

see Equity Rule 24. An oath of the truth of the bill must be appended to such a document, if it prays for an injunction, see *Rogers v. Abbott*, 4 Wash. 514. The bill may be amended at any time before replication, upon motion, without notice, by order from any judge of the court, and at or after the hearing, at the discretion of the court.

DEFENSES. PLEADINGS IN EQUITY.—Defenses may be made to a bill by demurrer, by plea or by answer. The defenses which may be made to actions at law may all be made to actions in equity, and in addition the defendant may employ two other defenses: non-jurisdiction in equity and laches.

REPLICATIONS IN EQUITY.—A replication is required to be filed by the complainant, in order to put in issue those points wherein the answer disagrees with the bill. It must be filed on or before the rule day which next succeeds that upon which the answer is due and is filed, see Equity Rules, 45, 46. It may, if offered after that time, be allowed by the court to be filed *nunc pro tunc* as of the day upon which it was due, see *Pierce v. West's Executors*, 1 Peters' C. C. Rep. 351.

HEARING IN EQUITY.—The hearing of an action in equity for infringement of a patent, may take place before one of the judges of the court sitting alone, or before several judges sitting together, or before a judge and a jury, or before a master in chancery.

DECREES IN EQUITY.—An interlocutory decree is a decree in favor of the plaintiff upon the issues created by the bill and answer, and referring the cause to a master in chancery for account of profits and award of damages. Where the validity of the patent and the fact of infringement are admitted or proved, the plaintiff is entitled to a decree and account as a matter of course, see *North Am. Iron Works v. Fiske*, 39 O. G. 1086. Where one of several patents, or one or more claims of the same patent are found to be valid and to have been infringed a decree must be granted and an account ordered, see *Tibbals v. Day*, 11 Fed. Rep. 903; *Matthews v. Lalance & Grosjean Mfg. Co.*, 17 O. G. 1284. Under a prayer for general relief the court may decree an account of profits, see *Stearns v. Gladding*, 17 How. 447. Profits and damages may be decreed though the right to an injunction be lost, see *Kirk v. DuBois*, 37 O. G. 102.

A final decree is one which terminates the litigation, awarding the plaintiff the profits, damages, and other relief to which he is entitled, or deciding the case upon its merits in favor of the defendant. A final decree cannot be granted until the cause has been decided upon its merits and, where an account is necessary, it has been taken by the master and reported to and accepted by the court, see *Reeves v. Keystone Bridge Co.*, 9 O. G. 885. The defendant has a right to this decree if he proves any one of his special defenses, see *Bates v. Coe*, 15 O. G. 337. If no infringement is found the court will not pass upon the question of novelty and validity, see *Saxe v. Hammond*, 7 O. G. 781.

REHEARINGS IN EQUITY.—A rehearing may be ordered at any time between the interlocutory and final decree for the purpose of admitting new evidence or additional defenses, or on other sufficient ground, see *Allis v. Stowell*, 18 O. G. 465. It is wholly within the discretion of the court to allow a rehearing, see *Am. Diamond Rock Boring Co. v. Sheldon*, 1 Fed. Rep. 870, and the court will not allow it unless the matters presented would change the decree, see *Brown v. Deere*, 19 O. G. 1217, and unless the motion to re-open the decree is made with due diligence, see *Bate Refrig. Co. v. Gillett*, 40 O. G. 1029. After a final decree an application for a rehearing must, under Equity Rule 88, be made at the same term as the final decree is entered and recorded, if the case can be appealed to the Supreme Court, otherwise it may be permitted during the next succeeding term. When the time for a rehearing has expired, a final decree can only be set aside by an appeal or a bill of review, see *Brown v. Deere*, 19 O. G. 1217.

APPEALS IN EQUITY CASES.—Errors of fact or law committed by any Circuit Court may be corrected by appeal to the Circuit Court of Appeals. Such appeal should be taken within six months from the entry of the decree appealed from, see 26 Statutes at Large, Sections 6 and 11; when the appeal is to operate as a supersedeas, and thus stay execution, it should be taken within sixty days, and indeed an execution may be issued, if the appeal be not taken within ten days after the rendition of the decree, see Revised Statutes, Sections 1012 and 1007, but in such cases a supersedeas afterwards obtained will stay further proceedings under the execution, although it will not interfere with what has already been done, see *Board of Commissioners v. Gorman*, 19 Wallace, 663.

A final decision of a United States Court, of a collateral question, may also be appealed to the Circuit Court of Appeals, even while other questions are still pending and undecided in the Circuit Court, see *Brush Electric Co. v. Electric Co. of San Jose*, 51 Fed. Rep. 557.

On the hearing of an appeal the decree may be attacked and supported by the appellant and appellee respectively, upon any ground in the record, whether the Circuit

Court based its decision upon that ground or not, see *Electric Gas Lighting Co. v. Fuller*, 59 Fed. Rep. 1003; but the decree cannot be attacked on the ground that the Court made or refused to make any decision within the judicial discretion of the court to make or not, see *Dean v. Mason*, 20 Howard, 198; *Jones v. Morehead*, 1 Wallace 155; *Roemer v. Bernheim*, 132 U. S. 106.

Where either party desires the alteration of a decree, he must appeal whether the other party appeals or not, see *Corning v. Troy I. & N. Factory*, 13 Howard, 451. No decree can be attacked by the appellee on the appellant's appeal. Where both parties appeal, both appeals are heard together. A decree may also be attacked upon several grounds which were not considered in the lower court; non-jurisdiction of equity is one of them; want of invention is another, when that want results from facts of which the court can take judicial notice, see *Brown v. Piper*, 91 U. S. 41.

BILLS OF REVIEW IN EQUITY.—A final decree if unappealed from, or affirmed upon appeal, is conclusive as to all matters covered by it, unless it is reversed by a bill of review. Such a bill may be filed by leave of the court, for errors of law apparent on the record, and without such leave for errors in fact disclosed by the discovery of new evidence. As to the nature and object of a bill of review, see *Story Eq. Pl.* §§ 403-428. A bill of review based on errors of law follows the rules governing writs of error, see *Clark v. Killian*, 103 U. S. 766; and when based on errors of fact is governed by the same rules as a petition for a new trial, see *Story Eq. Pl.* §§ 412-419. A decree by consent cannot be set aside by a bill of review, unless the consent was obtained by fraud, see *Pentlidge v. Beeston*, 17 Blatch. 306.

BILL OF REVIEW IN EQUITY.—Where the defendant dies pending suit, a bill of review may be filed against his representatives, see *Hohorst v. Howard*, 37 Fed. Rep. 97.

BILL TO PERPETUATE TESTIMONY IN EQUITY.—Where it is clear that certain evidence will be important on a future action which the proper plaintiff refused to commence, or which he cannot yet begin, and that, though now available, this evidence may at that time be beyond the reach of the petitioner, a bill to perpetuate testimony is required. The court, being satisfied that the allegations of the bill are true, will cause the testimony to be taken in some suitable manner, and preserved among the records of the court until needed at the trial. For discussion of the nature and object of this bill, and form of and proceedings thereunder, see *Story Eq. Pl.*, §§ 1506-1516, 300-310.

BILL OF DISCOVERY IN EQUITY.—This is a bill praying for the compulsory disclosure of certain facts within the knowledge of the respondent, or the production of certain documents or articles within his custody or control. See *Story Eq. Pl.*, §§ 689-691, 1480-1504.

POWER OF COURTS TO GRANT INJUNCTIONS AND ESTIMATE DAMAGES.

SEC. 4921. The several courts vested with jurisdiction of cases arising under the patent laws shall have power to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for an infringement, the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby; and the courts shall assess the same or cause the same to be assessed under its direction. And the court shall have the same power to increase such damages, in its discretion, as is given to increase the damages found by verdicts in actions in the nature of actions of trespass upon the case.

IN PATENT CASES, CIRCUIT COURTS MAY SUBMIT QUESTIONS OF FACT TO JURY.

Act of Feb. 16, 1875, Sup. to R. S. vol. 1, p. 136.

Sec. 2. That said courts [U. S. circuit courts], when sitting in equity for the trial of patent causes, may impanel a jury of not less than five and not more than twelve persons, subject to such general rules in the premises as may, from time to time, be made by the Supreme Court, and

submit to them such questions of fact arising in such cause as such circuit court shall deem expedient.

And the verdict of such jury shall be treated and proceeded upon in the same manner and with the same effect as in the case of issues sent from chancery to a court of law and returned with such findings.

The purpose of an injunction is to prevent prospective injury where no other adequate remedy exists; also to prevent a multiplicity of suits, see *Brooks v. Miller*, 28 Fed. Rep. 615. An injunction is the strong arm of the court; it is never to be used unless the court is convinced of its real necessity, see *Potter v. Schenck*, 3 Fisher, 821, but will issue whenever it is needed to protect rights, see *Wilson v. Barnum*, 2 Fisher, 635. The issue or refusal of a preliminary injunction is wholly within the discretion of the court, and from its decision there is no appeal, see *Irwin v. Dane*, 4 Fisher, 859. There can be no injunctions at law, see *Motte v. Bennett*, 2 Fisher, 642; only equity can prevent an invasion of rights, see *McMillan v. Barclay*, 5 Fisher, 189. Injunctions may be either preliminary, to compel a defendant to desist from his alleged infringing acts while the necessary investigations are being carried on in the courts, or perpetual, permanently prohibiting the defendant from the performance of acts which have been proven and adjudged to be in violation of the patent. On a motion for an injunction the only question is whether the plaintiff presents an undebatable case, see *Goodyear v. Hills*, 3 Fisher 134. Courts will not, as a rule, grant a preliminary injunction unless there has been some previous adjudication on, and sustaining the patent, where the same points of validity and infringement were in issue, or unless there has been a long and undisputed enjoyment of the monopoly under the patent, and the plaintiff is able to make it appear that the defendant's device and his own are substantially identical. A preliminary injunction ought never to be issued unless the right of the patentee is an established or an admitted one, and unless the alleged invasion of the right is proven beyond reasonable doubt, see *Am. Nicholson Pavement Co. v. City of Elizabeth*, 4 Fisher, 189; see also *Shelly v. Branuan*, 4 Fisher, 105.

Where a provisional injunction would operate unjustly upon the defendant, or when it would cause him irreparable injury, while the plaintiff could have ample satisfaction in money damages, the provisional injunction will be refused, see *Earth Closet Co. v. Fenner*, 5 Fish, 15.

A preliminary injunction will also be refused when the defendant will take a license, and this is the plaintiff's usual mode of profit, see *Baldwin v. Bernard*, 2 O. G. 320.

Acquiescence in an infringement may forfeit the right to relief in equity, see *Kittle v. Hall*, 39 O. G. 707. No injunction will issue where the plaintiff has been negligent in asserting his rights, see *Keyes v. Pueblo Smelting and Refining Co.*, 31 Fed. Rep. 560, but a patentee is not guilty of laches while ignorant of the infringement, see *Kilbourn v. Sunderland*, 180 U. S. 505.

Plaintiffs are, however, chargeable with the laches of former owners of the patent, see *Spring v. Domestic Sewing Mach. Co.*, 16 O. G. 721, and an assignee of claims for past infringements is bound by the laches of his assignor, see *New York Grape Sugar Co. v. Buffalo Grape Sugar Co.*, 32 O. G. 1356.

If the defendant was misled by the silence or laches of the plaintiff, and embarked in enterprises which would be destroyed by an injunction, the court will recognize the estoppel and refuse an injunction, see *Reay v. Raynor*, 26 O. G. 1111. An effectual estoppel also exists where the plaintiff has violated his equitable obligations to the defendant, whether created by an express or implied contract, and has thereby placed the defendant in a position where his self-preservation compelled him to infringe, see *Crowell v. Parmenter*, 18 O. G. 360. Where, however, the validity of the patent, the title of the plaintiff, and the intention of the defendant to infringe are fully proved, and where there are no circumstances which render the grant of an injunction inequitable, the court will issue it without reluctance or evasion, see *Poppenhusen v. N. Y. Gutta-Percha Comb Co.*, 2 Fisher, 74; *Foster v. Crossin*, 23 Fed. Rep. 400. A preliminary injunction will be denied, and the court may order that the defendant furnish a bond and a continuing account, when the validity of the patent is in dispute, and has never been adjudged, see *Morris v. Shelbourne*, 4 Fisher, 377; where the plaintiff has been negligent in enforcing his rights, see *Jones v. Merrill*, 8 O. G. 401; where the defendant's device is essential to his business, and is made under a later patent, though the plaintiff's patent is not disputed, if the defendant has acted in good faith, see *U. S. Annunciator & Bell Tel. Mfg. Co. v. Sanderson*, 3 Blatch. 184; where the injunction would injure the defendant more than it would benefit the plaintiff, see *McCreary v. Penn. Canal Co.*, 5 Fed. Rep. 367; where the patentee has never used his invention or

permitted others to do so, see *Hoe v. Knapp*, 36 O. G. 1244; where the plaintiff grants licenses, or is guilty of laches misleading the defendant, see *Westinghouse Air Brake Co. v. Carpenter*, 32 Fed. Rep. 545; where the defendant is responsible and intends to defend the suit, see *Am. Middlings Purifier Co. v. Christian*, 3 Bann. & A. 42; where novelty is doubtful, see *Heysinger v. Dennison Mfg. Co.*, 15 Phila. 509, or for any other cause that seems good and sufficient to the court.

The bond in such case should be sufficient to cover all probable losses to the plaintiff, and the account must so describe the articles sold or used by the defendant that any person acquainted with the business can fix their value and compute their profits, see *Brown v. Shannon*, 20 Howard 55; *Wilder v. Gayler*, 1 Blatch. 511.

An injunction may issue against any person, natural or artificial, an individual, firm, public or private corporation, prohibiting them from committing or promoting the infringement of a patent. Past injuries, however, are not a ground for injunction, and an injunction will not be issued against a defendant who, at the time of filing the bill, has parted with his interest in the infringing device, see *Brammer v. Jones*, 3 Fisher, 340, nor against the personal representatives of a deceased infringer, unless they manifest an intention to infringe, see *Draper v. Hudson*, Holmes 208, 3 O. G. 354.

An application for a preliminary injunction pending suit in equity may either be incorporated into the original bill or constitute a separate proceeding, see *Allis v. Stowell*, 23 O. G. 1033. An injunction in aid of a suit at law must be applied for in an independent motion, as if it were the only equitable remedy required. In any case the application must clearly set forth the plaintiff's right; its intended violation by the defendant, and pray for the immediate interference of the court. The facts should be set out in substantially the same manner as in an original bill for the recovery of damages or profits. The application must be supported by the oath of the plaintiff. The averments should show any former judgments sustaining the patent, or public acquiescence, or equivalent acts, see *Gutta-Percha & Rubber Mfg. Co. v. Goodyear Rubber Co.*, 2 Bann. & A. 212. Due notice of a motion for a preliminary injunction must be served on the party sought to be enjoined before that motion will be heard, see Rules of Practice, U. S. Supreme Court, Rule 55.

The answer to an application for an injunction is subject to the same general rules as an answer to an original bill. If the defendant does not appear, the hearing will proceed *ex parte* on the application and the evidence presented.

The evidence on the hearing is presented by affidavits, see *Brooks v. Bicknell*, 3 McLean, 250.

Each party is allowed a reasonable time to inspect the affidavits of the other, and to prepare his own, and evidence not thus submitted to inspection cannot be regarded by the court. Affidavits filed after the stipulated date cannot be considered, see *Am. Paper Barrel Co. v. Laraway*, 37 O. G. 674.

If the defendant does not appear and answer, and the plaintiff has shown the issue of the patent and a judgment in his favor, or an acquiescence by the public, and a probable infringement by the defendant, an injunction will issue even though the court may have some doubt as to the validity of the patent, see *Wells v. Gill*, 2 O. G. 590, but an injunction will be denied if the patent is defective on its face, see *Isaacs v. Cooper*, 1 Robb. 332, or the title of the plaintiff is uncertain, or doubt whether there has been sufficient public acquiescence to raise a presumption in favor of the patent, see *Guidet v. Palmer*, 6 Fisher, 82.

Where an application is heard upon opposing evidence it will be decided upon broad views of the equitable rights of the parties. The plaintiff's affidavits must make a *prima facie* case for an injunction; the defendant, to overcome the presumption thus raised, must present testimony proving the existence of circumstances rendering the allowance of an injunction inexpedient, see *Hovey v. Stevens*, 2 Robb, 479.

The court has a wide latitude in granting preliminary injunctions, and may grant these unconditionally, or upon such other terms as it may seem fit to impose upon the parties, see *Furbush v. Bradford*, 1 Fisher, 317. The plaintiff may be required to give a bond of indemnity to secure the defendant against unwarranted inquiry, see *Blake v. Boisselier* 16 O. G. 854; or to secure him against loss in case the plaintiff's suit fails, or the injunction proves to be improper, see *Consolidated Fruit Jar Co. v. Whitney*, 1 Bann. & A. 356; and if the defendant prevails he can sue on the bond, see *Tobey Furn. Co. v. Colby*, 35 Fed. Rep. 592.

An injunction takes effect according to its terms, and is restricted in its effect to the persons and things named therein, see *Welling v. Rubber Coated Harness Trimming Co.*, 7 O. G. 608; and remains in force so long as it may be needed, see *Singer Sew. Machine Co. v. Union Button-Hole and Emb. Co.*, 4 O. G. 553; but limited to the life of the patent, see *Nathan v. N. Y. Elevated R. R. Co.*, 2 Fed. Rep. 225, unless previously

recalled by the court, or superseded by some other judgment in the suit. It has no authority beyond the limits of the local jurisdiction of the court, see *Goodyear v. Chaffee*, 3 Blatch. 268, except when the defendant resides within the district so that he can be held accountable there for infringements wherever they may be committed, see *Hatch v. Hall*, 30 O. G. 1096.

The terms of the injunction may be modified from time to time, upon application to the court, as the interests of the parties may require, see *DeFlorez v. Reynolds*, 17 O. G. 503; and will be dissolved when it appears from the facts that such dissolution is warranted, see *Young v. Lippman*, 2 O. G. 249; *Goodyear v. Bourn*, 3 Blatch. 266; *Cary v. Domestic Spring Bed Co.*, 30 O. G. 1158.

The remedy of the plaintiff for a violation of an injunction is by an application to the court for an order of attachment against the defendant, upon which, if found guilty, he may be subjected to fine or imprisonment, see *Wetherell v. N. J. Zinc Co.*, 5 O. G. 460. The affidavits accompanying a motion for attachment must state the specific acts or omissions which constitute the contempt, and the interrogatories addressed to the defendant must be confined to these specific offences, but the defendant need not answer to matters charged on information and belief, and if he demurs to improper interrogations, he can recover his costs, see *Parkhurst v. Kinsman*, 2 Blatch. 76.

A clear case must be made out in proceedings for contempt, or an attachment will be granted, see *Bate Refrig. Co. v. Gillett*, 39 O. G. 833; *Allis v. Stowell*, 19 O. G. 727; *Celluloid Mfg. Co. v. Chrolithian Collar & Cuff Co.*, 24 Fed. Rep. 585.

PERPETUAL INJUNCTIONS.—At the conclusion of a suit in equity, if a decree finds an infringement, a perpetual injunction will be ordered, see *Potter v. Muck*, 3 Fisher, 428, even though the infringement has been stopped, see *Bullock Printing Press Co. v. Jones*, 13 O. G. 124. The right to an injunction is independent of the right to profits or damages, see *Colgate v. Int. Ocean Tel. Co.*, 17 O. G. 194.

A perpetual injunction is operative only during the life of the patent, except as to the use of articles constructed while the patent was in force, and capable of use after its expiry, see *Nathan v. El. R. R. Co.*, 2 Fed. Rep. 225. Its suspension after final decree rests entirely within the discretion of the court which granted it, see *Brown v. Deere*, 19 O. G. 1287. A final injunction may issue upon a decree by consent of the parties, see *Tomkinson v. Willett's Mfg. Co.*, 31 O. G. 918, but in such case no question upon the merits will be decided, see *Am. Middlings Purifier Co. v. Vail*, 15 Blatch. 315.

In case of a violation of the injunction the plaintiff may obtain redress in the mode already stated under preliminary injunctions.

APPEALS.—An appeal from an interlocutory decree which grants, continues, refuses, dissolves, or refuses to dissolve an injunction, may be taken to the Circuit Court of Appeals, for the circuit in which that decree was rendered, at any time within thirty days from the entry of such decree, see 28 Statutes at Large, Chap. 96, p. 666. Such an appeal will secure a review of that part of the decree which refers to an injunction; and the questions of validity and infringement, and whatever other questions may be involved touching the justice of the injunction, will be reviewed in this hearing.

SUIT FOR INFRINGEMENT WHERE SPECIFICATION IS TOO BROAD.

