cases the courts have ordered the cancellation of the patent,[2] and in other cases have enjoined the patentee from bringing suit on the patent.[3]

In case of fraud on the part of the patentee, it appears that the courts may order a patent canceled, but only on suit by the United States, and the fraud must be clearly proved,[4] but it does not appear that in other cases the actual cancellation of the letters patent may be compelled.

In nearly all foreign countries provision is made in the law for the revocation of invalid patents by proceedings brought for this purpose by the State, or by any interested party, either before the court or before the Patent Office. In Austria,[5] Germany,[6] Hungary[7] and Japan[8] the proceedings must be brought before the Patent Office, the Patent Office in

[1] Revised Statutes of the United States, Sec. 4918.

[2] Sturgis *vs.* Van Hagen, 4 O. G., 579.

[3] Sawyer *vs.* Massey, 25 Fed. Rep., 144.

[4] United States *vs.* Bell Telephone Co., et al., 79 O. G., 1362.

[5] Law of 1897 of Austria, Articles 33 and 67 to 94.

[6] Law of 1891 of Germany, Articles 13 and 38 to 94. See § 101.

[7] Law of 1895 of Hungary, Articles 38 and 39.

[8] Law of 1899 of Japan, Article 38.

these countries having full charge of not only the granting of patents, but all proceedings relative to their forfeiture or revocation.

In the other countries proceedings for revocation must be brought before the courts.

Sec. 85. Forfeiture for non-payment of taxes.

The fees required to be paid in foreign countries on the filing of the application and the grant of the patent are generally somewhat less than those required to be paid in the United States, but while the $35 required to be paid in the United States before a patent issues ($15 application fee and $20 final or issue fee) is all that is required to keep the patent in force throughout the term of seventeen years, the fees payable in foreign countries before the grant of the patent are sufficient to keep the patent in force during from one to four years only, in most countries for one year only. Before the expiration of the year or more for which the fee is paid, and at stated periods thereafter during the term of the patent, in most countries every year, a further tax must be paid, and if it is not paid when due,[1] the patent lapses and cannot thereafter be renewed. In most countries the tax increases each year,[2] and the aggregate amount necessary to keep a patent in force during the full term for which it was granted is many times the fee required in the United States, being in France no less than $290 (1,500 francs), in Belgium, $400 (2,120 francs), in Great Britain, $486 (£100), in Denmark, $550 (2,055 crowns), in Austria, $790 (1,975 florins), in Germany, $1,261 (5,300 marks, and in Russia, $1,667, (2,160 roubles reckoned at $0.772, the value of the gold rouble).

Sec. 86. Effect of forfeiture for non-payment of taxes.

The result of the requirement for the payment of these

[1] In a few countries only is a certain grace allowed for the payment of these annual or periodic taxes on a further payment in the nature of a fine.

[2] See comparative table under Austria, Belgium, Brazil, Denmark, Germany, Great Britain, Hungary, Italy, Japan, Mexico, Norway, Russia, Spain, Sweden, and Switzerland.

large amounts is that of the patents granted, comparatively few are kept in force during the full term for which they were granted.

In Great Britain of 4,260 patents granted in 1882, only 236, or 5.8 per cent., were kept in force for the full term of fourteen years. Of 3,898 patents granted in 1883, 238 or 6.2 per cent., and of the 9,983 granted in 1884, 451, or 4.5 per cent., were kept in force for the full term. In Switzerland, of the 289 patents granted in 1888, the year the patent law went into effect, but 36, or less than 12.5 per cent., were in force at the close of the year 1897, and of the 1,751 patents granted in 1889, but 192, or less than 11 per cent., were in force at the close of 1897. In France, out of 109,661 patents granted during the year 1880 to 1894, inclusive, only 25,987 were in force on the 1st of January, 1895, 83,674 having been abandoned for non-payment of the annual taxes.

Sec. 87. Forfeiture for non-working.

Under the laws of the United States, Great Britain and the British Colonies and dependencies, with certain exceptions,[1] Hawaii, Mexico, Mysore, Orange Free State and South African Republic, the failure of the patentee to put the invention into commercial use does not affect the continuance in force of the right granted to him.

In all other countries which have patent laws, the failure of the owner of the patent to put the invention in commercial use within a specified period, usually three years, but varying from six months in Venezuela,[2] in certain cases, to five years in Russia,[3] is sufficient cause for forfeiture of the patent. The provisions of the laws as to working were formerly extremely strict in all countries, and are so now in most of the countries, no excuse for non-working being accepted. There is, how-

[1] The British Colonies and dependencies in which working is required are Barbados, Canada, Jamaica, Malta and South Australia.

[2] Law of 1882 of Venezuela, Article 6.

[3] Law of 1896 of Russia, Article 24.

ever, a tendency observable in the more progressive of the foreign countries to enforce the provisions regarding working less stringently. A notable example of this tendency is shown by the law recently adopted in Sweden,[1] in which it is provided that a patent for an invention previously patented in another country shall not be forfeited for non-working in Sweden, provided it continues in force in the country of origin, a most favorable provision for American inventors.

The question of what constitutes a working of the invention sufficient to prevent forfeiture for non-working is a most difficult one to answer satisfactorily. The continued manufacture of the thing covered by the patent on a commercial scale, even though not an extensive scale, is undoubtedly sufficient to satisfy the requirements of the laws of any country. But it often happens that the patentee, particularly if a foreigner, is unable within the period within which the invention must be worked to dispose of the rights to the of the patent to a manufacturer or other person located in the country, who will see to it that the requirements of the law are complied with, and it becomes necessary for him, if he is to keep the patent in force, to work the invention sufficiently to satisfy the requirements of the law. If the invention of the patent is a simple article, the working, consisting in having a number of the articles manufactured in the country and offered for sale to the public, may be a matter of no great expense. If, on the other hand, the invention of the patent is a complicated and costly machine, such working may be a matter of very great expense, and this fact in most countries would undoubtedly be taken into account as excusing non-working, provided it be shown that the patentee had used every effort to work the invention, particularly that he has made efforts to interest manufacturers in the country in the invention and has offered on reasonable terms to license them

[1] Law of May 27, 1898, of Sweden. A proposition to introduce into the International Convention a similar provision is now under consideration in the countries which are members of the Union.

to manufacture the patented invention. The purpose of the requirement of working is to benefit the industries of the country, either by securing the establishment of a new industry in the country or stimulating the growth of industries already there established. A patent for an invention which the manufacturers or the public of the country desire to manufacture or use will not be held valid if the owner of the patent does not either actually work the invention in the country or permit others to do so on reasonable terms.

At the same time it should be said that in most countries the effect of failure to work the invention is not, as in case of failure to pay the annual taxes when due, to render the patent void, but rather to furnish a ground on which, on the application of an interested party, the patent may be annulled or revoked. Except in Russia where the owner of the patent is required to show working by a certificate from a proper officer,[1] and in Canada,[2] where the validity of the patent is under the law conditioned on its being worked, it does not appear that the owner of the patent is required to prove that the invention has been worked unless the annullment or revocation of the patent is asked by some interested party. It therefore happens that even though no efforts have been made to work the invention, the annual taxes will continue to be received and the patent continue to be apparently still in force, the fact that it has ceased to be valid not being brought out until an attempt is made to bring suit for infringement. While the decisions as to what constitutes a sufficient working are numerous and apparently conflicting, it may be said that anything less than an actual working of the invention or an attempt in good faith on the part of the owner of the patent to practice the invention in the country will not, in any country which requires working, be held to be sufficient to satisfy the requirements of the law.

[1] Law of 1896 of Russia, Article 241.

[2] Patent Act of Canada, Article 37.

Sec. 88. Forfeiture for other causes.

Under the laws of Canada,[1] France,[2] Peru,[3] Tunis[4] and Turkey,[5] the importation of articles embodying the invention of the patent manufactured in another country is sufficient to forfeit the patent. The same is true under the law of Switzerland[6] unless the patentee consents to grant licences on reasonable terms to Swiss manufacturers.

Under the law of Denmark[7] removal of the patentee from the country or assignment of the patent to a non-resident, unless a representative residing in the country has been appointed, or the failure of such representative to keep the Patent office informed of his residence is sufficient to cause the forfeiture of the patent. Failure on the part of a non-resident to be continuously represented by some duly authorized person resident in the country whose address is known to the Patent Office is in Brazil,[8] Denmark,[7] Finland,[9] Japan,[10] and Norway[11] ground for the forfeiture of the patent. Such patent is, however, generally allowed a reasonable time specified in the law of the respective country after notice from the Patent Office within which to appoint a representative.

Sec. 89. Expropriation of invention by the State.

In certain countries it is provided by law that the government may, if deemed necessary in the public interest, declare the invention free to the public, making suitable compensation to the patentee, in other words, may secure title to the patent

[1] Law of 1872 of Canada, Article 28.

[2] Law of 1844 of France, Article 32.

[3] Law of 1869 of Peru, Article 15.

[4] Law of 1888 of Tunis, Article 26.

[5] Law of 1879 of Turkey, Article 38.

[6] Law of 1888 of Switzerland, Article 9.

[7] Law of 1894 of Denmark, Article 23.

[8] Law of 1882 of Brazil, Article 5.

[9] Law of 1898 of Finland, Article 20.

[10] Law of 1899 of Japan, Article 38.

[11] Law of 1884 of Norway, Article 25.

for the use of the general public by practically condemnation proceedings. Such countries are: Austria, Bolivia, Brazil, Denmark, Ecuador, Finland, Germany, Japan, Luxemburg, Mexico, Norway, Sweden and Switzerland.

In the other countries which grant patents, while the government may use the invention covered by a patent if deemed necessary or desirable, this can be done only on payment of such compensation as may be agreed on with the patentee or decided by some tribunal to be suitable compensation, the government standing substantantially in the position of any individual except that its use of the invention cannot be enjoined.

Sec. 90. Compulsory licenses.

Under the law of Great Britain the owner of a patent is not compelled to work the invention, and his failure to do so is not ground for forfeiture of his patent. At the same time he cannot under the law refuse to permit others to make use of it if he he does not work it himself, nor can he refuse to permit owners of improvements to make use of the invention of his patent so far as may be necessary in order to use such improvements to their best advantage. The law provides that on a showing that the invention is not worked in Great Britain, or is not so worked as to satisfy the reasonable requirements of the public, the owner of the patent may be compelled by mandamus to grant licenses to others on such terms as may be deemed just by the Board of Trade, and that whether the invention is worked or not, he may be compelled to grant licenses to any persons who show that they are prevented by the owner of the patent from working or using to the best advantage inventions of which they are possessed.[1]

The same law both as regards patents which are not worked and those which though worked are used to prevent other inventions from being worked is found in the following British Colonies and dependencies: Bahama Islands, British

[1] Law of 1883 of Great Britain, Article 22.

New Guinea, Ceylon, India (British), Negri Sembilan, New Zealand, Perak, Queensland, Selangor, Tasmania, Trinidad and Western Australia, and in Mysore, Orange Free State and South African Republic.

Substantially the same provisions are found in the law of Finland.[1]

Under the laws of Hungary[2] and Malta,[3] a patentee who does not work his patent may be compelled to grant licenses.

Under the laws of Austria,[4] Germany,[5] Japan,[6] Luxemburg[7] and Norway[8] the owner of a patent may be compelled to grant licenses to others to use the invention of the patent if deemed necessary for the public interest, whether the owner of the patent works the invention or not.

In Austria,[4] Japan[6] and Portugal,[9] the patentee of an invention which cannot be worked without using the invention of a prior patent, may compel the owner of such prior patent to grant him a license.

Of the countries above mentioned as providing for compelling the grant of licenses, the following require the invention to be worked by the patentee within a specified period after the grant on pain of forfeiture: Austria,[4] Finland,[1] Germany,[5] Hungary,[2] Japan,[6] Luxemburg[7] and Norway.[8]

[1] Law of 1898 of Finland, Article 4.

[2] Law of 1895 of Hungary, Article 20.

[3] Law of 1893 of Malta, Article 5.

[4] Law of 1897 of Austria, Article 21.

[5] Law of 1891 of Germany, Article 11.

[6] Law of 1899 of Japan, Articles 17 and 38.

[7] Law of 1880 of Luxemburg, Article 18.

[8] Law of 1885 of Norway, Article 9.

[9] Rules of 1895 of Portugal, Article 45.

CHAPTER IX.

OF THE ENFORCEMENT OF THE RIGHTS OF THE PATENTEE.

Sec. 91. Civil and criminal procedure against infringers.

In the United States, Great Britain and the British Colonies and dependencies, Belgium,[1] Colombia, Liberia, Mysore, Orange Free State, Peru, South African Republic and Venezuela, the owner of the patent has his remedy against infringers only by suit in the civil courts for injunction and damages.

In the following countries, wilful infringers are not only liable for damages, but may be proceeded against in the criminal courts and are liable to fine or imprisonment: Argentine Republic, Austria, Bolivia, Brazil, Chili, Costa Rica, Denmark, Ecuador, Finland, France, Germany, Guatemala, Hungary, Italy, Japan, Luxemburg, Mexico, Norway, Portugal, Russia, Spain, Sweden, Switzerland, Tunis, Turkey and Uruguay.

Sec. 92. Suit for infringement. When suit may be brought.

Suits for infringement, as a general rule, may be brought only after the delivery of the patent, and damages cannot be collected for infringements committed before the delivery of the patent.

This general rule is subject to exceptions. In Great Britain, and the same is generally true of the British Colonies and dependencies, in which the English system of granting patents is followed, while suit for infringement may not be instituted until the sealing of the patent, it seems that damages may be recovered for infringements committed after the publication of the complete specification.[2]

In Russia suit may not be brought until the actual grant of

[1] Wilful infringers may be punished under the Belgian law by confiscation.

[2] Law of 1883 of Great Britain, Article 15.

the patent, but the certificate of provisional protection granted on the filing of an application in due form gives the applicant the right to warn infringers,[1] and on the grant of the patent the persons so warned are liable for infringements subsequently committed, even though prior to the actual grant of the patent.[2]

In Austria[3] and Hungary[4] suit for infringement may be brought on the publication of the application for opposition, and in Germany[5] infringers are liable for acts committed subsequent to the publication of the application.

It does not clearly appear whether under the law of France infringers are liable for acts committed between the date of application and the actual delivery of the patent.[6] As, however, the interval between the filing and delivery is inconsiderable, the question is not of importance.

Sec. 93. Suit for infringement. Time within which suit must be brought.

Under the law of the United States, damages cannot be recovered for acts of infringement committed more than six years prior to the bringing of suit for damages.[7] In Germany no action for infringement will lie after the expiration of three years from the date on which any one of the alleged infringements was committed.[8]

In Hungary claims for damages for infringement expire within three years from the day on which the party injured became aware of the infringement, or within ten years from the date of the infringing acts, whether such party was aware of such infringement or not.[9]

[1] Law of 1896 of Russia, Article 8.

[2] Law of 1896 of Russia, Article 22.

[3] Law of 1897 of Austria, Article 106.

[4] Law of 1895 of Hungary, Article 49.

[5] Law of 1891 of Germany, Article 23.

[6] Mainié. Brevets d' Invention. See 2680.

[7] Act of March 3, 1897, of the United States, Sec. 6.

[8] Law of 1891 of Germany, Article 38.

[9] Law of 1895 of Hungary, Article 55.

In Denmark infringement cases outlaw in one year after the infringement has come to the knowledge of the patentee, and in any case within three years after the infringing acts.[1]

In Norway action for infringement must be begun within one year from the time the injured party had proof of the infringement, and acts of infringement committed more than two years before the commencement of the suit are outlawed.[2]

Sec. 94. Infringement. Use of the invention on ships or other means of transport not infringement.

In many foreign countries it is expressly provided that the use of a patented invention on a foreign vessel or on a locomotive or other vehicle which is merely temporarily within the country shall not be an infringement. The law of Great Britain provides[3] that use of an invention on a foreign vessel temporarily in British waters, if it is not for or in connection with the manufacture or preparation of anything to be sold in or exported from the country, shall not be an infringement. This is, however, subject to the condition that the country to which such vessel belongs shall not prevent such use of an invention on a British vessel temporarily in its waters.

This law of Great Britain is substantially copied in the laws of many of the British Colonies and dependencies, and may probably be taken to be the law throughout the British possessions. Laws of similar effect are in force also in Austria, Finland, Germany, Hungary, Luxemburg,[4] Norway[5] and Mexico.

Sec. 95. Infringement. Use begun prior to application for patent may be continued without liability for infringement.

In Austria, Denmark, Finland, Germany, Hungary, Luzemburg and Mexico, those who before the date of filing of the

[1] Law of 1894 of Denmark, Article 26.

[2] Law of 1885 of Norway, Article 32.

[3] Law of 1883 of Great Britain, Article 43.

[4] Applies only to inventions used on locomotive engines.

[5] Applies only to inventions used on ships.

application had made use of the invention or had made preparation to do so, cannot be considered infringers and cannot be prevented by the patentee from continuing to make use of the invention though they cannot authorize others to use it.[1]

A somewhat similar provision is found in the law of Canada under which any person who has before the issue of a patent purchased, constructed or acquired the invention of the patent shall have the right to use or sell the specific thing without being liable as an infringer.[2]

Sec. 96. Suit for infringement. Threats of legal proceedings.

Under the law of Great Britain, a person who claims to be the patentee of an invention and threatens legal proceedings against those who manufacture, use, sell or purchase such invention may, unless he actually brings suit for infringement, be enjoined from continuing such threats,[3] and damages may even be recovered by the injured parties if the manufacture, sale or purchase was not in fact an infringement of any legal right of the person making the threats. The same provision is found in the laws of Queensland, Tasmania and Western Australia.

Sec. 97. Construction of the patent. In the United States. Claims.

An applicant for patent in the United States is required by law to not only describe his invention fully, but to "particularly point out and distinctly claim the part, improvement or combination which he claims as his invention or discovery,"[4] and on the meaning given by the courts to the claims, the scope and validity of the patent depends. Whatever of new and patentable invention may be described and shown in the

[1] Law of 1897 of Austria, Art. 9; Law of 1894 of Denmark, Art. 6; Law of 1898 of Finland, Art. 2; Law of 1891 of Germany, Art. 5; Law of 1895 of Hungary, Art. 12; Law of 1880 of Luxemburg, Art. 5; Law of 1890 of Mexico, Art. 9.

[2] Law of 1872 of Canada, Article 48.

[3] Law of 1883 of Great Britain, Article 32.

[4] Revised Statutes of the United States, Sec. 4888.

specification of the patent which is not clearly covered by the claims, is considered to have been dedicated to the public. The specification is necessarily referred to in determining the meaning of the claims, but even where it may be apparent that the patentee considered a part, improvement or combination described, and shown, to be of his invention, unless he has distinctly claimed it, he has under his patent no exclusive right to it. The description and illustration of a new invention involves comparatively little difficulty to persons familiar with the art to which the invention pertains, but the difficulty of drawing claims which shall adequately protect the invention, and shall at the same time so far distinguish between what is new and what is old in the art as to be valid is such as to require the greatest care and the best judgment of skilled and experienced solicitors familiar with the practice of the Patent Office and the courts. It is not too much to say that no legal document needs to be drawn with greater skill than does the claim of a patent. In many instances the exclusive right to valuable inventions has been lost to the inventor through failure to properly claim the invention set forth in the specification.

Sec. 98. Construction of the patent. In Great Britain.

In foreign countries, even in those in which claims are required to be made, the courts look rather to the specification as a whole than to the claim. In Great Britain, prior to the Patents, etc., Act of 1883, a distinct claim was not a necessary part of the complete specification, and while it had long been the practice to insert a claim, what appeared to be the invention would be protected though there were no distinct claim, and those parts which manifestly formed no part of the invention need not be disclaimed.[1] The present law of Great Britain expressly provides that the complete specification must end with a distinct statement of the invention claimed, but this provision is only in the nature of a direction, and failure to comply

[1] Frost. Patent Law and Practice, page 199, and decisions there cited.

with it will not invalidate the patent, provided that what the patentee claims can be gathered from the specification.[1] The claims will be read not as isolated sentences, but with reference to the body of the specification of which they form a part,[2] and the courts will endeavor, if it can fairly and honestly be done, to support the patent, and to adopt a construction of the specification which will give it validity if it can fairly be interpreted so as to achieve this result.[3]

Sec. 99. Construction of the patent. In Germany.

