

office to issue patents to the inventor unless otherwise specially requested by him. The mere facts of assignment and record do not impose upon the Commissioner the duty of issuing the letters patent to the assignee without further request, and the omission to do so is not therefore a mistake on his part. The rights of the assignee in the patent are precisely the same, whether the patent be issued to him or to the inventor, and whether it issue to the one or the other is a matter of form rather than of substance.

“In the case of *Dental Vulcanite Company v. Wetherbee*, (3 *Fish.*, 87,) where a similar correction is called the correction of a clerical error, the decision states that the error was corrected by reissue. The office records show that the patent was reissued to Cummings, January 10, 1865, after his sale to the Dental Vulcanite Company. On January 19, 1865, he addressed the office, stating the fact that all his rights were assigned to the Dental Vulcanite Company, and that the assignment was on record, and asking that the reissued patent ‘be so amended as to recite the fact that the said reissue is granted to the said Dental Vulcanite Company.’ This was refused, and on February 27, 1865, the reissue was surrendered, a fee of thirty dollars paid, and a new patent was reissued to the assignees, dated March 21, 1865.

“It is true that the learned judge speaks of this as the correction of a clerical error; but he adds, in effect, that it was an irregularity arising from an imperfection in the application. If the Commissioner was bound to issue to the assignee in all cases without request, upon the faith of the notice furnished by the record, the character of the application would have been immaterial.

“It must not be forgotten that applicants may make mistakes of a purely clerical character as well as the office. When the mistakes are those of the office, they will be corrected without expense to the applicant; but when he makes them, they can be cured only by a surrender of his old patent for correction, payment of the fee, and the issue of an amended patent.

“The error in the present case is one of the latter class, and can only be corrected by surrender and reissue.”
(*Commissioners' Decisions, February 10, 1870.*)

In the case of *Andrew ex parte, (motion,)* Acting Commissioner Duncan says: “This patent is for an improvement in door-knobs, and relates to a mode of adjusting the distance between the two knobs according to the thickness of the door upon which they are used, the adjusting mechanism consisting of a series of ratchet teeth upon the spindle, operating in connection with a spring detent located within the chamber or socket of the knob into which the spindle is to be inserted, the spring being made somewhat wider than the spindle, so that it can at any time be released by a proper instrument inserted by the side of the spindle through an orifice provided for that purpose. The claim is for ‘the flat spring C, attached to the knob spindle, and adapted to engage with the ratchet teeth a, a,’ &c.

“Unquestionably the word ‘spindle’ is erroneously used in the claim, and the patentee, by attorney, now moves that the specification be reprinted for the purpose of correcting the claim by erasing the interpolated word therefrom, on the ground that its insertion was a purely ‘clerical error.’

“It is found upon examination of the papers that the

claim as it stands in the patent is in the precise language in which it was drawn by Andrew's attorney when his application was pending before the office. The error originated with applicant's duly authorized agent, and if in consequence the present owner of the patent is to any extent debarred his right to the full enjoyment of his invention, the appropriate remedy is as provided in § 53 of the patent act of July 8, 1870. It is an instance of a 'defective specification,' in which the error has arisen by 'inadvertence, accident, or mistake,' the word specification being employed in this connection in its generic sense, to include claim as well as mere description.

"As this case clearly comes within the category of those for which the remedy by reissue has been provided, it would be unwise, to say the least, if not, in fact, an act of questionable authority, to attempt to correct the error in the manner proposed.

"Of reissue patents, going out as they do with a new date and a distinctive number, the public are bound to take notice, the same as they are of original patents; but there is no official mode yet adopted of advertising to the world the fact and the character of changes made in the specification of a patent by the process sought to be applied in the present instance.

"The proposition is to issue a new patent, which is to retain the same date and number as the old one; and the public, not advised of any alteration in the original instrument, as they would be if a reissue had taken place, are to continue to use whatever certified or otherwise official copies have passed into circulation, in the full, though erroneous, belief that these copies are, in all particulars,

faithful transcripts of a public record which has, in point of fact, been changed, though without notice to the world.

"I am clearly of the opinion, therefore, for reasons of public policy as well as because of the express provision of the statute applicable to this case, that the patentee, if he finds himself hindered in his rights to any extent by reason of the error in the specification, should cure the defect by a reissue. The motion is denied." (*Commissioners' Decisions, July 28, 1870.*)

(See generally, as to the correction and effect of mistakes, *Kneass v. Schuylkill Bank*, 4 Wash., 14; *Grant v. Raymond*, 6 Pet., 241, 242; *Woodworth v. Hall*, 1 Wood. & Minot, 260, 398, 399; *Kittle v. Merriam*, 2 Curt., 478.)

871. DIVISIONS OF A REISSUE, (*vide supra*, p. 255, *et seq.*)
The Commissioner may, in his discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant and upon payment of the required fee for a reissue for each of such reissued letters patent. (*Act of July 8, 1870, § 53.*)

A patentee, in reissuing, may at his option have a separate patent for each distinct and separate part of the invention comprehended in his original patent, by paying the required fee in each case and complying with the other requirements of the law, as in original applications. Each division of a reissue constitutes the subject of a separate specification, descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts. All the divisions of a reissue will issue simultaneously. If there be controversy as to one, the other will be withheld from issue until the controversy is ended. (*Patent Office Rules, July, 1870.*)

If an original patent include two inventions, and its validity on that account is doubtful, a separate reissue is just and proper, (*Goodyear v. Day*, MS. N. J., 1852;) and the patentee has a right to have a reissue of patents for each distinct part in order to effectually cure the defect. (*Ball ex parte MS. Appeal Cases*, D. C., 1860.)

In the matter of the application of William Lowe, for the reissue of letters patent for an improved method of increasing combustion in steam boilers, granted June 4, 1867, the Commissioner says:

“Applicant devised an apparatus whereby the products of combustion arising from a furnace are conducted by tubes, which enter a combustion chamber at nearly opposite points. The currents are thus disturbed and caused to commingle, and while in this condition air or oxygen is introduced to them. It is claimed that combustion is much facilitated by this arrangement.

“For this apparatus he has applied and been allowed letters patent. He now seeks, in another division of his application, to obtain a second patent, with the following claim: ‘The process above described of oxydizing the products of combustion, namely, by bringing air in contact with these gases while being mixed and in a state of disturbance.’

“The first answer to this claim is, that it cannot form the subject of a separate patent. It is not for a distinct and separate part of the thing patented in the original. The furthest point to which the division of inventions has been pushed has been to grant one patent for a process and another for the product of that process. Such patents have, with some hesitation, been sustained, (*Goodyear v. Honsinger*, 3 Fish., 150; *Goodyear v. Wait*, 8 Fish.,

244; *Goodyear v. Providence Rubber Company*, 2 Fish., 510;) but upon the express ground that this was a matter confided by law to the discretion of the Commissioner. But I have never known one patent to issue for a machine and another for the law or principle by which it operates. The mechanism of applicant is of no possible value except to carry out this process. Aside from this, it possesses no patentable utility. The process is of no avail, unless carried on through the medium of instrumentality. (*Morton v. New York Eye Infirmary*, 2 Fish., 324.) It would be idle to sell the patent for the mechanism, and withhold that which covers its legitimate and only mode of operation.

Separate patents for processes and products have been justified upon the ground that the product might be imported, and a patent for the process would give no protection; but the machine and its mode of operation cannot be separated.

“Upon this ground alone the present application for a division cannot be sustained.” (*Commissioners' Decisions*, April 30, 1870.)

872. ACTION OF THE COMMISSIONER.—In the case of *Allen v. Blunt*, 3 Story, 744, Story, J., says: “Whether the invention claimed in the original patent and that claimed in the new amended patent is substantially the same, is and must be in many cases a matter of great nicety and difficulty to decide. It may involve considerations of fact as well as of law. Who is to decide the question? The true answer is, the Commissioner of Patents, for the law intrusts him with the authority, not only to accept the surrender, but to grant the new amended patent. He is bound, therefore, by the very nature of his

duties, to inquire into and ascertain whether the specification is definite or insufficient, in point of law or fact, and whether the inventor has claimed more than he has invented, and in each case whether the error has arisen from inadvertency, accident, or mistake, or with a fraudulent or deceptive intention. No one can well doubt that, in the first instance, therefore, he is bound to decide the whole law and facts arising under the application for the new patent. *Prima facie*, therefore, it must be presumed that the new amended patent has been properly and rightfully granted by him. I very much doubt whether his decision is or can be re-examinable in any other place, or in any other tribunal, at least unless his decision is impeached on account of gross fraud or connivance between him and the patentee; or unless his excess of authority is manifest upon the very face of the papers; as, for example, if the original patent were for a chemical combination, and the new amended patent were for a machine. In other cases, it seems to me, that the law, having intrusted him with authority to ascertain the facts, and to grant the patent, his decision, *bona fide* made, is conclusive. It is like many other cases, where the law has referred the decision of a matter to the sound discretion of a public officer, whose adjudication becomes conclusive. Suppose the Secretary of the Treasury should remit a penalty or forfeiture incurred by a breach of the laws of the United States, would his decision be re-examinable in any court of law upon a suit for the penalty or forfeiture? The President of the United States is, by law, invested with authority to call forth the militia to suppress insurrections, to repel invasions, and to execute the laws of the Union; and it has been held by the

Supreme Court of the United States that his decision as to the occurrence of the exigency is conclusive. In short, it may be laid down as a general rule, that where a particular authority is confided to a public officer, to be exercised by him in his discretion, upon an examination of facts, of which he is made the appropriate judge, his decision upon these facts is, in the absence of any controlling provisions, absolutely conclusive as to the existence of those facts. My opinion, therefore, is, that the grant of the present amended patent by the Commissioner of Patents is conclusive as to the existence of all the facts which were by law necessary to entitle him to issue it; at least, unless it was apparent on the very face of the patent itself, without any auxiliary evidence, that he was guilty of a clear excess of authority, or that the patent was procured by a fraud between him and the patentee, which is not patented in the present case." The Commissioner is presumed, in issuing new letters patent, to have discharged his duty faithfully and correctly, (*Allen v. Blunt*, 2 *Wood. & Minot*, 138,) and his action is not re-examinable elsewhere, unless a clear case of fraud is made out, (*Day v. Goodyear*, *MS. N. J.*, 1850, *Batten v. Taggart*, 17 *How.*, 84,) or unless it is apparent from the face of the patent that he has exceeded his authority, or unless there is a clear repugnancy between the old and new patent, or unless the new one has been obtained by collusion between the Commissioner and the patentee, (*Potter v. Holland*, 1 *Fish.*, 327.) The only mode of impeaching the reissue upon the ground that it is for a different invention from the original, where there is no allegation or proof of fraud, is by showing upon the face of the instrument that one is so different

from and repugnant to the other that the court can see that the invention described in the original is another and different one from that set forth in the reissue. (*Middletown Tool Company v. Judd*, 3 *Fish.*, 141; *Hussey v. Bradley*, 2 *Fish.*, 362.)

The Commissioner has power to decide, and in every acceptance of surrender does decide, that the original patent was inoperative and invalid by reason of a defective specification, or by claiming too much, and that the error arose by inadvertency, accident, or mistake, and without any fraudulent or deceptive intention. (*Blake v. Stafford*, 3 *Fish.*, 294.)

He is authorized to grant a new patent for the same invention, and for no other; and when he grants the new one the presumption is that it embraces the same invention as the original, (*ib.*; *House v. Young*, 3 *Fish.*, 335;) but it is in accordance with the late decisions that the decision of the Commissioner is not conclusive upon the substantial identity of the inventions claimed in the original and reissued patents, (*Goodyear v. Berry*, 3 *Fish.*, 699;) and in the case of *Seymour v. Osborne*, 1869, (3 *Fish.*, 555,) Mr. Justice Nelson said: "It must be conceded that the action of the Commissioner, in receiving a surrender and granting a reissue, is very strong *prima facie* evidence that the case was one in which a reissue was proper and lawful, but the decision of the Commissioner upon this point is not conclusive; and the more recent decisions very clearly indicate the opinion that many reissues have been improperly granted, and that the abuses which have grown out of fraudulent or improper reissues have been such as to require a more rigid scrutiny in regard to the propriety and legality of the surrender and reissue of a

patent." (*Burr v. Duryee*, 1 Wall., 581, 579; *Case v. Brown*, 2 Wall., 320; *Sickles v. Evans*, 2 Fish., 417; *Carhart v. Austen*, 2 Fish., 543.)