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

This section is intended to provide a remedy for a defective patent, when a patentee has claimed more than he in fact invented. It provides a method whereby a plaintiff, in a suit for infringement, may avoid the defense that his patent claimed more than he invented, and enable him, in spite of such defect, to recover proper damages for any injury sustained by him by the infringement of his invention. Disclaimers under Secs. 4917 and 4922 rest on the same grounds, though used for different purposes, see *Hailes v. Albany Stove Co.*, 42 O. G. 95. The first section contemplates disclaimers as proper whenever a patentee has claimed more than that of which he was the first inventor, while the last provides for disclaimer only in cases wherein the excess is a material and substantial part of the invention, and prescribes a penalty for a neglect to enter a disclaimer within a reasonable time. Unreasonable delay avoids the good effect of a disclaimer, see *Tuck v. Bramhill*, 6 Blatch. 95. The disclaimer should be filed as soon as its need is known. Delay in disclaiming cannot exist until its need is brought to the attention of the patentee, see *Kittle v. Hall*, 30 Fed. Rep. 239. See Sec. 4917 and notes, *ante*, as to disclaimers generally.

PATENT NOT VOID ON ACCOUNT OF PREVIOUS USE IN FOREIGN COUNTRY.

SEC. 4923. Whenever it appears that a patentee, at the time of making his application for the patent, believed himself to be the original and first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery, or any part thereof, having been known or used in a foreign country, before his invention or discovery thereof, if it had not been patented or described in a printed publication.

In *Doyle v. Spaulding*, 27 O. G. 300; 19 Fed. Rep. 744, Nixon, J., said: "After a careful consideration of the provisions of the three sections of the Patent Act which bear upon the subject (Secs. 4886, 4920, 4923), we are of the opinion that the use or a knowledge of the use of an invention in a foreign country by persons residing in this country will not defeat a patent which has been granted to a *bona fide* patentee who, at the time, was ignorant of the existence of the invention or its use abroad."

That foreign use is not prior use, see *McFarland v. Spencer*, 32 O. G. 893; *Cornely v. Marckwald*, 24 O. G. 498; but if the person claiming a patent derived his knowledge of the invention from such prior use, his claim must be denied on the ground that it is not his invention.

EXTENSION OF PATENTS GRANTED PRIOR TO MARCH 2, 1861.

SEC. 4924. Where the patentee of any invention or discovery, the patent for which was granted prior to the second day of March, eighteen hundred and sixty-one, shall desire an extension of this patent beyond the original term of its limitation, he shall make application therefor, in writing, to the Commissioner of Patents, setting forth the reasons why such extension should be granted; and he shall also furnish a written statement, under oath, of the ascertained value of the invention or discovery, and of his receipts and expenditures on account thereof, sufficiently in detail to exhibit a true and faithful account of the loss and profit in any manner accruing to him by reason of the invention or discovery. Such application shall be filed not more than six months nor less than ninety days before the expiration of the original term of the patent; and no extension shall be granted after the expiration of the original term.

Rules of Practice, 1892.—172 to 186.

The five sections of the Revised Statutes relating to extensions, viz.: §§ 4924 to 4928 inclusive, relate exclusively to the extension of such patents as were issued prior to March 2d, 1861. The Commissioner cannot, under the existing law, entertain an application to extend a patent, issued subsequent to that date, and all extensions heretofore granted have expired. Congress alone can now grant extensions of patents, and such extensions will be by way of a special legislative enactment. The Congress may condition such a grant upon the results of an inquiry to be made before the Commissioner. Rules of Practice Nos. 172-186 prescribe the manner of conducting such an inquiry.

WHAT NOTICE OF APPLICATION FOR EXTENSION MUST BE GIVEN.

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

See Note to Sec. 4924, *ante*.

APPLICATIONS FOR EXTENSION, TO WHOM TO BE REFERRED.

SEC. 4926. Upon the publication of the notice of an application for an extension, the Commissioner shall refer the case to the principal examiner having charge of the class of inventions to which it belongs, who shall make the Commissioner a full report of the case, stating particularly whether the invention or discovery was new and patentable when the original patent was granted.

See note to Sec. 4924, *ante*.

COMMISSIONER TO HEAR AND DECIDE THE QUESTION OF EXTENSION.

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

See note to Sec. 4924, *ante*.

OPERATION OF EXTENSIONS.

SEC. 4928. The benefit of the extension of a patent shall extend to the assignees and grantees of the right to use the thing patented, to the extent of their interest therein.

See note to Sec. 4924, *ante*.

DESIGN PATENTS.

PATENTS FOR DESIGNS AUTHORIZED.

SEC. 4929. Any person who, by his own industry, genius, efforts, and expense, has invented and produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of woolen, silk, cotton, or other fabrics; any new and original impression, ornament, patent, [pattern] print, or picture to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture; or any new, useful, and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication, may, upon payment of the fee prescribed, and other due proceedings had the same as in cases of inventions or discoveries, obtain a patent therefor.

Rules of Practice, 1892.—24, 79 to 84.

DESIGNS DEFINED.—Two classes of patents are issued; mechanical patents, which cover the mechanical construction of a machine, instrument or device, or the steps of an art or process; and design patents, which protect the shape or surface configuration given to articles. A design is an appearance imparted to an object.

In *ex parte* Traitel, 25 O. G. 783, Butterworth, Com., said: "A design is merely a delineation of form or figure, either plane or solid—a shape or configuration. The construction of an article in accordance with that delineation is the materialization of the conception or design. The conception of a building of some particular shape, form, or configuration, and which is delineated on paper, is a design. The various shapes and figures which appear in colors on the surface of prints and carpets, are the expression of so many designs. The material out of which the building is constructed, whether of stone, wood, brick, or glass, forms no part of the design. The character of the material, whether velvet, cloth, cotton, or wool, upon which the designs find expression, forms no part of the design itself. The colors in which they find expression are of no possible importance in describing the design itself. A combination of red and blue and green may be beautiful, and the effect very desirable, but it forms no part of the design, but is the medium through which a design, which relates solely to form and configuration, finds expression or materializes." A design then, as the word is used in the statute, relates solely to the form, shape, or surface configuration which is given to some article or thing.

REQUISITES AS TO PATENTABILITY.—A design must be new and original, but need not be useful, see *Miller v. Young*, 33 Ill. 354. "Utility" in a design is the power to create agreeable sensations through the eye, see *ex parte* Schulze-Berge, 42 O. G. 293. "Novelty" is required in designs as in other inventions; to be patentable the design must not have been known or used by others before the applicants' invention or production thereof, or patented or described in any printed publication, see *Northrop v. Adams*, 12 O. G. 430; *Niedringhaus v. Commissioner*, 8 O. G. 279. As to identity of designs, *Strong, J.*, in *McCrea v. Holdsworth*, 2 O. G. 592, said: "We hold, therefore, that if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same; if the resemblance is such as to deceive such an observer, inducing him to purchase one, supposing it to be the other, the first patent is infringed by the other." In the same case it was held: A design is an entirety, and any

substantial change, by addition, substitution, or re-arrangement, makes a new design. Thus though details may differ yet, if the impression produced upon the eye is the same, it is the same design, see *Wood v. Dolbey*, 20 O. G. 523. A design is not complete until reduced to practice. A new design may consist of a combination of old designs, see *Kraus v. Fitzpatrick*, 42 O. G. 1292, but a mere aggregation of old designs is not a new design, see *Northup v. Adams*, 12 O. G. 430. Where a new design is created by the exercise of the inventive faculties, and not otherwise, it is a patentable invention, see *Western Electric Mfg. Co. v. Odell*, 18 Fed. Rep. 321.

THE APPLICATION.—A complete application consists of :

(1) A petition, with power of attorney, if an attorney is appointed, signed by the applicant.

(2) A specification, signed by the applicant and two witnesses.

(3) A drawing, when the device can be represented in a drawing, which must be made in accordance with the rules relating to drawings for mechanical patents. In case the nature of the design is such that it cannot properly be represented by such a drawing, upon the recommendation of the examiner a photograph may be employed ; in this case the photograph must be mounted on bristol board ten by fifteen inches in size, having a single marginal line one inch from its edges. The applicant must also furnish twenty-five unmounted extra copies of such photograph.

(4) Oath, signed by applicant before a notary public, or a diplomatic or consular officer of the United States. The requirements as to execution are the same as for other applications.

(5) The fee required by law.

The specification must point out distinctly the characteristic features of the design, and carefully distinguish between what is old and what is believed to be new. The claims also, when the design admits of it, should be as distinct and specific as in the case of other applications ; if not, it may be an omnibus claim, claiming the design as shown and described, see Rule 81.

PROCEDURE.—The procedure in the patent office after the filing of the application, as to rejections, amendments, references, appeals, interferences, etc., is the same as in case of mechanical patents, see Rev. Stat, Sec. 4933, *post*. Rules of Practice, 1892.—81.

DECISIONS.—A prior patent for a design is not a bar to a patent for the same thing as a manufacture, unless it discloses the same complete and operative means, see *Colender v. Griffith*, 18 O. G. 241. The public use of an article with a design upon it is an abandonment of the design, see *Theberath v. Rubber & Celluloid H. T. Co.*, 23 O. G. 1121. The doctrine of double use applies to designs, see *Western Electric Co. v. Odell*, 18 Fed. Rep. 321. The claims of a design patent should contain the phrase "as shown and described" so as to limit the patent to the exact design, see *ex parte Gerard*, 43 O. G. 1234. A claim for a design must not cover a mere function, see *ex parte Diefenderfer*, 2 O. G. 57. A claim for "the configuration of the design hereunto annexed when applied to carpeting" is proper, see *Dobson v. Dornan*, 35 O. G. 750. There can be no joinder of designs, see *ex parte Gerard*, 43 O. G. 1240. Two independent designs cannot be joined, see *ex parte Beattie*, 16 O. G. 266. The capability of being associated does not make two designs dependent, see *ex parte Patitz*, 25 O. G. 980. A design patent can cover but one design and such modifications of it as do not affect its identity, see *ex parte Gerard*, 43 O. G. 1240. The joinder of a combination design and its elemental designs is proper in the courts if the Patent Office will permit it, see *Dobson v. Hartford Carpet Co.*, 31 O. G. 787. In the Patent Office the elements of a design cannot be joined with the design, see *ex parte Gerard*, 43 O. G. 1235. In an application for a design a claim for a separable part of it, which is not a complete design cannot be inserted, see *ex parte Pope*, 25 O. G. 290. The relation of genus and species does not exist in designs, see *ex parte Gerard*, 43 O. G. 1240.

Where a design patent is applied for when a mechanical patent alone is proper, the examiner, if the case is clear, should hold the application and notify the applicant ; but if the case, being doubtful, is examined and rejected, a new application must be filed and a new fee paid, see *ex parte Bailey*, 37 O. G. 781.

An application for a design patent should be rejected if the examiner considers that the subject matter is not a design, and from such rejection an appeal lies to the Board of Examiners, see *ex parte Harris*, 38 O. G. 104.

If in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same * * * the first one patented is infringed by the other, see *Miller v. Smith*, 18 O. G. 1047. A patent for a design is infringed by copying a part thereof, if that part is covered by the patent, see *Dryfoos v. Friedman*,

18 Fed. Rep. 824. A design may be infringed though a different name be given it, see *Perry v. Starrett*, 14 O. G. 599. A decree in an action for the infringement of a design patent may order an account of the profits and damages resulting from making and selling the article containing the design, see *Dobson v. Dornan*, 35 O. G. 750.

MODELS OF DESIGNS.

SEC. 4930. The Commissioner may dispense with models of designs when the design can be sufficiently represented by drawings or photographs.

Rules of Practice, 1892.--82.

DURATION OF PATENTS FOR DESIGNS.

SEC. 4931. Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant may, in his application, elect.

Rules of Practice, 1892.—80.

As there is no way in which the term of design patents may be extended, applicants should be careful to elect in their application the full term for which they desire protection.

EXTENSION OF PATENTS FOR DESIGNS.

SEC. 4932. Patentees of designs issued prior to the second day of March, eighteen hundred and sixty-one, shall be entitled to extension of their respective patents for the term of seven years, in the same manner and under the same restrictions as are provided for the extension of patents for inventions or discoveries issued prior to the second day of March, eighteen hundred and sixty-one.

See Rev. Stat. Secs. 4924 to 4927, *ante*, for law relating to extension of mechanical patents.

See Rules of Practice, 1892.—172 to 186, for rules prescribing manner of conducting inquiry in Patent Office as to losses and profits.

No patents issued since March 2d, 1861, can be extended except by special act of Congress, consequently these sections of the law now have no force.

PATENTS FOR DESIGNS SUBJECT TO GENERAL RULES OF PATENT LAW.

SEC. 4933. All the regulations and provisions which apply to obtaining or protecting patents for inventions or discoveries not inconsistent with the provisions of this Title, shall apply to patents for designs.

Rules of Practice, 1892.—79 to 86.

Act Feb. 4, 1887, U. S. Stat., XXIV, pp. 387, 388.

UNAUTHORIZED USE OF PATENTED DESIGN UNLAWFUL.

CHAP. 105.—An act to amend the law relating to patents, trade-marks, and copyrights.

Be it enacted, etc., That hereafter, during the term of letters patent for a design, it shall be unlawful for any person other than the owner of said letters patent, without the license of such owner, to apply the design

secured by such letters patent, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or to sell or expose for sale any article of manufacture to which such design or colorable imitation shall, without the license of the owner, have been applied, knowing that the same has been so applied. Any person violating the provisions, or either of them, of this section, shall be liable in the amount of two hundred and fifty dollars; and in case the total profit made by him from the manufacture or sale, as aforesaid, of the article or articles to which the design, or colorable imitation thereof, has been applied, exceeds the sum of two hundred and fifty dollars, he shall be further liable for the excess of such profit over and above the sum of two hundred and fifty dollars; and the full amount of such liability may be recovered by the owner of the letters patent, to his own use, in any circuit court of the United States having jurisdiction of the parties, either by action at law or upon a bill in equity for an injunction to restrain such infringement.

See Rev. Stat. Secs. 629, 690, 699, 711, 978, 4919, 4920, 4921, and 4922, *ante*, and notes thereunder.

REMEDY BY EXISTING LAW NOT IMPAIRED.

Sec. 2. That nothing in this act contained shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any owner of letters patent for a design, aggrieved by the infringement of the same, might have had if this act had not been passed; but such owner shall not twice recover the profit made from the infringement.

Approved, February 4, 1887.

See note to preceding section.

FEES.

FEES IN OBTAINING PATENTS, ETC.

SEC. 4934. The following shall be the rates for patent fees:

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

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

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

On filing each caveat, ten dollars.

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

On filing each disclaimer, ten dollars.

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

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

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

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

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

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

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

Rules of Practice, 1892.—217 to 218.

MODE OF PAYMENT.

SEC. 4935. Patent fees may be paid to the Commissioner of Patents, or to the Treasurer, or any of the assistant treasurers of the United States, or to any of the designated depositaries, national banks, or receivers of public money, designated by the Secretary of the Treasury for that purpose; and such officer shall give the depositor a receipt or certificate of deposit therefor. All money received at the Patent Office, for any purpose, or from any source whatever, shall be paid into the Treasury as received, without any deduction whatever.

Rules of Practice, 1892.—217 to 224.

Nearly all the fees payable to the Patent Office are positively required by law to be paid in advance—that is, upon making application for any action by the office for which a fee is payable. Rule 217 requires that all fees are payable in advance.

REFUNDING.

SEC. 4936. The Treasurer of the United States is authorized to pay back any sum or sums of money to any person who has through mistake paid the same into the Treasury, or to any receiver or depositary, to the credit of the Treasury, as for fees accruing at the Patent Office, upon a certificate thereof being made to the Treasurer by the Commissioner of Patents.

Rules of Practice, 1892.—224.

Money paid to the Commissioner of Patents by actual mistake, such as a payment in excess, or when not required by law, or by neglect or misinformation on the part of the office, will be refunded.

If an inventor files an incomplete application, paying the filing fee thereon, and does not complete the same within the term of two years prescribed by law, he may withdraw both application and fees. Such withdrawal may usually be made at any time after such filing, although a mere change of purpose on the part of the applicant, after the payment of money, as when a party desires to withdraw a complete application or an appeal, will not entitle a party to demand such a return as of right.

REPEAL PROVISIONS.

WHAT REVISED STATUTES EMBRACE.

TITLE LXXIV, Rev. Stat., p. 1085 :

SEC. 5595. The foregoing seventy-three titles embrace the statutes of the United States general and permanent in their nature, in force on the first day of December, one thousand eight hundred and seventy-

three, as revised and consolidated by commissioners appointed under act of Congress, and the same shall be designated and cited as The Revised Statutes of the United States.

REPEAL OF ACTS EMBRACED IN REVISION.

SEC. 5596. All acts of Congress passed prior to said first day of December, one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revisions having been repealed or superseded by subsequent acts, or not being general and permanent in their nature: *Provided*, That the incorporation into said revision of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local or temporary character, shall not repeal, or in any way affect any appropriation, or any provision of a private, local or temporary character, contained in any of said acts, but the same shall remain in force; and all acts of Congress passed prior to said last-named day, no part of which are embraced in said provision, shall not be affected or changed by its enactment.

ACCRUED RIGHTS RESERVED.

SEC. 5597. The repeal of the several acts embraced in said revision shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall said repeal in any manner affect the right to any office, or change the term or tenure thereof.

PROSECUTIONS AND PUNISHMENTS.

SEC. 5598. All offenses committed, and all penalties or forfeitures incurred under any statute embraced in said revision prior to said repeal, may be prosecuted and punished in the same manner and with the same effect as if said repeal had not been made.

ACTS OF LIMITATION.

SEC. 5599. All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in said revision and covered by said repeal, shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made.

ARRANGEMENT AND CLASSIFICATION OF SECTIONS.

SEC. 5600. The arrangement and classification of the several sections of the revision have been made for the purpose of a more convenient

and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the Title under which any particular section is placed.

ACTS PASSED SINCE DEC. 1, 1873, NOT AFFECTED.

SEC. 5601. The enactment of the said revision is not to affect or repeal any act of Congress passed since the first day of December, one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from, or conflict with, any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith.

Approved June 22, 1874.

BINDING FOR PATENT OFFICE LIBRARY.

RESTRICTIONS AS TO BINDING NOT TO APPLY TO LIBRARY OF
PATENT OFFICE.

Act Feb. 26, 1879. Sup. to R. S. vol. 1, p. 420. R. S. ss. 3785, 3790.

Be it enacted, etc., That the act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes," approved June twentieth, eighteen hundred and seventy-eight, be, and the same is hereby, amended by adding to the clause of said act relating to the binding of books for the Departments of the Government, after the words "Congressional Library," the following words: "nor to the Library of the Patent Office," nor to the Library of the Department of State.

ABRIDGMENT OF PATENTS.

CLASSIFIED ABRIDGMENT OF LETTERS PATENT.

Act of March 3, 1881. Sup. to R. S., vol. 1, p. 613.

Be it enacted, etc. [Section 1], That the sum of ten thousand dollars be, and the same hereby is, appropriated, out of any moneys belonging to the patent fund in the Treasury not otherwise appropriated, to be expended under the direction of the Commissioner of Patents in the preparation of classified abridgments of all letters patent of the United States.

HOW PRINTED AND DISTRIBUTED.

SEC. 2. That the said abridgments shall be printed, and one copy of each shall be furnished to each Senator, Representative, and Delegate in Congress; one copy to each of eight public libraries to be designated

by each Senator, Representative, and Delegate; and two copies to the Library of Congress; and also copies to such foreign Governments, libraries, and learned societies as the Commissioner of Patents may designate:

TO BE SOLD AT COST.

Provided, That copies shall be sold at the cost of printing, and all sums received from such sale shall, on or before the first day of each month, be paid into the Treasury.

PATENT RIGHTS VEST IN ASSIGNEE IN BANKRUPTCY.

WHAT PROPERTY VESTS IN ASSIGNEE.

SEC. 5046. All property conveyed by the bankrupt in fraud of his creditors; all rights in equity, choses in action, patent-rights, and copyrights; all debts due him, or any person for his use, and all liens and securities therefor; and all his rights of action for property or estate, real or personal, and for any cause of action which he had against any person arising from contract or from the unlawful taking or detention, or injury to the property of the bankrupt; and all his rights of redeeming such property or estate; together with the like right, title, power, and authority to sell, manage, dispose of, sue for, and recover or defend the same, as the bankrupt might have had if no assignment had been made, shall, in virtue of the adjudication of bankruptcy and the appointment of his assignee, but subject to the exceptions stated in the preceding section, be at once vested in [in] such assignee.

An assignment can be made only by the owner of the patented invention. Either a bankrupt court, or a court of equity, however, may have the power to compel the owner to transfer the ownership by an assignment to the receiver or trustee, and a court of equity, on his refusal, may treat the equitable rights as vested in the creditors, and appoint a trustee for the owner to convey the legal title, in his name and behalf, to the officer in charge of his bankrupt estate, but the title in all such cases is still derived from him on whom it was originally conferred, see *in re. Keach*, 14, R. I. 571; *Pacific Bank v. Robinson*, 20 O. G. 1314; *Murray v. Ager*, 20 O. G. 1811. That if an insolvent refuses to convey when ordered by the court, it may appoint a trustee to make the assignment, see *Murray v. Ager*, 20 O. G. 1811.

A patent cannot be seized and sold on execution, nor set off to a judgment creditor, see *Carver v. Peck*, 181 Mass. 291; nor does a patent vest in a receiver merely by virtue of his appointment, see *Dick v. Struthers*, 84 O. G. 181. A receiver, as such, has no power to convey the legal title to a patent, though he may convey the equitable title, see *Adams v. Howard*, 22 Fed. Rep. 656. Under this section of the statutes it has been decided that a right to the patents of the bankrupt vested in the trustee by virtue of his appointment, see *Carver v. Peck*, 181 Mass. 291, and that the rights of the trustee were superior to those of an assignee of record whose assignment was made by the bankrupt after the bankruptcy, see *Prime v. Brandon Mfg. Co.*, 16 Blatch. 458; 4 Bann. & A. 879.