In Germany the courts will, as in Great Britain, look rather to the specification as a whole and the general conditions of the art at the time the invention was made, and will in construing a patent give to claims which to one accustomed to the view of patents taken by United States courts seem to be narrow, such meaning as may be necessary to fully protect the invention to which the patentee is justly entitled and which he intended to protect by his patent.

In Germany, as well as in Great Britain, claims should be few in number and should consist of a definite, concrete statement of what the applicant considers to be his invention, based on a specification in which it is clearly shown what is considered to be novel over what is already known. If it can be ascertained from the patent as a whole what the invention is and if the invention is in fact new, the claim will be given such a construction as to fully protect it, and there is no necessity for the applicant to attempt in a large number of claims to set forth the invention in all its possible phases. The large number of claims commonly found in United States patents are considered by the German patent office to obscure and render unintelligible the real invention. As a general rule, but one or two claims are permitted in a patent in Germany, yet this small number of claims is found under the practice of

[1] Frost. Patent Law and Practice, page 200, and decisions there cited.

[2] Same, page 203.

[3] Same, page 219.

the German courts to protect the invention quite as adequately as the large number of claims of United States patents.

Sec. 100. Construction of the patent. In France.

Under the law of France specific claims are not required to be made,[1] and if not made, it is necessary for the courts to determine from the specification as a whole what the essential features of the invention are. The construction given to the specification is such as to protect as fully as possible the invention intended to be covered by the patent.[2] The same is true of foreign countries generally, in all of which the courts seek to determine from the patent as a whole, rather than from the precise wording of the claim, what is the invention for which the patentee is entitled to protection.

Sec. 101. Validity of the patent. Presumption in favor of validity. Defenses.

In most foreign countries the presumption in favor of the validity of a patent is in practice much stronger than in the United States, even in countries under the laws of which, as in France,[3] patents are granted without preliminary examination. In countries in which, as in Germany, the patent is granted only after preliminary examination as to novelty and patentability, the action of the Patent Office in granting the patent is taken as practically conclusive of its validity. If facts exist which overcome the presumption of validity they must be shown without delay after the issuance of the patent, otherwise even such facts will not be considered. In Russia the validity of a patent cannot be contested after the expiration of two years from thedate of its grant.[4] In Germany a patent cannot be contested on the ground of lack of novelty

[1] Mainié. Brevets d' Invention, Sec. 808.

[2] Same. Sec. 796 to 812.

[3] Same. Sec. 1576.

[4] Law of 1896 of Russia, Article 26.

or patentability after the expiration of five years from the date of publication of the grant.[1]

In Great Britain all grounds on which a patent could be annulled are available as defenses on suit for infringement.[2] The same is true in France, though even after suit is brought action for annulment may be brought, and the suit for infringement may be suspended pending the determination of the action for annulment.[3] In Germany the validity of the patent may be contested only by action for annulment, and the person sued for infringement must, if the validity of the patent is to be called in question, at once bring an action for annulment before the Patent Office, and on such action being brought the suit for infiringement is suspended pending the determination of the action for annulment.[4] The same appears to be the practice in Austria, Hungary and Japan.

[1] Law of 1891 of Germany, Article 28.

[2] Law of 1883 of Great Britain, Article 26 (3).

[3] Mainié. Brevets d' Invention, Chap. XLV., Sec. 1.

[4] Hopkins, Handbook of German Patent Law, page 68. The number of patents annulled and revoked in Germany from 1877 to 1897 was 414. The number of patents granted during the same period was 96,190, of which 19,334 were in force in 1897.

CHAPTER X.

OF SPECIAL PROVISIONS OF FOREIGN PATENT LAWS.

Sec. 102. Applicants must place themselves within the jurisdiction of the courts. Election of domicile. Representative.

In nearly all of the important foreign countries a non-resident applicant is required, as a condition precedent to securing a patent, to put himself, so far as his rights under the patent are concerned, within the jurisdiction of the courts of the country in which he seeks a patent. This requirement appears in the laws of certain foreign countries in two forms: first, as a requirement that the applicant elect domicile at some particular place in the country, this requirement being usually made applicable to resident as well as non-resident applicants, and, second, as a requirement that the non-resident applicant appoint a representative located at some particular place in the country, on whom any notice of proceedings in which the patentee as as patentee may be concerned, may be served with the same legal effect as if served on the patentee personally.

Under the laws of the following countries the applicant for patent is required to elect domicile at some particular place in the country: Belgium,[1] Canada,[2] France,[3] Luxemburg,[4] Tunis[5] and Turkey.[6]

Under the laws of the following countries non-resident applicants are required to appoint a representative residing

[1] Law of 1854 of Belgium, Article 7.

[2] Law of 1872 of Canada, Article 12.

[3] Law of 1844 of France, Article 5.

[4] Law of 1880 of Luxemburg, Article 9.

[5] Law of 1888 of Tunis, Article 5.

[6] Law of 1879 of Turkey, Article 5.

in the country before a patent can be granted, and must continue to be represented by a resident throughout the life of the patent: Austria, Brazil, Denmark, Finland, Germany, Hungary, Japan, Luxemburg, Norway, Portugal, Russia, Sweden, and Switzerland.

Under the law of Denmark,[1] Finland,[2] Japan[3] and Norway,[4] if the representative appointed prior to the grant of the patent ceases to represent the patentee and the patentee fails after notice from the Patent Office to appoint a new representative, the patent becomes forfeited. Under the law of Brazil the patent lapses if the representative is not appointed.[5] Under the law of Germany, the place where the Patent Office is located is taken as the place of jurisdiction, unless the representative resides elsewhere.[6] Under the law of Hungary[7] and Sweden,[8] if the representative ceases to act in that capacity, or cannot be found, and a new representative is not appointed, the Patent Office or the courts will appoint a curator to represent the owner of the patent. Under the law of Luxemburg, the representative first appointed is presumed to continue in that capacity until notice of change is given to the Patent Office, and notice given at his last known domicile is sufficient.[9]

Sec. 103. Provisions respecting attorneys.

Under the law of Great Britain, no person is allowed to practice before the Patent Office or describe himself as a patent agent until he is regularly registered as such.[10] The same

[1] Law of 1894 of Denmark, Article 23.

[2] Law of 1898 of Finland, Article 20.

[3] Law of 1899 of Japan, Article 38.

[4] Law of 1884 of Norway, Article 25.

[5] Law of 1882 of Brazil, Article 5.

[6] Law of 1891 of Germany, Article 12.

[7] Law of 1895 of Hungary, Article 15.

[8] Law of 1884 of Sweden, Article 13.

[9] Law of 1880 of Luxemburg, Article 13.

[10] Law of 1888 of Great Britain, Sec. 1.

provision is found in the law of Queensland,[1] and a somewhat similar provision regulating the practice of patent agents is found in the law of Austria,[2] South Australia[3] and Western Australia,[4] and in the Rules of Practice of the United States Patent Office.

Sec. 104. Requirements as to marking patented article.

Articles made under a patent are required under the laws of Canada, Mexico and Switzerland to be marked *patented.*

Under the law of Canada, the word *patented*, together with the year in which the patent was granted, must be stamped or engraved on the article.[5] Failure to do so subjects the patentee to a heavy fine or imprisonment.

Under the laws of the United States[6] and Japan,[7] articles made under the patent must be marked with the word *patented.* The United States law requires the day and year the patent was granted to be also marked on the article. Failure to so mark patented articles deprives the patentee of the right to sue for damages for infringement unless he can show knowledge of his patent on the part of the infringer.

Under the law of Mexico, patented articles are required to bear a mark indicating that they are patented, and the date and number of the patent. The law does not state the penalty for failure to so mark goods.[8]

Under the law of Switzerland patented articles must be conspicuously marked with the Federal Cross and the number of the patent.[9] No action for infringement can be brought if the owner of the patent fails to so mark the goods made by him.

[1] Law of 1890 of Queensland, Article 5.

[2] Law of 1897 of Austria, Article 43.

[3] Law of 1877 of South Australia, Article 58.

[4] Law of 1888 of Western Australia, Article 38.

[5] Law of 1875 of Canada, Sec. 3.

[6] Revised Statutes of the United States, Sec. 4900.

[7] Law of 1899 of Japan, Article 49.

[8] Law of 1890 of Mexico, Article 30.

[9] Law of 1888 of Switzerland, Article 29.

No other countries require patented articles to be marked. It is, however, very generally provided that any one who falsely marks goods as patented shall be punished by fine or imprisonment. Under the law of France, if articles are marked patented, they must also bear the words "without guaranty of the government" (Sans Garantie du Gouvernement).[1] The same provision is found in the law of Tunis[2] and Turkey.[3].

Sec. 105. Provisions respecting the publication of patents.

In nearly all countries the specifications of all patents are, immediately on their grant, open to the inspection of the public, and copies may be obtained by any one. In Bolivia, Chili, Colombia and Ecuador, however, the specification is sealed up and preserved in secrecy until the expiration or forfeiture of the patent, when it is required to be published. In a few of the more important countries the specifications of patents relating to war material and the like may, if deemed advisable in the interest of the government, be preserved in secret. With the exception of such inventions, the specifications of patents granted are in the more important countries printed and published either in full or in abstract. The specifications and drawings are separately printed in full for sale to the public either, as in the United States, immediately on the grant of the patent, or within a short time thereafter, in the following countries: Austria,[4] Denmark, Germany, Great Britain, Hungary, Japan, Norway, Russia, Sweden and Switzerland.

In France, specifications of patents are printed after the payment of the second annual tax, those only being so published on which such tax has been paid. The volumes containing the specifications and drawings are published quar-

[1] Law of 1844 of France, Article 33.

[2] Law of 1888 of Tunis, Article 27.

[3] Law of 1879 of Turkey, Article 39.

[4] Under the law of 1897, which went into effect January 1899.

terly.[1] The specifications of patents granted in Italy are published either in full or in abstract in volumes issued quarterly.

Specifications of patents granted in New Zealand, Queensland and Victoria are published in full in yearly volumes, though the publication of such volumes does not appear to have been kept up in these countries.

Specifications of patents granted in Finland are published in an official journal, generally without the drawings. In Brazil and Mexico the laws require the publication of the specifications of patents within a short time after the grant, in Brazil immediately after the expiration of thirty days after the grant. The law of Mexico also requires the publication in an annual volume of clear and exact descriptions of the invention of patents granted and copies of the drawings. Under the law of Argentine Republic, descriptions and drawings of patents granted during the year must be published in an annual volume. Such a volume is required to be published once in two years under the law of Uraguay.

Abstracts of the specifications of patents granted in Belgium, Canada, Portugal and New South Wales are published, in Belgium in quarterly volumes, in Canada monthly, in Portugal once in two weeks, and in New South Wales in annual volumes.

Not all of the countries above mentioned appear to publish the specifications of patents as required by their laws. In a number of them patents are published only by title. In countries other than those named, only the titles of patents granted, are published, and in many no information as to patents granted is obtainable except the number granted. Even this information is not obtainable from all of the countries which grant patents. (See § 230.)

The following table shows the number of patents reported to the United States Patent Office as issued by foreign countries up to December 31, 1898 (report of the Commissioner of Patents for the year 1898):

[1] The publication of these volumes is at present suspended, none having been published for any year since 1893. Propriété Industrielle 1899, p. 64.

Countries.	Total issue.	Record in library.				
		Number only.	Copies.			
			Full.	Abstract.	Title.	Total.
Austria[a]	17,257	....	....	.....	17,257	17,257
Austria-Hungary[a]	82,933	....	....	.....	82,933	82,933
Bahama Islands	2	2	....	.....	....	....
Barbados	106	....	....	.....	106	106
Belgium	146,772	....	....	125,509	21,263	146,772
Bolivia	107	107	....	.....	....	....
Brazil	3,135	3,135	....	.....	....	....
British Guiana	126	126	....	.....	....	....
British Honduras	20	....	....	.....	20	20
Canada	65,489	....	....	65,489	....	65,489
Ceylon	467	302	....	.....	165	165
Chili	295	295	....	.....	....	....
Denmark	9,326	2,002	1,975	.....	5,349	7,324
Fiji Islands	22	....	....	.....	22	22
Finland	870	....	330	.....	540	870
France	297,166	....	247,758	.....	49,408	297,166
Germany	118,694	17,004	101,690	.....	....	101,690
Great Britain	265,870	....	265,870	.....	....	265,870
Guatemala	57	57	....	.....	....	....
Hawaii	148	....	....	.....	148	148
Hongkong	53	....	....	.....	53	53
Hungary[a]	8,795	1,207	7,588	.....	....	7,588
India	5,635	2,510	....	.....	3,125	3,125
Italy and Sardinia	46,970	....	46,970	.....	..	46,970
Jamaica	149	....	....	.....	149	149
Japan	3,272	....	3,272	.....	....	3,272
Leeward Islands	15	....	...	.....	15	15
Liberia	2	2	....	.....	....	....
Luxemburg	3,452	....	....	.....	3,452	3,452
Malta	27	....	....	.....	27	27
Mauritius	327	165	....	.....	162	162
Mexico	2,216	....	....	.....	2,216	2,216
Netherlands	4,535	4,535	....	.....	....	....
Newfoundland	245	....	....	.....	245	245
New South Wales	8,076	....	....	5,608	2,468	8,076
New Zealand	6,131	....	363	.....	5,768	6,131
Norway	8,486	984	7,502	.....	....	7,502
Portugal	2,712	1,950	762	.....	....	762
Queensland	3,870	....	570	.....	3,300	3,870
Russia	7,988	1,247	6,741	.....	....	6,741
St. Helena	4	4	....	.....	....	....
South African Republic	1,131	....	....	.....	1,131	1,131
South Australia[b]	4,594	3,669	925	.....	....	925
Spain	20,621	4,878	....	.....	15,743	15,743
Straits Settlements	78	....	...	.....	78	78
Sweden	12,677	3,200	9,477	.....	....	9,477
Switzerland	16,884	....	16,884	.....	....	16,884
Tasmania	1,639	1,021	...	.....	618	618
Trinidad	134	....	....	.....	134	134
Tunis	229	229	....	.....	....	....
Turkey	662	662	....	.....	....	....
Venezuela	120	120	....	.....	....	....
Victoria	9,582	2,449	5,094	.....	2,039	7,133
Western Australia	1,617	....	....	.....	1,617	1,617
Total	1,191,750	51,822	723,771	196,606	219,551	1,139,928

[a] The joint patent law of Austria-Hungary came to an end on July 7, 1895, the date of the new Hungarian patent law, which was not put in operation till March 1, 1896.

[b] Corrections made from reports for 1886–1897, inclusive, lately received.

Sec. 106. Mode of reckoning periods of delay and other terms fixed by law.

Under the present practice in the United States Patent Office, terms fixed by law, such, for instance, as the period of six months after allowance within which the final fee on an application may be validly paid, begins with the day of allowance or other action from which the period is reckoned and runs from date to date, months being taken as calendar months. On an application allowed January 15th, the period within which the final fee must be paid expires July 15th.[1] If, however, the term ends on a legal holiday, the fee must be paid on the day before and cannot be validly paid on the day after such holiday.

In most countries, periods fixed by law, such, for instance, as the delay of priority under the International Convention and the like, are reckoned as in the United States from the day on which the application was filed or other action taken from which the term fixed by law begins to run. Such countries are: France, Great Britain, Italy, Norway, Spain and Tunis. In Brazil and Portugal the term begins to run from the day and hour. In Belgium, Denmark, Germany and Sweden, the term begins to run from the day after the filing of the application or other action.

The term is, as in the United States, reckoned from date to date in calendar months in Belgium, Denmark, Germany, Great Britain, Italy, Norway, Portugal, Spain, Sweden and Tunis. In France, the term expires the day before the day of the month corresponding to the date on which the term began to run. For instance, a term of six months from January 15th would expire on July 14th.

A term ending on a holiday does not extend to the following day in Belgium, France and Italy. In Brazil, Denmark, Great Britain, Norway, Portugal, Spain, Sweden and Tunis, if the last day of the term would end on a holiday, it is extended to include the next day.[2]

[1] Ex parte Brown, 63 O. G., 759.

[2] Propriété Industrielle, 1897, page 155; 1898, pages 49 and 52.

CHAPTER XI.

COMPARATIVE TABULAR STATEMENT OF THE ESSENTIAL FEATURES OF THE PATENT LAWS OF THE PRINCIPAL COUNTRIES.

Sec. 107. The statement of essential features. Laws which are not included.

The statement of the essential features of the patent laws of the principal countries of the world which follows is based primarily on a similar tabular statement which appeared in the *Propriété Industrielle* of August 31, 1897, carefully revised and brought up to date. To the statement as presented in that journal have been added statements of the essential features of the laws of Canada, Japan, Luxemburg and Mexico, so that the statement now gives the essential features of all countries in which, up to 1899, more than one thousand patents had been granted except Netherlands, which since 1869 has had no patent law, South African Republic, the law of which is based on and follows in essential features the law of Great Britain, and certain British Colonies, the laws of which follow closely the laws of Great Britain, in some instances being substantially copies of the Patents, &c. Act of 1883 of Great Britain, with more or less of the later amendments to that Act. These colonies are India (British), New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria and Western Australia.

Sec. 108. The statement of essential features. Purpose of the statement.

To the tabular statement as it appeared in the *Propriété Industrielle* is prefaced an explanatory note, which translated is as follows:

EXPLANATORY NOTE.

"The International Bureau frequently receives letters from inventors asking it to indicate for a whole series of countries —often even for all countries—the formalities and conditions which must be complied with in filing an application for a patent. It is impossible to answer such requests in a satisfactory manner. Without counting that it would be difficult to reproduce every time the whole of the legislative and executive regulations in force in the countries in question, it would be necessary, further, to explain the administrative and judicial practice that has grown up in each of the countries. Moreover, the inventor should possess the technical knowledge necessary for describing his invention correctly and for preparing the necessary drawings, and he ought to know different languages sufficiently well to draw up the documents required. Even then he would be prevented from himself filing his application for a patent abroad by reason of the provision found in a large number of laws which require persons residing abroad to apply for their patents through a representative residing in the country.

"While instructing its correspondents to the best of its ability, the International Bureau has often thought that it ought to call their attention to the dangers to which they expose themselves in drawing up their applications themselves. It places itself at the same point of view as the Patent Office of the United States, which says in Article 17 of its Rules:

"The applicant is advised, unless familiar with such matters, to employ a competent attorney, as the value of patents depends largely upon the skillful preparation of the specification and claims.

"The table published hereinafter has therefore not for its purpose to put inventors in a position to themselves prepare their applications for patents. It is meant simply to let them form an exact idea of the various laws and their requirements. Moreover, the indications of this table, detailed as they are, do not always literally reproduce the requirements of the laws and regulations relating to the delivery of patents. It would

be well, therefore, to refer to the original texts. The complete legislation of all countries is found in the *Recueil de la Législation et des Traités Concernant la Propriété Industrielle*, published by the International Bureau."

Sec. 109. Useful Models (Gebrauchmuster) law of Germany.

The statement of the essential features of the Useful models (Gebrauchsmuster) law of June 1, 1891, of Germany, (57 O. G., 414), given in the tabular statement as published in the *Propriété Industrielle* is omitted from the tabular statement here given as not of sufficient importance to be classed with patent laws because of the very restricted class of inventions which may be protected under it, because of the very brief term of the protection afforded by it and because of the fact that American inventors cannot in their own names secure protection for their inventions under it.