373. REISSUE MUST BE FOR THE SAME INVENTION AS THE ORIGINAL PATENT.—The general rule is, that whatever is really embraced in the original invention, and so described or shown that it might have been embraced in the original patent, may be the subject of a reissue, (*Patent Office Rules*, July, 1870.) No new matter shall be introduced into the specification, nor, in case of a machine patent, shall the model or drawings be amended, except each by the other; but, when there is neither model nor drawing, amendments may be made upon proof satisfactory to the Commissioner that such new matter or amendment was a part of the original invention, and was omitted from the specification by inadvertence, accident, or mistake, as aforesaid. (*Act of July 8, 1870*, § 53.)

A reissue can be obtained only for that which was the original and true invention of the patentee, but which he failed to claim or describe in the original claim and specification, (*Hoffheim v. Brandt*, 3 Fish., 218.) A new and different invention cannot be claimed. (*Batten v. Taggart*, 17 How., 83.) The intent of the legislature was to enable patentees to cure *honest mistakes* and to get, *substantially, protection for the same invention* they had made and *intended* to be patented when the original patent was granted. (*Dyson ex parte*, MS. Appeal Cases, D. C., 1860.) Only what was invented *before or at the time of* the grant of the original patent, and was *omitted* to be put in the original patent by accident or mistake, and without any fraudulent or deceptive intention, can be embraced in a reissue, (*Wilson v. Singer*, MS. Appeal Cases, D. C.,

1860,) and the invention must be shown in some part of the original patent, specifications, drawings, and model. (*Hoffheim v. Brandt*, 3 *Fish.*, 318.) The Commissioner is authorized to grant a new patent for the same invention, and none other, (*ib.*;) and where an invention was described in reissues of 1863, but not made in 1854, when the original patent was granted, the reissues were held to be void. (*American Wood Paper Company v. Hift*, 3 *Fish.*, 316.)

But differences of description or specification between the original and reissue are consistent with the identity of the thing patented. To correct a description or claim, or both, is one object of allowing a surrender, (*Crompton v. Belknap Mills*, 3 *Fish.*, 536;) and a patentee can legally take out a reissued patent for more than is described in the surrendered patent, if it does not exceed the actual invention when the first patent was taken out. (*Tatham v. Lowber*, *Mirror of Patent Office*, 146; *N. Y.*, 1847.) It may be that the ground covered by the reissue is enlarged beyond that embraced in the original, but the true question is, whether it is broader than the original invention. (*Blake v. Stafford*, 3 *Fish.*, 294.) The legal question is not what the patentee intended to patent, but what he had in fact invented. (*American Wood Company v. Hift*, 3 *Fish.*, 316.) The describing part of a machine in the first patent, but without making any claim to it, does not deprive the inventor of a right to a patent for such part. (*Batten v. Taggart*, 17 *How.*, 83.) If a certain feature of the original invention was the invention of the patentee, which he omitted to claim, he has a right, upon the surrender of the patent, to incorporate that element in a reissue. (*Swift v. Whissen*, 3 *Fish.*, 343.) If the drawings

show an element of the invention which the patentee has not included specifically in his claim, it is evidence nevertheless that it was a part of his invention, and he has a right to incorporate that element in a reissued patent. (*Ib.*) The patentee is entitled to every advantage within the full scope of his invention, and a new function developed by the combination of different elements of the invention will not be considered new matter. (*Bull ex parte, MS. Appeal Cases, D. C., 1860.*)

In the case of an original application the applicant has no right, by law, to an amendment of his specification, except to conform his specification to the alterations suggested by the Commissioner, (*vide supra, p. 333;*) but an amendment in a case of a reissue is different: it is not of *grace*, but of right. (*Dyson ex parte, MS. Appeal Cases, D. C., 1860.*)

In a reissued patent the patentee need not claim all that was claimed in the original patent. He may retain whatever he deems proper. (*Crompton v. Belknap, 3 Fish., 536.*) He is not bound to describe or claim all that he described or claimed in his original patent, but he cannot describe any new or other improvement. (*Goodyear v. Day, MS. N. J., 1852.*)

Although, looking only to the claims of a reissue, it would be difficult to find any evidence that it was for the same invention as that specifically claimed in the original, and, indeed, a comparison of the language of these claims would seem, in the absence of all other proof, to repel such an allegation, yet this is not even conclusive. (*Hussey v. Bradley, 2 Fish., 326.*) It is well settled, that in deciding upon applications for reissue, and the question whether the invention claimed on the

reissue is the same invention intended to be patented on the original application, the Commissioner of Patents is not confined to the claims, nor even to the examination of the evidence furnished by the specification, models, and drawings accompanying the original application, and that any legal proof to show it to be the same invention should be received. (*Ib.*)

Where the original and reissued specifications are consistent, or where there is no positive conflict or absolute inconsistency, the rule that, in the absence of fraud, the reissued patent is evidence of the identity of the inventions, may be applied; but, where it appears on the face of the respective specifications, as matter of law, that the specification and claim of the reissued patent are for a different invention from that secured in the original, the rule cannot be sustained. (*Sickler v. Evans*, 2 *Fish.*, 417.) And wherever it appears, upon a comparison of the two specifications and claims, as a matter of law arising on their construction, that the reissued patent is for a different invention from that secured in the original patent, then the original patent is void and of no effect. (*Ib.*)

The examiner has no authority for allowing new matter to be introduced in a reissue which was not shown in the original application, (*W. C. Dodge, Commissioners' Decisions*, 1869, p. 27.) Where the original application claims equivalents in general terms, such as are not shown in it cannot be enumerated specifically on a reissue, (*ib.*) Nothing but what was shown in the original specification, drawings, or model can be introduced into a reissue, (*ib.*) Nothing can be claimed in a reissue which was not shown in the original application, although

proof is offered that it is a necessary part of what was shown, (*ib.*) A patent that mentions in general terms that the invention may be used for other purposes not described, cannot therefore be reissued with a specification of any such purpose, (*Woodward v. Reist., ib., 34.*) The model or drawings may be amended by each other upon a reissue, but neither can be by the specification, (*Elizabeth Hawkes, ib., 37.*) Devices not shown nor described in the original application, although alleged to be equivalents of what were, should not be introduced upon a reissue, (*Willis Humiston, ib., 47.*) Although equivalents are claimed in general terms in an application, none but such as are shown in it should be specified in a reissue of the patent, (*J. A. Krake, ib., 100.*) The construction of a machine which was evidently contemplated in the original specification may be described in explicit terms upon a reissue, (*George W. Brown, ib., 10.*) The specification may be amended upon a reissue by the model originally filed, and the model or drawings may be amended by each other, but not by the specification, (*W. C. Dodge, ib., 27.*)

A reissue is prohibited, both by law and the rules of the Patent Office, for any thing save the same invention which was described or shown in the original patent, (*Dietz ex parte, MS. Appeal Cases, D. C., 1860.*) But the legislature has not said by *what proof* the applicant shall show that his invention, claimed on reissue, is the same intended to be patented on his original application, and he is not limited by the statute to prove it by the original specifications, models, or drawing. Any legal proof, whether found in the record or *aliunde*, ought to be received and weighed. (*Dyson ex parte, MS. Appeal Cases, D. C., 1860.*)

The law does not point to the model and drawings as the sole means of proof, and no authority is given to the Patent Office to limit the range of the applicant's proof, if it is such as, upon the law of evidence, is held sufficient to prove facts before other legal tribunals. (*Ib.*) The rules of the Patent Office as to reissues are general in their terms, and properly so. They do not profess to be without exception; they state what may be the subject of reissue, not what shall be, and do not prescribe that the mode mentioned therein shall be the only mode of proving identity of invention. (*Ib.*)

If there is a defect in the original patent and its specification, the applicant may resort to the next highest evidence, the model, to show the defects complained of, (*Bull ex parte, MS. Appeal Cases, 1860,*) and the model may be referred to as evidence of the extent of the invention. The applicant is not necessarily confined to the original record, *i. e.*, the patent and specification of his first patent. (*Ib.*)

It belongs to the province of the jury to decide whether the reissued patent is for the same invention as the original one. (*Carver v. Braintree Company, 2 Story, 441, 442; Batten v. Taggart, 17 How., 83; Heilner v. Batten, 27 Penn., 521; Stimson v. Westchester Railroad, 4 How., 404.*) But the cases of *Batten v. Taggart* and *Carver v. Braintree Company* do not sustain the position that this question is one of fact, which *only* the jury can determine. The power of a court of equity to pass upon such fact is not touched by them. (*Poppenhausen v. Folke, 2 Fish., 181.*)

374. SPECIFICATION AND CLAIM SUBJECT TO REVISION.—
In all cases of applications for reissues the original claim, if reproduced in the amended specification, is subject to

re-examination, and may be revised and restricted in the same manner as in original applications; but if any re-issue be refused, the original patent will, upon request, be returned to the applicant. (*Act of July 8, 1870, § 53; Patent Office Rules, July, 1870.*)

375. SURRENDER DOES NOT TAKE EFFECT UNTIL THE RE-ISSUE IS GRANTED.—No surrender is made until the reissue is granted. Until the reissue is actually issued from the office the original patent remains uncanceled. It is usually deposited in the office with the application, as a guaranty that the application is made in good faith, and that, if the office is willing to grant the new patent, the old one shall be forthcoming. Besides this, as the demand for a reissue is declared to be based upon the invalidity of the original, an invalidity which the applicant is estopped to deny, (*Moffit v. Gaar, 1 Black, 273,*) the original patent is useless, and may well be committed to the custody of the office. Nevertheless, the uniform practice has been to return the original patent if a reissue be finally refused. There can be no doubt of the right of an applicant for a reissue to abandon his application at any time, and to demand and receive his original patent. Some have supposed the eighth section of the act of 1837 to be in conflict with this practice; but that section provides, not for an examination of the claims of the original patent, but for the examination of the new or corrected claims, in the same manner as upon an original application.

It is obvious that if the surrender does not take effect, and the patent remains uncanceled until the issue of the amended patent, the continuity is not broken. (*Whiteley ex parte, Commissioners' Decisions, 1869, p. 72.*)

If a reissue is not valid, the surrender which led to it will also be invalid, and the old letters patent will be considered in full force. (*Woodworth v. Edwards*, 3 *Wood. & Minot*, 137.)

376. RIGHTS CONFERRED BY REISSUE.—The new patent is issued to the patentee for the unexpired part of the term of the original patent, the surrender of which takes effect upon the issue of the amended patent, and the patent so reissued, together with the corrected specification, has the effect and operation in law, on the trial of all actions thereafter arising, as though the same had been originally filed in such corrected form. (See *Act of July 8, 1870*, § 53.) The reissued patent with corrected specifications has relation back to the emanation of the first patent as fully, for every legal purpose, as to causes subsequently accruing, as if the second patent had been issued at the date of the first one, (*Stanley v. Whipple*, 2 *McLean*, 37; *Smith v. Pearce*, 2 *McLean*, 176,) even though the original patent was invalid, (*Bloomer v. Stolley*, 5 *McLean*, 166,) and legalizes the rights of the patentee from the date of the first patent, (*Stanley v. Whipple*, 2 *McLean*, 37;) but it can cover only the same term that the original patent did. (*Woodworth v. Hall*, 1 *Wood. & Minot*, 257.)

It operates, except to suits for violations commenced before the amendment, from the commencement of the original term. (*Ib.*) An action cannot be maintained for damages for an infringement occurring under the old patent before the surrender, (*Moffit v. Gaar*, 1 *Fish.*, 610;) but it is no defense to an action upon the reissued patent that the defendant's machine was made and put up during the original patent, under which he was not liable

to an action for infringement, (*Coe v. Rice*, 1 *Fish.*, 198,) nor will proof of the use of the thing patented during the interval between the original and reissued patents defeat the action, (*Batten v. Taggart*, 17 *How.*, 84.) No prior use of a defective patent can authorize the use of an invention after the emanation of a renewed patent, however long such use may have been after the date of the defective and surrendered patent. (*Stimson v. Westchester Railroad*, 4 *How.*, 402.)