LABELS AND PRINTS.

Sections 3, 4, and 5 of the act of Congress, relating to patents, trade-marks, and copyrights, approved June 18, 1874 (18 Statutes at Large, p. 78), are as follows :

SEC. 3. That in the construction of this act the words "engraving, cut, and print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyrights and prints, except that there shall be paid for recording the title of any print or label, not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of the record, under the seal of the Commissioner of Patents, to the party entering the same.

SEC. 4. That all laws and parts of laws inconsistent with the foregoing provisions be and the same are hereby repealed.

SEC. 5. That this act shall take effect on and after the first day of August, eighteen hundred and seventy-four.

Rev. Stat. Sec. 4952 A.

LABELS AND PRINTS DEFINED.—The words "prints" and "labels" as used in this act, so far as it relates to registration in the Patent Office, are construed as synonymous, and are defined as any device, picture, word or words, figure or figures (not a trade-mark) impressed or stamped directly upon the articles of manufacture, or upon a slip or piece of paper, or other material, to be attached in any manner to manufactured articles, or to bottles, boxes, and packages containing them, to indicate the contents of the package, the name of the manufacturer or the place of manufacture, the quality of goods, directions for use, etc.

By the words "articles of manufacture" (to which such print or label is applicable by this act) is meant all vendible commodities produced by hand, machinery, or art.

But no such print or label can be registered unless it properly belongs to an article of commerce, and be as above defined; nor can the same be registered as such print or label when it amounts to a lawful trade-mark, or when its use in connection with the article to which it is applied is arbitrary or fanciful. See Rules of Practice, Trade-marks and Labels, p. 21.

RESTRICTIONS ON REGISTRATION.—The registration of prints and labels is effected under the provisions of the copyright laws. Until recently, all forms of prints and labels, even when consisting solely of the name of the manufacturer or the place of manufacture, the quality or quantity of goods, or directions for use, have been registered by the Patent Office; but the Supreme Court has recently decided, see *Higgins et al, v. Keuffel et al*, 55 O. G. 1189, that to be entitled to copyright the print or label must have by itself some value as a composition or writing, at least to the extent of serving some purpose other than as a mere advertisement or designation of the subject to which it is attached.

The clause of the Constitution under which Congress is authorized to legislate for the protection of authors and inventors is contained in the eighth section of article one, which declares that—

"The Congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

The copyright act, and the act of June 18, 1874, under which labels are registered, are based upon this provision. The Supreme Court has therefore held in effect, that this provision has reference only to such writings and discoveries as are the result of intellectual labor, and that labels which simply designate or describe the articles to

which they are attached, and which have no value separated from the articles, and no possible influence upon science or the useful arts, are not proper subjects for registration.

Thus a label upon a box of fruit giving its name as "grapes" even with the addition of adjectives characterizing their quality as "black" or "sweet" would not be registerable. Should, however, the label contain an essay upon the culture of grapes, or any other matter relating to science or the useful arts, clearly the product and result of intellectual labor, the label would be entitled to copyright protection.

The registration of labels and prints has, in view of this decision, practically ceased.

APPLICANT, WHO MAY BE.—The benefits of the act seem to have been originally confined to citizens or residents of the United States, but have been extended by existing treaties to British, German, Italian and Belgian subjects, see Rules of Practice, Trade-Marks and Labels, p. 22.

NOVELTY REQUIRED.—In order to secure copyright protection for a label or print, it is necessary that the application for its registration be filed in the Patent Office on or before the date of the first publication of such label or print in this or any foreign country. A label or print that has been published cannot be copyrighted upon an application filed subsequent to the date of such publication, see *Marsh v. Warren*, 13 O. G. 7.

THE APPLICATION.—A complete application for the registration of a label or print consists of the following parts:

(1) An application addressed to the Commissioner of Patents, containing a reference to the label or print presented for registration; claiming its ownership; stating its title; containing a description thereof; and a request that the same be registered in the Patent Office.

(2) At least five copies of the label or print.

The application must be signed by the applicant. In case of a firm, the usual signature of the firm will be sufficient. If the applicant is a corporation, it should be signed in the name of such corporation by one of the principal officers thereof, who must add his own signature and title of office. His signature should be attested by the corporate seal of the company, see Rules of Practice, Trade-Marks and Labels, pp. 21, 22.

NOTICE OF COPYRIGHT REQUIRED.—The law requires that when the copyright of a label or print has been obtained, that due notice of such copyright shall be given to the public. All copyrighted labels or prints should therefore contain the following notification: "Copyrighted 1892, by A. B.," or as the case may be, stating the year the copyright was entered, and the name of the party by whom it was taken out, see Rev. Stat., Sec. 4962.

TERM OF REGISTRATION.—The term of protection is twenty-eight years, see Rev. Stat., Sec. 4958.

ASSIGNMENTS.—It is held that a registered label is, like a copyright, assignable by an instrument in writing. No particular form of assignment is prescribed, but the assignment should be presented for record within sixty days of its execution, otherwise it is liable to be held void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, see Rules of Practice, Trade-Marks and Labels, p. 22.

HISTORY OF THE TRADE-MARK LEGISLATION OF THE UNITED STATES.

While the right to the exclusive use of, and property in trade-marks, has always been recognized under the common law in the chancery courts, and by the statutes of some of the States, and the owners of trade-marks have been protected and upheld in such rights, the entire legislation of Congress in regard to trade-marks is of very recent origin, and it was not until July 8, 1870, that an attempt was made to recognize, regulate, and control this class of property, by legislative enactment of Congress.

The act of July 8, 1870, provided for the registration of any device in the nature of a trade-mark, to which any person had by usage established an exclusive right, or which the person so registering intended to appropriate by that act to his exclusive use; and they made the wrongful use of a trade-mark, so registered, by any other person without the owner's permission, a cause of action in a civil suit. The framers of this act however blundered in not confining its provisions to the kind of commerce over which Congress has control, viz.: that with foreign nations, among the several States, and with the Indian tribes, and the Supreme Court of the United States in deciding the cases *United States v. Steffens*; same *v. Wittemann*; same *v. Johnson*, held the act to be unconstitutional, see 10 Otto, 82-99.

In 1871, an act was passed to prevent the importation of watches, or parts of watches, bearing the counterfeit marks of manufacturers in this country.

In 1876 an act was passed to punish the counterfeiting of trade-mark goods, and the sale or dealing in counterfeit trade-mark goods.

On March 3, 1881, the present registration act was passed.

The act of August 5, 1882, is an amending act, but does not materially modify or affect the act of 1881 in any essential particular.

The act of 1871 was amended in 1883 so as to include all articles of manufacture within its prohibitory effects.

The act of October 1, 1890, provided for the marking of imported goods with the name of the country of origin.

The acts now in force are therefore the penal act of 1871; the registration act of 1881, the acts of 1876 and 1883 prohibiting the importation of goods bearing counterfeit marks, and the act of 1890, requiring goods to be marked with the name of the country of origin.

The full text of these acts, so far as they relate to trade-marks, will be found below:

CONSTITUTION.

The power of Congress to legislate on the subject of trade-marks, is found in the Constitution, the source of all the powers that Congress can lawfully exercise.

The third clause of Section 8, Article 1 of the Constitution provides :

“That the Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.”

All the trade-mark legislation of the United States is founded upon this provision.

STATUTES.

AN ACT TO AUTHORIZE THE REGISTRATION OF TRADE-MARKS AND PROTECT THE SAME.

ACT OF MARCH 3, 1881.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That owners of trade-marks used in commerce with foreign nations or with the Indian tribes, provided such owners shall be domiciled in the United States or located in any foreign country or tribes, which, by treaty, convention, or law, affords similar privileges to citizens of the United States, may obtain registration of such trade-marks by complying with the following requirements:

First. By causing to be recorded in the Patent Office a statement specifying name, domicile, location, and citizenship of the party applying; the class of merchandise, and the particular description of goods comprised in such class to which the particular trade-mark has been appropriated; a description of the trade-mark itself, with fac-similes thereof, and a statement of the mode in which the same is applied and affixed to goods, and the length of time during which the trade-mark has been used.

Second. By paying into the Treasury of the United States the sum of twenty-five dollars, and complying with such regulations as may be prescribed by the Commissioner of Patents.

Rev. Stat. 4937.

For a definition of trade-marks see notes under Sec. 3.

APPLICANTS.—The applicant for registration may be a person, firm, or corporation. The United States has concluded arrangements for the reciprocal protection of trade-marks with the following countries, and upon the following dates:—Austria-Hungary, June 1, 1872; Belgium, July 30, 1869, and July 9, 1884; Brazil, Sept. 24, 1878; Denmark, October 12, 1892; France, April 16, 1869; German Empire, June 1, 1872; Great Britain

(including British Colonies so far as they grant reciprocal protection to citizens of the United States), July 17, 1878; Italy, March 19, 1884; Netherlands, Feb. 16, 1883; Russia, June 27, 1868; Servia, Dec. 27, 1882; Spain, April 19, 1883; Switzerland, May 16, 1883.

The United States is also a member of the International Convention, and residents, and persons having business establishments in countries belonging to this Union may obtain registration. The applicant must be the owner of the trade-mark, by reason of being the first to actually adopt and use the mark, or by reason of being the successor in right of the first person to so adopt and use the mark in commerce, see *Swift v. Peters*, 11 O. G. 1110.

The right to use a trade-mark depends upon its use, see *Wm. Rogers' Mfg. Co. v. Rogers & Spurr Mfg. Co.*, 11 Fed. Rep. 495. Where a person has appropriated a particular trade-mark to distinguish his goods from other similar goods, he has a right of property in it which entitles him to its exclusive use, which equity will protect, see *Hosletter v. Vowinkle*, 1 Dillon 329; and this right exists independently of the registration of the trade-mark, see Sec. 10 and notes, *post*.

It should be noted, in this connection, that if an individual permanently ceases to use a trade-mark, and consents to its use and adoption by another, he relinquishes his right to it, see *ex parte Kidd et al.*, 5 O. G. 337, and although a party shows that he once used a trade-mark, yet he must show a continuous use in order to establish a present right to it, see *Jacobs v. Lopez*, 23 O. G. 342.

THE APPLICATION.—A complete application consists of the following parts: (1) Letter of advice, with power of attorney, if an attorney is appointed, signed by the applicant; (2) Statement, signed by the applicant and attested by two witnesses. The statement should set forth (a) the name, domicile, and place of business, or location of the firm, or corporation, desiring the protection of the trade-mark, and the residence and citizenship of individual applicants; (b) the class of merchandise, and the particular description of goods comprised in such class, to which the trade-mark has been appropriated; (c) a description of the trade-mark itself, and the mode in which it has been applied, particularly pointing out the essential features of the mark; (d) the length of time during which the trade-mark has been used by the applicant on the class of goods described. This may be and usually is done by stating exactly or approximately the date upon which the mark was adopted. (3) A drawing of the trade-mark. This drawing must be furnished in every case which admits of it, and must conform to the rules for drawings of mechanical patents (see Rev. Stat. Sec. 4889, and notes). If, for any reason, such drawing does not constitute a satisfactory fac-simile of the trade-mark, two copies of the trade-mark, as actually used, must be deposited in addition to the required drawing, see Trade-Mark Rules of Practice, Rule 9. (4) A declaration (see following Section and notes).

EXAMINATION OF APPLICATIONS.—PROCEDURE IN PATENT OFFICE.—All applications for registration are examined in the first instance by the trade-mark examiner. A thorough examination is made to ascertain whether the trade-mark is identical with, or so closely resembles the trade-mark of any prior registrant as to be likely to cause confusion in the mind of the public, or to deceive purchasers. If the trade-mark is found to be novel, and it appears that it is used by the applicant in commerce between the United States and some foreign nation or Indian tribe, the examiner causes a letter of allowance to be sent to the applicant, and the certificate of registration follows in due course of business—about three weeks. If it appears that the identical trade-mark, or some mark closely resembling it has been registered to another, the applicant will be so advised. The applicant may amend the statement to correct informalities, or to avoid objections made by the office, or for other reasons arising in the course of the examination; but no amendments will be admitted unless warranted by something in the statement, or fac-simile, or drawing, as originally filed. In respect to amendments, the established rules in regard to applications for patents, will be observed (see Rev. Stat., Secs. 4888 and 4893, and notes, *ante*).

The declaration cannot be amended. If that filed with the application is faulty or defective, a substitute declaration may be filed.

APPEALS.—The applicant may appeal to the Commissioner in person, from an adverse decision of the examiner of trade-marks, who will review the case upon petition, sustaining or reversing the decision of the examiner, see Trade-Mark Rules of Practice, Rules 10 and 13.

REGISTRATION LIMITED TO A SINGLE CLASS.—The first adopter of a mark only acquires the exclusive right to its use, in connection with the specific class of goods to which he has applied it, see *ex parte Boehm & Co.*, 8 O. G. 319; *Carroll v. Ertheiler*,

1 Fed. Rep. 683; *Elecht v. Porter*, 9 Pac. Coast L. J. 569. Having adopted and registered the mark for a specific class, he is entitled to its exclusive use upon the different articles belonging to that class, which he may manufacture or sell, see *The Collins Co. v. Oliver Ames & Sons' Corp.*, 20 Blatch. 542; *The Amoskeag Co. v. Garner*, 6 Abb. Pr. (N. S.) 265. A registrant should enumerate in his statement all the articles to which he applies his mark, and must file a separate application for each separate class for which he desires to register the mark.

It is not uncommon for the same mark to be registered in different classes by a number of different owners, thus the word "Star" has been used for iron, shirts, lead pencils, oil, soap, agricultural implements, cutlery and dry goods.

CLASSIFICATION OF REGISTERED TRADE-MARKS.

1. Agricultural implements. (See Title 41, 73.)
2. Baking powder and yeast.
3. Beverages. (See Title 42.)
4. Blacking and leather dressing. (See Title 12.)
5. Boots, shoes and lasts. (See Title 57.)
6. Brooms and brushes.
7. Buttons. (See Title 22.)
8. Canned goods. (See Title 16, 26.)
9. Carpets, &c.
10. Cement, plaster, and bricks.
11. Cigars and cigarettes. (See Title 71.)
12. Cleaning and polishing preparations. (See Title 4.)
13. Coffee and tea.
14. Confectionery.
15. Corsets. (See Title 75.)
16. Cured meats. (See Title 8, 26, 37.)
17. Cutlery and edge tools. (See Title 73, 68.)
18. Dairy products.
19. Dentistry.
20. Drugs and chemicals. (See Title 44, 53, 72.)
21. Dry goods. (See Title 22, 69.)
22. Fancy goods. (See Title 7, 21, 30, 47.)
23. Fertilizers.
24. Fire arms, ammunition and explosives.
25. Flour.
26. Food and relishes. (See Title 8, 16.)
27. Fuel.
28. Games and toys. (See Title 46.)
29. Glassware. (See Title 32, 55.)
30. Gloves. (See Title 22.)
31. Headwear.
32. Household articles. (See Title, 29, 35, 55.)
33. Inks. (See Title 65.)
34. Iron, steel, and manufactures. (See Title 41, 73.)
35. Jewelry and plated wear. (See Title 32, 70.)
36. Lamps, lanterns, &c. (See Title 29.)
37. Lard and tallow. (See Title 16.)
38. Laundry articles. (See Title 61, 64.)
39. Leather and saddlery.
40. Locks and hardware. (See Title, 72, 73.)
41. Machines. (See Title 1, 34, 73.)
42. Malt Liquors. (See Title 3.)
43. Matches.
44. Medical compounds. (See Title 20, 53, 72.)
45. Miscellaneous.
46. Musical instruments. (See Title 28.)
47. Needles and pins. (See Title 22.)
48. Oils and lubricants. (See Title 51.)
49. Optics and measuring instruments. (See Title 73.)
50. Packing. (Machinery.)
51. Paints and painters' supplies. (See Title 48.)
52. Paper and envelopes. (See Title 65.)
53. Poisons for animals. (See Title 20, 44.)
54. Publications.
55. Receptacles. (See Title 29, 32.)
56. Rope, cord, and twine. (See Title 59.)
57. Rubber goods. (See Title 5, 69.)
58. Sewing machines and attachments. (See Title 41, 73.)
59. Sewing silk, cotton and thread. (See Title 56.)
60. Shirts, collars and cuffs. (See Title 75.)
61. Soap. (See Title 38, 72.)
62. Spices, mustard and salt. (See Title 26.)
63. Spirituous liquors. (See Title 42, 77.)
64. Starch, corn-starch, and products. (See Title 26, 38.)
65. Stationery miscellany. (See Title 33, 52.)
66. Stoves and heaters.
67. Sugar, syrup and molasses.
68. Surgical instruments and appliances. (See Title 17.)
69. Tailoring and clothing. (See Title 21, 57.)
70. Time-keeping instruments. (See Title 35.)
71. Tobacco and snuff. (See Title 11.)
72. Toilet articles and preparations. (See Title 20, 61.)
73. Tools and devices.
74. Umbrellas, parasols, and canes.
75. Underwear and furnishing. (See Title 15, 60.)
76. Vehicles.
77. Wines. (See Title 3, 42, 63.)

FEEs.—No portion of the fee is returnable if the application for registration is finally rejected. There are no taxes or subsequent payments required after the fee of twenty-five dollars paid upon the filing of the application, except upon the renewal of the registration at the expiration of the first term of thirty years. Money paid by

actual mistake, such as a payment in excess, or when not required by law, or by neglect, or mis-information on the part of the office, will be refunded; but a mere change of purpose after the payment of money, as when a party desires to withdraw his application for the registration of a trade-mark, will not entitle a party to demand such a return.

See Appendix, Trade-Mark Rules of Practice, Rule 215.

SEC. 2. That the application prescribed in the foregoing section must, in order to create any right whatever in favor of the party filing it, be accompanied by a written declaration verified by the person, or by a member of a firm, or by an officer of a corporation applying, to the effect that such party has at the time a right to the use of the trade-mark sought to be registered, and that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that such trade-mark is used in commerce with foreign nations or Indian tribes, as above indicated; and that the description and fac-similes presented for registry truly represent the trade-mark sought to be registered.

The declaration called for by this section must be signed and sworn to by the applicant in his own name, if the applicant be an individual; by a member of the firm, if the owner of the trade-mark be a firm; by one of the principal officers of the corporation, if the owner be a corporation. The oath may be taken within the United States before a notary public, justice of the peace, or the judge or clerk of any court of record, and must be attested by the official seal of the officer administering the oath; if he has no seal the officer's official character must be established by competent evidence, as by a certificate from a clerk of a court of record, or other proper officer having a seal. In any foreign country it may be taken before a diplomatic or consular officer of the United States, a notary public (see however note to Sec. 4826, Patents, *ante*, as to countries in which notaries public may not administer oaths), or before any person duly qualified by the laws of the country to administer oaths, whose official character shall be certified by a representative of the United States, having an official seal, see Trade-Mark Rules of Practice, Rules 7, 8 and 47. The officer administering the oath should, in all cases, affix his official seal.

SEC. 3. That the time of the receipt of any such application shall be noted and recorded. But no alleged trade-mark shall be registered unless the same appear to be lawfully used as such by the applicant in foreign commerce or commerce with Indian tribes, as above mentioned, or is within the provision of a treaty, convention, or declaration with a foreign power; nor which is merely the name of the applicant; nor which is identical with a registered or known trade-mark owned by another, and appropriate to the same class of merchandise, or which so nearly resembles some other person's lawful trade-mark as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers. In an application for registration the Commissioner of Patents shall decide the presumptive lawfulness of claim to the alleged trade-mark; and in any dispute between an applicant and a previous registrant, or between applicants, he shall follow, so far as the same may be applicable, the practice of courts of equity of the United States in analogous cases.

TRADE-MARKS DEFINED.—The statute does not define the word "trade-mark" or say of what a trade-mark shall consist. The term is used as though its signification were already well known in the law.

It will be observed that the statute only requires four things:

(1) That the trade-mark is lawfully used as such by the applicant in commerce with foreign nations or Indian tribes; or be within the provisions of a treaty, convention, or declaration with a foreign power;

(2) That the trade-mark shall not be merely the name of the applicant;

(3) Nor identical with a registered or known trade-mark owned by another, and appropriated to the same class of merchandise; and

(4) And that it must not so nearly resemble some other person's lawful trade-mark as to be likely to cause confusion or mistake in the mind of the public, or deceive purchasers. Within these limits then, the law and the decisions of the courts, furnish the guide as to what may, and what may not constitute a lawful trade-mark.

The right to registration is founded on the adoption of a proper trade-mark, not the property of another party, and the declared intention to use it, see *ex parte* Rothschild, 7 O. G. 220; it is no bar to the registry of a trade-mark that it has already been used as such on articles of a different character, see *ex parte* English, 3 Dec. Com. 142; it is only necessary that the trade-mark shall be so far original as that when known in the market the goods of one merchant or manufacturer may be distinguished from those of another, see *ex parte* Porter Blanchard's Sons, 3 Dec. Com. 97; *ex parte* Roberts, 3 Dec. Com. 190.