The inventions intended to be protected under this law are such as, while not deemed of sufficient importance to be patentable under the patent laws of Germany, are patentable under the laws of most other countries. Novelty is as essential to protection under this law as under the German patent law, and no invention which has been described in a printed publication in any country previous to the application for protection under this law can be protected under it. The inventions which may be protected under this law are those which consist in the novel form or novel arrangement of parts by which a tool or implement or the like, not a machine in the sense in which that term is commonly understood, is made more useful for its intended purpose or is adapted for a new purpose. The novelty must be novelty of shape or arrangement rather than novelty in the combination of mechanically co-operating elements. Processes, methods, compounds and compositions and inventions which depend for their novelty on the material used cannot be protected under this law. As the law provides for registration of all applications which are in proper form without preliminary

examination, it cannot, however, be determined from Patent Office decisions what is the precise line between inventions which are patentable and those which if protected at all must be protected under this law.

The term of protection under this law is but three years, renewable for a second three years, too short a term to be of material value except in case of an invention which can be put upon the market at once.

Only residents of Germany and of such other countries as afford similar protection for the same class of inventions to German inventors are entitled to the protection afforded by this law. The right is extended to foreigners only after notice has been published in the *Reichs-Gesetzblatt* that reciprocity in this matter has been established with the country of which they are residents. Such notice has been given only with reference to Austria-Hungary, Italy and Switzerland.[1] An application filed by a resident of any country other than those above named, though registered, gives no protection.

[1] A registration under this law by a foreigner who was a subject of a country (Belgium) other than those named was held invalid.—Propriété Industrielle, 1894, page 126.

COUNTRY.	WHO MAY OBTAIN A PATENT.	SUBJECT-MATTER.	NATURE AND DURATION OF THE PATENT-TAXES.	APPLICATION—FORMALITIES AND DOCUMENTS.	PRELIMINARY EXAMINATION.	REQUIREMENTS AS TO WORKING, ETC.
Sec. 110. **AUSTRIA.** (Not a member of the International Union.) (Law of January 11, 1897.) Austria-Hungary signified its adhesion to the International Convention in 1897, subject to the approval of parliament.	The author of the invention or his representative has sole right to a patent. The first applicant is considered as author of the invention until the contrary is proved. Persons not residing in Austria must appoint a representative residing in that country.	New inventions susceptible of industrial application. NOT PATENTABLE. First. Inventions whose object or use is contrary to the laws, immoral or injurious to health, or that are obviously to deceive the public. Second. Scientific theories or principles as such. Third. Inventions whose subject-matter is reserved as a State monopoly. Fourth. Inventions of—(*a*) Food products and objects of consumption (Genussmittel) for the human race; (*b*) Medicines and disinfectants; (*c*) Products obtained by chemical processes. But inventions mentioned under *a* to *c*, if they relate to a particular technical process, may be patentable. The effect of a patent for a process extends to the products produced by such process. NOT PATENTABLE. An invention is not considered new if before the date of the filing of the application for a patent it had already—First, been described in a printed publication in such manner as to render possible its use by those skilled in the art; second, been used, put on exhibition or presented in the country in a sufficiently public manner to render possible its use by those skilled in the art; third, been previously patented in Austria. It may be conceded to foreign States that patent specifications officially published by them shall not have the effect of printed publications until six months from the date of publication.	Two kinds of patents: First. Patents of invention. Duration, fifteen years, to start from the date on which the application for a patent was published in the *Patent Journal*. Second. "Patents of addition." Same duration as the principal patent to which they refer. Granted only to owner of principal patent. Temporary protection may be given to inventions shown at Exhibitions in the country. Duration of such protection is from the day of admission to the Exhibition until three months after its close. Owners of patents granted under the old law may be granted patents under the present law for the remainder of their terms. Applications for such patents are subject to preliminary examination. Patents which cannot be exploited without entire or partial utilization of an invention previously patented, are designated as dependent patents. Patents of invention, filing fee, 10 florins. Annual taxes: First year, 20 florins; second year, 25 florins; third year, 30 florins; fourth year, 40 florins; fifth year, 50 florins; sixth year, 60 florins; seventh year, 80 florins; eighth year, 100 florins; ninth year, 120 florins; tenth year, 140 florins; eleventh year, 180 florins; twelfth year, 220 florins; thirteenth year, 260 florins; fourteenth year, 300 florins; fifteenth year, 340 florins. "Patents of addition," 25 florins besides the filing fee. Florin = $0.40.	The application must be addressed to the Patent Office, and must contain (1) the full name, profession and residence of the applicant, and, if filed by a representative, the name, profession and residence of such representative; (2) a request for the grant of the patent; (3) the title of the invention; (4) a statement of the number of years for which the applicant desires to pay the annuities before the grant of the patent. The application must be accompanied by the application fee, or certificate showing that it has been paid, a power of attorney, if the application is filed through a representative, and a specification in duplicate and signed by the applicant or his representative, clearly, distinctly and fully describing the invention in such manner that competent persons may use it, and precisely and distinctly pointing out in one or more claims at the end of the specification what is new, and therefore forms the subject-matter of the patent. The specification must be accompanied by drawings in duplicate, one on bristol-board in deep black lines without color or wash and the other on tracing cloth. The size of the sheets must be 33 or 34 centimeters in height by 21, 42 or 63 centimeters wide, with a marginal line 2 centimeters from the edge surrounding the drawings. A clear space of 3 centimeters must be left at the top below the marginal line. All papers must be written in black non-copying ink on sheets 33 or 34 centimeters high by 21 wide, with a margin of 3 or 4 centimeters on the left. The drawings must be signed at the lower right-hand corner by the applicant or his attorney. If the invention relates to a process of producing dyes, dyed samples of wool, silk or cotton should be furnished. Otherwise models or specimens are not usually required.	First. Preliminary examination bearing on the novelty and patentability of the invention. Second. Publication of the application in the *Patent Journal*, with call for opposition. Time allowed for opposition, two months. In case of rejection of application or in case of allowance of a contested application, the interested party may appeal, within a month, to the Patent Office, Division of Appeals. Specifications and drawings are required to be published by the Patent Office.	The patented invention must be commercially produced in Austria at the latest within three years from the date of publishing the grant in the *Patent Journal*, and working must not be discontinued for more than two years; but the forfeiture of a patent cannot take place unless preceded by an official summons and warning of forfeiture, unless adequately worked within a stated period. If demanded by public interest the patentee may be required to grant licenses to others to use the invention, compensation therefor being determined by the Government. The invention may be appropriated by the State on payment of suitable indemnity.
Sec. 111. **BELGIUM.** (Member of the International Union.) (Law of May 24, 1854; amended March 27, 1857, and July 5, 1884.)	The patent is granted to the inventor or his legal representatives. Patents of importation are granted only to the inventor to whom the foreign patent was granted. The first applicant is entitled to priority. Priority is accorded to applications filed under the International Convention. The applicant must elect domicile in Belgium.	Every discovery or improvement susceptible of being exploited as an article of industry or commerce. NOT PATENTABLE. Inventions previously patented in Belgium or abroad, except those patented abroad which are applied for by the inventor to whom the foreign patent was granted or his assignee. Inventions patented or in use by others in Belgium before the date of application. Inventions described in a printed publication in any country, unless in case of inventions patented abroad, such publication was the result of legal requirement.	Three kinds of patents: First. Patents of invention. Term, twenty years from the date of filing of the application. Second. "Patents of importation." Duration limited always by that of the patent for the same invention previously granted abroad for the longest term, but in no case to exceed twenty years. Third. "Patents of improvement." Granted to patentee of principal patent only. Expire with the principal patent to which they relate. First annuity, 10 francs; second annuity, 20 francs; and so on, with an increase of 10 francs for each year. No fee is required for "patents of improvement" granted to the grantee of the principal patent. Franc = $0.193.	The applicant must file, at the office of one of the provincial governments or at the office of a district commissary, an application accompanied by the following, under sealed envelope: First. The description of the invention. Second. The drawings, models or specimens necessary for understanding the description. Third. A duplicate, suitably certified to conform with the original of the description and the drawings. Fourth. A memorandum of the documents filed. The above must all be dated and signed. There must be annexed to this deposit the receipt for the first annuity of 10 francs. The application must be in the French, Flemish or German language. If not in the French language, it must be accompanied by a translation in French if the applicant is not domiciled in Belgium, must indicate the name, given names, profession, and residence, real or elected, of the inventor in Belgium, and give an exact and concise title of the invention. The description must fully disclose the invention and conclude with definite claims. The drawings, in duplicate on tracing-cloth, must be in ink and on the metric scale, and indicate by a different shade the characteristic parts of the invention. All the parts of the application, except the drawings, must be signed by the applicant or his representative, whose power of attorney must be filed. The applicant need file specimens only when they are necessary for understanding the description.	The patents are granted without preliminary examination at the risk and peril of the applicants, and without guarantee of the reality, novelty or merit of the invention or of the correctness of the description, and without prejudice to the rights of third parties. Specifications of patents are required to be published in abstract within three months after the grant.	The patented invention must be worked in Belgium withina year from beginning of working elsewhere, and working must not be discontinued for more than one year.

COUNTRY.	WHO MAY OBTAIN A PATENT.	SUBJECT-MATTER.	NATURE AND DURATION OF THE PATENT-TAXES.	APPLICATION—FORMALITIES AND DOCUMENTS.	PRELIMINARY EXAMINATION.	REQUIREMENTS AS TO WORKING, ETC.
Sec. 114. **DENMARK.** (Member of the International Union.) (Law of April 13, 1894.)	The patent can be obtained only by the inventor or his assignee. In case of more than one application, the preference is given to the first applicant. Priority is accorded to applications filed under the International Convention. Every applicant for a patent not a resident of Denmark must appoint a resident representative.	Inventions capable of being utilized in industry or capable of industrial exploitation. NOT PATENTABLE. First, inventions devoid, as such, of any importance; second, those whose exploitation would be contrary to the laws, to morals, or to public order; third, inventions which at the time of the application were already described in a printed publication in any country or had already been used in public in Denmark sufficiently to be capable of being carried out by an expert in the art; fourth, inventions relating to medicines, food compounds and beverages, and those bearing on processes for manufacturing food. Exhibition of an invention at an International Exposition will not invalidate a patent applied for within six months from the date of the first exhibition of the invention.	Two kinds of patents: First. Patents of invention. Duration, fifteen years, dating from the date of issue. Second. "Patents of addition," expiring with the principal patent. Granted to patentee of principal patent only. Patents for improvements on inventions previously patented are expressly designated as dependent patents. Tax for filing, 20 crowns. Fee for issuing the patent, 10 crowns. Amount of annual taxes: The first three years each 25 crowns; the following three, each 50 crowns; the following three, each 100 crowns; the following three, each 200 crowns; the last three, each 300 crowns. "Patents of addition" pay only the filing and issue fees. Crown = $0.268.	First. Application for a patent, addressed to the Patent Commission at Copenhagen, in duplicate. Second. A description of the invention, in duplicate. Third. When it is necessary for understanding the description, a drawing, in duplicate, and, according to circumstances, a model, sample, etc. Fourth. When the applicant is not a resident of Denmark, the appointment of a general representative residing in that country, accompanied by the acceptance of such appointment by the representative. The application, on stamped paper, must indicate the name, profession, and the residence of the applicant, as well as the title of the invention. It must indicate the name of the inventor, and, if it is filed by another, contain proof of the assignment. The description must be sufficiently complete to permit the invention to be carried out. It must indicate exactly what constitutes the invention (claims). The application and the description must be on paper of official size. One of the copies of the drawing must be on white card-board of thirty-three centimeters in height by twenty-one, forty-two or sixty-three in width. All the figures and writings of the drawing must be executed in india-ink, in very black and clear lines, without colors, within a line traced at two centimeters from the edge, a clear space of three centimeters being left at the top. The signature must be placed in the lower right-hand corner. The second copy must be a tracing on muslin. All documents must be in Danish. Models are not required except when necessary for understanding the invention.	Preliminary examination as to formalities prescribed and as to the novelty and patentability of the invention. Publication of the application, with call for opposition. Time allowed for opposition, eight weeks. In case of rejection the applicant may appeal to the Patent Commission itself, afterward to a special commission to be appointed by the Minister of the Interior. Specifications of patents are published in full in separate copies.	The patented invention must be worked in Denmark within three years from date of patent, and working must not be discontinued for more than one year.
Sec. 115. **FRANCE.** (Member of the International Union.) (Law of July 5, 1844; amended May 23, 1856, and May 23, 1868.)	Any person who makes application therefor may obtain a patent for any new discovery or invention in any class of industry. The first applicant is entitled to priority. Priority is accorded to applications filed under the International Convention. Applicants must elect domicile in France.	The invention of new industrial products. The invention of new means or the new application of known means for obtaining an industrial result or product. NOT PATENTABLE. First. Pharmaceutical compositions or remedies of all kinds. Second. Plans and combinations of credit or finance. No discovery, invention or application which, in France or abroad, and previous to the date of the filing of the application, has received sufficient publicity to enable it to be carried out will be considered new, except in case of applications made in compliance with the terms of the International Convention. Patents for improvements on inventions previously patented can be granted during the first year of the principal patent only to the patentee.	Two kinds of patents: First. Patents of invention. Duration, five, ten or fifteen years, to start from the filing of the application. Second. Certificates of addition. Expire with the principal patent to which they refer. Granted only to owner of principal patent. The duration of patents granted for inventions already patented abroad cannot exceed that of such patents granted abroad. Taxes: First, patents of invention, 100 francs a year; second, certificates of addition, single tax of 20 francs. Franc = $0.193.	The applicant for the patent must file, under seal, at the office of the Secretary of the Prefecture in the Department in which he resides, or in any other Department which he elects as domicile: First. His application to the Minister of Commerce, Industry, Posts and Telegraphs. Second. A description of the discovery or invention. Third. The drawings or specimens necessary for understanding the description. Fourth. A memorandum of the documents filed. The application must be limited to a single principal subject, including the details which it comprises and the uses to which it may be applied. It must state the term of the patent desired and indicate a title, closing with a summary and precise designation of the subject of the invention. The description must be written in French. The denominations of weights and measures must be in the decimal system. The drawings must be line drawings in good black ink, according to the metric scale. They need not be signed. A duplicate of the description and the drawings must be filed with the application. All the documents must be signed by the applicant or his representative, whose power of attorney must accompany the application. The application will be received only on the production of a receipt for the payment of the first annuity of 100 francs, at Paris, at the office of the Central Receiver of Finances of the Seine or in the Departments at the office of the receivers of finance. A certificate of the filing is sent to the applicant on receipt of the price of the stamp. The applicant may file a model if he thinks it necessary to the understanding of the invention.	When the application has been regularly prepared, the patent is issued, without preliminary examination, at the risk and peril of the applicant, without guarantee either of the reality, the novelty or the merit of the invention, or of the fidelity or exactness of the description. Specifications of all patents on which the second annuity has been paid are published usually in full in quarterly volumes.	The patented invention must be worked in France within two years from grant of patent, and working must not be discontinued for more than two years. In any reference to a patent the words, "Without guarantee of Government" (Sans Garantie du Gouvernment), must be added. Patented articles manufactured abroad cannot be imported into France without causing the forfeiture of the patent. This does not apply in case of patents granted under the International Convention.

COUNTRY.	WHO MAY OBTAIN A PATENT.	SUBJECT-MATTER.	NATURE AND DURATION OF THE PATENT-TAXES.	APPLICATION—FORMALITIES AND DOCUMENTS.	PRELIMINARY EXAMINATION.	REQUIREMENTS AS TO WORKING, ETC.
Sec. 112. **BRAZIL.** (Member of the International Union.) (Law of October 14, 1882.)	The patent may be issued to the inventor or his assignee, but must be applied for by the inventor. In case of conflicting applications priority is determined by agreement of the parties or by court proceedings. Priority is accorded to applications filed under the International Convention, and to all foreign patentees who file applications within seven months from the date of filing of the application on which the foreign patent was granted. Non-resident applicants must appoint an accredited agent resident in Brazil.	The inventions of new industrial products; of new means or of the new application of known means for obtaining an industrial result; the improvement of an invention already patented, if it renders easier the manufacture of the product or the use of the patented invention or increases its utility. NOT PATENTABLE. Inventions, first, contrary to law and morality; second, dangerous to public security; third, injurious to public health; fourth, not producing a practical result. Inventions will be not considered new which have been employed or practiced, in Brazil or abroad, previous to the application for the patent, or described or published in any country in such a way as to enable them to be put in practice. Patents for improvements on previously patented inventions can be granted during the first year of the patent only to the patentee.	Three kinds of patents: First. Patents of invention. Duration, fifteen years. In case of an invention previously patented abroad, the patent will have the same duration as the original patent, without, however, exceeding fifteen years. Second. "Certificates of improvement." Expire with the principal patent to which they refer. Granted to patentee of principal patent only. Third. Provisional patents, for inventors who before applying for a definite patent wish to experiment on their inventions in public or exhibit them at an official exposition or an officially recognized exposition. The term of protection shall not exceed three years. Taxes: Patents of invention, first year, 20 dollars; second year, 30 dollars, and so on, with an annual increase of 10 dollars; "Certificates of improvement," single tax corresponding to the annuity to fall due.	Documents to be deposited with the Section of the Public Archives: First. Application for patent stating the name, nationality, profession, domicile, or temporary residence of the applicant, and the nature of the invention, signed by the applicant or his agent. Second. In duplicate, specification of the invention, under dated and sealed envelope, describing the invention, its object and method of use, with the drawings, models, and specimens necessary for understanding the invention. The specification must be sufficiently clear for a competent person to be able to practice the invention. It must end by specifying with clearness and precision the characteristic feature of the invention. The indications of weights and measures must be given according to the metric system, those relating to temperature according to the centigrade thermometer, those relating to density according to specific gravity. The drawings must be in duplicate on thick white paper not doubled or pieced, in permanent black ink. The sheets must be 33 centimeters high by 21, 42 or 63 centimeters wide, with a rectangular frame traced in double lines and leaving a margin of two centimeters on the outside. The serial number of the sheets and the signature of the inventor must be within the marginal lines. When it is a question of an improvement, the drawings will indicate by means of an ink of the same color, but by different lines—broken or dotted lines—the modifications added to the principal invention. Third. A power of attorney, duly legalized, if the application is not filed by the inventor himself. Fourth. The original patent or an official copy if it is a question of the confirmation of a foreign patent. Fifth. The original patent if it is a question of an improvement made by the patentee on his own invention. Sixth. An attestation relative to the principal patent if it is a question of the improvement of an invention of a third party. Seventh. A memorandum of the documents deposited. Documents must be in the Portuguese language. Models and specimens need be filed only when indispensable for understanding the invention.	The patent is delivered without preliminary examination, unless the invention relates to food products, chemicals, or drugs. In such case the government orders a preliminary examination at the cost of the applicant. In case of rejection the applicant may appeal to the Council of State. Description of the invention must be published in the *Diario Official* thirty days from the grant of the patent.	Patented invention must be worked in Brazil within three years from date of issue, and working must not be suspended for more than a year.
Sec. 113. **CANADA.** (Not a member of the International Union.) (Law of June 14, 1872, amended July 9, 1892, and April 1, 1893.)	The inventor, his executor, administrator, or assignee. Application must be made by the inventor, if living. In case of conflicting applications priority is determined by arbitrators appointed for the purpose. Applicants must elect domicile in Canada.	Any new and useful art, machine, manufacture, or composition of matter, or any improvement on any art, machine, manufacture, or composition of matter not known or used by others before the invention thereof by the applicant and not in public use or on sale for more than one year previous to the application in Canada with the consent or allowance of the inventor. NOT PATENTABLE. Inventions already in the possession of the public with the consent or allowance of the inventor. Inventions which have been described in a book or other printed publication. Inventions previously patented in Canada or elsewhere unless applied for by the inventor within one year from the grant of the foreign patent to him. Inventions having an illicit object in view or consisting in a mere scientific principle or abstract theorem.	Patents are granted for eighteen years from the date of issue. The applicant may pay the fee for the whole term or for six years or for twelve years. Patents granted for inventions previously patented abroad expire with the foreign patent first to expire. Defective patents may be reissued. Caveats may be filed for incomplete inventions. Term one year, not renewable. Notice within three months after the grant of a foreign patent of intention to apply for patent in Canada gives certain rights, on the issue of the patent, against those who begin manufacturing the invention during the year. Fee for eighteen years, $60; for twelve years, $40; for six years, $20; for further term of twelve years, $40; for further term of six years, $20. Caveat fee, $5. Reissue fee, $4.	The application must comprise a petition in which the applicant must elect domicile in Canada, specification, drawings if necessary, model if required, and oath or affirmation to the effect that the applicant verily believes himself to be the inventor of the invention for which the patent is asked, and that the allegations contained in the petition are true and correct. The specification must be in duplicate on paper 13 in. long by 8 in. wide. One copy only need be executed. Drawings in duplicate in India or carbon ink on sheets of tracing cloth 8 by 13 in. must be attached to the duplicate specification. Each sheet must contain the title of the invention at the top and at the bottom "certified to be the drawings referred to in the specification hereunto annexed," and the signature of the inventor or his attorney, place date and signature of two witnesses. Drawings must be neatly executed without colors and must be clear, sharp, well defined, not too fine and *perfectly black*, suitable for reproduction by photolithography. With each application an extra full set of drawings must be supplied on double bristol board 8 by 13 in., not folded, without writing on its face, merely the usual lettering, no title, certificate or signatures; on the back, the name of the inventor and title of the invention must be written in pencil.	Preliminary examination with reference to the formalities of the application and novelty and patentability of the invention.	The invention must be worked in Canada, within two years from the date of the patent. Articles may be imported for one year only, unless extension of privilege is asked for. Such extension is limited to one year. Patented articles must be marked with the word "patented" together with the year in which the patent was granted.