There is a well-recognized difference between an extended and a reissued patent. The former grants a wholly new term, the latter only legalizes the right during the continuance of the original term. (*McBurney v. Goodyear*, 11 *Cush.*, 571.)

A contract concerning a patent made before its surrender applies to the reissued patent. (*Ib.*)

377. PETITION FOR A REISSUE, (BY THE INVENTOR.)—

To the Commissioner of Patents.

Your petitioner prays that he may be allowed to surrender the letters patent for an improvement in coal-scuttles, granted to him May 16, 1867, whereof he is now sole owner, [or, "whereof Henry Bates, on whose behalf and with whose assent this application is made, is now sole owner, by assignment,"] and that letters patent may be reissued to him for the same invention, upon the annexed amended specification.

RICHARD JONES.

378. PETITION FOR A REISSUE, (BY ASSIGNEES.)—

[To be used only when the inventor is dead.]

To the Commissioner of Patents:

Your petitioners pray that they may be allowed to surrender the letters patent for an improvement in coal-scuttles, granted May 16, 1867, to Richard Jones, now deceased, whereof they are now owners, by assignment, of the entire interest, and that letters patent may be reissued to them for the same invention, upon the annexed amended specification.

JOHN TOWERS.

ARCHIBALD SOMERS.

379. OATH BY AN APPLICANT FOR A REISSUE, (INVENTOR.)

STATE OF PENNSYLVANIA, }
 City and County of Philadelphia, } ss.

Thaddeus Tompkins, the above-named petitioner, being duly sworn, (or affirmed,) deposes and says that he verily believes that, by reason of an insufficient and defective specification, his aforesaid letters patent are inoperative and invalid; that the said error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, to the best of his knowledge or belief; that he is the sole owner of said letters patent, [or, "that Henry Bates is the sole owner of said letters patent, and that this application is made on the behalf and with the consent of said Bates;"] and that he verily believes himself to be the first and original inventor of the improvement set forth in this amended specification.

THADDEUS TOMPKINS.

Sworn to and subscribed before me this 26th day of July, 1869.

[NOTABIAL SEAL.]

CHARLES CANDID,
Notary Public.

380. OATH BY AN APPLICANT FOR A REISSUE, (ASSIGNEE.)

[To be used only when the inventor is dead.]

STATE OF VIRGINIA, }
 City of Richmond. } ss.

Martin Halstead and Norris Brown, the above-named petitioners, being duly sworn, (or affirmed,) depose and say they verily believe that, by reason of an insufficient and defective specification, the aforesaid letters patent granted to Amos Mygatt are inoperative and invalid; that the said error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, to the best of their knowledge and belief; that the entire title to said letters patent is vested in them; and that they verily believe the said Amos Mygatt to be the first and original inventor of the invention set forth and claimed in the foregoing amended specification; and that the said Amos-Mygatt is now deceased.

MARTIN HALSTEAD.
 NORRIS BROWN.

Sworn to and subscribed before me this 14th day of November, 1869.

MORRISON WHITE,
Alderman and Justice of the Peace ex officio.

XXII. Extension.

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| <p>Sec.
 381. Résumé of the law.
 382. Duty of applicant.
 383. Assignee cannot apply.
 384. When application may be filed by attorney.
 385. When application must be filed.
 386. Administrator may apply.
 387. Publication of notice.
 388. Reference to examiner.
 389. Opposition.
 390. Testimony in contested cases.
 391. Service of notice to take testimony.
 392. Hearing.
 393. Applicant to furnish statement under oath.
 394. Divisions of a reissue.
 395. Questions considered and proof required.
 396. As to novelty.</p> | <p>Sec.
 397. As to value and importance.
 398. As to remuneration.
 399. As to policy.
 400. Granting the extended term.
 401. Effect of extension.
 402. Action of Commissioner.
 403. Rights of assignees.
 404. Extension by special act of Congress.
 405. Rights of assignees.
 406. Petition by patentee.
 407. Petition by administrator.
 408. Form of statement of account
 409. Oath by patentee.
 410. Oath by executor.
 411. Reasons for opposing extension.
 412. Reasons by a corporation.
 413. Oath to loss of letters patent.
 414. Certificate of extension.</p> |
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381. RÉSUMÉ OF THE LAW.—The Secretary of State, Commissioner of Patents, and Solicitor of the Treasury Department were, by the act of July 4, 1836, § 18, constituted a board of commissioners to hear evidence for and against the extension of patents, and to decide whether, having due regard for the public interest therein, it is just and proper that the term of the patent should be extended because the patentee has failed to obtain a reasonable remuneration. The commissioners being satisfied that the patent ought to be renewed, it was made the duty of the Commissioner of Patents to make a certificate on the original patent, showing that it extended

for a further term of seven years from the expiration of the first term. By the act of 1848, § 1, this power was vested solely in the Commissioner of Patents, who was thereby required to refer the application to the principal examiner having charge of the class of inventions to which the case belongs; and, upon his report, to grant or refuse the patent, upon the same principles and rules that had governed the board provided by the former act. The act of March 2, 1861, § 16, enacted that "all patents hereafter granted shall remain in force for the term of seventeen years from the date of issue, and all extension of such patents is hereby prohibited;" and the act of July 8, 1870, contains substantially the same provision; consequently, all patents granted after the passage of the act of 1861 are incapable of being extended, but patents granted before that date may still be extended on application. (*Curtis on Patents*, 285.)

382. DUTY OF APPLICANT.—Where the patentee of any invention or discovery, the patent for which was granted prior to the second day of March, 1861, shall desire an extension of his patent beyond the original term of its limitation, he shall make application therefor, in writing, to the Commissioner, setting forth the reasons why such extension should be granted; and he shall also furnish a written statement under oath of the ascertained value of the invention or discovery, and of his receipts and expenditures on account thereof, sufficiently in detail to exhibit a true and faithful account of the loss and profit in any manner accruing to him by reason of said invention or discovery. (*Act of July 8, 1870*, § 63.)

383. ASSIGNEE CANNOT APPLY.—Although the invention was sold and assigned before the patent was obtained,

and the extended term was sold to the same man, the application for extension should be made in the name of the patentee. (*Van Vliet ex parte, Commissioners' Decisions, 1869, p. 93.*)

384. WHEN APPLICATION MAY BE FILED BY ATTORNEY.— In the matter of the application of Henry Voelter for extension, Acting Commissioner Duncan says: "Question arises in this case as to the sufficiency of the proceedings under which the application was filed.

"The law requires that a patentee who is desirous of extending his patent beyond the term of its limitation shall make application in writing, &c., and that such application shall be filed at least ninety days before the expiration of the patent.

"Under this ninety days' limitation Voelter's application should have been in the Patent Office as early as June 1. In point of fact, the petition which bears his own signature was not received until July 2; but on the twenty-third day of May a duplicate of this petition was filed in the office by the inventor's retained counsel, the inventor's name being signed by such counsel in his character of attorney or agent.

"The requisite extension fee was paid on the same day, and the petition was accompanied with an affidavit by the party filing it, in which he set forth his relations to the case, and alleged that he had prepared and seasonably forwarded the original petition to the inventor's residence, in Germany, for his proper signature, but that, from recent telegraphic correspondence with him, it was feared that this would not be received back in time to meet the requirement of the statute if dependence were to be placed upon it alone.

“No serious question can be made as to the imperative character of the provision of law which fixes a limit of time for filing the petition. It is not an enactment addressed to the discretion of the Commissioner, but it is mandatory upon him; and he is as much required to insist upon a literal compliance with it as with those provisions of law which make it obligatory upon an applicant for a patent to take and subscribe the oath of invention, to complete the application within two years after filing the petition, or to pay the final fee within six months after notice of allowance.

“Passing this point, then, we come to the inquiry whether the filing an application for an extension is an act that must be done by the patentee *in propria persona*, or one that may also be performed by his duly authorized agent.

“For obvious reasons the law requires that the specification of a patent be signed by the inventor himself, if living. The oath, too, in original applications for patents, if not also in applications for extensions, is a personal matter, and must be made by the applicant himself.

“But the petition stands on a different basis. This is a matter of form merely. Its object in an extension case is simply to notify the office that the petitioner enters suit for an extension of the patent; and the object of the requirement that such notice be filed ninety days before the expiration of the original term is to enable the office to give the necessary publicity to the application by publishing it in the mode prescribed for sixty days prior to the day of hearing. Manifestly this can be done equally well whether the original notice comes from the hand of the party in interest or from his recognized agent. There

is nothing in the law that seems, directly or impliedly, to forbid the reception of the petition when signed by attorney; and in the absence of any such statutory prohibition, it is believed that a liberal policy in this regard is fully warranted by the analogies that obtain in the general law of principal and agent.

“If so, it is immaterial in the present case that the inventor’s agent has not produced a written power of attorney for the performance of this specific act. His employment as counsel for the extension in the inventor’s behalf, and the responsibility put upon him of preparing the papers relating thereto, are sufficient to establish the fact of agency; and no principle is better established than that an agent who is intrusted with general powers has all the implied powers within the scope of his employment.

“It would be unnecessary even that the agency be antecedently created, since an acquiescence by the principal in the assumed agency of another, when the acts of the volunteer agent are brought to his knowledge, is equivalent to an express authority.

“In the present instance, however, not only was there the pre-existing general agency, but the specific act of filing the duplicate petition was in effect ratified by the principal when he signed and filed the original. It is held, therefore, that the law in relation to the filing of applications for extensions has been complied with by the present applicant.” (*Commissioners’ Decisions; August 26, 1870.*)

The decision of Acting Commissioner Duncan, in the case of Voelter, was subsequently adopted by the Commissioner. In the case of *Garrigues ex parte* the Com-

missioner says: "A petition for the extension signed by the administrator, per attorney, was filed June 9, 1870, and one by the administrator himself was filed on June 16. The first of these was filed more and the second less than ninety days prior to the expiration of the patent. It is insisted by the opponents of the extension, whose notice of opposition, it may be remarked, is liable to the same objection, that the law requires the petition to be signed by the applicant in *propria persona*, and that the petition signed by the attorney is a nullity.

"This precise point has just been decided by the Acting Commissioner in the case of Henry Voelter's extension. I agree with him in the opinion which he has expressed and adopt his conclusion as my own. Undoubtedly it is the better practice for the applicant himself to file the petition, and I should require some reason to be given in cases where the act is sought to be performed by attorney. Satisfactory reasons are given in Voelter's case and in the one under consideration. In the present case it appears that the estate had been fully administered and distributed, and the administrator, doubting his right to do so, was reluctant to appear. He did not, perhaps, realize that his relation to the patent was rather that of trustee for the benefit of the heirs, than of administrator of undistributed assets. When convinced of his right to prosecute the application, the time was so far spent that the rights of the heirs could only be saved by a petition filed by attorney.

"The statement, however, is duly made and sworn to by the administrator. The petition is a formal paper, bringing the case before the office preliminary to the substantial pleading, which is the statement, and no good reason

is perceived for refusing to receive it when executed by the applicant, through the medium of an agent, whose acts are duly authorized or ratified, when the circumstances are such as to justify the employment of such agency." (*Commissioners' Decisions, September 5, 1870.*)

385. WHEN APPLICATION MUST BE FILED.—The application shall be filed not more than six months nor less than ninety days before the expiration of the original term of the patent, and no extension shall be granted after the expiration of said original term. (*Act of July 8, 1870, § 63.*)

In the case of J. T. & R. R. Smith the Commissioner says: "On August 8, 1870, applicants presented a petition for an extension of the patent granted to intestate, which they offered to file in the Patent Office. The patent will expire November 4, 1870. There would, therefore, be but eighty-nine days between the day of the filing of the application and the day of the expiration of the patent, if both of those days were included.