In general it may be said that anything which can serve to distinguish one person's goods from those of another, such as tokens, letters, figures, signs, seals, names, ciphers, monograms or pictures, may be used for a trade-mark, see *Shaw Stocking Co. v. Mack*, 12 Fed. Rep. 707.

It may be a symbol or emblem, unmeaning in itself, such as a cross or a star, a bird, castle, quadruped or sun, or a combination of various objects, as pictures, letters and figures, words and monograms, copied from nature, art or fancy. It may be adhesive or non-adhesive; put inside or on the outside of the article. It may be written, printed, stamped, embossed, stencilled, branded, painted, or otherwise, and on the article itself, or on its case, covering, envelope or wrapper. *Browne on Trade-Marks*, § 87.

Where a manufacturer uses a particular stamp or brand, or puts up his goods in a peculiar manner so that they are known to purchasers chiefly by the appearance of the package, he will be protected in the use of such stamp or brand, see *McLean v. Fleming*, 6 Otto, 245; in the shape, color, and label of packages, see *Sawyer v. Horn*, 4 Hughes, 239; and in the color, shape, and print of a wrapper, see *Sawyer v. Kellogg*, 7 Fed. Rep. 720.

There are restrictions, however, that should be noted. This section provides that the mere name of the applicant cannot be registered. His autograph may be, however, see *Browne on Trade-Marks*, § 204; so, too, a fac-simile of an autograph, or the name written, printed, branded or stamped, in a mode peculiar to itself, may constitute a legal trade-mark. *Browne on Trade-Marks*, § 87.

Generic names, and words descriptive of quality are common property, and no one can have a right to an exclusive use of them, see *ex parte* Hathaway, 3 Com. Dec. 284.

Initial letters and dates add nothing to a phrase which is not a lawful trade-mark without them, see *ex parte* J. G. Johnson & Co., 3 O. G. 315.

The registration of the mere name of a person, firm, corporation, place, or article, or a word or words indicating kind or quality, will be refused, see *Rowe & Post*, 9 O. G. 496; *Eagle Pencil Co.*, 10 O. G. 981; *Dundas Dick & Co.*, 10 O. G. 981. The name of a person cannot be registered as a trade-mark, although it is accompanied by a mark sufficient to distinguish it from the same name when used by others, see *Adriance Platt & Co.*, 20 O. G. 1820. If the name of a patentee has become a generic name to describe the thing patented, the owner of the patent cannot have the name registered as a trade-mark, see *Consolidated Fruit Jar Co.*, 14 O. G. 269.

A geographical name can not be registered as a trade-mark, see *ex parte* Farnum & Co. 18 O. G. 418, and this is so even though it is joined with something else, see *idem*. The word "London" cannot be registered as a trade-mark if its application is either descriptive or deceptive, see *ex parte* Knapp, 16 O. G. 318. The word "Raleigh" cannot be registered as a trade-mark for manufactured tobacco, see *ex parte* Oliver, 18 O. G. 923.

If a trade-mark so nearly resembles a prior, registered trade-mark as to be calculated to deceive the public, it cannot be registered, see *Weisert Bros.* 16 O. G. 680. A person has no right to employ a sign or symbol which, from the nature of the fact it is used to signify, others may employ with equal truth, and therefore with equal right, see *Pratt & Farmer*, 10 O. G. 866.

A trade-mark that is descriptive or deceptive cannot be registered, see *ex parte* Smith 16 O. G. 679; nor can a word which is descriptive of the quality of the article, be used as a trade-mark, see *Goodyear Rubber Co.* 11 O. G. 1062, although a word which is merely inferentially or remotely descriptive, may sometimes be registered, see *ex parte* Heyman, 18 O. G. 923. So the word "crystalline" cannot be registered as a trade-mark for artificial stones, see *ex parte* Kipling 24 O. G. 899, nor can a barrel constructed of light and dark staves alternately, be registered as a trade-mark for packages of flour, see *ex parte*

Holliday Bros. 16 O. G. 500, because they are, when so used, descriptive of the article. The word "evaporated" is at once generic and descriptive, and cannot be registered, see *ex parte* Alden, 15 O. G. 889. And for the same reason the word "swing" as applied to the socket of a scythe snath, see Thompson, Derby & Co., 16 O. G. 187, and the word "safety" as applicable to powder, fuse lighters and explosive caps, see Safety Powder Co., 16 O. G. 186, cannot be registered.

A device which does not perform the sole office of a trade-mark, but enters into the mechanical structure of the articles, cannot be registered as a trade-mark, see *ex parte* Gordon, 12 O. G. 517; nor can a simple outline figure surrounding words purely descriptive of the quality of the article, see *ex parte* G. W. Rader & Co., 18 O. G. 596.

The thing of value in the matter of registration is the trade-mark itself. No protection is afforded for the use of scrolls, fanciful figures, or other words which are not an essential part of the mark, and a full description of them will not be allowed, see *ex parte* Kimball, 11 O. G. 1109.

No person is entitled to a trade-mark in a numeral, which only indicates but does not express the quality of the goods, but if a person uses a numeral of a certain form, size, color and style, he may be entitled to use that as a trade mark, see *Kinney v. Allen*, 1 Hughes, 106.

A word which has been registered by another cannot be registered as an essential element in a trade-mark, see *Strasburger & Co.*, 20 O. G. 155, nor can the minor non-essentials of a composite symbol of trade be registered, see *ex parte* Coats, 16 O. G. 544.

A combination of two symbols cannot be registered if each has been previously registered separately, see *ex parte* Smith, 16 O. G. 679, but a combination of two symbols may be registered, although another has previously registered one of them as a trade-mark for the same article, see *Cornwall et al.*, 12 O. G. 188.

The symbols and emblems of secret and other organizations may be registered as a trade-mark, see *ex parte* Thomas, 14 O. G. 821.

If the use of a name is entirely fanciful and arbitrary, the same may be registered as a trade-mark, see *Pace, Talbott & Co.*, 16 O. G. 909.

A waved band of ribbon attached to a cigar box may be registered, see *Straiton & Storm*, 18 O. G. 923.

A newly coined word may be registered as a trade-mark, though it is suggestive of the material from which the article stamped with it is made, see *Francis & Mallon*, 3 Dec. Com. 283.

It is no objection to a trade-mark that the several parts of which it is composed have been used separately, provided it is so distinct as not to deceive or mislead the public, see *ex parte* Imbs, 10 O. G. 463.

It is sufficient if a trade-mark has an original and a distinctive signification as appertaining to the article, see *India Rubber Comb Co.*, 8 O. G. 905.

If an arbitrary mark or device has been so long used in connection with an article of manufacture that it has become well-known to the trade as designating a particular person's goods, it constitutes a lawful trade-mark, see *Morrison v. Case*, 2 O. G. 544. A simple illustration of a crown in connection with an article, to designate its origin and ownership, is a lawful trade-mark, see *Smith v. Reynolds*, 3 O. G. 216.

An arbitrary combination of numerals, having no other meaning than to distinguish the applicant's goods in the market and indicate to purchasers that all goods having this mark have one and the same origin, may be used as a trade-mark, see *Dawes & Fanning*, 1 O. G. 27.

The designation "lion" whether used pictorially, or written or printed, is a lawful trade-mark for a medicine for a particular disease, see *ex parte* Weaver, 10 O. G. 1.

Every emblem or device that cannot be divested of its ordinary signification, and would be either descriptive or deceptive, is unlawful as a trade-mark, see *ex parte* Tolle, 2 O. G. 415.

A compound trade-mark, one of whose distinguishing features has already been appropriated and registered by another, as applied to the same class of merchandise, cannot be registered, see *J. Bush & Co.*, 10 O. G. 164.

Phrases which are merely descriptive of the quality of the article, or its destined use, cannot be registered as a trade-mark, see *Lawrence & Co.*, 10 O. G. 163.

The name of a town joined to the name of an article is not a legal trade-mark, nor can it be made so by adding the name and place of business of the manufacturer, see *Armistead v. Blackwell*, 1 O. G. 603.

The word "centennial" as applied to medals generally, is not a good trade-mark, see *Hartell v. Vinez*, 2 W. N. 602.

RIVAL APPLICANTS. INTERFERENCES.—In the absence of evidence the party who files the first application is entitled to a trade-mark, see *Jacobs v. Lopez*, 23 O. G. 342.

If two or more applicants claim the same trade-mark, the matter may be referred to the examiner of interferences, see *Duke v. Green*, 16 O. G. 1094. An interference in trade-mark cases can properly be declared in accordance with the usual practice governing interference cases between applicants for patents, see *Lautz Bros. v. Schultz*, 9 O. G. 791, and in such interference proceeding the inquiry may extend to the ownership of the trade-mark as well as the priority of adoption, see *Hoosier Drill Co. v. Ingalls*, 14 O. G. 785.

If it appears that each party to an interference is entitled to an undivided half of a trade-mark, the applicant cannot obtain registration, for the law grants registration only to those entitled to the exclusive use of a trade-mark, see *McElwee v. Blackwell*, 15 O. G. 658.

If one partner, after the dissolution of a firm, alone continues to use it upon the same articles, he is entitled to have it registered, see *Simpson v. Wright*, 15 O. G. 248. If a firm which has acquired a trade-mark is dissolved, each becomes a tenant in common thereof, although one possesses the secret of manufacturing the article, and neither is entitled to a registration, see *Wright v. Simpson*, 15 O. G. 968. See also notes to Sec. 5, *post*.

In case of conflicting applications for registration, or in any dispute as to the right to use which may arise between an applicant and a prior registrant, the office will declare an interference, in order that the parties may have an opportunity to prove priority of adoption or right; and the proceedings on such interference will follow, as nearly as practicable, the practice in interferences upon applications for patents (see Rev. Stat., Sec. 4904, and notes, *ante*); but each applicant and registrant will be held to the date of adoption alleged in the statement filed with his application. On the petition of any party dissatisfied with the decision of the examiner of interferences, the case will be reviewed by the commissioner (see Trade-Mark Rules of Practice, Rule 18). An appeal may also be taken from an adverse decision of the Commissioner of Patents, to the Court of Appeals of the District of Columbia, (see Rev. Stat., Sec. 4911, Act of Feb. 9, 1893, and notes, *ante*).

SEC. 4. That certificates of registry of trade-marks shall be issued in the name of the United States of America, under the seal of the Department of the Interior, and shall be signed by the Commissioner of Patents, and a record thereof, together with printed copies of the specifications, shall be kept in books for that purpose. Copies of trade-marks and of statements and declarations filed therewith, and certificates of registry so signed and sealed shall be evidence in any suit in which such trade-marks shall be brought in controversy.

Trade-Mark Rules of Practice, Rules 14 and 19.

When the requirements have been complied with, and the office has adjudged the trade-mark lawfully registerable, a certificate will be issued by the Commissioner, under seal of the Interior Department, to the effect that the applicant has complied with the law, and that he is entitled to the protection of his trade-mark in such case made and provided. Attached to the certificate will be a fac-simile of the trade-mark, and a printed copy of the statement and declaration, see Rule 14.

A certified copy is evidence only that what is shown by it to have been filed was filed. It is not evidence that anything required by the statute to be filed, and not shown by the certificate, or by the statement annexed to it to have been filed, was filed. A general certificate of the Commissioner cannot be taken as evidence that the requirements of the law have been met, see *Smith v. Reynolds*, 3 O. G. 213.

The statement required by the statute is a separate and distinct thing from the declaration, and when the statute speaks of certified copies of the statement, it does not thereby include the declaration, see *Walker v. Reid*, 2 C. L. B. 133. A certificate which gives a copy of the statement, and shows that a declaration was filed, is sufficient, see *Walker v. Reid*, 2 C. L. B. 133.

Printed copies of the statement and declaration in each case, with a duplicate of the trade-mark, can be obtained from the office upon payment of the usual fee.

The Official Gazette of the Patent Office, published weekly, contains a weekly list of all trade-marks registered, with the name and address of the registrant, a brief statement of the essential features of the trade-mark, and the particular description of goods to which it is applied.

See Rule 19.

SEC. 5. That a certificate of registry shall remain in force for thirty years from its date, except in cases where the trade-mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of a foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this act at the time that such trade-mark ceases to be exclusive property elsewhere. At any time during the six months prior to the expiration of the term of thirty years such registration may be renewed on the same terms and for a like period.

Trade-Mark Rules of Practice, Rule 15.

This section does not affect the vitality of the trade-mark, for it is beyond the power of the national legislature to create or destroy an arbitrary symbol of manufacture or commerce termed a trade-mark, *Browne on Trade-Marks* § 388. It affects only what the act creates, the certificate of registry. The common law right in a trade-mark exists so long as the owner continues to use and employ it in his business, and his right may be assigned to his successors, who may continue in their enjoyment of the exclusive right to use the trade-mark, see *Burton v. Stratton*, 12 Fed. Rep. 696; and a person may not only assign his trade-mark, but even the right to use his own name in connection with a particular business, and the assignee will thereby become entitled to the exclusive use of the trade-mark, even as against the assignor, *Ibid.*; *Oakes v. Tousmierre*, 4 Woods, 547. The assignee should indicate, in the use of the trade-mark, that he is such assignee or purchaser, see *Stachelberg v. Ponce*, 28 Fed. Rep. 480.

The right to use a trade-mark may be lost by a non-user, and in *Blackwell v. Dibrell*, 8 Hughes, 151, it was held that a non-user for eight or nine years, lost the right to use the trade-mark, and that when lost, it could not be resumed if, in the mean time, another person has acquired the right to its use; but in all such cases the intent of the owner to abandon should be taken into consideration, for a mere non-use of a mark for any length of time, is not conclusive upon the point of abandonment, see *Brown on Trade-Marks*, §§ 674 to 691.

SEC. 6. That applicants for registration under this act shall be credited for any fee or part of a fee heretofore paid into the Treasury of the United States with intent to procure protection for the same trade-mark.

Trade-Mark Rules of Practice, Rules 17 and 18.

This section of the statute applied to trade-marks registered, or applications filed under the act of July 8, 1870, which act was declared unconstitutional by the Supreme Court of the United States. Owners of trade-marks registered, or applicants for registration under that act, were allowed registration of their trade-marks under the present act upon compliance with its requirements, the fee paid under the former act applying on account of the fee required for the new application; with each application of this character a specific reference to the date and number of the former certificate, or application, is required.

SEC. 7. That registration of a trade-mark shall be *prima facie* evidence of ownership. Any person who shall reproduce, counterfeit, copy, or colorably imitate any trade-mark registered under this act and affix the same to merchandise of substantially the same descriptive properties as those described in the registration shall be liable to an action on the case for damages for the wrongful use of said trade-mark at the suit of the owner thereof; and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of such trade-mark used in foreign commerce or commerce with Indian tribes, as aforesaid, and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful act; and courts of the United States shall have original and appellate jurisdiction in such cases without regard to the amount in controversy.

The registration of a trade-mark is *prima facie* evidence of title, as in the case of patents, see *Winans v. N. G. & Erie R. R. Co.*, 1 Fisher, 213; *Ransom v. Mayor*, *Ibid.* 252, and, as in the case of patents, the Federal Courts have jurisdiction over actions at law and in equity, to restrain the piracy of trade-marks, and to assess damages for the wrongful use of such property.

It should not be overlooked that a person may maintain an action in the State courts for the infringement of a trade-mark, although it has not been recorded at the Patent Office, for a trade-mark is property under the common law independently of the statute, see *Rodgers v. Philp*, 1 O. G. 29. Where a trade-mark has been registered in the Patent Office, the action may be brought against an infringer in the United States Courts. Actions in trade-mark cases are subject to the usual rules of the courts in other cases.

To constitute infringement it is not necessary that the marks should be identical, it is sufficient if they bear such resemblance as is calculated to deceive the public, see *Walton v. Crowley*, 3 Blatch., C. C. 440; nor is it necessary that there be fraudulent intention, see *The Collins Co. v. Walker*, 7 Weekly Reporter, 222; *Clement v. Maddick*, 1 Giffard, 98. Imposition on the public is the test, and probability of deception is necessary to constitute infringement, see *Walton v. Crowley*, 3 Blatch., C. C. 440; *Seixo v. Provezende*, L. R., 1 Ch. 192. For a very full and complete statement of the law and practice regarding infringements, see *McLean v. Fleming*, 13 O. G. 913; *Cox's Manual of Trade-Mark Cases*, 580.

SEC. 8.—That no action or suit shall be maintained under the provisions of this act in any case when the trade-mark is used in any unlawful business or upon any article injurious in itself, or which mark has been used with the design of deceiving the public in the purchase of merchandise, or under any certificate of registry fraudulently obtained.

It is a broad principle of law that all transactions in violation of morality, or *contra bonos mores*, are void. Thus, if it can be shown that a trade-mark is used to stamp obscene publications or articles used only in the commission of acts of vice, the registrant could not recover damages should the mark be counterfeited and a suit be instituted by him. Any business which violates the rules of public policy is unlawful, as well as any business carried on in violation of a statute, and it should also be observed that any business, the object of which is the violation of the laws of another nation, is properly treated as unlawful.

The words "any article injurious in itself" undoubtedly refer to any article designed for an evil purpose. Poisons, explosives, weapons used in warfare, intoxicating liquors, and similar articles may be perverted from lawful purposes, but are not *per se* unlawful. Adulterated foods, quack medicines, and other similar substances and articles are, however, included within the provisions of this section.

A person whose business is imposition, cannot invoke the aid of equity against a piracy of his trade-mark, see *Fowle v. Spear*, 7 Pa. L. J. 176. A false indication of origin, see *Palmer v. Harris*, 60 Penn. 156; the false representation of an article as patented, see the *Leather Cloth Co.* case, 11 Jur. (N. S.) 513; a mark calculated or likely to mislead the public, see *The Am. Sardine Co.*, 3 Off. Gaz. 395; or the use of one's own name to induce the public to accept goods as those of another person of the same name, see *Croft v. Day*, 7 Beav. 84, are methods of deceiving the public that the law will not tolerate, and it is no answer to the charge that the deceit was really for the benefit of the public, see *Partridge v. Menck*, 1 How. App. Cases, 558. Nor can a person take advantage of any certificate of registry fraudulently obtained. As to the meaning of the phraseology of the words "fraudulently obtained," see *Fetridge v. Wells*, 4 Abb. Pr. 144.

SEC. 9.—That any person who shall procure the registry of a trade-mark, or of himself as the owner of a trade-mark, or an entry respecting a trade-mark, in the office of the Commissioner of Patents, by a false or fraudulent representation or declaration, orally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence thereof to the injured party, to be recovered in an action on the case.

SEC. 10.—That nothing in this act shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade-mark might have had if the provisions of this act had not been passed.

RIGHTS UNDER THE COMMON LAW NOT AFFECTED BY REGISTRATION.—The right of property in a trade-mark is distinctly recognized in the common law. An owner of a trade-mark has the exclusive right to the use of his mark, and may maintain and enforce this right under the common law of the United States, irrespective of the registration of the trade-mark and his rights under the statute.

A person may maintain an action for infringement of a trade-mark, although it has not been recorded at the Patent Office, for a trade-mark is property independently of the statute. The act is not obligatory. It offers to manufacturers an opportunity to have their trade-marks recorded, but imposes no penalty or forfeiture of right for neglect to so record them, see *Rodgers v. Philp*, 1 O. G. 29; and it should be observed that the recording of a trade-mark does not convey any higher rights than the owner had independently of the statute, see *Popham v. Wilcox*, 14 Abb. Pr. (N. S.) 206.

Chancery protects trade-marks upon the ground that a party shall not be permitted to sell his own goods as the goods of another; and therefore he will not be allowed to use the names, marks, letters, or other *indicia* of another, by which he may pass off his own goods to purchasers as the manufacture of another, see *Croft v. Day*, 7 Beav. 84; *Newman v. Alford*, 51 N. Y. 192. Trade-marks are protected on the ground of property and not exclusively on the ground of fraud, and damages will be allowed for an unauthorized, though unintentional, use of a trade-mark, see *Oakes v. Tousmierre*, 4 Woods, 547. Where a person has appropriated a particular trade-mark to distinguish his goods from other similar goods, he has a right of property in it which entitles him to its exclusive use, which equity will protect, see *Hostetter v. Vowinkle*, 1 Dillon, 329.

In suits against the infringer of a trade-mark, the question is not whether the complainant was the original inventor or proprietor of the article made by him, and on which he has put his trade-mark, nor whether the article made by the respondent is equal to his own, in value or quantity, but the court proceeds on the ground that the complainant has a valuable interest in the good will of his trade or business, and that, having adopted a particular label, sign, or trade-mark, indicating to his customers that the article bearing it is made or sold by him, or by his authority, or that he carries on business at a particular place, he is entitled to protection against one who attempts to deprive him of his trade or customers by using such labels, sign, or trade-mark, without his knowledge or consent, see *McLean v. Fleming*, 6 Otto, 245.