COUNTRY.	WHO MAY OBTAIN A PATENT.	SUBJECT-MATTER.	NATURE AND DURATION OF THE PATENT-TAXES.	APPLICATION—FORMALITIES AND DOCUMENTS.	PRELIMINARY EXAMINATION.	REQUIREMENTS AS TO WORKING, ETC.
Sec. 116. **GERMANY.** (Not a member of the International Union.) (Law of April 7, 1891.)	The patent is granted to the inventor or his assignee. The first applicant is entitled to the patent unless opposed by the true inventor on the ground of fraud. Priority is accorded to applications filed under conventions between Germany and Austria-Hungary, Italy and Switzerland. Persons not residing in Germany must appoint a resident representative.	New inventions that are susceptible of industrial use. NOT PATENTABLE. First. Inventions the use of which would be contrary to the laws or to good morals. Second. Inventions relating to articles of food and medicine, also substances prepared by chemical processes in so far as they do not relate to a definite process for the preparation thereof. If the invention relates to a process for the production of a new substance, all substances of a like nature are considered as having been made by the patented process, until the contrary is proved. An invention which at the time of filing of the application has already been described in printed publications anywhere within the last century, or which has already been used in the country in a sufficiently public manner for those skilled in the art to be able to work it, will not be considered new. Official foreign patent specifications will, in case of those countries which are officially declared to guarantee reciprocity (Austria-Hungary, Italy and Switzerland), have the effect of printed publications only after three months from the date of such publication.	Two kinds of patents: First. Patents of Invention. Duration fifteen years, to start from the day following the date of filing the application. Second. "Patents of addition," granted to the patentee of the principal patent only, for the remainder of the term of the principal patent. May become in effect a principal patent if the principal patent for any cause becomes void. Application fee, 20 marks; first annuity, 30 marks; second annuity, 50 marks; third annuity, 100 marks, and so on, with an annual increase of 50 marks. "Patents of addition" pay only the filing fee and first annuity. Mark = $0.238.	(1) Application for a patent, addressed to the Imperial Patent Office. (2) Description of the invention, in duplicate, written on paper thirty-three by twenty-one centimeters. (3) Drawings in duplicate, one on white cardboard, the other on tracing linen. The principal drawing must be 33 centimeters high by 21 centimeters wide. A width of 42 centimeters is permissible if necessary. The additional drawing must be 33 centimeters in height. Width unlimited. Margin of at least 3 centimeters on left and right hand edges. Figures and letters of reference must be so arranged on the sheet that they shall be readable when the sheet is held upright. Lines must be clear and in perfectly black ink suitable for photolithographic reproduction. No explanations in writing should be placed on the sheet. Figures should be numbered consecutively without reference to the number of sheets. Small Roman letters should be used as reference letters, and when the alphabet is exhausted, numerals should be used. Section lines should be indicated by Roman capitals; angles by small Greek letters; direction of movement by arrows. Prime marks or exponent letters or figures should be used only in case the same part is shown in different positions in the same figure. The Patent Office may require the filing of models of the objects to be patented whenever it is considered necessary. When the invention relates to a process for the manufacture of chemical products, there must be filed a sample of the products in question, as well as the intermediate products necessary for the application of these processes. If the invention relates to colors derived from tar, there must likewise be filed samples of wool, silk, or cotton dyed in these colors.	First. Preliminary examination relating to the formalities of the application and the patentability and novelty of the invention. Second. Publication of the application, with call for opposition. Time allowed for opposition, two months. In case of rejection of application or in case of allowance of a contested application the interested party may appeal, within a term of one month, to the Patent Office, Division of Appeals. Specifications of patents are printed in full in separate copies.	Patent may be revoked after the lapse of three years from the day after the publication of the grant for failure of patentee to adequately work his invention in Germany or to do all that was necessary to secure such working. It may also be revoked if the public good requires that permission to use the invention be given to others and the patentee refuses to grant licenses on reasonable terms.
Sec. 117. **GREAT BRITAIN.** (Member of the International Union.) (Statute of 1623 of monoplies; laws of August 25, 1883, August 14, 1885, June 25, 1886, and December 24, 1888.)	The patent is valid only when granted to the true and first inventor either alone or jointly with another or others. A person resident in the United Kingdom to whom an invention has been communicated from abroad is considered a first and true inventor. The first applicant is entitled to the patent unless opposition is made by the true inventor on the ground of fraud. Priority is accorded to applications filed under the International Convention. In case of decease of the inventor the patent is granted to his legal representative.	Any manner of new manufactures, provided they are not in use or publicly known at the time of the grant of the patent and are not contrary to the law nor mischievous to the State by raising the price of commodities in the United Kingdom or injuring trade or generally inconvenient. (Statute of 1623.) NOT PATENTABLE. Any use of the invention in Great Britain or description in a printed publication accessible to the public prior to the filing of the application prevents the grant of a valid patent. But exhibition of the invention in an industrial or international exhibition does not invalidate a patent subsequently granted, provided notice has been given and the application filed within six months. Inventions patented in Great Britain on applications prior in date are not patentable to a later applicant.	Only one kind of patent is issued, having a duration of fourteen years from the date of filing the application. Taxes: At the filing of the application with provisional specification, 1 pound; at the subsequent filing of the complete specification, 3 pounds; at the filing of the complete specification with the first application, 4 pounds (the payment of these filing fees assures the legal protection during the first four years of the patent); fifth year, 5 pounds; sixth year, 6 pounds, and so on, increasing by 1 pound a year. Pound = $4.866½.	Application must be in prescribed form, must be signed by the applicant, must contain a statutory declaration that the applicant is in possession of an invention of which he claims to be the true and first inventor and for which he desires to obtain a patent, and must be accompanied by a provisional or complete specification. If a provisional specification only is filed with the application, the complete specification must be filed within nine months thereafter. The provisional specification must describe the nature of the invention and be accompanied by drawings if required. The complete specification whether left on application or subsequently must particularly describe and ascertain the nature of the invention and in what manner it is to be performed and must be accompanied by drawings if required. If drawings were filed with a provisional specification and the complete specification refers to such drawings, no drawings need be filed with the complete specification. Drawings must be on sheets of pure white, hot pressed, rolled or calendered drawing paper of smooth surface and good quality, measuring 13 inches at the sides by 8 or 16 inches at top and bottom, and must be in absolutely black India ink, if possible without color or wash. Reference letters must be bold and distinct, not less than ⅛ inch in height. Drawings must bear the name of the applicant in the left hand top corner, the number of sheets and the number of each sheet in the right hand top corner and the signature of the applicant or his agent in the right hand bottom corner. A fac-simile of the original, but without color or wash, must accompany the originals and be marked "true copy." All documents must be on strong wide ruled paper of a size of 13 inches by 8 inches with a margin of 2 inches on the left. If the applicant is represented by an agent, the power of attorney must be filed.	First. Examination of the complete specification to see that it has been prepared in the manner prescribed, and if the invention described in detail is the same as that described in the provisional specification. Second. Publication of the acceptance of the complete specification, when the application is open for two months for opposition by interested parties. The patent is issued if unopposed or in event of an unsuccessful opposition. Specifications of patents are printed in full in separate copies three weeks after the complete specification has been accepted. The patent is sealed about ten days after the expiration of the period allowed for opposition.	Failure to work the invention is not ground for revocation of the patent, but if the invention is not worked, or not sufficiently worked to satisfy the reasonable requirements of the public, any interested party can oblige the inventor to grant him a license on such terms as the Board of Trade may determine.

COUNTRY.	WHO MAY OBTAIN A PATENT.	SUBJECT-MATTER.	NATURE AND DURATION OF THE PATENT-TAXES.	APPLICATION—FORMALITIES AND DOCUMENTS.	PRELIMINARY EXAMINATION.	REQUIREMENTS AS TO WORKING, ETC.
Sec. 118. **HUNGARY.** (Not a member of the International Union.) (Law of July 14, 1895.) Austria-Hungary signified its adhesion to the International Convention in 1897, subject to the approval of parliament.	The patent may be granted to the inventor or to the holder of his interest. The first applicant is entitled to the patent unless opposition is made by the true inventor on the ground of fraud. Persons not living in Hungary must appoint a representative in the country.	Every invention that is new and susceptible of being used industrially. NOT PATENTABLE. Inventions, first, the application of which is contrary to law and good morals; second, relating to objects necessary for the development of the power of the army or the navy, if the Minister of Commerce opposes the granting of the patent; third, bearing upon theories and scientific principles, as such; fourth, for food products or medicines and chemical compounds (the process for the manufacture of these products is, however, patentable). The effect of a patent granted for a process extends also to the products produced by such process. An invention is not considered new if at the time of the application for the patent, first, it has already been sufficiently described in a publication printed or otherwise reproduced, to admit of its use by those skilled in the art; second, it has already been sufficiently divulged by exploitation or public exhibition to enable those skilled in the art to carry it into effect; third, it has already been the object of a patent. The invention is considered as new, though it has been used or published, if one hundred years has elapsed since the last case of exploitation or publication.	Two kinds of patents: First. Patents of invention. Duration, fifteen years, to start from the filing of the application. Second. "Patents of addition." Same duration as the principal patent to which they refer. May become in effect a principal patent if the principal patent becomes void for any reason. Granted only to owner of principal patent. Patents for improvements on inventions already patented are granted to owner of original patent only, during the first year after the grant of the original patent, and thereafter to any one whether such owner or not. Fee for filing for the two kinds of patents, 20 crowns. Annual tax for the patents of invention: First year, 40 crowns; second year, 50 crowns; third year, 60 crowns; fourth year, 70 crowns; fifth year, 80 crowns; sixth year, 100 crowns; seventh year, 120 crowns; eighth year, 140 crowns; ninth year, 160 crowns; tenth year, 200 crowns; eleventh year, 250 crowns; twelfth year, 300 crowns; thirteenth year, 350 crowns; fourteenth year, 400 crowns; fifteenth year, 500 crowns. Single tax for "patents of addition," 40 crowns over and above the fee for filing. Crown = $0.203.	The application for the patent must be filed in writing in the Patent Office, and must contain (1) the name, profession and residence of the applicant, and, if the case calls for it, of his representative; (2) the title of the invention; (3) the declaration that the petitioner is the inventor or the holder of his interest, and in the latter case (4) the name, the profession or the residence of the inventor, as well as a reference to the document upon which the applicant founds his right. With the application must be filed (1) the receipt of the Treasury for the payment of the fee for filing; (2) a legalized power of attorney if the filing is done by a representative; (3) the description of the invention, in duplicate, in a closed envelope, upon which should be written the title of the invention, as also the name and residence of the applicant; (4) when the applicant is the holder of the interest of the inventor, the document showing the transfer of the invention. The description must be sufficiently clear to enable those skilled in the art to understand the invention without other aid. It must end with one or more claims showing what is new and to be protected. If there are several claims and the substance of the invention consists in their combination or in their grouping, this circumstance must be mentioned. The description must be accompanied by the drawings necessary for the understanding of the invention, and be accompanied, if necessary, by specimens or models. It must be signed by the applicant or his representative. The requirements as to drawings are the same as for Austria, except that they must not exceed in height 33 centimeters, and that the second copy must be on transparent tracing cloth and in black ink only. Signatures to drawings are not required. Specimens are required if the invention relates to the manufacture of chemical products or dyes. Otherwise specimens or models need not be filed unless required.	First. Examination of the application for the patent as to regularity of the application and the patentability of the invention, but not as to the novelty of the latter. Second. Publication of the invention, with call for opposition. Time allowed for opposition, two months. In case of the refusal of a patent, or in case of acceptance of an application for a patent after opposition, the defeated party may appeal, within thirty days, to the judiciary branch of the Patent Office. Specifications of patents are published in full.	The patent may be revoked in whole or in part if not adequately worked or if working has been unjustifiably suspended, if the patentee has failed to do all that was possible to secure and continue working. Such revocation cannot, as a rule, take place before three years from the grant of the patent and only after due notice. Patent may be revoked after three years if patentee fails to work and refuses to grant licenses to others.
Sec. 119. **ITALY.** (Member of the International Union.) (Laws of October 30, 1859, and January 31, 1864. Amended August 4, 1894, and January 16, 1898.)	The right to the patent is accorded to the author of a new industrial invention or discovery, or his assignee. The first applicant is entitled to priority. Priority is accorded to applications filed under the International Convention or other conventions to which Italy is a party.	Any new industrial invention. An invention is called "industrial" when it has directly for its object, first, an industrial product or result; second, an instrument, a machine, a tool, a mechanism, or any mechanical construction whatsoever; third, a process or method of industrial production; fourth, a motor or the industrial application of a force already known; fifth, the technical application of a scientific principle, provided it gives immediate industrial results. NOT PATENTABLE. First. Inventions relating to industries contrary to law, to morality and to public safety. Second. Inventions which have not for their aim the production of material objects. Third. Inventions or discoveries purely theoretical. Fourth. Medicines. An invention is not considered new when it has been previously patented or known in Italy, or has been published in Italy or elsewhere. Description in a printed publication due to requirement of foreign patent law does not invalidate a patent of importation. Patents for improvements on inventions previously patented are granted during the first six months of the term of the principal patent only to the patentee.	Two kinds of patents: First. Patents of invention. Duration, one to fifteen years, as elected by the applicant, reckoning from the last day of March, June, September or December next following the date of application. Patents granted for a less term than fifteen years may be prolonged to the full term. Patents for new inventions already patented abroad, usually termed "patents of importation," expire with the foreign patent granted for the longest term, in no case, however, exceeding the term of fifteen years. Second. "Patents of addition." The same duration as the principal patent to which they refer. Granted only to the owner of the principal patent. Taxes: First, patents of invention and importation, 40 lire for the first three years, besides 10 lire per year indicated in the application for the patent; 65 lire for each of the years four to six; 90 lire for each of the years seven to nine; 115 lire for each of the years ten to twelve; 140 lire for each of the last three years. Second, "patents of addition," single tax of 20 lire. There is also a "prolongation tax" of 40 lire, payable in addition to the annuities and proportional tax when it is desired to prolong the term of a patent originally taken for less than fifteen years. Lira = $0.193.	The application for a patent must be addressed to the Minister of Agriculture, Industry and Commerce, through the local prefecture or sub-prefecture. It must contain (1) the surname and Christian name, the country, and the residence of the applicant and his representative; (2) the title of the invention; (3) a statement of the duration desired for the patent. With the application must be filed (1) the description of the invention; (2) the drawings necessary for understanding the invention; (3) the receipt for the payment of the prescribed taxes and stamp fees; (4) the title or certified copy of the patent granted to the foreigner, when a patent of importation is asked for; (5) if the application is filed by a representative, the power of attorney in authentic form, or in unauthenticated form, provided the signature of the applicant is certified to by a notary or by the magistrate (syndic) of the commune where the said applicant resides; (6) a list of the documents and articles filed. The description must be written in Italian or French, and must contain a complete and detailed statement of all the particulars necessary to enable one skilled in the art to put the invention into practice. Three copies of the description and the drawings, signed by the applicant, must be filed. If a model is filed, it will be sufficient to file two copies of the drawings. The application and the three copies of the description must be written on paper stamped with 50 centimes. The description must be headed, "Description of the invention having for title," etc. The drawings must be in triplicate, one copy on bristol-board in good black ink for photographic reproduction and two copies on tracing-cloth. There are no fixed dimensions for the sheet. It is only essential that the figures shall not exceed 40 centimeters in any direction. Each sheet must have a 50-centime stamp. Models need be filed only when the inventor considers it necessary for the understanding of the invention.	The patent is granted without preliminary examination as to the novelty of the invention. The administration refuses the patent only if the application relates to an invention in a class declared not patentable by law or if the filing has not been regularly effected. In case of refusal the applicant may, within fifteen days, address a complaint to a special commission named each year by the Minister. Patents relating to beverages or foods are not granted except upon the favorable judgment of the Superior Council of Health.	If the patent is granted for five years or less, the invention must be worked in Italy within one year from the date of the patent, and working must not be omitted for more than one year. If the patent is granted for more than five years, the invention must be worked within two years, and working must not be omitted for more than two years.