"Section 63, act of July 8, 1870, provides that the application for an extension 'shall be filed not more than six months or less than ninety days before the expiration of the original term of the patent.'

"The Commissioner has no power to waive this express provision of the law or to excuse the applicants for non-compliance. The language of the statute is positive, and has been universally treated as admitting of no exercise of discretion. Accordingly, in many cases in which the delay seemed unavoidable, Congress has interposed to grant relief by the passage of special acts, as well before as after the expiration of the patent.

"The petition in the present case cannot be received.

The fee of \$50 deposited by applicants will be returned to them." (*Commissioners' Decisions, September 22, 1870.*)

386. ADMINISTRATOR MAY APPLY.—If a patentee is dead his administrator may apply for and obtain an extension of the patent. (*Nyman's cases, 3 Opinions of Attorneys General, 446; Brooks v. Bicknell, 3 McLean, 258; Washburn v. Gould, 3 Story, 133; Woodworth v. Wilson, 4 How., 716.*) And this, although the original patentee had in his lifetime disposed of all his interest in his patent. (*Wilson v. Rosseau, 4 How., 675.*)

387. PUBLICATION OF NOTICE.—Upon the receipt of such application, and the payment of the duty required by law, the Commissioner shall cause to be published in one newspaper in the city of Washington, and in such other papers published in the section of the country most interested adversely to the extension of the patent as he may deem proper, for at least sixty days prior to the day set for hearing the case, a notice of such application, and of the time and place when and where the same will be considered. (*Act of July 8, 1870, § 64.*)

388. CASE TO BE REFERRED TO EXAMINER.—On the publication of such notice, the Commissioner shall refer the case to the principal examiner having charge of the class of inventions to which it belongs, who shall make to said Commissioner a full report of the case, and particularly whether the invention or discovery was new and patentable when the original patent was granted. (*Ib., § 65.*)

389. OPPOSITION.—Any person may appear and show cause why the extension should not be granted. (*Ib., § 64.*) Any person who intends to oppose an application for extension may, at any time after such application has

been made, give notice of such intention to the applicant. After this he will be regarded as a party in the case, and will be entitled to notice of the time and place of taking testimony; to a list of names and residences of the witnesses whose testimony may have been taken previous to his service of notice of opposition; to a copy of the application; and to any other papers on file, upon paying the cost of copying. (*Patent Office Rules, July, 1870.*) Any person opposing an extension must file his reasons of opposition in the Patent Office at least twenty days before the day of hearing. (*Ib.*)

390. TESTIMONY IN CONTESTED CASES.—In case of opposition to the extension of a patent by any person, both parties may take testimony, each giving reasonable notice to the other of the time and place of taking said testimony, which shall be taken according to the rules prescribed by the Commissioner in cases of interference. (*Ib.*) In contested cases no testimony will be received, unless by consent, which has been taken within thirty days next after the filing of the petition for the extension. (*Ib.*)

391. SERVICE OF NOTICE TO TAKE TESTIMONY.—Service of notice to take testimony may be made upon applicant, upon the opponent, upon the attorney of record of either, or, if there be no attorney of record, upon any attorney or agent who takes part in the service of notice or the examination of the witnesses of either party. Where notice to take testimony has already been given to an opponent, and a new opponent subsequently gives notice of his intention to oppose, the examination need not be postponed, but notice thereof may be given to such subsequent opponent by mail or by telegraph. This

rule, however, does not apply to *ex parte* examinations, or those of which no notice has been given when notice of opposition is served. (*Ib.*)

392. HEARING.—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. (*Act of July 8, 1870, § 66.*)

In the notice of the application for an extension a day will be fixed for the closing of the testimony, a day ten days later for the reception of arguments and for the filing of the examiner's report, and a day five days after this for a hearing; but no case will be set for a hearing more than three weeks prior to the expiration of the patent. Applications for a postponement of the hearing must be made and supported according to the same rules as are to be observed in cases of interference; but they will not be granted in such a manner as to cause a risk of preventing a decision in season. (*Patent Office Rules, July, 1870.*)

393. APPLICANT TO FURNISH STATEMENT UNDER OATH. The applicant for an extension must furnish to the office a statement in writing, under oath, of the ascertained value of the invention, and of his receipts and expenditures on account thereof, both in this and foreign countries. This statement must be made particular and in detail, unless sufficient reason is set forth why such a statement cannot be furnished. It must be filed within thirty days after filing the petition. (*Ib.*)

394. DIVISIONS OF A REISSUE.—When a patent has been reissued in two or more divisions, separate applications must be made for the extension of each division. (*Ib.*)

395. QUESTIONS CONSIDERED AND PROOF REQUIRED.—
The questions which arise on each application for an extension are:

First. Was the invention *new and useful* when patented?

Second. Is it *valuable and important to the public*, and to what extent?

Third. Has the inventor been *reasonably remunerated* for the time, ingenuity, and expense bestowed upon it, and the introduction of it into use? If not, has his failure to be so remunerated arisen from neglect or fault on his part?

Fourth. What will be the effect of the proposed extension upon the public interests?

No proof will be required from the applicant upon the first question, unless the invention is assailed upon those points by opponents.

To enable the Commissioner to come to a correct conclusion in regard to the second point of inquiry, the applicant should, if possible, procure the testimony of persons disinterested in the invention, which testimony should be taken under oath. This testimony should have relation to nothing but what is actually covered by the claims of the patent.

In regard to the third point of inquiry, in addition to his own oath, showing his receipts and expenditures on account of his invention, the applicant should show, by testimony under oath, that he has taken all reasonable measures to introduce his invention into general use; and that, without neglect or fault on his part, he has failed to obtain from the use and sale of the invention a reasonable remuneration for the time, ingenuity, and

expense bestowed on the same, and the introduction of it into use. (*Ib.*)

396. AS TO NOVELTY.—A patent for a useless machine having been reissued with fourteen claims, of which but one embraced a device capable of advantageous use, and that an obvious device, and the patentee having sold the extended term for a limited sum, an extension of it, which would subject the trade to a heavy royalty, was denied, (*Lupton ex parte, Commissioners' Decisions, 1869, p. 10.*) The question whether an invention was sufficiently perfected when the patent was granted having been considered at the time, and discussed upon trials in which the patent was sustained, should not be agitated anew upon an application for an extension without cogent reasons, (*Burrows, ib., 48.*) A patent will be extended upon the applicant's disclaiming a feature which had been anticipated, (*Crocker, ib., 85; Woodbury, ib., 86; Bailey, ib., 93.*) Although a patent covering the principle on which a process depends has already been extended, yet a patent to another person, who first discovered the method of making the principle available, and reduced it to a successful practice, will also be extended, (*Wetherill, ib., 87.*) A patent will not be extended unless it is restricted to the special use described of the device which is named, if the device is one which has been known before in other applications; if the claim embraces it in general terms, it is not enough to disclaim the former application of it, (*Stone, ib., 48.*) A patent may be extended notwithstanding the claim was too broad, there not being sufficient time to correct it by a reissue, (*Crocker, ib., 85.*) It is sufficient if, upon an extension, old devices are disclaimed, except when used in a certain combination

which is new, (*Woodbury, ib.*, 86.) Where matters have been improperly interpolated in a reissued patent, an extension of it will be refused, (*Krake, ib.*, 100.)

Upon an application for an extension of a patent the law requires a very rigid scrutiny into the original claim of the patentee as to the novelty and utility of the invention. (*Swift v. Whissen*, 3 *Fish.*, 343.)

397. AS TO VALUE AND IMPORTANCE.—Sales made under embarrassments are not a criterion of value upon a petition for an extension, (*Waterman ex parte, Commissioners' Decisions*, 51.) Although an invention was estimated at a high rate by witnesses, yet as no machine was ever made in accordance with the patent, and it had been sold back and forth at a nominal price, it was set down as of little value, (*Barrett, ib.*, 40.) An extension will be refused for the sole reason that the invention was of slight importance, (*Allender, ib.*, 46.) The extension of a patent will be refused when the only invention shown to be of any value was improperly interpolated upon a reissue, and did not appear in the original application, (*Goodale, ib.*, 82.) Where the invention as described in the original patent was never embodied in machines, the applicant will not be allowed to resort, in order to show its value, to machines manufactured under a reissue, in which old devices have been described and claimed, (*Taggart, ib.*, 102.) Upon applications for the extension of a patent the value of the invention will be estimated according to what it was as described in the original patent, irrespective of modifications improperly interpolated upon a reissue, (*Taggart, ib.*, 102.)

398. AS TO REMUNERATION.—In estimating the profits derived from a patented invention, only half of those

which have been made upon it in connection with another should, *prima facie*, be charged to it, (*Brown, ib.*, 10.) Where the invention could have cost but little time, ingenuity, or expense, was not of great public importance, and the patentee had reaped from it \$64,594 86, his application for an extension was refused, (*Tucker, ib.*, 39.)

399. AS TO POLICY.—A patent will not be extended when it would give the control of an important manufacture to assignees, who are to pay the inventor but one-fifth of the profits, (*Heck, ib.*, p. 19.) The patentee's want of diligence in originally applying for his patent is an objection to its being extended, (*Heck, ib.*, 19.) The extension of a patent should be refused when the patentee has done no more under it than to manufacture a few articles, has sold it at a low figure, and has disposed of most of his interest in the extension, if not the whole, (*Waters, ib.*, 42.) Devices not shown or described in the original application, having been introduced into a reissue, the patentee will be required to disclaim them as a condition of extending his patent, (*Humiston, ib.*, 47.) An extension will not be granted if it is for the benefit of an assignee, and not of the inventor, (*Van Vliet, ib.*, 93.)

400. GRANTING THE EXTENSION; TERM.—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 said Commissioner shall make a certifi-

cate thereon, renewing and extending the said patent for the term of seven years from the expiration of the first term, which certificate shall be recorded in the Patent Office; and thereupon the said patent shall have the same effect in law as though it had been originally granted for twenty-one years. (*Act of July 8, 1870, § 66.*)

401. EFFECT OF EXTENSION.—A renewed patent has the same obligation and confers the same rights with an original patent. The inchoate property which vested by the discovery is prolonged by the renewed patent as well as by the original patent, (*Evans v. Jordan, 1 Brock., 254,*) and the original patent becomes virtually a patent for twenty-one years. (*Gibson v. Harris, 1 Blatchf., 169; Woodworth v. Edwards, 2 Wood. & Minot, 125.*) It is not essential to the validity of a renewed patent that all the proceedings should be set out at length; it is enough if it appears that the subject was before the proper officer, and that the decision was in favor of renewal. (*Brooks v. Bicknell, 3 McLean, 435.*)

402. ACTION OF THE COMMISSIONER.—The decision of the Commissioner of Patents upon an application for an extension, where he has jurisdiction, is conclusive as to the regularity of the proceedings, and cannot be the subject of examination and review elsewhere, except, perhaps, in case of fraud, which is an exception to the general rule. (*Colt v. Young, 2 Blatchf., 471; Clum v. Brewer, 2 Curt., 506; Brooks v. Bicknell, 3 McLean, 435; compare Wilson v. Rosseau, 4 How., 646.*) But in the case of *Brooks v. Bicknell* it was held that the decision of the board of commissioners, (whose power is now vested in the Commissioner,) while conclusive as to matters of expense, the payment of the money required, and the

notice, was not conclusive as to the question of law, whether or not an administrator had a right, under the act of 1836, to apply for an extension. (3 *McLean*, 250.)

The decision of the Commissioner extending letters patent could not have been made without proof that the patentee had not derived a fair profit from his invention during the first part of his original term; and such decision, having been made after public notice and official investigation, shows that throughout the United States he was generally considered, as he was still considered at the Patent Office, the first inventor. (*Aiken v. Dolan*, 3 *Fish.*, 197.)

A notice of an application to extend the original patent is a sufficient notice of an application for the extension of a reissue; and as the functions of the Commissioner in extension cases are judicial, his judgment settles conclusively all questions of notice. (*Compton v. Bellnap Mills*, 3 *Fish.*, 536.)