A trade-mark is not granted by the government. The registration or the non-registration of the trade-mark does not affect the right of the owner to his exclusive use of the mark, for this exists under the common law from the time the mark is adopted and used. Nor does the statute create the right to judicial remedies generally, for that right has always existed. The registration of a trade-mark is *prima facie* evidence of ownership; such registration creates a presumption in favor of the registrant; that he was the first to adopt the mark in question, and that such mark is a proper and lawful trade-mark. The certificate of registry, duly signed and sealed; copies of trade-marks, and of statements and declarations filed therewith, are evidence in any suit in which such trade-marks shall be brought in controversy, but neither the vitality of the trade-mark, its ownership, nor the remedies for the wrongful use of the trade-mark, are in anywise affected by the act of registration, or the provisions of the statute itself.

SEC. 11.—That nothing in this act shall be construed as unfavorably affecting a claim to a trade-mark after the term of registration shall have expired; nor to give cognizance to any court of the United States in an action or suit between citizens of the same State, unless the trade-mark in controversy is used on goods intended to be transported to a foreign country, or in lawful commercial intercourse with an Indian tribe.

After the term for which registration can be effected has elapsed, the owner of the trade-mark is relegated to his common law rights. As registration cannot create or grant a trade-mark, so the owner thereof cannot be deprived of his property therein or his rights as such owner by the mere expiration of the registration.

In *Glen Cove Mfg. Co. v. Ludeling*, 22 Fed. Rep. 823, Wallace, J., said: "Unless the complainant's trade-mark is used on goods intended to be transported to a foreign country, by the terms of the act of Congress the court can take no cognizance of the wrong in a suit between citizens of the same State. If it is so used the court will not be concluded by the results of an inquiry whether it is used with an intent to mislead purchasers in the country where the goods are to be ultimately sold; because the goods may be sold here, or be in some country other than the one where they are to be ultimately sold, and the act of Congress contemplates a complete protection to the right which it creates."

SEC. 12.—That the Commissioner of Patents is authorized to make rules and regulations and prescribe forms for the transfer of the right to use trade-marks and for recording such transfers in his office.

Trade-Mark Rules of Practice, Rule 16.

The right to the use of any trade-mark is assignable by an instrument in writing, and such assignment of a registered trade-mark must be recorded in the Patent Office within sixty days after its execution, in default of which it may be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice. No particular form of assignment or conveyance is prescribed, but the trade-mark must be identified by the certificate number.

SEC. 13.—That citizens and residents of this country wishing the protection of trade-marks in any foreign country the laws of which require registration here as a condition precedent to getting such protection there may register their trade-marks for that purpose as is above allowed to foreigners, and have certificate thereof from the Patent Office.

Approved March 3, 1881.

The precise meaning of this section has yet to be discovered. It does not seem possible that the owner of a trade-mark would desire to secure registration in a foreign country unless he was engaged in commerce with that country, and in this case he may proceed under Sec. 1, and obtain registration and his certificate therefor. If it has any other purpose than to grant registration for the trade-marks of such citizens and residents of the United States as are engaged in commerce with foreign nations, it is clearly unconstitutional, in view of the decision of the Supreme Court upon the Act of July 8, 1870.

AN ACT RELATING TO THE REGISTRATION OF TRADE-MARKS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing contained in the law entitled "An act to authorize the registration of trade-marks and protect the same," approved March third, eighteen hundred and eighty-one, shall prevent the registry of any lawful trade-mark rightfully used by the applicant in foreign commerce or commerce with Indian tribes at the time of the passage of said act.

Approved August 5, 1882.

It is difficult to find any reason or excuse for the passage of this act. By the act of March 3, 1881, to which this is virtually an amendment, every possible species of lawful trade-mark is entitled to registration. This act neither adds to nor subtracts from the practice as established by that act.

PENAL ACT.*

AN ACT TO PUNISH THE COUNTERFEITING OF TRADE-MARK GOODS AND THE SALE OR DEALING IN OF COUNTERFEIT TRADE-MARK GOODS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person who shall, with intent to defraud, deal in or sell, or keep or offer for sale, or cause or procure the sale of, any goods of substantially the same descriptive properties as those referred to in the registration of any trade-mark, pursuant to the statutes of the United States, to which, or to the package

* This act and the act of March 3, 1881, providing for the registration of trade-marks, are in effect one, and should be construed together. Registration under the act of March 3, 1881, is an indispensable prerequisite to a criminal prosecution under the act next following.

in which the same are put up, is fraudulently affixed said trade-mark, or any colorable imitation thereof, calculated to deceive the public, knowing the same to be counterfeit or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or imprisonment not more than two years, or both such fine and imprisonment.

SEC. 2.—That every person who fraudulently affixes, or causes or procures to be fraudulently affixed, any trade-mark registered pursuant to the statutes of the United States, or any colorable imitation thereof, calculated to deceive the public, to any goods, of substantially the same descriptive properties as those referred to in said registration, or to the package in which they are put up, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished as prescribed in the first section of this act.

SEC. 3.—That every person who fraudulently fills, or causes or procures to be fraudulently filled, any package to which is affixed any trade-mark, registered pursuant to the statutes of the United States, or any colorable imitation thereof, calculated to deceive the public, with any goods of substantially the same descriptive properties as those referred to in said registration, knowing the same to be counterfeit, or not the genuine goods referred to in said registration, shall, on conviction thereof, be punished as prescribed in the first section of this act.

SEC. 4.—That any person or persons who shall, with intent to defraud any person or persons, knowingly and willfully cast, engrave, or manufacture, or have in his, her, or their possession, or buy, sell, or offer for sale, or deal in, any die or dies, plate or plates, brand or brands, engraving or engravings, on wood, stone, metal, or other substance, moulds, or any false representation, likeness, copy, or colorable imitation of any die, plate, brand, engraving, or mould of any private label, brand, stamp, wrapper, engraving on paper or other substance, or trade-mark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this act.

SEC. 5.—That any person or persons who shall, with intent to defraud any person or persons, knowingly and willfully, make, forge, or counterfeit, or have in his, her, or their possession, or buy, sell, offer for sale, or deal in, any representation, likeness, similitude, copy, or colorable imitation of any private label, brand, stamp, wrapper, engraving, mould, or trade-mark, registered pursuant to the statutes of the United States, shall, upon conviction thereof, be punished as prescribed in the first section of this act.

SEC. 6.—That any person who shall, with intent to injure or defraud the owner of any trade-mark, or any other person lawfully entitled to use or protect the same, buy, sell, offer for sale, deal in or have in his possession any used or empty box, envelope, wrapper, case, bottle, or other package, to which is affixed, so that the same may be obliterated without substantial injury to such box or other thing aforesaid, any trade-mark, registered pursuant to the statutes of the United States, not so defaced, erased, obliterated, and destroyed so as to prevent its fraudulent use, shall, on conviction thereof, be punished as prescribed in the first section of this act.

SEC. 7.—That if the owner of any trade-mark, registered pursuant to

the statutes of the United States, or his agent, make oath, in writing, that he has reason to believe, and does believe, that any counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance; or moulds of his said registered trade-mark, are in the possession of any person, with intent to use the same for the purpose of deception and fraud, or makes such oaths that any counterfeits or colorable imitations of his said trade-mark, label, brand, stamp, wrapper, engraving on paper or other substance, or empty box, envelope, wrapper, case, bottle, or other package, to which is affixed said registered trade-mark not so defaced, erased, obliterated, and destroyed as to prevent its fraudulent use, are in the possession of any person, with intent to use the same for the purpose of deception and fraud, then the several judges of the circuit and district courts of the United States and the commissioners of the circuit courts may, within their respective jurisdictions, proceed under the law relating to search-warrants, and may issue a search-warrant authorizing and directing the marshal of the United States for the proper district to search for and seize all said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, and said counterfeit trade-marks, colorable imitations thereof, labels, brands, stamps, wrappers, engravings on paper, or other substances, and said empty boxes, envelopes, wrappers, cases, bottles, or other packages that can be found; and upon satisfactory proof being made that said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, counterfeit trade-marks, colorable imitations thereof, labels, brands, stamps, wrappers, engravings on paper or other substance, empty boxes, envelopes, wrappers, cases, bottles, or other packages, are to be used by the holder or owner for the purposes of deception and fraud, that any of said judges shall have full power to order all said counterfeit dies, plates, brands, engravings on wood, stone, metal, or other substance, moulds, counterfeit trade-marks, colorable imitations thereof, labels, brands, stamps, wrappers, engravings on paper or other substance, empty boxes, envelopes, wrappers, cases, bottles, or other packages, to be publicly destroyed.

SEC. 8.—That any person who shall, with intent to defraud any person or persons, knowingly and willfully aid or abet in the violation of any of the provisions of this act, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars; or imprisonment not more than one year, or both such fine and imprisonment.

Approved August 14, 1876.

PROHIBITION OF ENTRY OF WATCHES AND OTHER GOODS OF FOREIGN MANUFACTURE, BEARING FALSIFIED MARKS, AT CUSTOMS HOUSES.

“SEC. 2496.—No watches, watch cases, watch-movements, or parts of watch-movements, or any other articles of foreign manufacture, which shall copy or simulate the name or trade-mark of any domestic manufacture, [manufacturer,] shall be admitted to entry at the custom house of the United States, unless such domestic manufacturer is the importer of the same. And in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer who has adopted trade-marks may require his name and residence and a description of his trade-marks, to be recorded in books which shall be kept for that purpose in the Department of the Treasury, under such regulations as the Secretary of the

Treasury shall prescribe, and may furnish to the Department *fac-similes* of such trade-marks; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of the customs."

The Treasury Department, by circular of May 15, 1883, called the attention of customs officers to this section of the Revised Statutes, and instructed them to exercise care to prevent the entry at custom houses of any article of foreign manufacture copying or simulating any such mark, not imported by the owner of such name and trade-mark.

Applications for the recording of names or trade-marks in the Treasury Department should mention the name and residence of the domestic manufacturer, and furnish a description of the mark. No such name will be received unless the trade-mark is registered in the Patent Office; and the fact must be shown by the production of a copy of the mark, certified by the Commissioner of Patents, under the seal of the Patent Office, in the manner provided by law, and also of the necessary *fac-similes*, under the seal of the Patent Office, to be forwarded to collectors of customs.

On the receipt by a customs officer of any such *fac-similes*, with information from the Department that they have been recorded therein, he will properly record and file them.

IMPORTED GOODS TO BE MARKED WITH NAME OF THE COUNTRY OF ORIGIN.

Act of October 1, 1890.

SEC. 6.—That on and after the 1st day of March, 1891, all articles of foreign manufacture, such as are usually or ordinarily marked, stamped, branded, or labeled, and all packages containing such or other imported articles, shall, respectively, be plainly marked, stamped, branded, or labeled in legible English words, so as to indicate the country of their origin, and unless so marked, stamped, branded, or labeled, they shall not be admitted to entry.

SEC. 7.—That on and after March 1, 1891, no article of imported merchandise which shall copy or simulate the name or trade-mark of any domestic manufacture or manufacturer, shall be admitted to entry at any custom house of the United States. And in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer who has adopted trade-marks may require his name and residence and a description of his trade-marks to be recorded in books which shall be kept for that purpose in the Department of the Treasury under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department *fac-similes* of such trade-marks; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of the customs.

It will be noted that under this act the registration of a trade-mark in the Patent Office is not a pre-requisite to the recording of the trade-mark, with the owner's name and address, in the Treasury Department. We can recommend this system of recording to domestic owners of trade-marks, even in advance of the registration of their marks in the Patent Office, as affording convenient and positive evidence as to their adoption of their trade-marks, and their rights under the common law. At the same time such recording may prevent the piracy of their trade-marks, or at least the importation of goods from abroad bearing trade-marks, or names, the same or similar to the mark or name of such owner.

The procedure in recording trade-marks in the Treasury Department is very simple. It is necessary to file an application requesting the recording of the mark, and to accompany such application with a statement of the full name, and residence of the owner, a detailed description of the trade-mark, and the *fac-similes* required for registration, and state the names of the ports to which the *fac-similes* should be sent. See Circular No. 112 of the Treasury Department, dated October 31, 1890.

HISTORY OF THE COPYRIGHT SYSTEM OF THE UNITED STATES.

Previous to the adoption in 1787 of the Constitution, the nation had no power to grant copyright protection to authors. The State of Connecticut in January, 1783, and Massachusetts in March, 1783, passed acts granting copyright protection for twenty-one years to their own citizens, and in May, 1783, Congress recommended the States generally to legislate upon the subject.

The State of Virginia in 1785, New York and New Jersey in 1786, also passed acts providing for copyrights, and other States were considering them, when the Statute of 1790, passed by the Congress, rendered further State legislation unnecessary.

The act of 1790 followed the provisions of the English act of 1710 closely, giving to authors who were citizens or residents, their heirs and assigns, copyright in books, maps and charts, for fourteen years, with privilege of renewal at the end of this term, if the author was then living, for a further term of fourteen years. It required the printed title to be deposited, before the publication of the work, in the clerk's office of the local United States District Court; it required notice of the copyright to be inserted four times in a newspaper within two months after publication, and that a copy of the work be deposited with the Secretary of State of the United States within six months after publication. The act prescribed a remedy against unauthorized publication of manuscripts, and, as a penalty for piracy, forfeiture and a fine of fifty cents for each sheet found, one-half to go to the United States, and one-half to the owner of the copyright.

The act of 1802 required notice of copyright to be printed on the title page, or the page next thereto, and included designs, engravings and etchings, as subject-matters for protection.

The act of 1819 gave original jurisdiction in copyright cases to the United States Circuit Courts.

The act of 1831 (a consolidation of previous acts) extended the term of copyright to twenty-eight years, with privilege of renewal for a further term of fourteen years; included musical compositions; required a copy of the work to be left with the district clerk, within three months from the date of publication, for transmission to the Secretary of State, and cancelled the requirement for advertising in a newspaper, except for renewals.

The act of 1834 required assignments to be recorded in the court of the original entry.

The act of 1846 establishing the Smithsonian Institution, required one copy of the work to be delivered to that Institution, and one copy to the Library of Congress.

The act of 1856 secured the right of performance to dramatists.

The act of 1859 repealed the provisions of 1846, as to the deposit of copies, and placed the Interior Department in charge of copyright matters, instead of the State Department.

The act of 1861 provided for appeal to the Supreme Court in all copyright cases.

The act of 1865 again required the deposit of a copy in the Library of Congress, and provided that such deposit be made within one month from the date of publication; another act including photographs and negatives among the subject matters for protection.

The act of 1867 established a penalty of \$25 for failure to deposit the copy required to be left in the Library of Congress.

The act of 1870 was a general act taking the place of the various acts before mentioned; it did away with the system of registry with the local District Court, and made the Librarian of Congress the copyright officer; it extended the protection afforded by the law to "paintings, drawings, chromos, statues, statuary, and models or designs intended to be perfected as works of the fine art"; it required that a printed title of the work should be filed with the Librarian of Congress before the publication, and two copies of the work within ten days after the publication thereof.

In 1873-74 the copyright act was included in the Revised Statutes of the United States, as Sections 4948 to 4971 (see also §§ 629 and 699).

These sections of the revised statutes as amended and augmented by the amending acts of June 18, 1874, August 1, 1882, March 3, 1891, and March 2, 1895, as interpreted by the decisions of the courts, form the body of the present law of copyright now in force. The full text of the law is found below.

CONSTITUTION.

The clause of the Constitution of the United States, which authorizes the grant of copyright, is found in Article 1, Section 8:

The Congress shall have power * * * to promote the progress of science and the useful arts by securing, for limited times, to authors and inventors, the exclusive rights to their respective writings and discoveries * * * also to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.

THE LAW OF COPYRIGHT IN THE UNITED STATES.

IN FORCE JULY 1, 1895.

From the Revised Statutes of the United States, in force December 1, 1873, as amended by Act of June 18, 1874, August 1, 1882, March 3, 1891, and March 2, 1895.

SECTION 4948. All records and other things relating to copyrights and required by law to be preserved, shall be under the control of the Librarian of Congress, and kept and preserved in the Library of Congress; and the Librarian of Congress shall have the immediate care and supervision thereof, and, under the supervision of the Joint Committee of Congress on the Library, shall perform all acts and duties required by law touching copyrights.

SEC. 4949. The seal provided for the office of the Librarian of Congress shall be the seal thereof, and by it all records and papers issued from the office, and to be used in evidence shall be authenticated.

A copy of any record, or a duplicate certificate of any copyright record will be furnished under seal of the office, the legal fee for same being fifty cents, see Rule 2.

SEC. 4950. The Librarian of Congress shall give a bond, with sureties, to the Treasurer of the United States, in the sum of five thousand dollars, with the condition that he will render to the proper officers of the Treasury a true account of all moneys received by virtue of his office.

SEC. 4951. The Librarian of Congress shall make an annual report to Congress of the number and description of copyright publications for which entries have been made during the year.

SEC. 4952. The author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person, shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors or their assigns shall have exclusive right to dramatize or translate any of their works, for which copyright shall have been obtained under the laws of the United States.

PARTIES.—To constitute an "author," the person must by his own intellectual labor, applied to the materials of his composition, produce an arrangement or compilation new in itself, see *Atwell v. Ferrett*, 2 Blatch., 39. The word "proprietor" has been used in the copyright laws in the limited and restricted sense of a person who has lawfully

acquired the exclusive rights of some artist or author, see *Yuengling v. Schile*, 12 Fed. Rep. 97. A proprietor cannot claim a copyright for a work invented by another unless he shows an exclusive right lawfully received from the inventor, *idem*.

A party who first brings together materials drawn from different sources is entitled to a copyright for a compilation, see *Gray v. Russell*, 1 Story, 11.

A reporter of judicial decisions is entitled to copyright of his work to the extent of his authorship of the composition contained therein, see *Little v. Gould*, 2 Blatch., 165.

A person who translates a dramatic composition with the consent of the author is entitled to a copyright, see *Shook v. Rankin*, 6 Biss. 477.

The legal assignee of an author is competent to take out a copyright, although he takes it in trust for others, see *Little v. Gould*, 2 Blatch., 302.

SUBJECTS OF COPYRIGHT.—A "book" need not be a book in the common and ordinary acceptation of the word, viz., a volume made up of several sheets bound together. It may be printed only on one sheet, see *Clayton v. Stone*, 2 Paine, 382. The term "book" does not carry with it the requirement that it shall be printed; a book may exist without printing, and such book when made or composed, is entitled to copyright, see *Roberts v. Meyers*, 23 Law Rep. 396.

The word "chart" as used in this section refers to a form of map, see *Ehret v. Pierce*, 18 Blatch., 302.

The word "print" is used in connection with "engraving, cut, and photograph." It means apparently a picture; something complete in itself, similar in kind to an engraving, cut, or photograph. It clearly does not mean something printed on paper that is not intended for use as a picture, but is itself to be cut up and embroidered, and then made into an entirely different article, see *Rosenbach v. Dreyfuss*, 17 O. G. 1153.

The word "print" embraces lithographs, see *Yuengling v. Schile*, 12 Fed. Rep. 97, but a photograph is not a print, cut, or engraving, see *Wood v. Abbott*, 5 Blatch., 325.

The provisions of this section in relation to photographs are constitutional, see *Sarony v. Burrow G. L. Co.*, 17 Fed. Rep. 591.

An advertising card used to display the different colors of paints is not a subject of copyright, see *Ehret v. Pierce*, 10 Fed. Rep. 553. The statute was passed for the encouragement of learning, and was not intended for the encouragement of mere industry, unconnected with learning or science, see *Clayton v. Stone*, 2 Paine, 382.

Blank account books are not the subject of copyright, see *Baker v. Selden*, 17 O. G. 1029; but a compilation of information that is useful in a counting room is a proper subject, see *Bullinger v. Mackey*, 15 Blatch., 550.

A new arrangement of an old piece of music is a valid subject of copyright, see *Schuberth v. Shaw*, 28 A. L. Reg. 248.

If a chromo is clearly a work of artistic merit it is the subject of a copyright, although the person claiming the copyright expects to obtain his reward indirectly through an increase of profits in his business, to be obtained through its gratuitous distribution, see *Yuengling v. Schile*, 12 Fed. Rep. 97.

Immoral, pernicious or indecent works are not entitled to copyright, see *Richardson v. Miller*, 12 O. G. 3; but in order to exclude such works from protection it must appear that there is something immoral, pernicious or indecent in the thing *per se*, or that it is incapable of use except in connection with some illegal or immoral act, *idem*. That this applies to dramatic composition, see *Martinette v. Maguire*, 1 Deady, 216.

No reporter can have any copyright in judicial decisions, see *Wheaton v. Peters*, 8 Wheat, 591.

A daily or weekly publication of the state of the market is not the subject of a copyright, see *Clayton v. Stone*, 2 Paine, 382.

The preliminary steps required by law cannot be reasonably applied to a work of so ephemeral a character as a newspaper, see *Clayton v. Stone*, 2 Paine, 282.

A chart which contains a series of diagrams interspersed with printed instructions as to the mode of using them in taking measurements for and cutting garments, is the subject of copyright, see *Drewry v. Ewing*, 1 Bond, 540.

Playing cards may be a proper subject of copyright, see *Richardson v. Miller*, 12 O. G. 3.

A spectacular piece consisting almost wholly of scenic effects or representations, and in which the dialogue is very scant and meaningless is not a dramatic composition, see *Martinelli v. Maguire*, 1 Deady, 216.

The musical composition contemplated by the statutes must be substantially a new and original work, and not a copy of a piece already produced, with additions and variations which a writer of music with skill and experience might readily make, see *Jollie v. Jacques*, 1 Blatch., 618.