COUNTRY.	WHO MAY OBTAIN A PATENT.	SUBJECT-MATTER.	NATURE AND DURATION OF THE PATENT-TAXES.	APPLICATION—FORMALITIES AND DOCUMENTS.	PRELIMINARY EXAMINATION.	REQUIREMENTS AS TO WORKING, ETC.
Sec. 120. **JAPAN.** (Member of the International Union.) (Law of March 1, 1899, in effect July 1, 1899.)	The inventor or his assignee may apply for a patent. In case of interfering applications the patent is granted to the prior inventor. When in case of interference between an application and a patent priority is awarded to the applicant and the existing patent is revoked, the term of the patent granted to the applicant is reckoned from the date of registration of the revoked patent. Applicants residing abroad must appoint a representative residing in Japan. Priority is accorded to applications filed in accordance with the provisions of the International Convention.	Any new and useful invention relating to manufactures or industrial processes. The effect of a patent for a process extends to the products of such process. NOT PATENTABLE. Inventions relating to food or drink or other refreshment; those relating to medicines or the compounding thereof; those which are offensive to public order or morals; those which have been publicly known or used before applications for patent therefor are filed, nnless such use has been for experimental purposes only and has not continued more than two years. A patent for an improvement on an invention previously patented by another can be granted only after the consent of the owner of the principal patent has been obtained. If such consent is refused the patent may however be granted if on consideration of the circumstances the Director of the Patent Bureau shall so direct. Exhibition of an invention at an officially recognized Exhibition in Japan will not prevent the grant of a patent thereon, provided notice of intention to exhibit the invention is given and application for patent filed within six months. In case of exhibition of an invention at an International Exposition in any country belonging to the International Union, the time allowed in such country for the subsequent application for patent shall be allowed in Japan.	Two kinds of patents: First. Patents of inventions. Granted for fifteen years to date from the date of registration. Second. Certificates of addition. Granted only to the inventor to whom was granted the principal patent. Expire with the principal patent and is not transferable except with the principal patent. In case the drawing or specification of a patent is imperfect the owner of the patent may apply for an amendment of the patent, but the essential feature of the invention cannot be changed. Taxes: No application fee seems to be required by the present law. Annual taxes are as follows: for each of the first three years, 10 yen; for each of the second three years, 15 yen; for each of the third three years, 20 yen, and so on, increasing each three years by 5 yen. For certificates of addition a single payment of 20 yen. Yen = $0.498.	Application addressed to the Minister of State for Agriculture and Commerce stating the name, status, occupation, domicile, and present residence of the applicant, the title of the invention, the date at which the invention was made, and the term for which a patent is desired, signed and sealed by the applicant, together with the specification and necessary drawings, must be filed at the Patent Bureau. Registration-stamps of a value corresponding to the required fee must be affixed. A foreigner making application for patent must furnish a certificate of nationality. All documents must be written in Japanese. A power of attorney, certificate of nationality or other document written in a foreign language must be accompanied by a translation. The specification must be clearly written without erasure or alteration on Mino paper, 13 lines per page and 25 characters per line. It must comprise (1) title sufficiently indicating the nature of the invention; (2) brief statement of the nature and purpose of the invention; (3) brief explanation of the drawings, if any; (4) detailed explanation of the invention, referring to the drawings, if any, sufficiently clear to enable any person of ordinary ability to work the invention without difficulty, the meaning of words used in the claims being explained; (5) in case of an improvement the difference between the original invention and the improvement must be pointed out; (6) claims in which the essential features of the invention shall be pointed out. Drawings must be in black India ink and must be suitable for reproduction by photolithography. Space occupied by figures, 7.2 by 4.6 suns (Sun = 1.19 inch). Margin at top, 1 sun; at bottom, 8 sun; at left, 3 sun; at right, 1.5 sun. On the drawings shall be put only the name of the applicant and his agent, with the seal of the latter. Not more than one sheet shall be used unless necessary. As little shading shall be used as possible. Section shall be shown by parallel lines about .3 sun apart. F[illegible] copies of drawings are required, which must be on Mino paper. M[illegible] specimens, when required, must be filed within ninety days from the d[illegible] notice that they are required.	Preliminary examination as to form and as to novelty and patentability. In case of rejection reëxamination may be demanded and such reëxamination is made by an examiner other than the one by whom the rejection was made. Any one dissatisfied with the reëxamination may appeal to the Patent Bureau. Such appeals and appeals in interference are heard by five justices. From this decision appeal may be taken to the Supreme Court. Patents are published in full immediately on the grant.	A patent may be annulled if the owner without reasonable cause fails to work and publish the invention in Japan within three years from the date of the patent or if having ceased to work and publish it for more than three years he refuses to assign it to a third party or to grant licenses under reasonable terms and conditions. If the owner of the patent fails to mark his article *patented* he can sue for damages those persons only who have knowingly infringed. The Director of the Patent Bureau may if he deems it necessary, or he is so required to do by proper authority, limit or refuse a patent for any invention required by public interest to be free to the public or needed for military purposes, or may require any such invention to be kept secret, and may limit or annul a patent already granted for any such invention. In any such case reasonable compensation shall be made to the applicant or owner of the patent.
Sec. 121. **LUXEMBURG.** (Not a member of the International Union.) (Law of June 30, 1880.)	The right to a patent belongs to whoever is the first to make application therefor. An applicant must elect domicile in the Grand-Duchy, and, if a foreigner, must choose his domicile at the house of a proxy on whom papers can be legally served.	New inventions susceptible of being worked industrially. NOT PATENTABLE. 1. Inventions the working of which would be contrary to the law or good morals. 2. Food products, medicines, or the products of chemical processes. Special processes for the manufacture of these products may be patented. An invention is not considered new if at the date of the application it is found to be already so clearly described in a print open to the public or so openly worked in either the Grand-Duchy or any of the States of the German customs union as to enable those skilled in the art to make use of it.	Two kinds of patents are granted: First. Patents of invention. Duration fifteen years from the day following the date of filing of the application. Second. Certificates of addition granted to the owner of the principal patent. Expire with the principal patent. Taxes: First year, 10 francs; second year, 20 francs; third year, 30 francs, and so on, increasing each year by 10 francs up to the fifteenth year for which the tax is 150 francs. For patents of addition, the first tax of 10 francs only is required. Franc = $0.193.	A special application is required for each invention. This must contain the full name, address, business, and chosen domicile of the applicant, and also of his representative, if required, and must give a title containing a summary and precise indication of the object of the invention. This application must be accompanied by a description of the invention in French or German, and drawings, models or samples, if necessary for understanding the invention. Description and drawings must be in duplicate. Description must be clear and complete and must end with a precise statement of the characteristics of the invention. Drawings must be in ink on the metric scale. All papers must be signed by the applicant or by his representative. Application must be accompanied by a receipt for the first annual tax.	If the application is regular in form the patent is granted without preliminary examination, without guarantee of novelty, merit or correctness of description. But the patent is void if within three months from the date of application, an application for patent is not made for the same invention in one of the states of the customs union (Germany) or if on the application so made, a patent is refused or after being allowed, is revoked, annulled, or otherwise becomes extinct.	The patent may be revoked after three years, if the invention is not put into operation to a suitable extent in the Grand-Duchy. The patentee may also be required in the interest of the public to grant licenses to use the invention.
Sec. 122. **MEXICO.** (Not a member of the International Union.) (Laws of June 7, 1890, and June 22, 1896.)	The patent is granted to the inventor only, or, if already patented abroad, to the applicant for the foreign patent or his assignee. Persons not residing in Mexico must appoint a resident representative. Patentee has the exclusive right for one year after the grant to patent improvements. In case of conflicting applications the patent is granted to the prior inventor. Otherwise the patent is granted to the first applicant.	A patent may be obtained on a new industrial product, a new method of production, or a new application of means already known to obtaining a result or an article useful in industry. Chemical or pharmaceutical preparations are likewise patentable. NOT PATENTABLE. First. Inventions of which the operation is forbidden by law or imperils the lives and property of citizens. Second. Scientific principles or discoveries which are merely speculative and cannot be embodied in a machine, an apparatus, an instrument or chemical operation of a practical, industrial character. Inventions are not new if patented in Mexico or given such publicity in Mexico or abroad as to enable them to be worked; but this does not include publication by foreign patent office, or exhibitions of the invention in an exposition held in Mexico or abroad.	Only one kind of patent is issued having a duration of twenty years, dating from the date of the grant. The term may be extended for five years at the discretion of the executive. Patents granted for inventions previously patented abroad expire at the same time with the foreign patent, or, if more than one, with the foreign patent first granted. Fee for grant of patent from $50 to $150 (Mexican). The taxes are, before the expiration of the fifth year, $50 (Mexican); before the expiration of the tenth year, $75; before the expiration of the fifteenth year, $100.	Application in due form must be made, to the Department of Public Works and must include petition, duplicate specification (in Spanish), and duplicate drawings, on cloth or paper of any convenient size, with margin at the sides. A non-resident who is unable to appear personally must appoint a resident agent by notarial power, legalized by Mexican consul. Models are not usually required.	Patents are granted without preliminary examination; but notice of application must be published three times in the Official Journal, with call for opposition. Time allowed for opposition, two months.	Working is not now required. Patented articles must be marked patented and must bear the date and number of the patent. The State may appropriate an invention under certain circumstances on payment of a suitable indemnity.

COUNTRY.	WHO MAY OBTAIN A PATENT.	SUBJECT-MATTER.	NATURE AND DURATION OF THE PATENT-TAXES.	APPLICATION—FORMALITIES AND DOCUMENTS.	PRELIMINARY EXAMINATION.	REQUIREMENTS AS TO WORKING, ETC.
Sec. 123. **NORWAY.** (Member of the International Union.) (Law of June 16, 1885.)	The patent is valid only when granted to the first inventor or to his assignee. In case of conflicting applications when it cannot be ascertained which is the first inventor, the patent is granted to the first applicant. Priority is accorded to applications filed under the International Convention. Persons not living in Norway must appoint a representative in that country.	New inventions which may be utilized in the arts. NOT PATENTABLE. First, inventions the use of which is contrary to law, to good morals or to public order; second, those the object of which is a food, an article of consumption or a medicine. Patents, however, can be granted for the processes or the special apparatus designed for the manufacture of such products. An invention is not considered new if before the filing of the application for the patent it is already sufficiently well known to be used by persons skilled in the art. The publication in a printed memoir or the exhibition at an international exposition, however, constitutes an obstacle to the granting of the patent only after the expiration of six months.	Two kinds of patents: First. Patents of invention. Duration, fifteen years, to start from the filing of the application. Second. "Patents of addition." Same duration as the principal patent to which they refer. Fee for filing, 30 crowns (this constitutes at the same time the first annuity for the patents of invention); second annuity, 10 crowns; third annuity, 15 crowns, and so on, with an annual increase of 5 crowns. "Patents of addition" are subject to the payment of the filing fee only. Crown = $0.268.	The applicant must file with the Patent Commission: (1) an application for a patent addressed to the Commission; (2) the description of the invention, in duplicate; (3) the drawings necessary for explaining the invention, also in duplicate, and, if the case requires it, models, specimens, etc.; (4) a power of attorney if the application is not filed by the inventor himself; (5) a memorandum of the documents filed. The application must state the name of the applicant, with his profession and residence, as well as the title of the invention. If the invention is not made by the applicant, he must furnish documents proving the transfer of the invention. The description must be sufficiently clear and complete to enable an expert in the art to execute the invention. It must end with an exact indication of what the applicant claims as his invention. The application and the description must be written in Norwegian. The drawings must be executed in a sufficiently clear and durable manner. They must show all the details named in the description, which must be indicated by letters or figures corresponding in the text and drawings. The requirements for drawings are the same as for Austria, except that they must not exceed 33 centimeters in height. They need not be signed. Models need not be filed unless necessary for the understanding of the invention.	First. Preliminary examination bearing upon the formality of the application. Second. Publication of the application, with call for opposition. Time allowed for opposition, eight weeks. Third. Examination bearing on the novelty and patentability of the invention. In case of the refusal of a patent, the applicant may, within six weeks, demand of the Commission to submit the matter to a new examination, furnishing it with explanations of a nature to bring about another result. If the decision does not give satisfaction to the applicant, he may, within four weeks, demand that the matter be submitted to examination by a superior commission composed of seven members named by the King for each special case. Specifications of all patents are published in full in separate copies.	A patent may be made void by judgment on suit by any interested party, if the patentee has not worked the patent either himself or through others within three years from its date. A patented invention may, if deemed necessary to the public interest, be permitted to be used by others than the patentee, suitable compensation being made to him.
Sec. 124. **PORTUGAL.** (Member of the International Union.) (Law of May 21, 1896.)	A patent may be granted to any person who has invented an industrial object or a material product of commerce. The right to receive the patent belongs to the first applicant. Priority is accorded to applications filed under the International Convention.	The following may be patented: First. A new product or new industrial result. Second. A new combination or arrangement of parts or elements which may be new or already known. Third. A new principle or means of industrial or professional application. Fourth. A new application of known means. Fifth. A new application of known products. Sixth. A technical application of known scientific principles. Seventh. An improvement in any product or industrial object whatsoever. Eighth. A new method or process of industrial production. Ninth. A means of rendering the production more economical, or regulating or facilitating it. NOT PATENTABLE. Chemical and pharmaceutical products. The processes for the manufacture of these products are patentable. No invention is considered as new which has been described in any publication whatsoever within less than one hundred years or which has been utilized in a public manner in Portugal or in Portuguese possessions.	Two kinds of patents: First. Patents of invention. Duration not to exceed fifteen years, to start from the date of the patent. Second. Certificates of addition. The same duration as the principal patent to which they refer. Granted only to the proprietor of the principal patent. Fees: First, patents of invention, 3,000 reis, payable on filing the application, for each year of the term of the patent; second, certificates of addition, single fee of 3,000 reis. Milreis = $1.08.	The applicant for a patent must address to the Division of Industry, at the Ministry of Public Works, Commerce and Industry, (1) a petition in Portuguese or French containing the name and residence and nationality of the petitioner, the short title of the patent, the claims showing what it contains that is new, and the term for which the patent is desired; (2) a power of attorney in favor of a person living in Portugal, if the case requires it; (3) a list, in duplicate, of the documents accompanying the petition; (4) a description of the invention, accompanied by the drawings necessary for the understanding of this description. These documents must be filed in duplicate, sealed. All the documents written or drawn must be dated and signed. The description of the invention and the titles may be written in Portuguese or French. At the time that the application for the patent is filed there must be deposited in the Division of Industry, (1) the sum of 3,000 reis for each of the years asked for in the application for the patent; (2) the sum of 500 reis per page of twenty-five lines when written in the French language and of 200 reis for the expense of correspondence. It is not necessary to translate the explanatory words on the drawings. The description must be written with non-copying black ink, or lithographed or printed on paper 33 centimeters long by 22 centimeters wide, and must be sufficiently clear to enable any competent person to execute the invention. It must be dated and signed by the inventor or by his representative and initialed on each sheet. It must have the short title of the patent applied for at the top of the first page and must end with the claims showing the points considered as new. These claims must correspond exactly with those indicated in the petition. The drawings must be 33 centimeters in height and of the necessary width. They must be inclosed in plain lines, with a margin of at least 2 centimeters. They may be done in india-ink and water-colors or in permanent black ink, or be reproduced by lithography or photography. The scale must always be indicated. The parts representing the novelty should be made apparent by shading or hatching. Instead of drawings, good photographs may be filed. The rules of practice of March 28, 1895, contain forms for the drawing up of the application for a patent and the list of documents filed. The filing of models or specimens is optional.	First. Examination of the application for a patent with reference to prescribed formalities and to determine whether the invention belongs to a class which is patentable under the law. Second. Publication of the application, with call for opposition. Time allowed for opposition, three months. In case of the refusal of a patent, the interested party may appeal to the Tribunal of Commerce within three months.	The patented invention must be worked in Portugal within two years from the date of the patent and working must not be interrupted for two years.

COMPARATIVE TABLE OF PATENT LAWS. (8.)

COUNTRY.	WHO MAY OBTAIN A PATENT.	SUBJECT-MATTER.	NATURE AND DURATION OF THE PATENT-TAXES.	APPLICATION—FORMALITIES AND DOCUMENTS.	PRELIMINARY EXAMINATION.	REQUIREMENTS AS TO WORKING, ETC.
Sec. 125. **RUSSIA.** (Not a member of the International Union.) (Law of May 20 (June 1), 1896.)	The right to the patent belongs to the inventor or to his assignee. The patent is granted to the first applicant. If the applicant be living abroad, he must appoint a representative living in Russia.	Inventions and improvements which are new or have some essentially new feature in one or more of their parts or consist in a new combination of parts already separately known. NOT PATENTABLE. The inventions, first, which represent scientific discoveries and abstract theories; second, which are contrary to public order, to morality, and to good manners; third, which previous to the application for the patent have been patented in Russia or have been used there without a patent or which have been described in print in a manner sufficiently complete to be reproduced; fourth, which are known abroad without a patent or which are there patented in the name of a person other than the petitioner, except in case the invention shall have been assigned to the latter; fifth, which do not represent a sufficient novelty, but constitute trifling modifications of inventions already known. Patents are not granted for chemical products, foods, and the like (though for the processes and apparatus designed for their manufacture patents may be obtained), nor for medical compounds, nor for processes or apparatus for their manufacture. In addition, patents are not at present granted for munitions of war unless adapted to other purposes, in which case the grant is subject to the right of the Government to use the same without compensation.	Two kinds of patents: First. Patents of invention. Duration, fifteen years, to start from the date of the signing of the patent. Second. "Patents of addition." Expire with the principal patent to which they refer. Granted during the first year of the term of the principal patent only to the patentee. Patents granted for improvements or modifications of inventions previously patented to others are designated as dependent. Patents of invention, fee for filing, 30 rubles. Taxes: First year, 15 rubles; second year, 20 rubles; third year, 25 rubles; fourth year, 30 rubles; fifth year, 40 rubles; sixth year, 50 rubles; seventh year, 75 rubles; eighth year, 100 rubles; ninth year, 125 rubles; tenth year, 150 rubles; eleventh year, 200 rubles; twelfth year, 250 rubles; thirteenth year, 300 rubles; fourteenth year, 350 rubles; fifteenth year, 400 rubles. "Patents of addition," single tax, 30 rubles. A patent granted for an invention already patented abroad previous to the date of the filing of the application expires as soon as the patent or one of the foreign patents of anterior date has ceased to exist. Ruble = $0.772.	(1) Application for a patent addressed to the Department of Trade and Manufacture, with the heading "To the Committee of Technical Affairs." It must be written upon a sheet of paper of ordinary size, bearing two stamps of 80 copecks and contain a request for the grant of a patent for the invention indicated in the description and title. (2) A memorandum of the documents inclosed, the principal of which are the description, the drawings, the receipt for the filing fee of 30 rubles, and, if the case require it, a power of attorney in favor of the representative. The application must be signed by the petitioner or by his representative signing by power of attorney, which in the case of a foreign applicant must be legalized. The description must be written in the Russian language and be clear and plain. It must be accompanied, if necessary, by drawings and models sufficient to enable one to reproduce the invention. At the end it must contain an enumeration of the distinctive particulars of the invention. The description must be written on paper of ordinary size, in duplicate, and be signed by the petitioner or his representative. A stamp of 80 copecks must be affixed to each sheet of one of the copies. The drawings in duplicate must be in black lines, one copy on thick white drawing-paper, the other on tracing cloth. They must be 13 inches long by 8 inches in width, or 13 inches by 16, or 13 inches by 24. Each drawing must have a margin of one inch. Upon the upper margin must be indicated the application to which the drawing relates. The addition of explanatory words and the use of colors are prohibited. The usual designation of the figures—*i. e.*, "Fig."—must not appear on the drawing. The applications presented by the representative must be accompanied by a power of attorney. If the petitioner is living abroad and if the power of attorney is written in a foreign language, it must bear the signature of the local Russian consul, certifying that it is executed according to the laws of the country, and be accompanied by a certified translation in the Russian language. If the invention be already patented abroad, the application must be accompanied by a certified copy of the foreign patent which is the first to expire. If the patent is asked for an invention patented abroad in the name of another person, the petitioner must file a certified assignment stating that he has received the exclusive right to use the invention in Russia.	The applicant for a patent who has complied with the prescribed formalities receives a certificate of protection, which permits him to use his invention, to make it known, and to threaten infringers with prosecution. This certificate ceases to be in force if a patent is denied. The application is submitted to the Committee of Technical Affairs of the Department of Commerce and Manufactures, which determines whether the application and the description of the invention answer to the conditions established by law. These researches do not bear either upon the utility of the invention or upon the existence of the right of the petitioner, but involve examination as to novelty. In case of refusal the interested party may appeal within the three months to the Department of Commerce and Manufactures. Specifications of patents are published in full in separate copies.	The patented invention must be worked in Russia within five years from the grant of the patent. Working must be certified to by a competent authority and the certificate filed with the Department of Trade and Manufacture.
Sec. 126. **SPAIN.** (Member of the International Union.) (Law of July 30, 1878.)	Any Spaniard or foreigner who desires to establish or has established a new industry in the Spanish dominions. Priority is accorded to applications filed under the International Convention.	Machines, apparatus, instruments, mechanical or chemical processes or operations which as a whole or in part are of original invention and new, or which if not new, are not established or exploited in the same manner or under the same form in the Spanish dominions. New industrial products or results obtained by new or known means, provided that their exploitation will result in establishing a new branch of industry in the country. NOT PATENTABLE. First. The results or products of patentable machines, apparatus, instruments, mechanical or chemical processes or operations when they are not of original invention or new and their exploitation does not result in establishing a new branch of industry in the country. Second. The use of natural products. Third. Scientific principles or discoveries as long as they remain in the domain of speculation and are not reduced to a practical industrial use. Fourth. Pharmaceutical preparations or medicines. Fifth. Plans or combinations of credit or finance. Inventions which are known or have been exploited in the Spanish domains or abroad or have been patented in Spain are not considered new.	Four kinds of patents: First. Patents of invention for subjects of original and new invention. Duration, twenty years. Second. Patents of introduction for all that is not of original invention or which, so being, is not new. Duration, five years. Third. "Patents of importation" for all original inventions, even though the inventor has already obtained a patent for the same invention abroad, if he makes application in Spain before the expiration of two years from the time of obtaining the first foreign patent. Duration, ten years. Fourth. "Patents of addition." Expire with the principal patent to which they relate. Granted only to owner of the principal patent. Tax: 10 pesetas the first year, 20 pesetas the second, and so on, increasing by 10 pesetas each year, payable in advance annually; "patents of addition," single tax of 25 pesetas. Peseta = $0.193.	The applicant for a patent must file at the office of the civil government of any of the provinces of Spain the following documents and articles: (1) An application to the Ministry of Commerce stating the object of the patent, whether the said object is or is not of original invention and new, and stating the address of the applicant or his representative. In the latter case the power of attorney must be filed with the application. (2) A specification, in duplicate, clearly describing the invention to be patented. At the end of the specification there must be indicated in a note which part, mechanism, process, etc., it is desired to make the subject of the patent. The indications relative to weights and measures must be according to the metric system. (3) The drawings, specimens, or models that the applicant shall deem necessary for understanding the specification, in duplicate. The drawings must be executed in duplicate, on tracing-cloth, in ink, on the metric scale. (4) The certificate of payment to the State of the tax for the first year. (5) A signed list of all the documents and articles deposited, which must themselves also be signed by the applicant or his representative. The specification must be written in the Spanish language, without abbreviations or corrections, on numbered sheets. The applicant may file a model if he thinks it necessary for understanding the invention.	The patents are granted without preliminary examination as to the novelty or utility of the invention, and must not in any case be considered as a declaration or certificate of the novelty or utility of the invention.	The patented invention must be worked in the Spanish dominions within two years from its date. Working must not be discontinued for more than one year.