403. RIGHT OF ASSIGNEES.—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. (*Act of July 8, 1870*, § 67.)

Under the patent laws prior to 1836 a license or assignment expired with the limitation of the original patent, unless it was expressly in terms so granted as to be applicable to any renewal of the patent afterward. (*Washburn v. Gould*, 3 *Story*, 122, 135; *Woodworth v. Sherman*, 3 *Story*, 171.) The rule proceeded upon the ground that a man can pass by grant or assignment only that which he possesses and which is in existence at the time; and this doctrine is expressly applicable to licensees and assignees under the act of 1836, the whole design of

which is confined to the inventor and for his benefit, and not for the benefit of his licensee or assignee. (*Woodworth v. Sherman*, 3 *Story*, 171.) Therefore, the extension of a patent under § 67 of the act of 1870 does not inure to the benefit of assignees or grantees under the original patent, so as to vest in them any *exclusive* right; but the benefit of such renewal is limited to those who were in use of the patented article at the time of the renewal, and insures such persons the right to use the machine held by them at the time of such renewal. (*Wilson v. Rosseau*, 3 *How.*, 682.) The phrase "to the extent of their interest therein" means their interest in the patented machines, be that interest in one or more at the time of the extension, (*ib.*;) and the meaning of the word "thing patented," when construed in connection with the simple right to use, has reference to the thing patented. (*Ib.*)

The right of the assignee is limited to the right to *use*, although the person holding it may also have held, during the original term, an exclusive right to *make* and *vend*. (*Day v. Union Rubber Company*, 3 *Blatchf.*, 491.)

The object of the clause as to assignees is to preserve any previous contract or assignment in the sense in which both parties understood and intended it at the time it was made. (*Wilson v. Turner*, 7 *Law Reporter*, 530.)

A patentee cannot convey an extended patent before the extension. (*Day v. Candee*, 3 *Fish.*, 9.) He may, however, agree, upon a valuable consideration, to convey such right whenever it shall be vested in him. (*Ib.*)

The inchoate right of an inventor to an extension may be the subject of a contract of sale, (*Clum v. Brewer*, 2 *Curtis*, 506,) and an agreement made between a patentee, who is about to apply for a renewal of his patent, with

another, that in case of a renewal he will convey to him such renewed patent, in consideration of a certain sum, is valid, and, if the patent is renewed, such agreement conveys to the assignee an equitable interest or title, which can be converted into a legal title by offering to pay the agreed consideration, (*Hartshorn v. Day*, 19 *How.*, 220;) and where H agreed with A that, upon the fulfillment of certain considerations, he, H, would assign to A the extended term of certain letters patent, if the same should be extended, it was held that if the conditions had been fulfilled, H would have become the equitable owner of the extended term. (*Allen v. Dolen*, 3 *Fish.*, 197.)

Where J contracted to convey "to A a local interest in letters patent, to the utmost and fullest extent as to duration that he is or may be entitled to under the said letters patent," it was held that these words transferred an equitable title to the same local interest in an extension of said letters patent afterwards obtained, (*Chase v. Walker*, 3 *Fish.*, 120;) but a provision in a license, that a privilege is to continue during the term for which letters patent are or may be granted, is satisfied by holding it to apply exclusively to the reissue of the patent. There is nothing in the language which makes it exclusively or even necessarily applicable to an extension. (*Hodge v. Hudson River and Harlem Railroad*, 3 *Fish.*, 410.)

The established doctrine therefore is, that an assignee of a patent, holding, at the expiration of the first term, a right during that term to make and use the thing patented, may, during the term of its subsequent extension, continue to use it, and even repair it for use, but he cannot make it for use or for any other purpose, (*Wood v. Michigan and Southern Railroad*, 3 *Fish.*, 464;) but if the

patentee has agreed for a valuable consideration to convey the right in the extended term whenever it shall be vested in him, an equitable title in the extension of the letters patent afterwards obtained is transferred. (*Chase v. Walker*, 3 *Fish.*, 120; *Day v. Candee*, 3 *Fish.*, 9.)

Where a patent has been extended to a patentee, it is immaterial whether or not he was vested with the entire interest in the patent at the time of a surrender and reissue made prior to the extension. The extension vested an absolute and complete title in him, (*Potter v. Empire Sewing Machine Company*, 3 *Fish.*, 474;) and a reissue granted to an assignee may be extended to the patentee. In judgment of law, a reissue is only a continuation of the original patent. (*Crompton v. Bellknapp Mills*, *ib.*, 536.)

404. EXTENSION BY SPECIAL ACT OF CONGRESS.—Congress may, by special act, extend a patent even after the expiration of the original patent. (*Blanchard Gun-Stock Company v. Warner*, 1 *Blatchf.*, 274; *Blanchard v. Haynes*, 6 *West. Law Jour.*, 83.) Congress has the constitutional power to grant an extension of a patent after it has once been extended under § 18 of the act of 1836. (*Bloomer v. Stolley*, 5 *McLean*, 160.) There is no provision against such second extension. The policy of the law is to compensate the inventor, and if this object be not attained by a first extension, there would seem to be justice in a second. (*Ib.*) An act of Congress is not unconstitutional because it acts retrospectively to give a patent for an invention which was in public use. (*Blanchard v. Sprague*, 3 *Sumn.*, 541.) Such act of Congress is to be considered as ingrafted on the general laws relating to patents; they are statutes *in pari materia*, and such a patent is issued in pursuance of both. (*Evans v. Eaton*, 3

Wheat., 518; *Bloomer v. McQuewan*, 14 *How.*, 550.) A patent, when extended by act of Congress, after an extension under § 18 of the act of 1836, becomes a patent for twenty-one years. (*Gibson v. Harris*, 1 *Blatchf.*, 169.)

405. RIGHT OF ASSIGNEES UNDER EXTENSION BY ACT OF CONGRESS.—The right of an assignee to continue to use an invention, under his assignment during an extension of the patent, does not arise when the extension is by special act of Congress, and the assignment contains no provision to give such right. (*Bloomer v. Stolley*, 5 *McLean*, 158.) But in *Bloomer v. McQuewan*, (14 *How.*, 550,) in which case it was held that one in the lawful use of a machine, under a purchase, during the original term of a patent, is entitled to continue such use during an extension made by an act of Congress, unless there is something in the language of the act requiring a different construction. To enable an assignee to derive any benefit from an extension of a patent by act of Congress, an express provision should be inserted in the grant or assignment looking to such a renewal. Unless there be such a stipulation, showing that a renewal was contemplated, the court is bound to construe the instrument as relating to the existing right, in respect to which the parties are considered as contracting with each other. (*Gibson v. Cook*, 2 *Blatchf.*, 144.) If there is no reservation in an act of Congress extending a patent in favor of assignees, they have no right under the term thereby created, and they cannot even continue in the use of machines lawfully constructed before such term, and actually existing and in use when the former term expired. (*Gibson v. Gifford*, 1 *Blatchf.*, 529.)

406. PETITION FOR EXTENSION BY PATENTEE.—

To the Commissioner of Patents:

Your petitioner, now residing at Albion, Orleans county, New York, prays that the letters patent No. 12,841, for an improvement in steam-engines, granted to him August 17, 1853, may be extended for seven years from and after the expiration of the original term.

JAMES JOHNSON.

407. PETITION FOR EXTENSION BY AN ADMINISTRATOR.

To the Commissioner of Patents:

Your petitioner, Thomas Twitcher, administrator of the estate of Timothy Tweedle, deceased, (as by reference to the duly certified copy of letters of administration, hereto annexed, will more fully appear,) residing at Pittsburg, Allegheny county, Pennsylvania, prays that letters patent No. 12,842, for an improvement in stoves, granted to said Timothy Tweedle, August 24, 1853, may be extended for seven years from and after the expiration of the original term.

THOMAS TWITCHER,
Administrator.

408. FORM OF STATEMENT OF ACCOUNT.—

In the matter of the application of Fanny Forrester, of the city, county, and State of New York, executrix of the last will and testament of De Witt Forrester, deceased, for extension of letters patent No. 10,817, granted to him January 9, 1855, for improvement in mowing machines.

To the Commissioner of Patents:

The applicant respectfully represents that, prior to obtaining the letters patent now sought to be extended, the said De Witt Forrester was a farmer. That his attention was called to the subject of mowing machines by the difficulty of cutting grass by the machines then in use; that, after numerous patient and costly experiments, he succeeded in perfecting his invention and in obtaining his patent. He immediately made arrangements to manufacture the improvement, and for this purpose sold three fourths of his farm. He then, with others, built a factory and commenced operations; but, two years afterward, the establishment was destroyed by fire, without insurance. In the exposure at the fire Mr. Forrester contracted a disease which confined him to the house for three years, when he died, leaving applicant his executrix and widow, with a large family and small means. Nevertheless, applicant made every effort to induce manufacturers to use the improvement, and at last succeeded in inducing the firm of Weakly & Co., of Pemberton, New York, to recommence the manufacture of the machines. But after four years the firm failed, being largely in debt to appli-

cant for royalties. After this it became impossible for applicant to do anything with the invention. She wrote to various manufacturers and made personal application to others, but found them unwilling to make arrangement to pay royalties, or to use the invention in any way, unless she would sell the patent, including the extension, for a nominal sum. She states, however, that she has at length succeeded in perfecting an agreement with Merriam & Co., of Syracuse, New York, conditioned upon the extension, whereby the said firm agreed to manufacture the patented machines, and to pay her a royalty of three dollars upon each one made. Aside from the interest so vested in Merriam & Co., the entire interest in the extension remains vested in her, and she has made no assignment, contract, or agreement of any kind for the sale or assignment of the extended term to any person whatsoever.

Owing to the destruction of Mr. Forrester's books in the fire, it is impossible to prepare an accurate account of receipts and expenditures, but the following is believed to be as correct as it was possible to make it.

Receipts.

From profits from business, (for particulars of which see Schedule A).	\$1,236 00
From royalties from Weakly & Co., (for details of which see Schedule B).....	2,341 50
From sale of shop right to Brown & Jones, Penn Yan, N. Y.....	250 00
	<hr/>
Total receipts.....	\$3,827 50

Expenditures.

Expense of procuring patent.....	\$250 00
	<hr/>
Net receipts.....	<u>\$3,577 50</u>

The invention is exceedingly useful, as will be abundantly proved by the testimony. It is believed, if properly understood and appreciated, that it would now be incorporated in at least 50,000 mowing machines. Its value may be fairly fixed at the price which manufacturers have agreed to pay for it, which is three dollars per machine. If this estimate is even approximately correct, it is evident that the public have been greatly benefited; while the fact that Mr. Forrester invested his entire time and means, and finally lost his life in the prosecution of his invention, is respectfully offered as proof that he has not been adequately remunerated for his time, ingenuity, and expense bestowed upon this invention, and the introduction thereof into use.

Respectfully submitted,

FANNY FORRESTER,

Executrix.

409. OATH BY PATENTEE.—

STATE OF NEW YORK, }
 County of Ontario, } ss.

Edward Monroe, the above-named applicant, being duly sworn, (or affirmed,) deposes and says that the foregoing statement and account by him signed is correct and true in all respects and particulars, to the best of his knowledge and belief.

EDWARD MONROE.

Sworn to and subscribed before me this 1st day of November, A. D. 1868.

PAUL PLACID,
Justice of the Peace.

410. OATH BY EXECUTOR.—

UNITED STATES OF AMERICA, }
 Northern District of Ohio. } ss.

Roger Bacon, executor of the last will and testament of Simon Newcome, deceased, being duly sworn, (or affirmed,) deposes and says that the foregoing statement and account by him subscribed is correct and true in all respects and particulars, to the best of his information, knowledge, and belief.

ROGER BACON,
Executor, &c.

Sworn to and subscribed before me this 20th day of May, 1869.

WILLIAM BLACKSTONE,
U. S. Commissioner for the Northern District of Ohio.

411. REASONS OF OPPOSITION TO AN EXTENSION, (BY INDIVIDUALS.)—

In the matter of the application of Peter Prolong, for an extension of letters patent for improvements in sewing machines, No. 12,213, dated May 15, 1855.

To the Commissioner of Patents:

We wish to oppose the application above referred to, for the following reasons, viz:

First. Applicant was not the original and first inventor of the improvement claimed by him in said letters patent.