If an engraving does not involve invention it is not a subject of copyright, see *Collender v. Griffiths*, 3 O. G. 689.

Works on law, whether elementary or otherwise, are proper subjects of abridgment, see *Story v. Halcombe*, 4 McLean, 303.

There is a clear distinction between a compilation and an abridgement. To abridge requires an exercise of the mind, and that is not copying. To compile is to copy from various authors into one work, see *Story v. Halcombe*, 4 McLean, 303.

COPYRIGHT FOR PROJECTED WORKS.—A copyright may be secured for a projected as well as for a completed work, but the law provides for no *caveat*, or notice of interference—only for actual entry of title, see Rule 7.

SEC. 4953. Copyrights shall be granted for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed.

SEC. 4954. The author, inventor, or designer, if he be still living, or his widow or children, if he be dead, shall have the same exclusive right continued for the further term of fourteen years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights, within six months before the expiration of the first term. And such person shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers, printed in the United States, for the space of four weeks.

Applications for renewal must be accompanied by a printed title and the fee; and by explicit statement of ownership in the case of an author, or of relationship in the case of his heirs, and must definitely state the date and place of entry of the original copyright.

The time of the publication required by this section is not limited by law or regulation, but the courts have held that it should take place "within a reasonable time," see Rules 6 and 7.

SEC. 4955. Copyrights shall be assignable in law by any instrument of writing, and such assignment shall be recorded in the office of the Librarian of Congress within sixty days after its execution; in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice.

See Rules 8 and 9.

The statute does not say what interest may be assigned, but there is no sufficient reason for preventing an author from conveying any distinct portion of his right. Divisibility as well as assignability enhances the value of his property, for he may find a purchaser able and willing to pay for a part, but not for the whole of his copyright, see *Roberts v. Myers*, 23 Law Rep. 396.

A parol promise for a good consideration, to transfer an interest in a copyright is binding, for the making of the assignment merely concerns the manner of the performance of the promise, see *Gould v. Banks*, 8 Wood, 562.

The exclusive right to act and represent a drama is distinct from that of printing and publishing, and may be assigned for certain territory and a limited time, see *Roberts v. Myers*, 23 Law Rep. 396.

An assignee may maintain an action, although his assignment may never have been recorded, for it is valid between the parties, see *Webb v. Powers*, 2 W. & M. 497.

Although an instrument has never been copyrighted yet a transfer thereof is a sufficient consideration for a promissory note, see *Cates v. Bales*, 78 Ind., 285.

With regard to co-owners, the statute confers upon all the owners full power, without exacting any obligation in return, to print, publish and sell. Each can exercise his own right alone. When one owner at his own expense publishes and sells the book, he is not liable to account to the co-owners for the profits, see *Carter v. Bailey*, 64 Me. 458.

SEC. 4956. No person shall be entitled to a copyright unless he shall, on or before the day of publication, in this or any foreign country, deliver at the office of the Librarian of Congress, or deposit in the mail

within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the painting, drawing, statue, statuary, or a model or design, for a work of the fine arts, for which he desires a copyright; nor unless he shall also, not later than the day of the publication thereof, in this or any foreign country, deliver at the office of the Librarian of Congress, at Washington, District of Columbia, or deposit in the mail, within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such copyright book, map, chart, dramatic or musical composition, engraving, chromo, cut, print, or photograph, or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same: *Provided*, That in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above, shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives, or drawings on stone made within the limits of the United States, or from transfers made therefrom. During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph, so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives, or drawings on stone made within the limits of the United States, shall be, and it is hereby prohibited, except in the cases specified in paragraphs 512 to 516, inclusive, in section two of the act entitled, an act to reduce the revenue and equalize the duties on imports and for other purposes, approved October 1, 1890; *and except in the case of persons purchasing for use and not for sale, who import subject to the duty thereon, not more than two copies of such book at any one time; and, except in the case of newspapers and magazines, not containing in whole or in part matter copyrighted under the provisions of this act, unauthorized by the author, which are hereby exempted from prohibition of importation:

Provided, nevertheless, That in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the original language shall be permitted.

The following regulations (Department order 102, July 8, 1891) have been issued by the Treasury Department to customs officers under this section:

1. Copyrighted books and articles, the importation of which is prohibited by Section 4956 of the Revised Statutes, as amended by Section 3 of said act, shall not be admitted to entry. Such books and articles, if imported *with* the previous consent of the proprietor of the copyright, shall be seized by the Collector of Customs, who will take the proper steps for the forfeiture of the goods to the United States under Section 3082, Revised Statutes.

2. Copyrighted books and articles imported contrary to said prohibition, and *without* the previous consent of the proprietor of the copyright, being primarily subject to forfeiture to the proprietor of the copyright, shall be detained by the Collector, who shall forthwith notify such proprietor, in order to ascertain whether or not he shall institute proceedings for the enforcement of his right to the forfeiture.

* NOTE.—These paragraphs of the Tariff act permit free importation of books, etc., more than twenty years old, books in foreign languages, publications imported by the Government, or for societies, colleges, etc., and libraries which have been in use one or more years, brought from abroad by persons or families and not for sale.

If the proprietor institutes such proceedings and obtains a decree of forfeiture, the goods shall be delivered to him upon payment of the expenses incurred in the detention and storage, and the duties accrued thereon. If such proprietor shall fail to institute such proceedings within sixty days from date of notice, or shall declare in writing that he abandons his right to the forfeiture, then the Collector shall proceed as in the case of articles imported *with* the previous consent of such proprietor.

3. Copyrighted articles the importation of which is not prohibited, but which, by virtue of Section 4965 of the Revised Statutes, as amended by Section 8 of said act, are forfeited to the proprietor of the copyright when imported without his previous consent, and are moreover subject to the forfeiture of \$1 or \$10 per copy, as the case may be, one-half thereof to the said proprietor and the other half to the use of the United States, shall be taken possession of by the Collector, who shall take the necessary steps for securing to the United States half of the sum so forfeited, and shall keep the goods in his possession until a decree of forfeiture is obtained, and the half of the sum so forfeited, as well as the duties and charges accrued, are paid; whereupon he shall deliver the goods to the proprietor of the copyright.

In case of failure to obtain a decree of forfeiture, the goods shall be admitted to entry.

See Rules 1, 8, 11 and 14.

The printed copy of the title required by this section may be a copy of the title page of such publications as have title pages. In other cases the title must be printed expressly for copyright entry, with name of claimant of copyright. The style of type is immaterial, and the print of a typewriter will be accepted. A separate title is required for each entry; in case of periodicals, each number of the periodical requires a separate entry of copyright, and the title must include the date and number.

The description required in case of paintings, drawings, etc., should be full and explicit, enumerating all important and essential facts and particulars, and naming a definite title. A mounted photograph, as large as cabinet size, should accompany the description.

Every applicant for a copyright should distinctly state the full name and residence of the claimant; name the article for which a copyright is desired, and state whether the claimant is the author, designer, or proprietor. No affidavit or witness to the application is required.

The printed title, description, and application must be delivered to the Librarian of Congress, or deposited in the mails within the United States prepaid and addressed to the Librarian of Congress, Washington, D. C., on or before the day of publication in this or any foreign country. The two printed copies of the complete work, or in case of paintings, drawings, etc., the photograph, must be delivered or mailed to the Librarian of Congress, in the same way, not later than the day of publication, under the penalty imposed by Sec. 4960, *post*, and the avoidance of the copyright. The copies required may be sent through the mails within the United States free, without limit of weight, by using printed penalty labels, which are furnished by the Librarian of Congress upon application.

Congress by the statute created the right, and no protection can be claimed unless its provisions have been complied with, see *Wheaton v. Peters*, 8 Peters, 591.

If the publication is made before a deposit of a printed copy of the title, the person is not entitled to a copyright, see *Baker v. Taylor*, 2 Blatch., 82. The right accrues from the time a copy of the title of the book is deposited in the Librarian's office, see *Wheaton v. Peters*, 8 Peters, 591; but no copyright is valid unless two copies of the book are delivered to the Librarian of Congress within the prescribed time, see *Chase v. Sanborn*, 6 O. G. 932. In *Dwight v. Appleton*, 1 N. Y. Leg. Obs. 195, it was held that if the work consists of several volumes, the delivery of the copies of the first volumes within the prescribed time, and of the copies of the other volumes before any piracy is committed, or any action is brought therefor, is sufficient.

If there has been no publication of the book no copies of the book need be deposited with the Librarian, see *Roberts v. Myers*, 23 Law Rep. 396.

SEC. 4957. The Librarian of Congress shall record the name of such copyright book, or other article, forthwith in a book to be kept for that purpose, in the words following: "Library of Congress, to wit: Be it remembered that on the _____ day of _____ A. B., of _____ hath deposited in this office the title of a book, (map, chart, or otherwise, as the case may be, or description of the article,) the title or description of which is in the following words, to wit: (here insert the title or

description,) the right whereof he claims as author, (originator, or proprietor, as the case may be,) in conformity with the laws of the United States respecting copyrights. C. D., Librarian of Congress." And he shall give a copy of the title or description under the seal of the Librarian of Congress, to the proprietor, whenever he shall require it.

See Rule 9.

A copy of the record, or an original or a duplicate certificate of any copyright entry can be obtained upon application therefor, and payment of the legal fee of fifty cents each.

SEC. 4958, The Librarian of Congress shall receive from the persons to whom the services designated are rendered, the following fees: 1. For recording the title or description of any copyright book or other article, fifty cents. 2. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents. 3. For recording and certifying any instrument of writing for the assignment of a copyright, one dollar. 4. For every copy of an assignment, one dollar. All fees so received shall be paid into the treasury of the United States: *Provided*, That the charge for recording the title or description of any article entered for copyright, the production of a person not a citizen or resident of the United States, shall be one dollar, to be paid as above into the treasury of the United States, to defray the expenses of lists of copyrighted articles as hereinafter provided for.

See Rule 2.

And it is hereby made the duty of the Librarian of Congress to furnish to the Secretary of the Treasury copies of the entries of titles of all books and other articles wherein the copyright has been completed by the deposit of two copies of such book printed from type set within the limits of the United States, in accordance with the provisions of this act, and by the deposit of two copies of such other article made or produced in the United States; and the Secretary of the Treasury is hereby directed to prepare and print, at intervals of not more than a week, catalogues of such title-entries for distribution to the collectors of customs of the United States and to the postmasters of all post offices receiving foreign mails, and such weekly lists, as they are issued, shall be furnished to all parties desiring them, at a sum not exceeding five dollars per annum; and the Secretary and the Postmaster General are hereby empowered and required to make and enforce such rules and regulations as shall prevent the importation into the United States, except upon the conditions above specified, of all articles prohibited by this act.

See regulations of Treasury Department under Sec. 4956, *ante*.

SEC. 4959. The proprietor of every copyright book or other article shall deliver at the office of the Librarian of Congress, or deposit in the mail, addressed to the Librarian of Congress, at Washington, District of Columbia, a copy of every subsequent edition wherein any substantial changes shall be made: *Provided, however*, That the alterations, revisions, and additions made to books by foreign authors, heretofore published, of which new editions shall appear subsequently to the taking effect of this act, shall be held and deemed capable of being copyrighted as above provided for in this act, unless they form a part of the series in course of publication at the time this act shall take effect.

See Rule 8. Also see Sec. 4956 and notes *ante*, as to method and requirements for depositing copies.

SEC. 4960. For every failure on the part of the proprietor of any copyright to deliver, or deposit in the mail, either of the published copies, or description, or photograph, required by sections 4956 and 4959, the proprietor of the copyright shall be liable to a penalty of twenty-five dollars, to be recovered by the Librarian of Congress, in the name of the United States, in an action in the nature of an action of debt, in any district court of the United States within the jurisdiction of which the delinquent may reside or be found.

SEC. 4961. The postmaster to whom such copyright book, title, or other article is delivered, shall, if requested, give a receipt therefor; and when so delivered he shall mail it to its destination.

SEC. 4962. No person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title page, or the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted, the following words, viz: "Entered according to act of Congress, in the year ———, by A. B., in the office of the Librarian of Congress, at Washington;" or, at his option, the word "Copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out, thus: "Copyright, 18—, by A. B."

This section imposes an additional duty upon the person obtaining the copyright, as a pre-requisite to its maintenance. He must first acquire a copyright under the provisions of the act, and then in order to enforce his rights against infringers he must also give notice of his right by the means prescribed by this section, see *Farkinson v. Lasalle*, 8 Saw, 381.

If an entire work, embracing a complete system, is composed of several volumes, it is sufficient if the entry is made on the first volume, see *Dwight v. Appleton*, 1 N. Y. Leg. Obs., 195.

The omission to cause the date of the entry of a map to be engraved on some visible portion thereof will prevent a recovery, see *King v. Force*, 2 Cranch C. C. 208.

A notice is valid although the initial of the owner is used instead of the full Christian name, see *Sarony v. Burrow G. L. Co.* 17 Fed. Rep. 591.

Notice that copyright is secured is full protection for the original edition throughout its term, but is no protection to a second edition with notes, nor to any succeeding edition with improvements, see *Lawrence v. Dana*, 7 O. G. 81.

Subsequent editions, without alterations or additions, should give the same notice that the copyright is secured as the original edition, see *Lawrence v. Dana*, 7 O. G. 81.

Successive editions with additions or alterations, need not specify the date of the original copyright, see *Lawrence v. Dana*, 7 O. G. 81. A copyright of a second edition will not cure material defects in the copyright of the original edition, see *Lawrence v. Dana*, 7 O. G. 81.

A mere mistake as to the year in which the book was entered will not deprive the author of the benefit of the statute, see *Myers v. Callaghan*, 5 Fed. Rep. 726.

SEC. 4963. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, or other article, for which he has not obtained a copyright, shall be liable to a penalty of one hundred dollars, recoverable one-half for the person who shall sue for such penalty, and one-half to the use of the United States.

See Rule 4.

The right of action is restricted by the plain language and sense of the statute to a single person. If the plaintiff brings several actions, and the defendant files a demurrer in each, the court will not, on the motion of the plaintiff, order an argument of the demurrer in one of the cases and stay all proceedings in the meantime in the other cases, to abide the event of the one to be argued, see *Ferrett v. Atwill*, 1 Blatch., 151.

The penalty imposed by this section is imposed only in case of articles that are subject to copyright, see *Rosenbach v. Dreyfuss*, 17 O. G. 1153.

As the penalty accrues one-half to the proprietor and one-half to the United States, it is a proper subject of a "*qui tam*" action, see *Stevens v. Cady*, 2 Curt. 200.

SEC. 4964. Every person who, after the recording of the title of any book and the depositing of two copies of such book as provided by this act, shall, contrary to the provisions of this act, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, dramatize, translate, or import, or knowing the same to be so printed, published, dramatized, translated, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction.

See Rule 5.

No notice or record is required to secure to authors and their assigns the exclusive right to translate or to dramatize any of their works.

The mere recording of the title does not entitle the party to protection for a book not yet made, for the act says a book, but not an intended book, see *Centennial Catalogue Co. v. Porter*, 2 W. N. 601.

An action on the case is the proper remedy, see *Atwill v. Ferrett*, 2 Blatch., 89.

The words "copy of a book" naturally import a transcript or copy of the entire book. They do not include cases of copying parts of a book, but only the reproduction of the article, see *Rogers v. Jewett*, 22 Law Rep. 339.

The Circuit Courts of the United States have original jurisdiction of all suits at law or in equity arising under the copyright laws, and Sections 629, 690, 699 and 711 of the Revised Statutes apply with equal force to Patent and Copyright cases. For the text of these Sections, see under Patents, *ante*. The practice in copyright actions is substantially the same as in Patent cases. We do not, therefore, give full notes to this and the next six sections, but refer the reader to the corresponding sections under Patents, *ante*.

SEC. 4965. If any person, after the recording of the title of any map, chart, dramatic or musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts as provided by this act, shall, within the term limited, contrary to the provisions of this act, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, dramatize, translate, or import, either in whole or in part, or by varying the main design, with intent to evade the law, or knowing the same to be so printed, published, dramatized, translated, or imported, shall sell or expose to sale any copy of such map or other article, as aforesaid, he shall forfeit to the proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported or exposed for sale; and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale; one-half thereof to the proprietor and the

other half to the use of the United States. *Provided, however,* That in case of any such infringement of the copyright of a photograph made from any object not a work of fine arts, the sum to be recovered in any action brought under the provisions of this section shall be not less than one hundred dollars, nor more than five thousand dollars, and: *Provided, further,* That in case of any such infringement of the copyright of a painting, drawing, statue, engraving, etching, print, or model or design for a work of the fine arts or of a photograph of a work of the fine arts, the sum to be recovered in any action brought through the provisions of this section shall be not less than two hundred and fifty dollars, and not more than ten thousand dollars. One-half of all the foregoing penalties shall go to the proprietors of the copyright and the other half to the use of the United States.

As the penalty accrues one-half to the proprietor and one-half to the United States, it is a proper subject only of a "*qui tam*" action, see *Stevens v. Cady*, 2 Curt. 200.

A photograph is an infringement of a copyrighted engraving. The word "copy" is a general term added to the more specific terms before used for the very purpose of covering methods of reproduction not included in the words engrave, etch or work, see *Rossiter v. Hall*, 5 Blatch., 362.

The penalty of one dollar for every sheet, whether printed, or being printed or published, or exposed for sale, is limited to sheets in the possession of the defendant, see *Backus v. Gould*, 7 How. Pr. 798.

A person who has infringed a copyright cannot be compelled to discover the number of copies he has sold or has on hand, for this would subject him to a penalty, see *Chapman v. Ferry*, 12 Fed. Rep. 693.

SEC. 4966. Any person publicly performing or representing any dramatic composition for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, shall be liable for damages therefor; such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just.

The object of this section is to secure to the author of a copyrighted play the sole right to its performance after it is printed, while it is in manuscript he needs no such protection, see *Boucicault v. Fox*, 5 Blatch., 87.

A publication of a dramatic composition after the filing of the title is a violation of this section, see *Boucicault v. Hart*, 13 Blatch., 47. The exclusive right to perform a dramatic composition under the statute depends upon a copyright. There is no such right if there is no copyright, *idem*.

An action may be maintained for a representation after recording the title but before the publication, as well as after publication, see *Boucicault v. Wood*, 2 Biss. 34.

If an author after depositing the title of a play with the Librarian of Congress, consents to its publication in a foreign country prior to the publication here, any manager has the right to import the play and use it on the stage, for this is an abandonment of his rights under our laws, see *Boucicault v. Wood*, 2 Biss. 34.

SEC. 4967. Every person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained, shall be liable to the author or proprietor for all damages occasioned by such injury.

The right of an author in his manuscript at common law has not been taken away or abridged by the statute relating to copyrights, see *Woolsey v. Judd*, 4 Duer, 379.

The word "manuscript" does not include a picture, see *Parton v. Prang*, 2 O. G. 619.

A surreptitious publication of a substantial part of a manuscript is within the principle of the statute, see *Bartlett v. Crittenden*, 5 McLean, 32.

An author at common law has a property in a manuscript, and may obtain redress against any one who deprives him of it, or by improperly obtaining a copy endeavors to

realize a profit by its publication, see *Wheaton v. Peters*, 8 Peters, 591. This exclusive right is the right of property in the words, thoughts and sentiments, which in their connection form the written composition, see *Woolsey v. Judd*, 4 Duer, 379. This right is absolute and unlimited. As owner he has an absolute right to suppress as well as to publish. *Idem*.

Publication is circulation before the public eye by printing or multiplied copies in writing, see *Grigsby v. Breckenridge*, 2 Bush, 480.

An author retains his right in his manuscript until he relinquishes it by contract or some unequivocal act indicating an intent to dedicate it to the public, see *Palmer v. DeWitt*, 47 N. Y. 532.

After publication an author's exclusive right to his manuscript ceases at common law, see *Palmer v. DeWitt*, 5 Abb. Pr. (N. S.) 180.

A manuscript of a dramatic composition is equally under the protection of the law with any other work, see *Keene v. Kimball*, 82 Mass. 545. The rights of an author of a drama are two-fold. He is entitled to the profit arising from its performance, and also from the sale of the manuscript or the printing and publishing it, see *Palmer v. DeWitt*, 47 N. Y. 532.

A performance of a play at a theatre is a general publication, see *Keene v. Wheatley*, 4 Phila. 157, but if a general publication of a play does not enable others to represent it through a retention of the words in their memory, the author's proprietorship continues. *Idem*. If a spectator retains it by memory alone and publishes it, the exclusive right is gone, see *Palmer v. DeWitt*, 5 Abb. Pr. (N. S.) 180.

The author of any letter, whether it is a literary composition, or a familiar letter, or a letter of business, possesses the sole and exclusive copyright therein, see *Folsom v. Marsh*, 2 Story, 100. By sending a letter the author parts with his right to the possession, control or reclamation thereof without the consent of the receiver, and gives the latter the exclusive right to read and keep it, see *Grigsby v. Breckenridge*, 2 Bush, 480. The author has the right to publish the letter if he keeps or can procure a copy; the recipient has the right to keep it, or destroy it, or dispose of it in any other way than by publication. *Idem*; he may read the letter to a friend, or deposit it for safe keeping, without violating the author's right of publication, *Idem*. A person to whom a letter is addressed has no right to publish it, except to protect or vindicate himself, see *Folsom v. Marsh*, 2 Story, 100.