COUNTRY.	WHO MAY OBTAIN A PATENT.	SUBJECT-MATTER.	NATURE AND DURATION OF THE PATENT-TAXES.	APPLICATION—FORMALITIES AND DOCUMENTS.	PRELIMINARY EXAMINATION.	REQUIREMENTS AS TO WORKING, ETC.
Sec. 127. **SWEDEN.** (Member of the International Union.) (Laws of May 16, 1884; April 14, 1893; March 26, May 28, 1897, and May 27, 1898.)	The patent is valid only when granted to the inventor or to his assignee. In case of conflicting applications, the patent is granted to the first applicant. Priority is accorded to applications filed under the International Convention. Applicants not living in Sweden must appoint a representative in that country.	Inventions bearing upon new industrial products or upon special processes of manufacture. NOT PATENTABLE. Inventions the use of which is contrary to the laws or to good morals. If an invention relates to foods or medicines, the patent cannot be granted for the product, but only for the process of manufacturing the same. An invention is not considered new if prior to the filing of the application it has already been described in any printed publication made accessible to the public, or has been so publicly used as to enable a person skilled in the art to carry it out. If the invention has been exhibited at an international exhibition, the fact that the invention has thereby or afterwards, through a printed publication or public use, become known will not prevent the grant of a patent provided the application be filed within six months from such exhibition of the invention.	Two kinds of patents: First. Patents of invention. Duration, fifteen years, to start from the filing of the application. Second. "Patents of addition." Expire with the principal patent to which they refer. Granted to patentee of principal patent only. Fee for filing, 20 crowns (this constitutes at the same time the first annuity for the patents of invention); annual tax for each of the years two to five, 25 crowns; for the years six to ten, 50 crowns; for the years eleven to fifteen, 75 crowns. A ten-crown stamp must be affixed to the Letters Patent. The "patents of addition" are subject only to the payment of the fee for filing. Crown = $0.268.	(1) Application for a patent addressed to the Bureau of Patents and Registry. (2) Description of the invention, in duplicate. (3) The drawings necessary for the understanding of the description, in duplicate. The requirements for drawings are the same as for Austria, except that the height must not exceed 33 centimeters. Drawings need not be signed. (4) Models or specimens, if the case requires. (5) A power of attorney in favor of the representative if the applicant resides outside of the country. The application should state the name, profession and address of the applicant and of his representative, as well as the title of the invention. The description should be sufficiently clear to enable a person skilled in the art to use the invention. It should show in precise terms what the applicant considers as new in the invention. If the patent is applied for by a person other than the inventor, the applicant should show that he is the holder of the inventor's interest. All the parts of the application must be in the Swedish language, or if in another language must be accompanied by a legalized translation. Models need not be filed unless necessary for the understanding of the invention.	1st. Preliminary examination bearing upon the novelty and patentability of the invention. 2d. Publication of the application, with call for opposition. Time allowed for opposition, two months. In case of the refusal of the patent, the applicant may lodge an appeal with the King within the time allowance of sixty days. Specifications of patents are published in full in separate copies.	The patented invention must be worked in Sweden within three years from the date of the patent; but the time may be extended on request to four years. Working must not be omitted for more than one year. In case of inventions previously patented in a foreign country, failure to work in Sweden will not be cause for forfeiture, provided the requirements of the country of origin in respect to working are complied with.
Sec. 128. **SWITZERLAND.** (Member of the International Union.) (Laws of June 29, 1888, and March 13, 1893.)	The patent is valid only when granted to the inventor or to his assignee. In case of conflicting applications, the patent granted to the first applicant only is valid. Priority is accorded to applications filed under the International Convention or under the convention with Germany. Applicants not living in Switzerland must appoint a representative in that country.	New inventions which may be applied in the arts and are capable of being represented by models. NOT PATENTABLE. Inventions which cannot be represented by models. Methods or processes cannot be patented. Inventions are not considered new which at the time of application for a patent are sufficiently well known in Switzerland to enable a person skilled in the art to execute them or are patented in Switzerland.	First. Patents of invention. Duration, fifteen years, to start from the date of the application. Second. "Patents of addition." Expire with the principal patent to which they refer. Granted only to owner of principal patent. A complete patent of invention is granted only upon proof of the existence of the model. In default of this proof a provisional patent is granted, which can be changed into a complete patent within a limit of two years, to date from the day of the application, by furnishing proof of the point in question. Fee for filing, 20 francs; first annuity, 20 francs; second annuity, 30 francs, etc., increasing each year by 10 francs. The "patents of addition" are subject only to the payment of the fee for filing. Franc = $0.193.	The application for the patent must be addressed to the Federal Bureau of Intellectual Property, and must comprise (1) a description of the invention; (2) the drawings necessary for the understanding of the description; (3) the proof that a model of the object invented exists or that the invention itself exists; (4) the sum of 40 francs representing the fee for filing and the first annuity; (5) a power of attorney if the application is filed by a representative; (6) a declaration signed by the inventor, certified to by a competent authority or by a notary, establishing the right of the holders of the interest, if the patent is not applied for in the name of the inventor; (7) a memorandum of the documents and articles filed. The application must be written upon a form furnished by the administration. The description of the invention and the drawings must be in duplicate. The application and the documents joined thereto must be in French, German or Italian. All parts of the application must be in the same language. The title must clearly designate the subject of the invention. The description of the invention must be clear and so written that one skilled in the art may therefrom carry out the invention. It must end with a résumé of the features of the invention which are of special importance (claims). The drawings, in duplicate, one copy on bristol-board and the other on tracing-cloth, must be of the following size: 33 centimeters high by 21 wide, 33 centimeters high by 42 wide, or 33 centimeters high by 63 wide. The small or medium form should be used if possible. Each sheet of the drawings must be surrounded by a single line drawn two centimeters from the edge. It must have at the left at the top the name of the applicant and the date of the application, at the right at the top the number of sheets filed and the number of each sheet, and at the right at the bottom the signature of the applicant. One of the duplicates, for photographic reproduction, must be executed upon strong, smooth and white drawing-paper. It must be neither colored nor painted with a wash. The lines must be in good black ink. The hatchings must be separated. The second duplicate must be a reproduction of the first upon tracing-paper. It may be colored. Proof of the existence of the model is shown, first, by forwarding models of which the filing is obligatory (watches or parts of watches, portable firearms, inventions which are essentially composed of substances difficult of identification, inventions which are characterized by properties which ordinary means of investigation do not admit of establishing); second, by filing photographs representing the invention in a concise and complete manner; third, by a temporary deposit of models or satisfactory photographs, not to be permanently filed, but only for the purpose of comparison. (Fee for comparison in the Federal Bureau, 10 francs.)	Any application which does not comply with the required formalities may be rejected subject to appeal. If the Bureau considers that the invention is not patentable for lack of novelty or for other reasons which would render it null and void if granted, they may so advise the applicant, but the patent may not be refused for such reason. Patents are granted without delay at the risk and peril of the applicants and without guarantee as to the reality, novelty or merit of the invention. Specifications and drawings are published by the Bureau for sale.	The patent may be declared forfeited if the invention has not been put in use at the expiration of three years from the date of application. It may also be declared forfeited if the object patented is imported from abroad and the owner of the patent refuses to grant licenses to manufacture in Switzerland on fair conditions. Patented articles must be marked with the Federal Cross and the number of the patent. Patentee of improvement may, after three years from date of principal patent, demand license of owner of such patent.

COUNTRY.	WHO MAY OBTAIN A PATENT.	SUBJECT-MATTER.	NATURE AND DURATION OF THE PATENT-TAXES.	APPLICATION—FORMALITIES AND DOCUMENTS.	PRELIMINARY EXAMINATION.	REQUIREMENTS AS TO WORKING, ETC.
Sec. 129. **TUNIS.** (Member of the International Union.) (Law of December 26, 1888.)	Any person who makes application therefor may obtain a patent for any new discovery or invention in any class of industrial art. The first applicant is entitled to priority. Priority is accorded to applications filed under the International Convention. Applicants must elect domicile in Tunis.	The invention of new industrial products, the invention of new means, or the new application of known means for obtaining a result or an industrial product. NOT PATENTABLE. Plans and combinations of trust or of finance, as well as inventions contrary to law or to good morals. If the invention relates to foods or to medicines, the patent cannot be granted for the product itself, but only for the special process relating to its manufacture. An invention is not considered new which has been patented in the Regency or abroad and previous to the date of filing of the application has been made sufficiently public to admit of being practiced. Patents for improvements, alterations or additions to an invention previously patented may be granted during the first year of the principal patent only to the patentee.	First. Patents of invention. Duration, five, ten, or fifteen years, to start from the filing of the application. Second. Certificates of addition. The same duration as the principal patent to which they refer. Granted only to the owner of the principal patent. The duration of patents granted for inventions already patented elsewhere cannot exceed that of the patents previously taken abroad. Taxes: First, patents of invention, 100 piasters (francs) per year; second, certificates of addition, single tax, 20 piasters (francs). Piaster (franc) = $0.193.	The applicant for a patent must produce at the Bureau of Industrial Property, at Tunis, a receipt for the payment at the office of the Receiver-General of the Tunisian Government of the first annuity of 100 piasters (francs) and forward to the said Bureau a sealed package containing First, an application; second, a description, in duplicate; third, one or several drawings, if the applicant considers them necessary for the understanding of the description; fourth, a memorandum of the documents filed. The application must state the term of the patent desired, indicate concisely the subject of the invention, and be signed by the petitioner or his representative. The original description must have at the top the word "Original," the copy the word "Duplicate." Both must be signed by the applicant or his representative. The description must be written in French and not contain any denomination of weights and measures other than those of the metric system. The two copies of each drawing must be exactly alike, in good black ink, and may be on cloth or paper. The applicant may file a model if considered necessary for the understanding of the description.	If the application is considered regular, it is published with call for opposition. Time allowance of opposition, two months. In case of opposition the patent is granted only after the applicant has obtained a decree of a competent tribunal. Patents are delivered at the risk and peril of the applicant and without guarantee of the reality, novelty or merit of the invention or the accuracy of the specification.	The patented invention must be worked in Tunis within two years from date of patent, and working must not be discontinued for more than one year. In any mention of the patent the words "without guarantee of the Tunisian Government" must be added.
Sec. 130. **UNITED STATES.** (Member of the International Union.) Revised Statutes, 1878, Title LX, Chap. I. Act of March 3, 1897. Act of February 28, 1899.	Patents are granted only to the first and original inventor, his assignors or in case of his death to his legal representatives. The application must be made by the inventor if living, except in case of his insanity, when application may be made by his guardian. In case of conflicting applications or applications which conflict with an unexpired patent, priority is determined by the Patent Office. Priority is *not* at present accorded to applications filed under the International Convention.	Any new and useful art, machine, manufacture or composition of matter or any new and useful improvement therefor. NOT PATENTABLE. An invention is not considered new if before the invention thereof by the applicant it was known or used by others in the United States, or if more than two years before the filing of his application it had been patented or described in a printed publication in any country, or if it had been in public use or on sale in the United States for more than two years before the date of application. A patent is not granted for an invention previously patented in a foreign country by the applicant or his legal representatives if the application on which the foreign patent was granted was filed more than seven months before the date of the application in the United States.	Patents are granted for seventeen years. The term begins to run from the date of issuance of the grant. In case a patent is found to be defective, it may be surrendered and a corrected patent, termed a reissue, for the same invention taken for the remainder of the term of the original patent. Caveats may be filed for immature inventions by citizens of the United States, or alien residents who have declared intention to become citizens, only. Term one year, not renewable. FEES. Application fee, payable on filing the application, $15. Final fee, payable before the expiration of six months from the date of allowance of the application, $20. Fee for reissue payable on filing the application for reissue, $30. Caveat fee, $10. No annual or other taxes are required.	The application must comprise: 1. A petition addressed to the Commissioner of Patents asking the grant of a patent, giving title and referring to the specification for full description, and signed by the applicant. 2. A specification describing the invention in sufficiently full, clear, and exact terms to enable others skilled in the art to which it appertains to practice it, particularly pointing out and distinctly claiming the part, improvement, or combination claimed by the applicant as his invention or discovery, and signed by the applicant and by two witnesses. 3. A drawing in India ink on bristol board (10x15 inches), signed by the applicant or his attorney in fact and by two witnesses. 4. An oath signed and sworn to by the inventor before a proper officer to the effect that he believes himself to be the original and sole inventor and that certain bars to the grant of the patent do not exist. Models are not required unless necessary to an understanding of the invention. All documents must be in the English language. All powers of attorney must bear a 25 cent revenue stamp.	Applications are examined as to formalities and as to novelty and patentability. In case of rejection in whole or in part reëxamination may be demanded. In case of rejection a second time, appeal may be taken to the examiners-in-chief. From their adverse decision, appeal may be taken to the Commissioner in person. From his adverse decision appeal may be taken to the Court of Appeals of the District of Columbia. Priority between two or more persons each claiming to be the inventor of the same invention is determined by an interference in which, upon the proofs submitted by the parties, judgment of priority is awarded and the patent issued to the party adjudged to be the first and original inventor. The same course of appeals is open in interferences as in applications. Specifications of patents are published in full immediately on the grant in separate copies.	The invention is not required to be worked. A patent if valid at the time it is granted is valid throughout its term, and cannot be invalidated by any act or failure to act on the part of the patentee or others.

PART II.

TRADEMARK LAWS.

CHAPTER I.

OF TRADEMARK LAWS IN GENERAL.

Sec. 131. The purpose of trademarks.

From the earliest times it has been customary for the producer or trader to place on the goods sold by him a mark of some kind, by which they may be distinguished by the purchaser from goods of the same class manufactured or produced by others, and it has also been customary from the earliest times to protect the person who has adopted and used a distinctive mark on his goods against any use of his mark by others.[1] Such use by others of a mark known to be the distinctive mark of a particular producer or trader has everywhere been recognized as a fraud, not only on his rights, but on the rights of the purchaser.

Sec. 132. Early trademark laws. Compulsory use of distinctive marks.

Some of the earliest laws on the subject of trademarks were adopted rather as a protection to the public than to the manufacturer. The early laws of both France[2] and Russia[3] on the subject required manufacturers to adopt and use distinctive

[1] Marafy. Dictionnaire, Article Antiquité des marques.

[2] Recueil Général, Vol. I, page 270.

[3] Recueil Général, Vol. II., page 357.

marks as in effect a guarantee to the purchaser against deception or adulteration in the quality of the goods. Such requirements could not be enforced except under the governmental supervision of industries which existed in many countries prior to the present century and mainly disappeared early in the century, though even at the present day the laws of certain countries contain a provision that the state may compel the use of distinctive marks in certain industries.

Sec. 133. The right of the first user. Presumption of notice arising from actual use of the mark.

Before the development of modern methods of transportation, the market which could be reached by a particular producer or trader was restricted—practically a local market only. In such a market not only was competition necessarily restricted, but the goods of any particular producer or trader and the mark used to distinguish them could not but become known to all his rivals in trade as soon as the goods bearing it were placed upon the market. There was little chance that one producer or trader could be long ignorant of the marks adopted and used by others engaged in the same business. The mere use of the marks on goods sold upon the market could fairly be presumed to be, and in practically all cases undoubtedly was, a sufficient notice of the claim of the user to an exclusive right to its use to warrant the courts in holding all other users of the mark to be imitators of a known mark, and the use of such a mark by others could fairly be held to be a wrongful use, a fraud upon the rights of the producer or dealer who had earned a reputation for his goods and whose mark had become known to the purchasing public —in other words, a use for the purpose of unfair competition. Under such conditions the holding, as was held under the common law in England and the United States, that the first user of a mark acquired by such use an exclusive property in its use, was little more than a holding that manufacturers or traders were entitled to protection against fraudulent interfer-

ence with their business by others.[1] Up to a comparatively recent date it was necessary in order that that the first user of the mark obtain relief against others who used similar marks that fraudulent intent be proved.[2]

Sec. 134. The right of the first user. Necessity for notice other than by use of the mark on goods.

Under modern conditions, with the present facilities for the cheap transportation of goods, the market which may be reached by any producer or trader is practically unrestricted and his goods may come in direct competition with those of another located at a great distance, even in a distant country. As the possible market becomes less restricted, the importance of trademarks becomes necessarily greater. The name of the manufacturer, which in a merely local market may be sufficient to distinguish his goods from others of the same class, ceases to be distinctive in a market in which they come in competition with the goods of another manufacturer of the same or a similar name, and the use of a distinctive mark by which they may be known becomes a necessity. The value of the distinctive mark necessarily increases with the wider market made accessible to the user of the mark and the protection of his property right to its exclusive use becomes of even greater importance to him. But as the market broadens the number of other producers or dealers with whose goods those of the user of the mark come in competition necessarily increases, and the chance that some of them may have adopted and used the same or a similar mark to designate

[1] In nearly all reported cases involving the right to a trademark, up to comparatively recent years, the question was one of unfair competition, rather than a question of the property right in the mark as against those who made use of a similar mark without notice. Upton on Trademarks, (Albany, 1860,) treats the question of trademarks wholly from the standpoint of unfair competition. Browne, in his first edition, (Browne on Trademarks, Boston, 1873,) presents practically nothing which has a bearing on the question of the right to a trademark except as against wilful infringers, and the same is substantially true of his second edition. (Boston, 1885.)

[2] See Sebastian, Law of Trademarks, page 94.

their goods without actual knowledge of his goods or his use of the mark is much greater. Fraud cannot be alleged on the part of one who uses a mark similar to or even identical with that of another if he has no knowledge of the prior use of such mark.[1] The mere use of the mark upon goods which in a merely local market could be properly held to be sufficient notice to others is clearly not sufficient under modern conditions, and it has therefore become necessary in order that the owner of a trademark be entitled to full protection in his right to its exclusive use that he be required to give a more adequate notice of his claim to its exclusive use.

Sec. 135. The purpose of registration of trademarks.