Second. If said alleged invention was ever made by applicant, which we deny, it is not *useful*.

Third. Said invention is not *valuable* and *important* to the public.

Fourth. Applicant has been *adequately remunerated* for his time, ingenuity, and expense in originating and perfecting his alleged invention.

Fifth. Applicant has not used due diligence in introducing his alleged invention into general use.

Sixth. Applicant has assigned to other parties all interest in the extension, and the extension, if granted, would not be for his benefit.

(See assignment to Veteran Grimes, dated April 1, 1864; recorded June 2, 1864, in liber J¹⁰, p. 217.)

Seventh. The statement and account filed by applicant do not present a true statement of his receipts and expenditures.

DANIEL DRIVER.

SINCLAIR SCORCHEM.

JEREMIAH JOINING.

PAWTUCKET, RHODE ISLAND, *July 19, 1869.*

412. REASONS OF OPPOSITION TO AN EXTENSION, (BY A CORPORATION.)—

In the matter of the application of Timothy Twist, for an extension of letters patent for improvements in process for dressing thread, No. 13,119, dated May 19, 1855.

To the Commissioner of Patents:

The Growler Mills, a corporation established under the laws of Massachusetts, doing business at Fall River, Massachusetts, hereby gives notice of intention to oppose the application above referred to, for the following reasons, viz:

First. This company is extensively engaged in the manufacture and sale of sewing thread of the various kinds in general use, having large sums of money invested in business. It has been accustomed to dress thread by sizing and brushing, in substantially the same manner as warps and thread have been dressed and finished for many years, in the full belief that such process is neither new nor patentable. The said manufacture has been carried on for more than three years, with the knowledge and consent of said Timothy Twist, and without any claim to royalty or other compensation on his part, or pretense that he was the inventor of the said process. Within the past six months, however, he has threatened this corporation with an action for damages, unless an exorbitant sum of money were paid to him.

Second. Said letters patent are valid neither in law nor in fact; the alleged invention is not *valuable* and *important* to the public, and an extension would result in the prolongation of a vexatious and unfounded claim, which would compel a resort to litigation to prove the utter worthlessness of said patent.

This corporation is ready to substantiate by evidence these reasons of objection.

And said corporation hereby appoints Messrs. Morehead & Newton, of Fall River, Massachusetts, its attorneys and counsel, with full power to represent said corporation in all matters relating to said proposed extension.

Witness the seal of said corporation and the signature of its president, at Fall River, Massachusetts, this 3d day of April, A. D. 1869.

[SEAL.]

THE GROWLER MILLS.

By RODERICK RITTENHOUSE, *President.*

[50-cent revenue stamp.]

The applicant for extension is required to forward to the Commissioner the original patent. If the patent has been lost or destroyed, the applicant should forward a statement, under oath, of the following form:

413. OATH TO THE LOSS OF LETTERS PATENT.- -

STATE OF MASSACHUSETTS, } ss.
County of Suffolk.

Charles Careful, of said county, being duly sworn, doth depose and say, that he is administrator of the estate of Henry Miner, deceased, late of Boston, in said county; that the letters patent No. 12,219, granted to said Henry Miner, and bearing date on the 9th day of January, A. D. 1855, have been lost or destroyed, as he verily believes; that he has made diligent search for the said letters patent in all places where the same would probably be found, if existing, and especially among the papers of the decedent; and that he has not been able to find said letters patent.

CHARLES CAREFUL,
Administrator, &c.

Subscribed and sworn to before me this 5th day of October, 1868.

PETER PLACID,
Justice of the Peace.

414. FORM OF CERTIFICATE OF EXTENSION.—

Whereas, upon the petition of A. W., of Auburn, in the State of New York, for the extension of the patent granted to him December 6, 1869, and reissued to him the fourth day of January, 1870, the undersigned, in accordance with the act of Congress approved the eighth day of July, 1870, entitled "An act to revise, consolidate, and amend the statutes relating to

patents and copyrights," did, on this twelfth day of October, 1870, decide that said patent ought to be extended:

Now, therefore, I, Samuel S. Fisher, Commissioner of Patents, by virtue of the power vested in me by said act of Congress, do renew and extend the said patent, and certify that the same is hereby extended for the term of seven years from and after the expiration of the first term, viz, from the fifth day of December, 1868, which certificate being duly entered of record in the Patent Office, the said patent has now the same effect in law as though the same had been originally granted for the term of twenty-one years.

In testimony whereof I have caused the seal of the Patent Office to be [SEAL.] hereunto affixed this fourth day of December, 1868, and of the independence of the United States the ninety-third.

SAM'L S. FISHER,
Commissioner

XXIII. Disclaimer.

SEC.	SEC.
415. When disclaimer may be filed; requisites.	418. Rights of grantees.
416. Action for infringement prior to disclaimer.	419. Owner of sectional interest may disclaim.
417. What should be set forth; when necessary.	420. Delay in filing.
	421. Effect of disclaimer.
	422. Form of disclaimer.

415. WHEN DISCLAIMER MAY BE FILED; REQUISITES. Whenever, through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, a patentee has claimed more than that of which he was the original or first inventor or discoverer, his patent shall be valid for all that part which is truly and justly his own, provided the same is a material or substantial part of the thing patented; and any such patentee, his heirs or assigns, whether of the whole or any sectional interest therein, may, on payment of the duty required by law,

make disclaimer of such parts of the thing patented as he shall not choose to claim or to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent: said disclaimer shall be in writing, attested by one or more witnesses, and recorded in the Patent Office, and it shall thereafter be considered as part of the original specification to the extent of the interest possessed by the claimant and by those claiming under him after the record thereof. But no such disclaimer shall affect any action pending at the time of its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing it. (*Act of July 8, 1870, § 54.*)

416. ACTIONS FOR INFRINGEMENT PRIOR TO DISCLAIMER. Whenever, through inadvertence, accident, or mistake, and without any willful default or intent to defraud or mislead the public, a patentee shall have (in his specification) claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor or discoverer as aforesaid, every such patentee, his executors, administrators, and assigns, whether of the whole or any sectional interest in the patent, may maintain a suit at law or in equity for the infringement of any part thereof which was *bona fide* his own, provided it shall be a material and substantial part of the thing patented, and be definitely distinguishable from the parts so claimed, without right as aforesaid, notwithstanding the specification may embrace more than that of which the patentee was the original or first inventor or discoverer. But in every such case, in which a judgment or decree shall be rendered for the plaintiff, no costs shall

be recovered, unless the proper disclaimer has been entered at the Patent Office before the commencement of the suit; nor shall he be entitled to the benefits of this section if he shall have unreasonably neglected or delayed to enter said disclaimer, (*Ib.*, § 60.)

417. WHAT SHOULD BE SET FORTH; WHEN NECESSARY.—The interest of the party disclaiming should be set forth; but where an administrator, in whose name a patent had been extended, entered a disclaimer stating that he was the patentee, and referring to the patent as showing his interest, it was held to be sufficient, (*Brooks v. Bicknell*, 3 *McLean*, 439;) and where a patentee filed a disclaimer setting out that it was “to operate to the extent of the interest in said letters patent vested in the patentee,” it was held that it fairly enough imported on its face that the patentee was the owner of the entire interest in the patent, and if so there was a substantial compliance with the statute as to the statement of interest, (*Footte v. Silsby*, 1 *Blatchf.*, 450;) and where the party disclaiming stated that he was the patentee, but said nothing in regard to a transfer of any part of the patent, the fair presumption is that he still owns the whole. (*Silsby v. Footte*, 14 *How.*, 221.) The law is not penal, but remedial; it is intended for the protection of the patentee as well as the public, and should not be restricted in its operation within narrower limits than the words of the law fairly import. (*O'Reilly v. Morse*, 15 *How.*, 121.)

A patentee may disclaim any thing which has been claimed through inadvertence or mistake, (*Parker v. Sears*, 1 *Fish.*, 93;) but a disclaimer is necessary only in cases where the thing claimed wrongfully is a material and substantial part of the thing invented. If it is not

essential to the machine, and was not introduced into the patent through willful default or intent to defraud or mislead the public, the want of a disclaimer affords no ground for invalidating the patent. (*Hall v. Wiles*, 2 *Blatchf.*, 199.) But when a patent is illegal in part, because of claiming more than the inventor has described, or more than he has invented, the patentee must disclaim in order to save the portion to which he is entitled. (*O'Reilly v. Morse*, 15 *How.*, 121.)

Inadvertence and error may occur as well in a disclaimer as a claim, (*Poppenhausen v. Fulke*, 2 *Fish.*, 181,) and a disclaimer in such a case will not prevent the patentee from embracing the part so disclaimed in a reissue of his patent. (*Hayden ex parte*, *MS. Appeal Cases*, *D. C.*, 1860.)

418. RIGHT OF ASSIGNEES.—If a disclaimer is filed by a patentee alone after an assignment of a part thereof, it will not operate in favor of the assignee in any suit, either at law or in equity, unless he has joined in it, (*Wythe v. Stone*, 1 *Story*, 294.) The disclaimer cannot affect a prior grantee unless he accept it, and he may refuse to be affected by it. (*Smith v. Mercer*, 5 *Penn. Law Jour.*, 531, *Kane, J., Pa.*, 1846.)

419. OWNER OF SECTIONAL INTEREST MAY DISCLAIM.—The owner of a sectional interest may file a disclaimer, which will be considered as a part of the original patent to the extent of his interest, but the patentee is not compelled to join in such disclaimer, nor will it affect any one except him making it and those claiming under him. (*Potter v. Holland*, 1 *Fish.*, 327.)

420. EFFECT OF DELAY IN FILING.—In every suit brought upon a patent it is a good defense, both at law and in

equity, that there has been unreasonable delay or neglect to file a disclaimer where one is necessary. (*Wythe v. Stone*, 1 *Story*, 295; *Reed v. Cutler*, *ib.*, 600; *Brooks v. Bicknell*, 3 *McLean*, 449; *Hotchkiss v. Oliver*, 5 *Denio*, 318; *Parker v. Stiles*, 5 *McLean*, 56.)

What is "unreasonable delay" in filing a disclaimer is a mixed question of law and fact, to be decided under the direction of the court.) *Brooks v. Bicknell*, 3 *McLean*, 449.) It is a question of law for the court. (*Seymour v. McCormick*, 19 *How.*, 106; *Singer v. Walmsley* —.) The time in reference to the question of delay commences from when knowledge is brought home to the party that he is not the first inventor, or a court of competent jurisdiction has declared him not to be one. (*Singer v. Walmsley*, —.) Whether a disclaimer has been filed before or after the suit is brought, the plaintiff will not be entitled to the benefit thereof if he has unreasonably neglected or delayed to file it in the Patent Office. But such an unreasonable neglect or delay will constitute a good defense to the suit. (*Reed v. Cutler*, 1 *Story*, 600.) The question of delay in entering a disclaimer goes to the right of action, and if the jury are satisfied that there has been unreasonable negligence on the part of the patentee in making a disclaimer, then the whole patent is inoperative. (*Hall v. Wiles*, 2 *Blatchf.*, 198; *McCormick v. Seymour*, 3 *Blatchf.*, 222.)

421. EFFECT OF DISCLAIMER.—The disclaimer mentioned in § 7 of the act of 1837 (*vide supra*, p. 23, § 54) applies solely to suits pending when the disclaimer is filed, and the disclaimer mentioned in § 9 of the same act (*vide supra*, p. 27, § 60) applies solely to suits brought after such disclaimer is filed. (*Wythe v. Stone*, 1 *Story*,

294.) If filed before the suit is brought, and the plaintiff establish on trial that a part of his invention not disclaimed has been infringed, he will be entitled to costs, (*Reed v. Cutler*, 1 *Story*, 600;) but if he omits to disclaim, and it appears on trial that he is entitled to be protected in a portion of his claims, but not in respect to another portion, he is still entitled to damages for the infringement of the valid portion, but is not entitled to costs, (*McCormick v. Seymour*, 3 *Blatchf.*, 222;) and a disclaimer will not affect any action pending at the time of filing it, except in respect to the question of unreasonable neglect or delay. (*Guyon v. Serrill*, 1 *Blatchf.*, 245.)