SEC. 4968. No action shall be maintained in any case of forfeiture or penalty under the copyright laws, unless the same is commenced within two years after the cause of action has arisen.

Every printing for sale is a new infraction of the right, and if such printing was within two years before the suit was brought, the defendant is liable, see *Reed v. Carusi*, Tancy, 72.

SEC. 4969. In all actions arising under the laws respecting copyrights the defendant may plead the general issue, and give the special matter in evidence.

SEC. 4970. The circuit courts, and districts courts having the jurisdiction of circuit courts, shall have power, upon bill in equity, filed by any party aggrieved, to grant injunctions to prevent the violation of any right secured by the laws respecting copyrights, according to the course and principles of courts of equity, on such terms as the court may deem reasonable.

A motion for a preliminary injunction will be disposed of on the affidavits of the parties, and will not be referred to a master, see *Smith v. Johnson*, 4 Blatch., 252. Such injunction may be granted although the questions involved have never been settled by any prior adjudication, see *Little v. Gould*, 2 Blatch., 165.

Where an infringement is palpable, and a provisional injunction will not be attended with serious injury, it is not ordinarily refused as to so much of the work as is a plain infringement of the prior publication, see *Banks v. McDivett*, 8 O. G. 860. If there are doubts in regard to the infringement of a copyright the defendant may be allowed to give bond instead of awarding a preliminary injunction, see *Hubbard v. Thompson*, 14 Fed. Rep. 689.

See notes under Sec. 4921 (Patents) *ante*.

SEC. —. [Approved June 18, 1874, to take effect August 1, 1874.]

In the construction of this act the words "engraving," "cut," and "print," shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label, not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of the record, under the seal of the Commissioner of Patents, to the party entering the same.

See Labels and Prints *ante*.

SEC. —. [Approved Aug. 1, 1882.] That manufacturers of designs for molded decorative articles, tiles, plaques, or articles of pottery or metal subject to copyright may put the copyright mark prescribed by section forty-nine hundred and sixty-two of the Revised Statutes, and acts additional thereto, upon the back or bottom of such articles, or in such other place upon them as it has heretofore been usual for manufacturers of such articles to employ for the placing of manufacturers, merchants, and trade-marks thereon.

SEC. 11. [Approved March 3, 1891, to take effect July 1, 1891.] That for the purpose of this act each volume of a book in two or more volumes, when such volumes are published separately, and the first one shall not have been issued before this act shall take effect, and each number of a periodical shall be considered an independent publication, subject to the form of copyrighting as above.

See Rule 10.

In the case of books published in more than one volume, or of periodicals published in numbers, or of engravings, photographs, or other articles published with variations, a copyright must be entered for each volume or part of a book, or number of a periodical, or variety, as to style, title, or inscription, of any other article. To complete the copyright on a book published serially in a periodical, two copies of each serial part as well as of the complete work (if published separately), should be deposited.

SEC. 12. That this act shall go into effect on the first day of July, anno Domini eighteen hundred and ninety-one.

SEC. 13. [Approved March 3, 1891, to take effect July 1, 1891.] That this act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may at its pleasure become a party to such agreement. The existence of either of the conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time as the purposes of this act may require.

International copyright arrangements have now (January 1, 1896) been concluded between the United States and Great Britain and her Colonies, France, Belgium, Switzerland, Germany, Italy, Denmark, Spain, and Portugal, and citizens or subjects of these countries may now obtain copyright protection of their works in the United States.

PATENTS.

FORMS FOR APPLICATION BY A SOLE INVENTOR.

PETITION WITH POWER OF ATTORNEY.

To the Commissioner of Patents :

Your Petitioner, (insert full names of inventor), a citizen, (or subject, and state of what country applicant is a citizen or subject, as, for instance, "a citizen of the Republic of France," or "a subject of the Queen of Great Britain and Ireland,") residing at (insert residence of applicant), prays that Letters Patent may be granted to him for the (insert title of invention), set forth in the annexed specification; and he hereby appoints William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county and State of New York, and of Washington, D. C., his attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith. (Signature.)

SPECIFICATION.

To all whom it may concern :

Be it known that I, (insert full name of inventor), a citizen, (or subject, and state of what country applicant is a citizen or subject), and resident of (insert residence), have invented a certain new and useful (insert title of invention, and if the invention has already been patented in any other country, insert here the words for which I have obtained a patent (or patents) in, and state in what countries patents have been obtained, giving the numbers and dates of the patents, as : "Great Britain No. 1426, bearing date June 24, 1890," etc.,) of which the following is a specification :

The objects of my invention are (here insert a brief description of the objects of the invention). Referring to the drawings which form a part of this specification, Figure 1 is (here insert a brief description of each figure of the drawings, after which insert the specification or description of the invention, inserting before the claims the words) ;

Having now described my invention, what I claim as new and desire to secure by Letters Patent is : (Insert claims.)

In witness whereof I have hereunto set my hand in presence of two witnesses.

Witnesses : (Inventor signs here.) (Two witnesses must sign here.)

OATH.

(Insert place of execution.)..... } ss.
(Insert name of country.)..... }

(Insert name of inventor), the above-named petitioner, a citizen (or subject, and state of what country he is a citizen or subject, as for instance, "a citizen of the Republic of Switzerland," or "a subject of the King of Prussia"), and resident of (insert residence), being duly sworn, deposes and says that he verily believes himself to be the original, first, and sole inventor of the (insert title of invention) described and claimed in the foregoing specification; that the same has not been patented to himself or to others with his knowledge or consent. (If the invention has not been patented in any other country, add the words "in any country." If prior patents exist, add the words "except in," and proceed to state the name or names of the country or countries in which it has been patented, and the official number and date of such prior patents, as for example: "Great Britain, No. 4120, Dated January 1, 1890," etc.,); that the same has not to his knowledge been in public use or on sale in the United States for more than two years prior to this application, and he does not know and does not believe that the same was ever known or used prior to his invention thereof. (Signature.)

Sworn to and subscribed before me {
this (insert date). }
(Seal of officer administering oath.)

(Signature of official administering the oath.)

FORMS FOR APPLICATION BY JOINT INVENTORS.

PETITION WITH POWER OF ATTORNEY.

To the Commissioner of Patents :

Your petitioners, (insert name of one inventor), a citizen (or subject, and state of what country he is a citizen or subject), residing at (insert residence of first inventor), and (insert name of second joint inventor), a citizen (or subject, and state of what country he is a citizen or subject), residing at (insert residence of second inventor), pray that Letters Patent may be granted to them for the (insert title of invention) set forth in the annexed specification: and they hereby appoint William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county and State of New York, and of Washington, D. C., their attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith. (Signature of first inventor.) (Signature of second inventor.)

SPECIFICATION.

To all whom it may concern :

Be it known that we, (insert name of one inventor), a citizen (or subject, and state of what country he is a citizen or subject), residing at (insert his residence), and (insert name of second inventor), a citizen (or subject, and state of what country he is a citizen or subject), residing at (insert his residence), have invented a certain new and useful (insert title of invention. If the invention has already been patented in any other country insert here the words for which we have obtained a patent (or patents) in, and state in what countries patents have been obtained, giving the number and date of each patent, as for instance, "Great Britain, No. 1736, bearing date September 22, 1890; France, No. 214,976, bearing date January 1, 1890," etc.,) of which the following is a specification :

The objects of the invention are (here briefly describe the objects of the invention).

Referring to the drawings which form a part of this specification, Figure 1 is (here give a brief description of each figure of the drawings, and follow with the specification or description of the invention, inserting before the claims the words):

Having now described our invention, what we claim as new and desire to secure by Letters Patent is: (Insert claims.)

In witness whereof we have hereunto set our hands in presence of two witnesses.

Witnesses.

(Two witnesses must sign here.)

(First inventor signs here.)

(Second inventor signs here.)

OATH.

(Insert place of execution.)..... } ss.
 (Insert name of country.)..... }

(Insert name of one inventor), a citizen (or subject, and state of what country he is a citizen or subject), and resident of (insert place of residence), and (insert name of other inventor), a citizen (or subject, and state of what country he is a citizen or subject), and resident of (insert place of residence), the above-named petitioners, being duly sworn, depose and say that they verily believe themselves to be the original, first and joint inventors of the (insert title of invention) described and claimed in the foregoing specification; that the same has not been Patented to themselves or to others with their knowledge or consent (if the invention has not been patented in any other country, add the words "in any country." If prior patents exist, add the words, "except in" and proceed to state the name or names of the country or countries in which it has been patented, and the official number and date of such prior patents, as for example: "Great Britain, No. 4120, dated January 1, 1890," etc.); that the same has not to their knowledge been in public use or on sale in the United States for more than two years prior to this application, and they do not know and do not believe that the same was ever known or used prior to their invention thereof.

(First inventor signs here.)

(Second inventor signs here.)

Sworn to and subscribed before me }
 this day of.....(insert date). }

(Signature of official administering oath.)

(Official seal of officer administering oath.)

FORMS FOR AN APPLICATION BY AN ADMINISTRATOR.

NOTE.—An application by an administrator must be accompanied by a duly certified copy of the letters of administration.

In case of a deceased foreign inventor it is necessary to apply for and obtain ancillary letters of administration in the name of a resident of the United States, and make the application in his name.

PETITION WITH POWER OF ATTORNEY.

To the Commissioner of Patents:

Your petitioner, (insert full name), a citizen (or subject, and state of what country applicant is a citizen or subject,) residing at (insert residence), administrator of the estate of (insert full name and last residence of inventor), late a citizen (or subject, and state of what country he was a citizen or subject), deceased, as by reference to the duly certified copy of letters of administration hereto annexed will more fully appear, prays that Letters Patent may be granted to him for the invention of the said (insert name of inventor), for (insert title of invention), set forth in the annexed specification; and he hereby appoints William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county and State of New York, and of Washington, D. C., his attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith. (Signature.)

SPECIFICATION.

To whom it may concern:

Be it known that (insert name of inventor), late a citizen of (or subject of, and proceed to state of what country he was a citizen or subject), and a resident of (insert last place of residence), but now deceased, did invent a certain new and useful (insert title of invention, and if any foreign patents have been obtained add the words, for which patents have been obtained in, and proceed to specify the countries in which patents have been obtained and the number and date of each patent), of which the following is a full, clear, and exact specification.

The invention has for its object. (Here proceed with the specification and claims as in other cases.) (Signature of administrator),

Witnesses:

(Signatures of two witnesses.)

Administrator of the estate of (insert name of deceased inventor) deceased.

OATH.

(Insert place of execution.)..... } ss.
 (Insert name of country.)..... }

(Insert name of administrator), the above-named petitioner, a citizen (or subject, and state of what country he is a citizen or subject), and resident of (insert residence), being duly sworn, deposes and says that he is the administrator of the estate of (insert name of inventor), late a citizen (or subject, and state of what country he was a citizen or subject), and resident of (insert last place of residence), deceased; that he verily believes that the said (insert name of inventor) was the original, first and sole inventor of the improvement in (insert title of invention), described and claimed in the foregoing specification; that the same has not been patented to himself, or to others with his knowledge or consent (if the invention has not been patented in any country add the words "in any country." If prior patents exist, add the words, "except in the following countries," and proceed to state the name or names of the country or countries in which the same has been patented, as for example: "Great Britain, No. 4125, dated January 1, 1890; France, No. 192,478, dated January 2, 1890," as the case may be); that the same has not to his knowledge been in public use or on sale in the United States for more than two years prior to this application, and he does not know and does not believe that the same was ever known or used prior to the said (insert inventor's name) invention thereof. (Signature.)

Sworn to and subscribed before me this.....day of.....189.....

(Signature of official administering the oath.)

(Official seal of officer administering oath.)

FORMS FOR AN APPLICATION BY AN EXECUTOR.

NOTE.—An application by an executor must be accompanied by a duly certified copy of the letters testamentary.

In case of a deceased foreign inventor it is necessary to apply for and obtain ancillary letters of administration in the name of a resident of the United States, and make the application for patent in his name.

PETITION WITH POWER OF ATTORNEY.

To the Commissioner of Patents :

Your petitioner, (*insert name and residence of executor*), a citizen (*or subject, and state of what country the executor is a citizen or subject*), executor of the last will and testament of (*insert name and last residence of inventor*), late a citizen (*or subject, and state of what country the inventor was a citizen or subject*), deceased, as by reference to the duly certified copy of letters testamentary, hereto annexed, will more fully appear, prays that Letters Patent may be granted to him for the invention of the said (*insert name of inventor*), for a (*insert title of invention*), set forth in the annexed specification; and he hereby appoints William E. Richards, and William W. White, doing business under the name and style of Richards & Co., of the city, county and State of New York, and of Washington, D. C., his attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith. (Signature.)

SPECIFICATION.

To all whom it may concern :

Be it known that (*insert name of inventor*), who was a citizen of (*or subject of, and state of what country he was a citizen or subject*), and a resident of (*insert last residence*), but is now deceased, did invent a certain new and useful (*insert title of invention and if any foreign patents have been obtained add the words for which patents have been obtained in, and proceed to specify the countries in which such patents have been obtained, stating the number and date of each*), of which the following is a full, clear and exact specification :

(*Here proceed with the specification and claims as in other cases.*)

Witnesses :
(*Signatures of two witnesses.*)

(Signature of Executor.)
Executor of the estate of (*insert name of deceased inventor*) deceased.

NOTE.—All the executors, if there be more than one, should join in the application and in executing the documents.

OATH.

The form is precisely the same as for an administrator, except that he "*deposes and says he is the executor of the last will and testament of*" instead of "*administrator of the estate of,*" in the first few lines of the document.

REVOCATION OF POWER OF ATTORNEY, AND APPOINTMENT OF NEW ATTORNEY.

To the Commissioner of Patents :

The undersigned, having on or about the (*insert date*) appointed (*insert name and address of attorney whose power is to be revoked*), his attorney to prosecute an application for Letters Patent for (*insert title of invention*), which application was filed in the Patent Office on or about (*insert filing date*), serial number (*insert serial number*), hereby revokes the power of attorney then given, and appoints William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county and State of New York, and Washington, D. C., his attorneys, with full power of substitution and revocation, to prosecute said application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith. (Signature.)

FORM FOR SUPPLEMENTAL OATH AS TO FOREIGN PATENTS.

SUPPLEMENTAL OATH AS TO FOREIGN PATENTS.

(*Insert place of execution.*)..... } ss.
(*Insert name of country.*)..... }

(*Insert name of inventor*), whose application for Letters Patent for an improvement in (*insert title of invention*) was filed in the United States Patent Office on or about the (*insert date of filing*), being duly sworn, deposes and says that he is the applicant named in the application above described; that he verily believes himself to be the original, first and sole inventor of the said improvements, and that the same have not been patented to him, or to others with his knowledge or consent, except in the following countries: (*here insert the numbers and dates of all existing foreign patents, as for example: "Great Britain, No. 4715, dated June 4, 1880; France, No. 194,615, dated May 12, 1881," etc., as the case may be.*) (Signature.)

Sworn to and subscribed before me this (*insert date*).

(Signature of official administering oath.)

(Official Seal.)

FORM OF SUPPLEMENTAL OATH TO ACCOMPANY A NEW OR AN ENLARGED CLAIM.

OATH.

(*Insert place of execution.*)..... } ss.
(*Insert name of country.*)..... }

(*Insert name of inventor*), whose application for Letters Patent for an improvement in (*insert title of invention*), serial number (*insert serial number*), was filed in the United States Patent Office on or about the (*insert date of filing*), being duly sworn, deposes and says that he verily believes himself to be the original, first and sole inventor of the improvement as described and claimed as follows: (*here insert the claim or claims in question*), in addition to that which was embraced in the claim originally made, and that he does not know and does not believe that the same was ever before known or used, and that the matter sought to be inserted formed a part of his original invention at the date of filing said application, and was invented by him before he filed the same. (Signature.)

Sworn to and subscribed before me this (*insert date*).

(Signature of official administering the oath.)

[Official Seal.]

RE-ISSUES.

FORMS FOR APPLICATION FOR A RE-ISSUE. BY AN INVENTOR.

PETITION WITH POWER OF ATTORNEY.

To the Commissioner of Patents :

Your petitioner, (*insert name of inventor*), a citizen (*or subject, and state of what country the applicant is a citizen or subject*), residing at (*insert residence*), prays that he may be allowed to surrender the Letters Patent for an improvement in (*insert title of invention*), granted to him, (*insert date of patent*), whereof he is now sole owner (*or, if the patent has been assigned, whereof (insert name of assignee) on whose behalf, and with whose assent this application is made, is now sole owner, by assignment,*) and that letters patent may be re-issued to him (*or to the said (insert name of assignee)*) for the same invention, upon the annexed amended specification. With this petition is filed an abstract of title, duly certified, as required in such cases. And your petitioner hereby appoints William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county and State of New York, and of Washington, D. C., his attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith. (*Signature.*)

NOTE.—If the patent has been assigned, the assent of the assignee must be procured in the following form :

The undersigned, assignee of the entire (*or if of an interest, here define it*) interest in the above-mentioned letters patent, hereby assents to the accompanying application. (*Signature of assignee.*)

OATH.

(*Insert place of execution*) } ss.
 (*Insert name of country*)..... }

(*Insert name of inventor*), the above-named petitioner, being duly sworn, deposes and says that he does verily believe himself to be the original and first inventor of the improvement set forth and claimed in the foregoing specification, and for which improvement he solicits a patent; that deponent does not know and does not believe that said improvement was ever before known or used; that deponent is a citizen (*or subject, and state of what country he is a citizen or subject*), and resides at (*insert residence*); that deponent verily believes that the letters patent referred to in the foregoing petition and specification, and herewith surrendered, are inoperative (*or invalid*) for the reason that the specification thereof is defective (*or insufficient*), and that such defect (*or insufficiency*) consists particularly (*here insert a statement particularly specifying such defects or insufficiencies*); and deponent further says that the errors which render such patent so inoperative (*or invalid*) arose from inadvertence (*or accident, or mistake*), and without any fraudulent or deceptive intention on the part of deponent; that the following is a true specification of the errors which it is claimed constitute such inadvertence (*or accident, or mistake*), relied upon: (*here recite the facts*); that such errors so particularly specified arose (*or occurred*) as follows: (*state here how the errors arose or occurred*). (*Signature of Inventor.*)

Subscribed and sworn to before me this (*insert date*).

(*Signature of official administering oath.*)

[*Official Seal.*]

FORMS FOR APPLICATION FOR RE-ISSUE. BY THE ASSIGNEES.

(*To be used only when the inventor is dead.*)

PETITION WITH POWER OF ATTORNEY FOR A RE-ISSUE.

To the Commissioner of Patents:

Your petitioners, (*insert name of one assignee*), a citizen (*or subject, and state of what country he is a citizen or subject*) residing at (*insert place of residence*), and (*insert name of other assignee*), a citizen (*or subject, and state of what country he is a citizen or subject*), residing at (*insert place of residence*), pray that they may be allowed to surrender the Letters Patent for an improvement in (*insert title of invention*), granted (*insert date of patent*), to (*insert name of patentee*), now deceased, whereof they are now owners by assignment of the entire interest, and that the Letters Patent may be re-issued to them for the same invention, upon the annexed amended specification. With this petition is filed an abstract of title duly certified, as required in such cases. Your petitioners hereby appoint William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county and State of New York, and of Washington, D. C., their attorneys, with full powers of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the Patent, and to transact all business in the Patent Office connected therewith. (*Signatures.*)

OATH.

(*Insert place of execution*) } ss.
 (*Insert name of country*)..... }

(*Insert names, addresses, and citizenship of assignees.*) the above-named petitioners, being duly sworn, depose and say that they verily believe that the aforesaid letters patent granted to (*insert name of patentee*) are (*here follow allegations as in oath for re-issue by inventor, the necessary changes being made to make them apply to the assignees, after which and before the signatures*) the following must be added): that the entire title to said letters patent is vested in them, and that they verily believe the said (*insert name of patentee*) to be the first and original inventor of the invention set forth and claimed in the foregoing amended specification, and that the said (*insert name of patentee*) is now deceased. (*Signatures of assignees.*)

Sworn to and subscribed before me this (*insert date*).

(*Signature of official administering oath.*)

[*Official Seal.*]

DISCLAIMER.**FORM FOR DISCLAIMER AFTER ISSUE OF PATENT.**

To the Commissioner of Patents:

DISCLAIMER.

Your petitioner, (*insert name of disclaimant*), a citizen (*or subject, and state of what country he is a citizen or subject*), residing at (*insert residence*), represents that in the matter of a certain improvement in (*insert title of invention*), for which letters patent of the United States No. (*insert number of patent*) were granted to (*insert name of patentee*) on the (*insert date of patent*), he is the (*here set forth the exact facts as to the interests in said patent owned by the disclaimant; if he is the assignee, state the liber and page where assignment is recorded*), and that he has reason to believe that through inadvertence (*or accident or mistake*) the specification and claim of said letters patent are too broad, including that of which the patentee was not the first inventor. Your petitioner, therefore, hereby enters his disclaimer to that part of the claim in said specification which is in the following words, to wit; (*here recite the part disclaimed.*) (*Signature.*)

Witness:

(*Signature of Witness.*)**INTERFERENCE.****FORM FOR DOMESTIC INVENTOR.****STATEMENT IN INTERFERENCE.**(*Preliminary Statement of Domestic Inventor.*)(*Insert name of Inventor.*)

vs.