The necessity of such notice is recognized in nearly all countries which are of commercial importance, and it is for the purpose of enabling such notice to be given to others who produce or trade in goods of the same class that such countries now provide by law for the official registration of trademarks in some centrally located place, usually the capital of the country. In none of the countries which have trademark laws, except only the United States, is the user of a particular mark entitled to claim an exclusive right to its use as against all others, unless and until he has by registering it in conformity with the law given public notice of his claim of exclusive right, though in a number of countries, even if the mark is not registered or not even registrable, the courts will interfere to prevent its deliberate and intentional use by others for the purpose of unfair competition. In no country, however, except the United States, is the protection afforded to the owner of an unregistered mark as complete as that provided by law for owners of registered marks even so far as regards wilful infringers.

[1] The injustice of depriving a manufacturer of the right to use a mark which resembled the mark of another, but which had been adopted in good faith and without knowledge of the prior use, was recognized in an English case as early as 1869, (Bass *vs.* Dawber, 19 L. T. N. S., 626; Cox Trademark Cases, New York, 1892, 310.)

Sec. 136. The adoption of the same mark by different producers or traders.

That a producer or trader may in good faith and without intent to infringe on the rights of a prior user, adopt a mark which is practically or even precisely the same mark which the prior user has adopted and used unless some notice other than the mere use of the mark is given, is shown by numerous cases which have come before the courts of the United States and other countries.[1] This is readily understood when it is considered what characteristics should be possessed by a trademark in order to be effective for its purpose, and what are very generally possessed by those in use which are best known to the purchasing public. A trademark must be readily recognized and remembered by the public and for this purpose must either be simple and striking in itself or have some essential feature which appeals at once to eye or the ear. Such marks as a simple star, an anchor, a diamond, the head of some commonly known animal are good illustrations of marks which are found to be most effective and valuable.[2]

Sec. 137. The trademark as distinguished from the commercial name or name of locality of origin.

In nearly all of the more important commercial countries, a clear line of distinction is drawn between trademarks and commercial names, or names indicating locality of origin. The commercial name, that is, the name under which an individual, firm, corporation or association transacts business, is com-

[1] So many instances of the adoption by two or more traders of substantially identical marks were found when the Trademarks Registration Act of 1875, of Great Britain, went into effect that it was found necessary to frame a rule known as the "Three mark Rule," under which identical or similar old marks, *i. e.*, marks in use before the date of the act, might be registered by different persons in the same trade up to the number of three, but not more; the rule providing that if the mark had been used *bona fide* by more than three persons it must be treated as common to the trade, and no registration at all be allowed. See Sebastian, Law of Trademarks, p. 58.

[2] The representation of a star, or the word "star," has been registered in the United States Patent Office for nearly every recognized class of goods. The same is true of a representation of an anchor, or the word "anchor."

monly placed on the goods produced or sold, and serves to distinguish such goods from other goods of the same class. If such name is used in a distinctive form, such, for instance, as the fac-simile of the signature of an individual or firm, it is generally considered to be a trademark and registrable as such, but if not in a distinctive form it is not technically a trademark and cannot be the subject of an exclusive right as against others who bear the same name, it being a generally accepted principle that all persons have the right to use their own names on goods produced or sold by them. Commercial names which have by long continued use become known to the public as the distinguishing mark of the goods of a certain producer or trader are universally recognized as exclusive property to be protected by the law against those who without right make use of them for fraudulent or deceptive purposes, and it has even been held that where such purpose is shown a person may be restrained from so using his own name as to deceive purchasers.[1] In certain countries provision is made for the registration of commercial names as such,[2] but in most countries such names are protected without obligation or registration.[3] In nearly all countries, except the United States, the fraudulent use of a commercial name is an offense punishable by fine or imprisonment.

Names indicating locality of origin are in very few countries admitted to registration and protected as trademarks, it being a generally accepted principle that any person has the right to mark goods produced or sold by him with the name of the place of their production. But is also generally accepted that no person has the right to make goods with the name of a locality other than that of their true origin, especially when

[1] Baker & Co. *vs.* Baker, 78 O. G., 1427, and cases therein cited.

[2] The following countries provide by law for the registration of commercial names as such: Denmark, Germany, Portugal, Roumania, Sweden and Switzerland. It does not, however, appear that in any of these countries provision is made for the registration of commercial names of foreigners.

[3] See Internationl Convention, Part III, Article 8.

the purpose of so falsely marking the goods is to interfere with the trade of others or to deceive the public.[1]

Sec. 138. The trademark as distinguished from the commercial name or name of locality of origin. The trademark defined.

The definition of a trademark as distinguished from other marks which may be used on goods, such as commercial names or indications of locality of origin, which is generally accepted in the leading commercial countries of the world may be thus stated: A trademark is a mark which by reason of its arbitrary or fanciful character is distinctly different from marks which it must be presumed would naturally be used by others who produce or deal in the same class of goods to indicate nature or quality, origin, or destination of the goods, and for this reason may from the moment of its adoption be considered the exclusive property of the user.[2] The right of any one to place his own name on goods sold by him is recognized as a natural right and cannot be interfered with. A commercial name consisting of the name of an individual or firm cannot be registered as a trademark, since at the date of its adoption the user cannot be permitted to interfere with its use in good faith by others bearing the same name. Nor since it is natural for all producers in a given locality to place the name of the locality on their goods, can such a name become at the moment of its adoption the exclusive property of any one person who may choose to use it.

Sec. 139. The trademark as distinguished from marks descriptive of nature or quality of goods. Purpose of trademark protection.

It is also clear that a mark which is merely the name of the

[1] Pillsbury Washburn Flour Mills Co. *vs.* Eagle, 85 O. G., 1397, and cases therein cited.

[2] As was said by the United States Supreme Court in the case of Canal Co. *vs.* Clark, 13 Wallace, 311, quoting from the opinion of Judge Duer in the case of Amoskeag Mfg. Co., *vs.* Spear, "(One) has no right to appropriate a sign or symbol which, from the nature of the fact which it is used to signify, others may employ with equal truth, and therefore have an equal right to employ for the same purpose."

particular goods, or is such a mark as would be commonly and necessarily understood to be a mere designation of quality or a statement of the purpose for which the goods are to be used cannot at the moment of its adoption be conceded to be the property of any one producer.[1] The use of such marks must be permitted to all producers of the same class of goods. To permit a mark which is the necessary designation by which a particular class of goods is known on the market to become the exclusive property of any one producer would be to give him through the protection afforded to trademarks virtually a monopoly of the trade in such goods. Trademark laws are not intended for any such purpose.[2] The necessity for the use of a trademark arises only when the goods of one producer come in competition with goods of the same class produced by others. The whole purpose of these laws is not to restrict production, or create monopolies, or prevent competition in any way, but to secure fairness in competition.

[1] It has been held in France that a word mark "ought to consist essentially in a term which is other than the general, common, usual or scientific (vulgaire, commune, usuelle ou scientifique) designation of the product." Versailles, January 6, 1897, cited in Annuaire Farjas, 1899, page 403.

[2] This applies even in case of a specific designation by which a patented article is known on the market, it being well settled that the original patentee or his assignees have no right to the exclusive use of such designation as a trademark. Singer Mfg. Co. *vs.* June, 163 U. S., 169. *Ex parte* Velvril, 84 O. G., 807. See Sebastian's Law of Trademarks, page 59, and decisions there cited.

CHAPTER II.

OF TRADEMARK LAWS AT PRESENT IN FORCE.

Sec. 140. Countries which have trademark registration laws, with dates of laws at present in force.

The following countries provide by law for the registration of trademarks. The dates of the laws at present in force are given in each case, and so far as possible a statement is made in each case of where the text of the law may be found in English, or if not found in English, where it may be found in French. As will be observed, a comparatively small number of these laws are, with the exception of the laws of the United States, Great Britain and the British Colonies and dependencies, accessible in English translation:

Argentine Republic, Law of August 14, 1876, (42 O. G., 383,) July 31, 1897, (Propriété Industrielle, 1898).

Austria, Law of January 6, 1890. (52 O. G., 1539.) June 10, 1891 (59 O. G., 1611.)

Belgium, Law of April 1, 1879. (Recueil Général.)

Bolivia, Law of November 25, 1893, amended March 24, 1897. (Propriété Industrielle, 1899.)

Brazil, Law of October 14, 1887. (45 O. G., 235.)

British New Guinea,*[1] Law of 1894.

British South Africa,*[2] (Rhodesia, Mashonaland and Matabeleland,) Laws of 1893 and 1894.

Bulgaria, Law of December 15–27, 1892, (65 O. G., 137,) amended December 21, 1893—January 2, 1894. (Propriété Industrielle, 1897.)

* British Colony or dependency.

[1] Law substantially identical with law of Great Britain.

[2] Law similar in essential features to the law of Great Britain.

Canada,* Law of May 15, 1879. (Revised Statutes of 1886), amended March 26, 1890.

Cape Colony,*[1] Law of 1877, amended July 5, 1895.

Ceylon,*[1] Law of December, 1888, amended April 16, 1890.

Chili, Law of November 12, 1874. (Marafy.)

Congo Free State,[2] Law of April 26, 1888. (Marafy.)

Costa Rica, Law of May 22, 1896. (Propriété Industrielle, 1896.)

Denmark, Law of April 11, 1890. (54 O. G., 1419,) amended December 19, 1898. (Propriété Industrielle, 1899.)

Dutch East Indies,†[3] Law of September 30, 1893.

Dutch West Indies,†[3] (Surinam and Curaçao,) Law of September 30, 1893.

Fiji Islands,[1] Law of April 22, 1886.

Finland, Law of February 11, 1889. (Recueil Général.)

France, Law of June 23, 1857, amended May 3, 1890. (Recueil Général.)

Germany, Law of May 12, 1894. (71 O. G., 145.)

Great Britain, Law of August 25, 1883, (25 O. G., 90,) August 23, 1887, December 24, 1888, (46 O. G., 1395,) and May 11, 1891.

Greece, Law of February 10–22, 1893. (69 O. G., 126.)

Guatemala, Law of November 23, 1897. (Propriété Industrielle, 1898.)

Hawaii,[4] Law of June 23, 1888.

Hong Kong,* Laws of December 9, 1873, and August 7, 1890.

Hungary, Law of February 4, 1890. (See Law of 1890 of Austria.)

* British Colony or dependency.

† Colonial possessions of the Netherlands.

[1] Law similar in essential features to the law of Great Britain.

[2] Law similar in essential features to the law of Belgium.

[3] Law substantially identical with law of Netherlands.

[4] Annexed to the United States. Until further legislation the Hawaiian law must be presumed to be still in force.

Italy, Law of August 30, 1868, (Recueil Général,) and January 16, 1898. (Propriété Industrielle, 1898.)

Jamaica,*[1] Laws of 1888 and 1889.

Japan, Law of March 1, 1899.

Labuan,* Law of November 1, 1893. (Recueil Général.)

Leeward Islands,*[1] Law of 1887.

Luxemburg, Law of March 28, 1883. (Recueil Général.)

Mauritius,* Law of October 20, 1868. (Marafy.)

Mexico, Law of November 28, 1889, (51 O. G., 809,) amended December 17, 1897. (Propriété Industrielle, 1898.)

Natal,*[1] Laws of 1885 and October 24, 1888. (Marafy.)

Netherlands, Law of September 30, 1893. (66 O. G., 174.)

Newfoundland,*[2] Law of May 9, 1888.

New South Wales,* Law of May 26, 1865. (Marafy.) amended 1893.

New Zealand,*[3] Law of September 2, 1889. (Carpmael Supplement.)

Norway, Law of May 26, 1884. (Recueil Général.)

Orange Free State,[1] Law of 1891.

Paraguay,[4] Law of August 5, 1892.

Peru, Law of December 19, 1892, amended December 31, 1895. (Propriété Industrielle, 1897.)

Portugal, Law of May 21, 1896. (Carpmael Supplement.)

Queensland,*[5] Laws of October 13, 1884 (31 O. G., 122), and November 5, 1890. (Marafy.)

Roumania, Law of April 15-27, 1879. (55 O. G., 1653.)

Russia, Law of February 26-March 9, 1896. (Recueil Général.)

Serbia, Law of May 30-June 11, 1884 (75 O. G., 1035.)

South African Republic, Law of May 31, 1892.

South Australia,*[5] Law of 1892.

* British Colony or dependency.

[1] Law similar in essential features to the law of Great Britain.

[2] Law substantially the same as the law of Canada.

[3] Law substantially identical with the laws of Great Britain.

[4] Law substantially identical with the law of Argentine Republic.

[5] Law substantially identical with law of Great Britain.

Spain, Laws of November 20, 1850, July 11, 1851, September 1, 1888, and February 12, 1889. (Recueil Général.)

Sweden, Laws of July 5, 1884, November 28, 1884, February 20, 1885, March 5, 1895, and December 31, 1895 (Recueil Général), March 5, 1897. June 25, 1897 (Propriété Industrielle, 1898).

Switzerland, Law of September 26, 1890 (Recueil Général), amended July 30, 1895.

Tasmania,*[1] Law of September 29, 1893. (Carpmael Supplement.)

Trinidad and Tobago,*[2] Law of November 19, 1894 (Carpmael Supplement), amended 1897.

Tunis,[3] Law of June 3, 1889. (Marafy.)

Turkey, Law of May 10, 1888. (Recueil Général.)

United States,[4] Law of March 3, 1881 and August 5, 1882.

Uruguay,[5] Law of March 1, 1877. (Marafy.)

Venezuela, Law of May 24, 1887. (Marafy.)

Victoria,*[1] Law of July 10, 1890, amended December 19, 1890.

Western Australia,*[1] Law of October 10, 1894. (Carpmael Supplement.)

* British Colony or dependency.

[1] Law substantially identical with law of Great Britain.

[2] Law similar in essential features to the law of Great Britain.

[3] Law similar in essential features to the law of France.

[4] Nearly all of the several states provided by law for the registration and protection of trademarks. See § 141. As to the protection of trademarks in territory subject to military government by the military forces of the United States, see order of the Secretary of War of April 11, 1899. (87 O. G., 361,) and June 1, 1899 (87 O. G., 2123).

[5] Law substantially identical with law of Argentine Republic.

NOTE.—In the above, *O. G.* refers to the Official Gazette of the United States Patent Office. *Recueil Général* refers to the Recueil Général de la législation et des traites concernant la propriété industrielle, published by the International Bureau of Industrial Property, Berne, 1896. *Propriété Industrielle* refers to the official journal of the International Bureau of Industrial Property, published monthly at Berne. *Marafy* refers to the Dictionnaire International de la propriété industrielle, by Maillard de Marafy, Paris, 1890. *Carpmael Supplement* refers to the supplements to Carpmael's Patent Laws of the World, published from time to time by the Institute of Patent Agents, London.

Sec. 141. Trademark laws of the several states of the United States.

The Congress of the United States derives its authority to make laws for the registration and protection of trademarks from that clause of the Constitution which empowers it to "regulate commerce with foreign nations, and among the several states and with the Indian tribes." (Constitution, Article 1, Sec. 8, 3d clause.)[1] The law of the United States at present in force (Act of March 3, 1881,) provides for the registration of those trademarks only which are used in commerce with foreign nations, or with the Indian tribes. The registration and protection of trademarks used in commerce within the several states must under the Constitution be left to be provided for by State legislature.[2] Legislation for this purpose has been adopted by most of the States.

The following States provide by law for the registration of trademarks by any person, or association, or union of workingmen, and for the punishment, by fine or imprisonment, of infringers:

Delaware, Act of March 29, 1893.
Georgia, Act of December 20, 1893.
Idaho, Act of March 12, 1897.
Illinois, Act of June 13, 1895.
Indiana,[3] Act of March 6, 1891, and Act of March 8, 1897.
Iowa, Act of March 26, 1892.
Louisiana, Act of July 8, 1898.
Maine, Act of March 28, 1893.
Maryland, Act of April 4, 1892.
Massachusetts, Act of June 4, 1895.
Michigan, Act of May 24, 1895.
Minnesota, Act of February 23, 1895.

[1] Trademark cases, 16 O. G., 999, 100 U. S., 82.

[2] Report of Thomas Jefferson, Secretary of State, to House of Representatives, 2nd Congress, (Jefferson's Complete Works, Washington, 1854, Vol. 7, page 563.)

[3] Limited to citizens of Indiana, except as to trademarks used by persons engaged in bottling or selling beverages.

Missouri, Act of March 20, 1893.
Montana, Sander's Penal code, 1895.
New Hampshire, Act of March 13, 1895.
New Jersey, Act of March 15, 1898.
Ohio,[1] Act of March 30, 1892, May 1, 1894, Revised Statutes, 1890.
Oklahoma, Act of March 11, 1897.
Tennessee, Act of February 3, 1897.
Utah, Act of March 8, 1894.
Wisconsin, Act of April 9, 1895.

The following States provide by law for the registration of trademarks by any person and for the punishment of infringers by fine or imprisonment, but do not expressly provide by law for registration by associations or unions:

Arkansas,[2] Act of March 31, 1883.
California, Act of March 12, 1885, Chapter 157, of laws of 1897.
Colorado, Mill's Annotated Statutes, 1891.
Connecticut, Statutes of 1888, Chapter 93 of laws of 1895.
Nevada, Statutes of 1885.
North Dakota, Act of March 9, 1891.
Oregon, Hill's Annotated Laws, 1892.
Washington, Act of February 21, 1891, March 20, 1895.
West Virginia,[3] Code of 1897, Act of 1882.

The following states provide by law for the registration of trademarks only by associations or unions of workingmen and for the punishment of infringers by fine or imprisonment:

Kansas, Act of March 11, 1891.
Kentucky, Act of April 16, 1892, March 8, 1894.
Nebraska, Laws of 1891, Chapter 15.

[1] Provides for registration only by unions or associations of workingmen, except that any one engaged in manufacture, bottling, or sale of beverages in bottles, &c., may register.

[2] Expressly permits registration by foreign persons or corporations located in countries which by treaty or convention afford similar privileges to citizens of the United States.

[3] Limited to persons, firms or corporations dealing in timber.

Pennsylvania, Act of May 21, 1895.

South Dakota, Act of March 7, 1890.

The following states provide by law for the registration of trademarks only by manufacturers or dealers in beverages in bottles, &c., and for the punishment of persons who make fraudulent use of the bottles &c. so marked:

Alabama, Act of February 14, 1891.

New York, Act of May 27, 1896, R.

Rhode Island, Act of May 13, 1892.

Virginia, Act of February 17, 1890, February 12, 1892.

Sec. 142. The protection afforded to trademarks in countries in which no provision is made for registration.

In practically all the British possessions other than those above named[2] in which provision is made by law for registration of trademarks, the Merchandise Marks Act of 1887 of Great Britain has, either in precise terms or in substance, been put in force. Under this act forging or falsely applying a trademark to goods[1] is made a punishable offense. The British possessions in which such law has been adopted without requirement of or provision for registration are: Barbados, Bermuda, British Guiana, British Honduras, Falkland Islands, Gibraltar, Gold Coast, Grenada, India (British), Lagos, St. Lucia, St. Vincent, Sierra Leone and Straits Settlements. In Malta fradulent use of a trademark is punishable under the criminal law. In Colombia fraudulent use of a trademark is punishable under the Penal Code, and though not specifically authorized by law a register of trademarks is kept.[3] In Egypt trademarks are protected against infringement by the courts. In China the trademarks of foreigners will to some extent at least be protected against infringement through diplomatic action.

NOTE.—For a fuller abstract of the trademark laws of the several states, see the American Corporation Legal Manual, 1899.

[1] Merchandise Marks Act of 1897 of Great Britain, Article 2.

[2] § 140.

[3] Propriété Industrielle, 1898, page 143.

In all of these countries in which no provision is made for registration, it is generally found of importance for the owner of a trademark to give ample notice to the public of his claim to the exclusive right to the mark by publishing the mark in newspapers. The protection afforded in these countries is in the nature of protection against unfair competition rather than protection of the property right in the mark.