In the case of *Aiken v. Dolan* the complainant filed a bill in equity to restrain the defendant from infringing letters patent for "improvement in knitting needles."

Mr. Justice Cadwalader, delivering the opinion of the court, said: "By a proper disclaimer of the invention of latch needles without any such curvature the patent would, however, be sustainable for the actual improvement. The complainant proposes, through his counsel, to disclaim any construction of a latch needle which has not a swell, or its equivalent, substantially as shown in the drawings; and to repeat, in the words of the original specification, that what he claims as the invention of the patentee is the operation of the latch or tongue, &c., operated as therein described. The effect of such a disclaimer will be to deprive the complainant of all right to recover costs in the present suit. But a court of equity sometimes considers that which might and ought to be done as having already been done. There may, therefore, be a decree for a perpetual injunction; each party to pay his own costs, without any actual proof of record in the

Patent Office. According to the decision of the Supreme Court in *O'Reilly v. Morse*, (15 *How.*, 121,) it might perhaps be supposed that I should go further, and, before any actual disclaimer, decree an account or order an issue *quantum damnificatus*. But I do not think that a court whose decision is liable to reversion, on appeal, should in such case make any decree beyond the perpetual injunction without an actual disclaimer, previously recorded in the Patent Office. In the present stage of the case, therefore, I can do no more than award the injunction with leave to disclaim, and afterward to move for such further order for an account, &c., as may be deemed proper." (3 *Fish.*, 207.)

422. FORM OF DISCLAIMER.—

To the Commissioner of Patents:

Your petitioner, Ichabod Willis, of St. Louis, county of St. Louis, and State of Missouri, represents that he has, by grant duly recorded in the United States Patent Office, (liber —, p. —,) become the owner of an exclusive right within and for the several States of Maine, New Hampshire, and Vermont, to make, use, and vend to others to be used, a certain improved mechanical movement, for which letters patent of the United States were granted to Jeremiah Ingersoll, of Albany, in the county of Albany and State of New York, April 1, 1869; that he has reason to believe that, through inadvertence, accident, or mistake, the specification and claim of said letters patent are too broad, including that of which said patentee was not the first inventor. Your petitioner, therefore, hereby enters his disclaimer to that part of the claim in said specification which is in the following words, to wit:

"I also claim the sleeves A B, having each a friction cam C, and connected, respectively, by means of chains or cords, K L and M N, with an oscillatory lever, to operate substantially as herein shown and described."

ICHABOD WILLIS.

Witness: HENRY OAKLAND.

XXIV. The Patent.

SEC.	SEC.
423. Issuing, signing, and recording.	425. Date.
424. Contents and grant.	426. Form of patent.

423. ISSUING, SIGNING, AND RECORDING.—All patents shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall be signed by the Secretary of the Interior and countersigned by the Commissioner, and they shall be recorded, together with the specification, in said office, in books to be kept for that purpose. (*Act of July 8, 1870, § 21.*)

424. CONTENTS AND GRANT.—Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the said invention or discovery throughout the United States and the Territories thereof, referring to the specification for the particulars thereof; and a copy of said specifications and of the drawings shall be annexed to the patent and be a part thereof. (*Ib., § 22.*)

425. DATE.—Every patent shall date as of a day not later than six months from the time at which it was passed and allowed and notice thereof was sent to the applicant or his agent; and if the final fee shall not be paid within that period, the patent shall be withheld. (*Ib., § 23.*)

426. FORM OF PATENT.—

No. ———.

THE UNITED STATES OF AMERICA.

To all to whom these letters patent shall come:

Whereas, ———, of ———, ———, ha- alleged that ——— ha- invented a new and useful ———, and ha- made ——— that ——— a citizen

of the United States; that — verily believes — the original and first inventor or discoverer of the said —, and that the same hath not to — knowledge and belief been previously known or used; — ha- paid into the Treasury of the United States the sum of — dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor.

These are therefore to grant to the said —, his —, executors, administrators, or assigns, for the term of — years from the — day of —, one thousand eight hundred and —, the full and exclusive right and liberty of making, using, and vending to others to be used, the said —, a description whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the Patent Office to be hereunto affixed. Given under
 [SEAL.] my hand at the of city Washington, this — day of —, in the year of our Lord one thousand eight hundred and —, and of the independence of the United States of America the —.

— —, *Secretary of the Interior.*

— —, *Commissioner of Patents.*

[Countersigned and sealed with the seal of the Patent Office.]

XXV. Patent Office Fees.

SEC.	SEC.
427. All fees to be paid in advance.	430. How fees may be paid.
428. Tariff of fees.	431. Money paid by mistake.
429. Final fee to be paid within six months.	432. Revenue stamps.

427. ALL FEES TO BE PAID IN ADVANCE.—Nearly all the fees payable to the Patent Office are positively required by law to be paid in advance, that is, upon making application for any action by the office for which a fee is payable. For the sake of uniformity and convenience, the remaining fees will be required to be paid in the same manner. (*Patent Office Rules, July, 1870.*)

428. **TARIFF OF FEES.**—The following is the tariff of fees established by law:

On filing every application for a design, for three years and six months-----	\$10 00
On filing every application for a design, for seven years-----	15 00
On filing every application for a design, for fourteen years-----	30 00
On filing every caveat-----	10 00
On filing every application for a patent-----	15 00
On issuing each original patent-----	20 00
On filing a disclaimer-----	10 00
On filing every application for a reissue-----	30 00
On filing every application for a division of a reissue-----	30 00
On filing every application for an extension-----	50 00
On the grant of every extension-----	50 00
On filing the first appeal from a primary examiner to examiners-in-chief-----	10 00
On filing an appeal to the Commissioner from examiners-in-chief-----	20 00
On depositing a trade-mark for registration-----	25 00
For every copy of a patent or other instrument, for every 100 words-----	10
For every certified copy of drawing, the cost of having it made. (<i>Vide supra</i> , p. 309.)	
For copies of papers not certified, the cost of having them made.	
For recording every assignment of 300 words or under-----	1 00
For recording every assignment, if over 300 and not over 1,000 words-----	2 00

For recording every assignment, if over 1,000 words ----- \$3 00

429. FINAL FEE TO BE PAID WITHIN SIX MONTHS, (*vide supra*, p. 343.)—The final fee on issuing a patent must be paid within six months after the time at which the patent was allowed and notice thereof sent to the applicant or his agent. And if the final fee for such patent be not paid within that time the patent will be forfeited, and the invention therein described become public property, as against the applicant therefor, unless he shall make a new application therefor within two years from the date of the original allowance. (*Patent Office Rules, July, 1870; Act of July 8, 1870, § 35.*)

430. HOW FEES MAY BE PAID.—The money for the payment of fees may be paid to the Commissioner, or to the Treasurer, or any of the assistant treasurers of the United States, or to any of the designated depositaries, national banks, or receivers of public money, designated by the Secretary of the Treasury for that purpose, who shall give the depositor a receipt or certificate of deposit therefor, which shall be transmitted to this office. When this cannot be done without much inconvenience, the money may be remitted by mail, and in every case the letter should state the exact amount inclosed. Letters containing money may be registered. Post-office money-orders now afford a safe and convenient mode of transmitting fees. All such orders should be made payable to the Commissioner of Patents. (*Patent Office Rules, July, 1870; Act of July 8, 1870, § 69.*)

All money sent by mail, either to or from the Patent Office, will be at the risk of the owner. In no case should money be sent inclosed with models. All payments to

or by the office must be paid in specie, treasury notes, national bank notes, certificates of deposit, or post-office money-orders. (*Patent Office Rules, July, 1870.*)

431. MONEY PAID BY MISTAKE.—Money paid by actual mistake will be refunded; but a mere change of purpose after the payment of money will not entitle a party to demand such return. (*Patent Office Rules, July, 1870; Act of July 8, 1870, § 70.*)

432. REVENUE STAMPS must be attached as follows:

1st. A stamp of the value of fifty cents is required upon each power of attorney authorizing an attorney or agent to transact business with this office relative to an application for a patent, reissue, or extension.

2d. No assignment directing a patent to issue to an assignee will be recognized by this office, nor will any assignment be recorded, unless stamps shall be affixed, of the value of five cents, for every sheet or piece of paper upon which the same shall be written.

3d. The person using or affixing the stamp must cancel the same by writing thereupon the initials of his name and the date. (*Patent Office Rules, July, 1870.*)

PART IV.

CONTRACTS, ASSIGNMENTS, AND PRECEDENTS.

52*

621

CONTRACTS, ASSIGNMENTS, AND PRECEDENTS.

I. Assignments.

SEC.	SEC.
1. Patent may issue to assignees.	10. Assignment before patent.
2. Assignments, &c.	11. Effect and construction.
3. Interests conveyed.	12. Sale on execution.
4. Recording.	13. Assignees of alien inventors.
5. Recording not essential as between the parties.	14. Form of assignment before patent.
6. Object to protect bona fide purchasers.	15. Form of assignment of patent.
7. Assignee.	16. Form of assignment of undivided interest.
8. Grantee.	17. Form of exclusive territorial grant.
9. Licensee.	

1. **PATENT MAY ISSUE TO ASSIGNEES.**—Patents may be granted and issued or reissued to the assignee of the inventor or discoverer, the assignment thereof being first entered of record in the Patent Office; but in such case the application for the patent shall be made and the specification sworn to by the inventor or discoverer; and also, if he be living, in case of an application for reissue. (*Act of July 8, 1870, § 33.*)

2. **ASSIGNMENTS, GRANTS, AND CONVEYANCES.**—Every patent, or any interest therein, shall be assignable in law by an instrument in writing; and the patentee, or his assigns or legal representatives, may, in like manner, grant and convey an exclusive right under his patent to

the whole or any specified part of the United States; and said assignment, grant, or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice, unless it is recorded in the Patent Office within three months from the date thereof. (*Act of July 8, 1870, § 36.*)

(As to right of assignee in cases of reissue, *vide supra*, p. 556. In cases of extension, p. 603.)

3. INTERESTS WHICH MAY BE CONVEYED.—A patent may be assigned, either as to the whole interest or any undivided part thereof, by any instrument in writing. No particular form of words is necessary to constitute a valid assignment, nor need the instrument be sealed, witnessed, or acknowledged; and a patent will, *upon request*, issue directly to the assignee or assignees of the entire interest in any invention, or to the inventor and the assignee jointly, when an undivided part only of the entire interest has been conveyed. When the patent is to issue in the name of the assignee, the entire correspondence should be in his name. The patentee may grant and convey an exclusive right under his patent to the whole or any specified portion of the United States, by an instrument in writing; or he may convey separate rights under his patent to make or to use or to sell his invention, or he may convey territorial or shop rights, which are not exclusive. Such conveyances are mere licenses, and need not be recorded. (*Patent Office Rules, July, 1870.*)

What if Congress provides for three kinds of assignments: first, as to the whole interest; second, as to an undivided part; and, third, an exclusive right in any district, (*Blanchard v. Eldridge, 1 Wall., 330;*) but the stat-

ute renders the monopoly capable of subdivision as to locality, and in no other way. The patentee cannot carve out his monopoly, which is a unity, into a hundred or more, all acting in the same place and liable to come into conflict. (*Ib.*; *Whittemore v. Cutter*, 1 Gall., 431; *Suydam v. Day*, 2 Blatchf., 23.)

He cannot divide his right into parts and grant to one man the right to use it in its connection with or application to one thing, and to another in connection with a different thing, to such an extent as that purchasers from any of these persons may not use the fabric exactly as they like. (*The Washing-Machine Company v. Earle*, 3 Wall., —.)