(*Insert name of Opponent.*)

} Interference in United States Patent Office.
No. (*insert number.*)
Preliminary Statement of
(*insert name of Inventor.*)

(*Insert name of inventor*), of (*insert residence of inventor*), being duly sworn, doth depose and say that he is a party to the interference declared by the Commissioner of Patents, (*insert date of declaration of interference*), between his application for letters patent, filed (*insert date of filing application*), serial number (*insert serial number*), and the (*state whether application or patent*) of (*insert name of opponent*), No. (*insert number*), for (*insert title of invention*); that he conceived the invention set forth in the declaration of interference on or about the (*state date of conception*); that on or about the (*insert date*) he made drawings of the invention (*if he has not made a drawing, then he should say that no drawing of the invention in issue has been made*); that on or about the (*insert date*) he first explained the invention to others, and that he made a model showing such invention on or about the (*insert date*), (*if he has not made a model, then he should allege that no model of the invention in issue has been made*); that he embodied his invention in a full-sized machine, which was completed about the (*insert date*), and that on the (*insert date*) the said machine was successfully operated at his shop in (*insert name of town or city, county and State*), and that he has since continued to use the same, and that he has manufactured others for use and sale. (*If he has not embodied the invention in a full-sized machine, he should so state, and if he has embodied it, but has not used it, he should so state.*) (*Inventor signs here.*)

Subscribed and sworn to before me this (*insert date*).[*Official Seal.*](*Signature of official administering oath.*)**FORM OF PRELIMINARY STATEMENT IN INTERFERENCE FOR A FOREIGN INVENTOR.****STATEMENT IN INTERFERENCE.**(*Preliminary Statement of Foreign Inventor.*)(*Insert name of Inventor.*)

vs.

(*Insert name of Opponent.*)

} Interference in United States Patent Office.
No. (*insert number.*)
Preliminary Statement of
(*insert name of Inventor.*)

(*Insert name and residence of inventor*), being duly sworn, doth depose and say that he is a party to the interference declared by the Commissioner of Patents (*insert date of the declaration of interference*), between his application for patent filed (*insert date of filing*), serial number (*insert serial number*), and the (*state whether application or patent*) of (*insert name of opponent*), No. (*insert number*), for (*insert title of invention*); that he made the invention set forth in the declaration of interference, being at that time in (*insert name of place*); that patents for such invention were applied for and obtained as follows: (*here insert the dates of all applications for foreign patents that have been made, together with the numbers and dates of each patent, as for instance: "Application filed in Great Britain, December 4th, 1888, patent numbered 24,076 of 1888, and dated December 4th, 1888," etc., etc. If a patent has not been obtained in any country it should be so stated.*)

That such invention was fully described in: (*Here set forth any publications of the invention, giving the dates, and stating where such publications appeared, and when and where such publications were introduced into the United States, if at all. If the invention was never described in a publication it should be so stated.*)

That knowledge of such invention was introduced into the United States under the following circumstances: On (*insert date*), the said (*name of inventor*) wrote a letter to (*insert name*) residing at (*insert residence*), describing such invention, and soliciting his services in procuring a patent therefor in the United States. (*Here proceed to recite the facts, showing to whom in the United States knowledge of the invention was disclosed for the purpose of making application for patent therefor; the earliest date upon which such knowledge of the invention was introduced into the United States, etc.*)

If the invention has been manufactured in the United States, state when, and to whom the applicant first wrote to secure such manufacture, and also whether the invention has been described in trade circulars in the United States, the date, etc., and any other information that will show when and where the invention was first introduced into or disclosed in the United States. If the invention has not been introduced into the United States otherwise than by the application papers, it should be so stated. (*Signature.*)

Subscribed and sworn to before me this (*insert date*).[*Official Seal.*](*Signature of official administering oath.*)

NOTE.—This statement must be subscribed and sworn (or affirmed) to before a Notary Public, or a Diplomatic or Consular Officer of the United States, who must in all cases affix his official seal.

ASSIGNMENTS.**FORM OF ASSIGNMENT TO ACCOMPANY AN APPLICATION FOR PATENT WHEN IT IS DESIRED THAT THE PATENT SHALL ISSUE TO AN ASSIGNEE.****ASSIGNMENT.**

Whereas I, (*insert name of inventor*), of (*insert residence of inventor*), have invented a certain new and useful (*insert title of invention*), for which I am about to make application for letters patent of the United States therefor.

And whereas, (*insert name of assignee*), of (*insert residence of assignee*), is desirous of acquiring an interest in said invention, and in the letters patent to be obtained therefor.

Now, therefore, to all whom it may concern, be it known that for and in consideration of the sum of (*insert consideration*), to me in hand paid, the receipt of which is hereby acknowledged, I, the said (*insert name of assignor*), have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said (*insert name of assignee*), all my right, title and interest in and to the said invention, as fully set forth and described in the specification prepared and executed by me on the (*insert date of execution of application*), preparatory to obtaining letters patent of the United States therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said letters patent when granted to the said (*insert name of assignee*).

In testimony whereof I have hereunto set my hand and affixed my seal this (*insert date*).

In presence of
(*Signatures of two witnesses.*)

(*Signature of inventor.*) [SEAL.]

FORM OF ASSIGNMENT OF PARTIAL INTEREST, WHERE APPLICATION HAS BEEN FILED, WITH REQUEST TO ISSUE PATENT TO INVENTOR AND ASSIGNEE JOINTLY.**ASSIGNMENT.**

Whereas I, (*insert name of inventor*), of (*insert residence of inventor*), have invented a certain new and useful (*insert title of invention*), for which I have made application for letters patent of the United States therefor, said application having been filed in the United States Patent Office on or about (*insert date upon which application was filed*), serial number (*insert serial number of application*).

And Whereas, (*insert name of assignee*), of (*insert residence of assignee*), is desirous of acquiring an interest in said invention, and in the letters patent to be obtained therefor:

Now, therefore, to all whom it may concern, be it known, that for and in consideration of the sum of (*insert consideration*), to me in hand paid, the receipt of which is hereby acknowledged, I, the said (*insert name of inventor*), have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said (*insert name of assignee*), an undivided one-half part of the whole right, title and interest in and to the said invention, and in and to the letters patent to be obtained therefor, and I do hereby authorize and request the Commissioner of Patents to issue the said letters patent when granted to me and to the said (*insert name of assignee*), jointly.

In testimony whereof I have hereunto set my hand and affixed my seal this (*insert date*), at (*insert place of execution*).

In presence of
(*Signatures of two witnesses.*)

(*Signature.*) [SEAL.]

FORM OF ASSIGNMENT, AFTER ISSUE OF PATENT.**ASSIGNMENT.**

Whereas I, (*insert name and address of patentee*), did obtain letters patent of the United States of America, for an invention entitled (*insert title of invention*), which letters patent are numbered (*insert number of patent*), and bear date the (*insert date of patent*).

And whereas, (*insert name and address of assignee*), is desirous of acquiring an interest in the same:

Now, therefore, to all whom it may concern, be it known that for and in consideration of the sum of (*insert consideration*), to me in hand paid, the receipt of which is hereby acknowledged, I, the said (*insert name of assignor*), have sold, assigned, and transferred, and by these presents do sell, assign and transfer unto the said (*insert name of assignee*), all my right, title and interest (*or an undivided one-half interest, or whatever interest may be assigned, as the case may be*), in and to the said invention, and in and to the letters patent therefor aforesaid: the same to be held and enjoyed by the said (*insert name of assignee*), for his own use and behoof, and for the use and behoof of his legal representatives and assigns, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal at (*insert place of execution*), this (*insert date*).

In presence of
(*Signatures of two witnesses.*)

(*Signature.*) [SEAL.]

CAVEATS.

NOTE.—Only citizens of the United States, or aliens who have resided in the United States for one year next preceding the filing of the caveat, and who have declared their intention to become citizens of the United States, are entitled to file caveats.

FORM OF PETITION WITH POWER OF ATTORNEY.

To the Commissioner of Patents:

The petition of (*insert name of petitioner*), a citizen of the United States (*or if a resident alien recite the facts in accordance with the above note*), residing at (*insert residence*), represents:

That he has made certain improvements in (*insert title of invention*), and that he is now engaged in making experiments for the purpose of perfecting the same, preparatory to applying

for letters patent therefor. He therefore prays that the subjoined description of his invention may be filed as a caveat in the confidential archives of the Patent Office.

And he hereby appoints William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county and State of New York, and of Washington, D. C., his attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, and to transact all business in the Patent Office connected therewith. (Signature.)

SPECIFICATION.

To the Commissioner of Patents :

Be it known that I, (*insert name of caveator*), a citizen of the United States (*or if a resident alien recite the facts in accordance with the above note*), and residing at (*insert residence*), having invented (*insert title of invention*), and desiring further to mature the same, file this my caveat therefor, and pray protection of my right until I shall have matured my invention.

The following is a description of my invention, which is as full, clear, and exact as I am able at this time to give, reference being had to the drawing hereto annexed.

(*Here insert a description of the invention. It is not necessary to append claims to a caveat.*)

Witnesses:
(*Signatures of two witnesses.*)

(*Signature of Caveator.*)

OATH.

(*Insert place of execution.*)..... } ss.
(*Insert name of country.*)..... }

(*Insert name of caveator*), the above-named petitioner, a citizen of the United States (*or if a resident alien recite the facts in accordance with above note*), and resident of (*insert residence*), being duly sworn, deposes and says that he verily believes himself to be the original and first inventor of the (*insert title of invention*), described in the foregoing specification.

(*Signature of Caveator.*)

Sworn to and subscribed before me this (*insert date*).

[*Official Seal.*]

(*Signature of official administering oath.*)

DESIGN PATENTS.

DOCUMENTS REQUIRED.

NOTE.—The documents required are the same as for other Patents. The forms for Specifications and Oaths are the same as for other Patents, except that in reciting the title of the invention the words "a new and original design for" are to precede the title. The petition must state the term for which protection is asked, as follows:

FORM OF PETITION FOR DESIGN PATENT.

To the Commissioner of Patents :

Your petitioner, (*insert name of inventor*), a citizen of (*or subject of, and state of what country he is a citizen or subject*), residing at (*insert residence*), prays that letters patent may be granted to him for the term of (*here insert the term asked for, whether three and one-half, seven, or fourteen years*), for the new and original design for (*insert title of invention*), set forth in the annexed specification, and he hereby appoints William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county, and State of New York, and of Washington, D. C., his attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to sign the drawings, to receive the patent, and to transact all business in the Patent Office connected therewith.

(*Signature of Inventor.*)

TRADE MARKS.

FORMS FOR APPLICATION. BY AN INDIVIDUAL.

APPLICATION FOR THE REGISTRATION OF A TRADE MARK.

LETTER OF ADVICE WITH POWER OF ATTORNEY.

To the Commissioner of Patents :

The undersigned presents herewith a fac-simile of his lawful trade mark and requests that the same, together with the accompanying statement and declaration, may be registered in the United States Patent Office, in accordance with the law in such cases made and provided; and he hereby appoints William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county, and State of New York, and of Washington, D. C., his attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the Certificate of Registration, and to transact all business in the Patent Office connected therewith. (Signature.)

STATEMENT.

To all whom it may concern :

Be it known that I, (*insert name of applicant*), a citizen of (*or subject of, and state of what country he is a citizen or subject*), residing at (*insert residence*), and doing business at (*insert business address, naming street and number*), have adopted for my use a trade-mark for (*insert name of goods upon which trade mark is used*), of which the following is a full, clear and exact specification.

My trade mark consists of (*state of what the trade mark consists*). This has generally been arranged, as shown in the accompanying fac-simile, which represents (*here insert a complete description of the trade mark, describing in detail all of its parts and features*).

The essential feature of my trade mark is (*here name the essential features of the trade mark claimed*). This trade mark I have used continuously in my business since (*insert date since when*

the trade mark has been continuously used). The class of merchandise to which this trade mark is appropriated is *(here name such class)*, and the particular description of goods comprised in said class upon which I use it is *(here name the particular goods or commodities upon which it is used)*. It is my practice to apply my trade mark by *(here state the manner in which the trade mark is applied)*.

In witness whereof I have hereunto set my hand in presence of two witnesses. (Signature).

Witnesses:
(Signatures of two witnesses.)

DECLARATION.

(Insert place of execution.)..... } ss.
(Insert name of country.)..... }

(Insert name of applicant), being duly sworn, deposes and says that he is the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that he has at this time a right to the use of the trade mark therein described; that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used by him in commerce between the United States and foreign nations or Indian tribes, and particularly with *(here name one or more foreign countries or Indian tribes, or both, between which and the United States it is used in commerce)*; and that the description and fac-similes presented for record truly represent the trade mark sought to be registered. (Signature).

Sworn and subscribed before me, *(insert title of officer before whom the declaration is made)*, this *(insert the date)*.

(Signature of official administering oath.)

[Official Seal.]

FORMS FOR APPLICATION. BY A FIRM.

APPLICATION FOR THE REGISTRATION OF A TRADE MARK.

LETTER OF ADVICE WITH POWER OF ATTORNEY.

To the Commissioner of Patents:

The undersigned present herewith a fac-simile of their lawful trade mark and request that the same, together with the accompanying statement and declaration, may be registered in the United States Patent Office, in accordance with the law in such cases made and provided; and they hereby appoint William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county and State of New York, and of Washington, D. C., their attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the Certificate of Registration, and to transact all business in the Patent Office connected therewith. (Signature of firm.)

STATEMENT.

To all whom it may concern:

Be it known that we, *(insert name of firm)*, a firm domiciled in *(state place of domicile)*, and doing business at *(insert business address, naming street and number)*, have adopted for our use a trade mark for *(here insert name of goods upon which the trade mark is used)*, of which the following is a full, clear and exact specification:

Our trade mark consists of *(state of what the trade mark consists)*. This has generally been arranged as shown in the accompanying fac-simile, which represents *(here insert a complete description of the trade mark, describing in detail all of its parts and features)*.

The essential feature of our trade mark is *(here name the essential feature claimed)*.

This trade mark has been used continuously in business by us and those from whom we derive our title since *(insert date since when the trade mark has been continuously used)*. The class of merchandise to which this trade mark is appropriated is *(here name such class)*, and the particular description of goods comprised in such class on which it is used by us is *(here name the particular goods or commodities upon which it is used)*. It has been our practice to apply our trade mark by *(here state the manner in which the trade mark is applied)*.

In witness whereof we have hereunto set our hands in presence of two witnesses. (Signature of firm.)

Witnesses:
(Signatures of two witnesses.)

DECLARATION.

(Insert place of execution.)..... } ss.
(Insert name of country.)..... }

(Insert the name of the member of the firm who makes the declaration), being duly sworn, deposes and says that he is a member of the firm, the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that the said firm has at this time a right to the use of the trade mark therein described; that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the trade mark is used by the said firm in commerce between the United States and foreign nations or Indian tribes, and particularly with *(here name one or more foreign nations or Indian tribes, or both, between which and the United States it is used in commerce)*, and that the description and fac-similes presented for record truly represent the trade mark sought to be registered.

(Signature of the member of the firm who makes the declaration.)

Sworn and subscribed before me, a *(state official)* }
(title of officer administering oath.) }
this *(insert date.)* }

[Official Seal.]

(Signature of official administering oath.)

**FORM OF APPLICATION. BY A CORPORATION.
APPLICATION FOR THE REGISTRATION OF A TRADE MARK.
LETTER OF ADVICE WITH POWER OF ATTORNEY.**

To the Commissioner of Patents:

The undersigned presents herewith a fac-simile of its lawful trade mark and requests that the same, together with the accompanying statement and declaration, may be registered in the United States Patent Office, in accordance with the law in such cases made and provided; and it hereby appoints William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county and State of New York, and of Washington, D. C., its attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the Certificate of Registration, and to transact all business in the Patent Office connected therewith. (Signature of corporation.)

STATEMENT.

To all whom it may concern:

Be it known that the (insert name of corporation), a corporation organized under the laws of (state under what laws the corporation is organized), and located in (state where located), and doing business in (state business address of corporation, giving street and number), has adopted for its use a trade mark for (state goods upon which trade mark is used), of which the following is a full, clear and exact specification:

The trade mark of said company consists of (state of what the trade mark consists). This has generally been arranged as shown in the accompanying fac-simile, in which (here insert a complete description of the trade mark, describing in detail all of its parts and features).

The essential features of the said trade mark are (here name the essential features claimed). This trade mark has been continuously used by said corporation since (state date since when the trade mark has been continuously used). The class of merchandise to which this trade mark is applied is (state class), and the particular description of goods comprised in such class on which it is used by the said company is (here name the goods or commodities upon which it is used). It is usually (here state how the trade mark is applied or affixed). (Signature of corporation.)

Witnesses:
(Signatures of two witnesses.)
(Seal of corporation.)

By (Signature of official signing same.)
(Title of official who signed.)

DECLARATION.

(Insert place of execution)..... } ss.
(Insert name of country)..... }

(Insert name of the officer of the corporation who makes the declaration,) being duly sworn, deposes and says that he is (state his title of office) of the corporation, the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that the said corporation has at this time a right to the use of the trade mark therein described; that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the trade mark is used by said corporation in commerce between the United States and foreign nations or Indian tribes, and particularly with (here name one or more foreign nations or Indian tribes, or both, between which and the United States the trade mark is used in commerce), and that the description and fac-similes presented for record truly represent the trade mark sought to be registered.

(Signature of the officer of the corporation who makes the declaration.)

[Seal of corporation.]

Sworn and subscribed before me, a (state official title of the person administering the oath)..... } (Signature of official administering oath.)
.....this (insert date)..... }

[Official Seal.]

LABELS AND PRINTS.

FORM OF APPLICATION. BY AN INDIVIDUAL.

To the Commissioner of Patents:

The undersigned, (insert name of applicant), of (insert residence), and a citizen of (or subject of, and state of what country he is a citizen or subject), hereby furnishes five copies of a label (or print, as the case may be), to be used for (state use of label or print), of which he is the sole proprietor. The title of said label (or print) is (insert title), and the said label (or print) consists of the words and figures as follows, to wit: (here insert a full description of the label or print).

And he hereby requests that the said label (or print) be registered in the Patent Office, in accordance with the Act of Congress to that effect, approved June 18, 1874.

And he hereby appoints William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county and State of New York, and of Washington, D. C., his attorneys, with full powers of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the Certificate of Registration, and to transact all business in the Patent Office connected therewith. (Signature.)

(Insert place and date of execution.)

Proprietor.

FORM OF APPLICATION. BY A FIRM.

To the Commissioner of Patents:

The undersigned, (insert name of firm), a firm domiciled in (insert domicile), and doing business at (insert business address, giving street and number), hereby furnishes five copies of a label (or print, as the case may be), to be used for (state use of label or print), of which they are the sole proprietors. The title of said label (or print) is (insert title), and the said label (or print) consists of the words and figures as follows, to wit:—(here insert a full description of the label or print).

And they hereby request that the said label (or print) be registered in the Patent Office, in accordance with the Act of Congress to that effect, approved June 18, 1874.

And they hereby appoint (insert power of attorney in the same form as given above, in form of application by an individual). (Signature of firm.)

(Place and date of execution.)

Proprietors.

FORM OF APPLICATION. BY A CORPORATION.

To the Commissioner of Patents :

The applicant, a corporation created by authority of the laws of *(state under what law corporation was organized)*, and doing business at *(insert business address, giving street and number, city and country)*, hereby furnishes five copies of a label *(or print, as the case may be)*, to be used for *(state use of label or print)*, of which it is the sole proprietor. The title of said label *(or print)* is *(insert title)*, and the said label *(or print)* consists of the words and figures as follows, to wit: *(here insert description of label or print)*.

And it is hereby requested that the said label *(or print)* be registered in the Patent Office, in accordance with the Act of Congress to that effect, approved June 18, 1874.

And it hereby appoints *(insert power of attorney in the same form as given above, in form of application by an individual.)* *(Signature of corporation.)*

(Place and date of execution.)

By *(signature of official signing same.)*
(Title of official signing.)

(Seal of corporation.)

COPYRIGHTS.

FORM OF APPLICATION.

To the Librarian of Congress, Washington, D. C. :

The undersigned, *(insert name of applicant)*, a citizen of *(or subject of, and state of what country he is a citizen or subject)*, and resident of *(insert residence)* presents herewith a printed copy of the title of a *(state whether a book, map, chart, dramatic or musical composition, or whatever the work may be)*, for which he desires copyright protection in accordance with the law in such cases made and provided.

He claims the right to such copyright protection as the *(state whether he claims as author, designer, or proprietor)* of the work, the printed title of which is presented herewith, and he hereby appoints William E. Richards and William W. White, doing business under the name and style of Richards & Co., of the city, county and State of New York, and of Washington, D. C., his attorneys, with full powers of substitution and revocation, to prosecute this application, to pay all fees required by law, to receive the Certificate of Registration, and to transact all business relating thereto.

(Signature.)

(Place and date of execution.)

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All fees payable are required to be paid in advance—that is, upon making any application for any action for which a fee is payable.

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