CHAPTER III.

OF THE ACQUISITION OF THE RIGHT TO A TRADE MARK UNDER THE LAWS OF THE DIFFERENT COUNTRIES.

Sec. 143. Two classes of laws—Declaratory and attributive.

Trade mark laws are of two classes, first, those under which the exclusive right to the trade mark is acquired by adoption and use, registration being merely declaratory of the existing right; and, second, those under which registration is attributive of the property right, that is, the property right is acquired by registration and continues only so long as the registration is kept in force. Under the first of these classes, priority of adoption and use determines the right of property in the mark as between two or more users, priority of registration being disregarded, it being of comparatively little importance whether the prior user has registered the mark or has given other notice of his claim to exclusive property in it than the mere use of the mark on goods sold by him. Under the second class the right to the mark is determined absolutely by priority of registration, the question of priority of use being disregarded.

Sec. 144. Attributive laws a development of modern commercial conditions. Trademark legislation in Great Britain.

Of these two classes the second is clearly the better adapted to modern commercial conditions as, by reason of the fact that registration is absolutely necessary to the protection of the right to the mark, all marks will be registered and all persons who are engaged in the production or sale of any class of goods may by consulting the register of trademarks be informed of what marks are in use by others and may in selecting a mark for their own use avoid those used by others.

Nearly all laws adopted within the last twenty years belong in this class, though under some of them the right of the registrant as against the prior user of the mark is not conclusively determined by the fact of registration until the expiration of a certain period of time.

The attributive trade-mark law may be considered a necessary development of modern commercial conditions. This is illustrated by the history of trade-mark legislation in Great Britain. Up to 1862 trade-marks were protected in Great Britain only under the common law, the first user of the mark being recognized as entitled to the exclusive right to the mark and entitled to an injunction and damages against an infringer. Few trade-mark cases had up to that time been brought before the courts, the number of reported decisions in trade-mark cases in England and the United States from the earliest case in 1590 up to 1855 being but 46, and up to 1865 but 104.[1] The protection afforded under the common law was recognized as uncertain and inadequate and in 1862 an act was passed providing a penalty for the fraudulent marking of merchandise, in which trademarks are distinctly referred to as indications which are not to be misapplied to goods. In attempting to apply this act so far as it related to trademarks, it was found that it was almost impossible to ascertain whether any particular device which a manufacturer might wish to adopt as a distinguishing mark for his goods, was novel or had been already appropriated. From this condition of affairs it became necessary in view of the growing importance to commerce of both adequately protecting trademarks and providing for due notice to others of the adoption of a particular trademark, to provide for and compel the registration of all trademarks in which exclusive right was claimed. The act of August 13, 1875, known as the Trademarks Registration Act of 1875 was passed with a view to remedying the

[1] Coddington's Digest of Trademarks, New York, 1878, preface. In the table of cases of Sebastian's Law of Trademarks, (3rd edition 1890) the names of more than 1200 trademark cases are given.

difficulties. Under this act not only was it definitely stated what should be registrable as a trademark, but it was also provided that no person should thereafter be entitled to institute any proceeding to prevent the infringement of any trademark until and unless such trademark be registered.[1] This act was repealed by the Patents, Designs and Trademarks Act of 1863, which though amended from time to time does not as it stands to-day differ materially from the act of 1875 in so far as regards the acquisition of the right to a trademark or the requirement for registration. Under the present law registration is so far attributive of the right to the mark that it is made the equivalent of public use, is *prima facie* evidence of the exclusive right, and after the expiration of five years is conclusive evidence of that right.[2]

Sec. 145. Declaratory laws. The United States trademark law.

The trademark law of the United States (Act of March 3, 1881,) is perhaps the most striking example of a registration law which is merely declaratory. Under this law, which is restricted in its application for constitutional reasons to trademarks used in commerce which is subject to the control of the general government,[3] only those marks which have actually been used and the right of ownership in which has been acquired by such use are registrable. Registration is merely *prima facie* evidence of ownership,[4] and does not by lapse of time become conclusive evidence of ownership. The right of the registrant to the mark must give way to the right of a prior user of the mark though such prior user may never have even sought to register the mark. The law expressly declares that nothing contained therein shall prevent, lessen, impeach or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trademark might

[1] Trademarks Registration Act of 1875 of Great Britain, Article 1.

[2] Patents, &c., Acts of 1883-8 of Great Britain, Articles 75 and 76.

[3] See § 141.

[4] Law of 1881 of the United States, Sec. 7.

have had if the law had not been adopted,[1] and further provides that the expiration of the term for which registration was granted shall not unfavorably affect a claim to the exclusive ownership in the trademark.[2] The law does not even make the wrongful use of a registered trademark a punishable offense, and the owner of a registered trademark has no remedy against those who wrongfully make use of his mark which the owner of an unregistered mark may not have under the common law, *i. e.*, damages and injunction.[3]

The United States law is not, however, to be taken as typical of declaratory laws generally. Under all other declaratory laws registration is effective to give the owner of the mark rights against infringers which the owner of an unregistered mark may not have. For instance, in France while the owner of an unregistered mark may under the laws relating to unfair competition bring suit for damages and injunction,[4] he may not proceed against the infringer also in the criminal courts as may the owner of a registered mark. In all countries, other than the United States, which provide by law for the registration of trademarks, the full protection of the law is accorded only to marks which are registered in accordance with the law.

Sec. 146. Attributive laws. The German merchandise marks law.

The Merchandise Marks Law of 1894 of Germany may be considered a typical law of the second of these two classes. Under this law the registrant is the owner of the exclusive right to the mark,[5] and while his registration may be canceled

[1] Law of 1881 of the United States, Sec. 10.

[2] Same, Sec. 11.

[3] Trademarks used in commerce which is subject to state jurisdiction, that is, carried on within the limits of a State, may very generally be registered under State laws, and wrongful use of such marks is in most of the States made by law an offense punishable by fine or imprisonment. See § 141.

[4] Marafy, Dictionnaire, Article—France. RecueilGénéral, Vol. I., page 312, note 2.

[5] Law of 1894 of Germany, Article 12.

for a number of causes which may arise during the term for which it is registered, his right to the mark is absolute so long as it remains on the register. The user of an unregistered mark is not recognized as entitled to the protection of the law. The first applicant is entitled to registration and the right to the exclusive use of the mark even against a prior user.

Sec. 147. Use of the mark necessary to continuance of the exclusive right thereto.

Whether the legal right to the exclusive use of a mark be acquired by use or by registration, it ceases to exist if the mark is not used by the person who acquired such right, on goods produced or sold by him of the class for which it was registered or on which it was originally used.[1] It is very generally provided in trademark laws that the right to the mark expires with the abandonment of the business in which it was originally used or its transfer to another,[2] whether such abandonment or transfer be of the business of the owner of the mark as a whole or of that branch of it only which was concerned in the manufacture or sale of the particular product to which the mark was applied. So, too, if the owner of the mark while continuing the manufacture or sale of the product by ceasing to use the mark for an extended period, especially if he uses another mark on that product, shows an intent to abandon the mark, his right to the exclusive use ceases.[3] Under the laws of certain countries, as the United States, Great Britain and France, intent to abandon the mark must be shown, but such intent may be shown by conduct and need not be shown to

[1] It has, however, been held in France in effect that the registrant acquires by registration a property right in the mark independent of the question of its use either before or after registration. See Annuaire Farjas, 1899, page 414. It is to be noted also that the law of Great Britain makes registration the equivalent of public use.

[2] See, for instance, Article 9 of law of 1890 of Austria, Article 3 of law of 1892 of Bulgaria, Article 9 of law of 1894 of Germany, Article 12 of law of 1899 of Japan, and Sebastian, Law of Trademarks, pages 120 and 121, and decisions there cited.

[3] See Sebastian, Law of Trademarks, page 124, and decisions there cited.

have been an express abandonment.[1] In certain other countries, as Switzerland, Mexico and Brazil, the mere fact of non use of the mark for a period specified in the law deprives the original owner of the mark of the right to its exclusive use.[2] By knowingly permitting others to make use of his mark the original owner may lose his right to the exclusive use.[3] In few countries is it permissible under the law to license others to use the mark or to transfer the right to its exclusive use other than with the transfer of the business of producing or selling the article on which the mark is used.[4]

[1] See Sebastian, Law of Trademarks, pages 12 1and 122, and decisions there cited.

[2] Law of 1890 of Switzerland, Article 9; law of 1889 of Mexico, Article 11, and law of 1887 of Brazil, Article 12.

[3] See Sebastian, Law of Trademarks, page 122.

[4] See § 177.

CHAPTER IV.

OF THE REGISTRATION OF TRADEMARKS.

Sec. 148. Different systems of registering trademarks.

The same differences that are found in systems of granting patents[1] are found in the systems of registering trademarks. In many countries, applications for registration of trademarks are subjected to a rigid preliminary examination; in a few countries applications for registration are in addition to the preliminary examination advertised for opposition before being granted;[2] in other countries all applications for registration of trademarks which are presented in the form required are entered on the register.

In the following countries, preliminary examination is required by law to be made: Argentine Republic, Brazil, Bulgaria, Canada, Denmark, Finland, Germany, Great Britain, (and most of the British Colonies and dependencies,) Japan, Norway, Paraguay, Peru, Portugal, Servia, Spain, Sweden, United States and Uraguay. In Great Britain and the more important of the British colonies (except Canada and Newfoundland)applications for registration are also required to be advertised for opposition. In Bolivia, Guatemala and Mexico applications for registration are required to be published for opposition. In the following countries, trademarks are registered without preliminary examination or publication in advance of registration, if the application is in proper form: Austria, Belgium, Chili, Congo Free State, Costa Rica, France, Greece, Hungary, Italy, Luxemburg, Netherlands, Roumania, Switzerland,[3] Tunis, Turkey and Venezuela.

[1] See § 9. [2] See § 11.

[3] The applicant is notified under the laws of Austria, Hungary and Switzerland if the mark is found to be not registrable under the law, but if he insists the mark will be registered.

As will be noted in all countries in which applications for patent are subject to preliminary examination,[1] the system of preliminary examination of applications also prevails, as well as in many countries in which there is no preliminary examination of applications for patent. Registration of trademarks without preliminary examination is the exception. At the same time it is to be noted that the system of publication of the application in advance of the registration prevails in very few countries except Great Britain and the British Colonies.

Sec. 149. The preliminary examination of trademark applications.

The questions considered in the preliminary examination of applications for registration of trademarks are very different from those considered in the examination of applications for patent. Abstract novelty need not be considered since novelty is not essential to a trademark. Many trademarks, probably the majority of trademarks, consist of representations of objects which are in themselves old and well known.[2] Use of the trademark in public by the applicant for registration prior to application for registration not only is not a reason why the mark should not be registered, but in many countries is a necessary prerequisite to registration. In all countries in which registration is merely declaratory of the right to the mark, length of use determines the right to the mark as between two claimants.

Sec. 150. The preliminary examination of trademark applications. Prior use of the mark in another country not considered.

The question of prior use of the mark by another in a foreign country is not considered in the preliminary examination it being generally considered that the producer or trader who first makes use of a particular mark *in the country*,[3] or, in the

[1] See § 16.

[2] See § 136.

[3] In Great Britain it is held that use of a mark prior to August 13, 1875, in a foreign country, is not sufficient to constitute such a mark an "old mark."

countries in which registration is attributive of property, the person who first applies for registration *in the country*, is alone entitled to be considered the owner of that mark so far as that country is concerned. This is in principle reasonable, since so far at least as goods which are produced and consumed within the country are concerned, a mark used by a producer in one country does not interfere with the use of the same mark by another in another country, and the same mark may be used by both without conflict and without deception of the public. If, however, the goods on which the mark is used are exported and placed on the market in another country in which the same mark is used by a producer or trader located there, conflict arises at once and it becomes necessary to determine whether the domestic user of the mark or the foreigner has the better right. In such case it is but reasonable that the person who has acquired ownership within the country by compliance with the law of the country should be held to be entitled to the exclusive right to the mark, provided he adopted and has used the mark in good faith without intent to defraud another of the right to which he is justly entitled and without intent to deceive purchasers. It is not unreasonable to hold the foreign owner of the mark to the same diligence in complying with the requirements of the law that is expected of domestic owners in those countries in which the law permits foreigners to register and protect the trademarks to which they have acquired the exclusive right in their own country. At the same time it must be recognized that in certain countries in which registration is attributive of the exclusive right to the mark, the law has been taken advantage of by those whose real object is not to protect a mark which has been made valuable by themselves, but to secure to themselves the legal right to a mark which has through the efforts of a foreigner come to be well known and valuable, by a fraud which is none the less real because it cannot be prosecuted or punished under the laws as they exist at present.

Sec. 151. Usurpation of marks known to be in use in another country.

This usurpation of marks known to be in use in a foreign country, and recognized there as the distinctive marks of producers or traders who have earned a high reputation for their goods and made their marks valuable, has been carried to such an extent in certain foreign countries, as to seriously hamper the originators of the marks in their efforts to extend their foreign trade. No matter how long the originator of a mark has enjoyed the exclusive right to it, or how extensive may have been his use of it in his own country, even though the reputation of the goods bearing his mark may have extended far beyond his country, if he has failed, in any foreign country in which registration is attributive of the right to the mark, to apply for registration before the usurper of the mark applies, he cannot export goods bearing his mark to that country except by making terms with the usurper. He is absolutely without remedy, and can place his goods on the market in that country, if at all, only on such conditions as the registrant may choose to dictate. This usurpation of known marks has affected especially owners of marks located in countries in which, as in the United States, the right to the mark is acquired by use. Relying on the fact of their ownership acquired by use, and not realizing that in foreign countries registration, which in their own country may not be necessary to protect their rights, is absolutely necessary, they have in many cases delayed to apply for registration abroad and by their delay have given an opportunity to the usurper to take advantage of the foreign patent laws to deprive them of valuable rights to which they may be justly entitled and which might have been secured by diligence in applying for registration.

Sec. 152. Usurpation of marks known to be in use in another country. Attitude of the International Union.

This usurpation of marks was the subject of consideration

by the International Union for the Protection of Industrial Property at the conference at Madrid in 1891 and at the recent conference at Brussels. At the latter conference it was proposed by the Belgian delegates to add to the Convention the following:

"A trademark cannot fall into the public domain, nor be validly registered by another in one of the States of the Union as long as it shall be the subject of a prior right in the country of origin."[1]

No decisive action was taken towards the adoption of such an amendment, though the delegates of eight out of the sixteen countries belonging to the Union favored the adoption of substantially such an amendment to the Convention. The character of the discussion was such, however, as to indicate that steps may be taken in the near future to remedy this evil of usurpation of known marks, by international agreement.

Sec. 153. The preliminary examination. Questions to be considered.

The questions to be determined by the preliminary examination of an application for registration of a trademark are but two; *First*, Does the mark sought to be registered possess the characteristics of a lawful trademark? and, *Second*, Has the applicant for registration the right to the exclusive use of the mark?

Sec. 154. The preliminary examination. Determination of the applicant's right to the mark.

The right of the applicant to the exclusive use of the trademark which he seeks to register is, in the countries in which registration is attributive of property in the mark, determined by an examination of the register of trademarks. A mark which is identical with a mark previously registered for the same class of goods, or so nearly resembles such registered mark as to be readily mistaken for it by the purchasing public, cannot be registered so long as such previously registered

[1] Report of the United States delegates to the Brussels conference, page 12.

mark remains on the register. In these countries, the only marks not on the register which need to be taken into consideration in determining this question are the marks known to be in common use in the trade.[1] In countries in which registration is not attributive of property in the mark, if any preliminary examination is required to be made, an examination should be made not only of the register of marks, but of all available records of marks in use but not registered. As, however, the records of marks in use but not registered are necessarily meager, it is evident that the value of the preliminary examination as determining the probable right of the applicant to the mark depends upon the extent to which marks in use are registered. In the United States, as only marks used in commerce with foreign nations or with the Indian tribes are registrable under the law, and as registration does not give the user of the mark any material advantage not enjoyed by those who use without registering,[2] the register of marks can be relied on only as showing a small percentage, probably not one-fourth of the marks in use,[3] and the preliminary examination is necessarily of little value unless it discloses the fact that the applicant has not a right to the mark. In certain other countries in which, as in Great Britain, registration while not attributive of property in the mark from the date of registration, becomes so after a certain period,[4] and in countries in which registration, though not attributive of property in the mark, gives the registrant certain advantages not enjoyed by those who use marks without registration,[5] the inducement to register marks is such that it may be presumed that a large proportion of the marks in use

[1] See § 168 and note thereunder. [2] See § 145.

[3] The number of trademarks registered in the United States from the passage of the law of 1870, including reregistrations under the present law, up to the beginning of 1899, was but 32,307.

[4] See § 144. The number of trademarks registered in Great Britain from the passage of the law of 1875 to the close of the year 1897, was 86,148.

[5] The number of trademarks registered in France for the last ten years averaged more than 6,000 annually.

are registered and the value of the preliminary examination is much greater.

Sec. 155. The preliminary examination. What constitutes a lawful trademark. The International Convention.

The question whether the mark sought to be registered is a lawful trademark is one on which the laws of different countries differ materially. Marks registrable under the law of one country are not necessarily registrable under the laws of other countries. It may be assumed that marks which consist of or contain representations contrary to good morals or public order are not lawful trademarks in any country, though there is not universal agreement as to what representations are contrary to public order, particularly as to those which involve mention of rulers or dignitaries of the state. It may also be assumed that marks which contain representations reflecting on or in fraud of the rights of others, or which tend to deceive the public, are not registrable, though there is in the different countries some divergence of view as to what rights of others are to be respected, and as to what tends to deception of the public. Such marks may not improperly be considered to be contrary to public order. Under the Convention for the Protection of Industrial Property,[1] concluded at Paris in 1883, it is agreed by the countries which are parties thereto[2] that any trademark registered in accordance with the law of that one of the countries of the Union in which it originates shall be admitted for registration and protected in all the other countries of the Union in the form in which it was originally registered, whether registrable or not under the laws of such other countries, provided it is not objectionable as being contrary to morals or to public order,[3] and is not already registered by another. This agreement appears to be given in full force and effect in all the countries

[1] Part III., § 215.

[2] Same. Note under Article 1 of the International Convention.

[3] Same. Article 6 of the International Convention and note.

of the Union except Great Britain and the British Colonies of New Zealand and Queensland, and the United States.[1] In Great Britain (and the law is the same in New Zealand and Queensland) it has been held that in the matter of the registration of trademarks by foreigners the law and not the Convention is controlling,[2] and as a consequence the trademark of a foreigner not registrable under the law cannot be registered in Great Britain, though registrable in the country of origin and filed for registration under the Convention. In the United States an opinion has been rendered by the Attorney General that legislation is necessary to give effect to the Convention,[3] and though there is no reported case in which registration has been refused, for any reason affecting the lawfulness of the mark, to a foreigner for any trademark registered by him in the country of origin, it must be regarded as doubtful whether such mark, if not registrable under the United States law, would be registered.

Sec. 156. Trademarks. Arbitrary devices.

Arbitrary devices, that is, representations of arbitrary figures or symbols, pictures, seals, vignettes and the like, the *marques figuratives*, as they are termed in French, are in all countries recognized as lawful trademarks. Marafy says of such marks:

The *marque figurative* is the trademark *par excellence.* It belongs to a language accessible to all and understood by all in every region of the world. The *marque figurative* being addressed to the eye, it matters little, so far as people separated by diversity of language are concerned, whether such a a mark is accompanied by words of description. Such words may be of use with purchasers of a certain class, but not being understood by the majority of purchasers they should, so far as the latter are concerned, be considered as non-existent.[4]

[1] Part III., § 215. Note under Article 6 of the International Convention.

[2] "Syrup of Figs" case. *In re* California Fig Syrup Co., 40 Ch. D., 620.

[3] 47 O. G., 397.

[4] Marafy, Dictionnaire. Article Marque. Vol. V.