When the patentee sells the right to make, use, and vend the invention in a particular place, the purchaser buys a portion of the franchise which the patent confers; but the purchaser of a patented implement or machine for use in the ordinary pursuits of life stands on a different ground. By virtue of the contract of sale and the unconditional delivery of a patented article, it passes outside the monopoly, and is no longer under the peculiar protection granted to patent rights, (*Goodyear v. Beverly Rubber Company*, 1 Clifford, 348;) and when the patentee of certain processes and the products thereof, for a valuable consideration, sold the patented article, both the manufactured article and the materials of which it was composed passed to the purchaser, discharged of the peculiar privileges secured by the patent, and the purchaser may use the material in the manufacture of other articles not themselves protected by the patent, (*ib.*) and this although the patented article was bought of the patentee's licensee, who was restricted by the

license to a use of the patented product different from that to which it was devoted by the purchaser, (*ib.*;) but where a person had purchased of the owner of the invention certain knitting machines, with which the vendor was accustomed to send a package of needles used in the same, it was held, that the sale of the machines did not carry with it a right to the purchaser to manufacture new needles of the same construction "as those sold, when those which he had bought were worn out, although the machines could not be operated without them, and the needles were the patented invention of the seller; the needles, however, being the subject-matter of a different patent from that covering the machine. (*Aiken v. Manchester Print Works*, 2 *Clifford*, 435.)

The grant of a machine, with the right to use it, does not import the same privileges under the patent as the sale of the right to make and vend the patented machine, (*ib.*) In the latter case the purchaser buys a portion of the franchise, and the right he acquires necessarily terminates at the time limited for the continuance of the patent; but in the former, the machine sold passes outside the monopoly, and is no longer under the protection of the patent act, (*ib.*) and redress for injury in such case must be sought in the State courts, under State laws, and not under the special jurisdiction conferred on the Federal courts by the patent acts. (*Ibid.*)

4. RECORDING.—Every assignment or grant of an exclusive territorial right must be recorded in the Patent Office within three months from the execution thereof; otherwise, it will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice; but if recorded after that time, it will protect the

assignee or grantee against any such subsequent purchaser whose assignment or grant is not then on record. (*Patent Office Rules, July, 1870.*)

In every case where a patent issues or reissues to an assignee the assignment must be recorded at the Patent Office at least five days before the issue of the patent, and the specification must be sworn to by the inventor. (*Ib.*)

No assignment directing a patent to issue to an assignee will be recognized by the office, nor will any assignment be recorded, unless stamps shall be affixed of the value of five cents for every sheet or piece of paper upon which the same shall be written.

The person using or affixing the stamp must cancel the same by writing thereupon the initials of his name and the date. (*Ib.*)

The receipt of assignments is not generally acknowledged by the office. They will be recorded in their turn within a few days after their reception, and then transmitted to the persons entitled to them. (*Ib.*)

Three cases of the recording of assignments are provided for by the statute: first, an assignment of the whole patent; second, an assignment of an undivided part thereof; and, third, a grant or conveyance of an exclusive right under the patent within any specified part or portion of the United States. A grant of right, not being exclusive, need not be recorded. (*Brooks v. Byam, 2 Story, 542.*)

5. RECORDING NOT ESSENTIAL AS BETWEEN THE PARTIES.—To render an assignment valid under § 36 of the act of 1870, as *between the parties and against strangers*, it is not essential that it should be recorded. (*McKernan*

v. *Hite*, 6 *Ind.*, 430; *Case v. Redfield*, 4 *McLean*, 527.) The provision of the statute as to the recording of assignments within three months is merely directory, and, except as to intermediate *bona fide* purchasers without notice, any subsequent recording of an assignment will be sufficient to pass title to the assignee. (*Brooks v. Byam*, 2 *Story*, 524; *Boyd v. McAlpine*, 3 *McLean*, 424; *Peck v. Bacon*, 18 *Conn.*, 388; *Olcott v. Hawkins*, 2 *Amer. Law Jour.*, 319; *Hildreth v. Turner*, 17 *Ill.*, 185.) The recording is not a prerequisite indispensable to the validity of the assignment. (*Pitts v. Whitman*, 2 *Story*, 615, 618.) It is not necessary to make the transfer operative, but only essential to enable the assignee to sue in his own name, (*Blanchard's Gun-Stock Turning Company v. Warren*, 1 *Blatchf.*, 271;) and it is immaterial whether the assignment is recorded before or not till after suit brought. It is the common case of a deed required to be registered, where it is sufficient if it be registered before the trial, though after the suit is brought. (*Ib.*)

6. OBJECT OF RECORDING TO PROTECT BONA FIDE PURCHASERS.—The chief object of the requiring assignments to be recorded is manifestly the protection of *bona fide* purchasers, though not especially so declared. (*Gibson v. Cooke*, 2 *Blatchf.*, 148.) After the expiration of three months, if no record has been made of an assignment, and another assignment of the same right is made and recorded, the last assignment would be valid. (*Boyd v. McAlpine*, 3 *McLean*, 429.) To guard against an outstanding title of over three months' duration, the purchaser need only look to the records of the Patent Office; within that period he must protect himself as best he can, as an unrecorded assignment would prevail; but it

must be an assignment in writing, that may be recorded within the time limited. (*Gibson v. Cooke*, 2 *Blatchf.*, 148.)

7. ASSIGNEE.—An assignee is one who has transferred to him in writing the whole interest of the original patent, or an undivided part of such whole interest, in every portion of the United States. And no one, unless he has such an interest transferred to him, is an assignee. (*Potter v. Holland*, 1 *Fish*, 327.)

8. GRANTEE.—A grantee is one who has transferred to him in writing the exclusive right, under the patent, to make and use, and to grant to others to make and use, the thing patented, within and throughout some specified part or portion of the United States. Such right must be an exclusive sectional right, excluding the patentee therefrom. (*Ib.*)

9. LICENSEE.—A licensee is one who has transferred to him in writing or orally a less or different interest than either the interest in the whole patent, or an undivided part of such whole interest, or an exclusive sectional interest. (*Ib.*)

10. ASSIGNMENT BEFORE PATENT, (*vide supra*, p. 274, *et seq.*)—An assignment of a patent may be made as well before the issuing of a patent as afterward. The thing to be assigned is not the mere parchment, but the monopoly conferred—the right of property which it creates; and when the party has acquired an inchoate right, an assignment of it is legal, (*Gayler v. Wilder*, 10 *How.*, 477, 493;) and an invention may as well be sold before as after the application for a patent. (*Rathbone v. Orr*, 5 *McLean*, 132.) After the patent has been issued no new assignment is necessary; the legal right to the monopoly and the property it created is vested by

operation of the assignment in the assignee. So held when the assignment had been recorded before the patent issued. (*Ib.*) An assignment of an invention is not void by being executed before the invention is patented. It is a good transfer of the right of the patentee immediately upon his obtaining the patent, and he would be estopped from setting up any adverse title. (*Herbert v. Adams*, 4 *Mason*, 15.) An inventor may sell his invention before he obtains a patent; and after the patent has been obtained, the contract will secure to the assignee the extent of his right. The provision of law which requires the application for a patent to be made in the name of the inventor becomes necessarily a part of the contract; the inventor sells his right, and obligates himself to obtain a patent. (*Rathbone v. Orr*, 5 *McLean*, 131; and see *Rich v. Lippincott*, 26 *Jour. Frank. Inst.*, 3d s., 13.) An inventor may sell future improvements as well as those already made, and a second as well as a first patent for them. (*Nesmith v. Calvert*, 1 *Wood. & Minot*, 34.) It is not proper to grant a patent on a joint invention to one of two inventors upon the assignment of the other; but all who are concerned in the invention should join in the petition. (2 *Opinions Attorneys General*, 571.) Patents for inventions cannot, under § 6 of the act of 1837, issue jointly to the inventor as such and to the assignee of a partial interest, but may issue to the assignee or assignees of the whole interest. (4 *Ib.*, 401.) When a transfer or assignment of an inventor's right is only partial, although the part excepted be very small, the assignee has no legal claim to have the patent issue in his name. It should issue in the name of the inventor. (9 *Ib.*, 403.)

11. EFFECT OF ASSIGNMENT.—An assignment of an exclusive right to make, use, and vend to others a patented machine, within a certain territory only, does not prohibit the assignee from selling elsewhere, out of the said territory, the products of such machines. The restriction in the assignment applies solely to the using of the machine, and is no restriction as to place of the sale of the product. (*Simpson v. Wilson*, 4 *How.*, 709.) An agreement between a patentee and a third person, as trustee, that the latter should hold the patent and have the control thereof for the benefit of those who had a right to use the same, under contracts with the patentee, transfers the entire interest and ownership, legal and equitable, of the patentee in the patent to such trustee, for the benefit of those interested. (*Hartshorn v. Day*, 19 *How.*, 211.) An assignment of the revenues of a railroad, by the company, to a preferred creditor, and the use of the rolling stock, is not a transfer of corporate entity or property; and the use, by the assignee, of cars to which patented brakes were attached, does not render him liable to account for infringement upon the patent right, the exclusive use of the brakes having previously been licensed to the company by the patentee. The assignee used the brakes as an agent and not as a purchaser; such use, in the name of the company, being exclusive, in the meaning of the license. (*Emigh v. Chamberlain*, 1 *Am. Law. Reg.*, n. s., 207; *S. C.*, 2 *Fisk.*, 192.) A particular agreement allowing the use of a patent right held a mere license, and not an assignment conveying an interest in the patent. (*Armstrong v. Hanlenbeck*, 3 *N. Y. Leg. Obs.*, 43.) An assignment of the whole or any part of an interest in a patent will be valid, although it is

at the time the subject of litigation, (*Gay v. Cornell*, 1 *Blatchf.*, 510,) but a paper purporting to be the assignment of an expired patent is void as an assignment. (*Bell v. McCullough*, 1 *Fish.*, 380.)

Mere circumstantial differences between a description of the patent in the specification and in an assignment will not render the assignment invalid, (*Holden v. Curtis*, 2 *N. Hamp.*, 63,) nor do they indicate fraud or prevent the right from passing. (*Case v. Mowry*, 1 *N. Hamp.*, 349.) An assignment may be exclusive, although limited to a certain number of machines, (*Washburn v. Gould*, 3 *Story*, 131;) such limitation is not inconsistent with the grant of an exclusive territorial right. (*Ib.*, 167.) The term exclusive comprehends not only an exclusive right to a whole patent, but the exclusive right to a patent in a particular section of country. (*Ib.*, 131.) If an assignment contains no warranty, the vendee cannot set up a parol warranty, for it is presumed that the writing contains the entire contract, (*Jolliffe v. Collins*, 21 *Mo.*, 341,) unless it is also alleged that the warranty was false and fraudulent, and then parol proof is only evidence of such representation. (*McClure v. Jeffrey*, 8 *Ind.*, 83.) The conveyance of a patent by A, with the written consent of B, in whom the title then was, is equally effective with a conveyance directly from B. (*Sherman v. Champlain Transportation Company*, 31 *Vt.*, 175.)

12. SALE ON EXECUTION.—A patented machine, and the right of use attached to it, may pass by sale, devise, or levy of execution, or assignment of any insolvent's effects. (*Woodworth v. Curtis*, 2 *Wood. & Minot*, 524.) The sale of a patented machine by a sheriff, under an execution, does not, in and of itself, convey to the purchaser

any right to use the machine in the manner pointed out in the patent right. The purchaser acts at his own peril. (*Sawin v. Guild*, 1 *Gall.*, 485.)

13. ASSIGNEES OF ALIEN INVENTORS take and hold the patent, which may be issued to them with all the privileges belonging to American patentees. The clause in § 15 of the act of 1836, (5 *Stats. at Large*, 123,) requiring the invention to be put on sale in a certain time, applies only to alien patentees. (*Tatham v. Lowber*, 2 *Blatchf.*, 49.) To the contrary, (*Tatham v. Loring*, 5 *N. Y. Leg. Obs.*, 207.)

14. FORM OF ASSIGNMENT OF THE ENTIRE INTEREST IN AN INVENTION BEFORE THE ISSUE OF LETTERS PATENT.—

In consideration of \$1, to me paid by Ephraim G. Hall, of Cleveland, Ohio, I do hereby sell and assign to said Ephraim G. Hall all my right, title, and interest in and to a certain invention in plows, as fully set forth and described in the specification which I have prepared [if the application has been already made, say "and filed"] 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 to the said Ephraim G. Hall, as my assignee, for the sole use and behoof of the said Ephraim G. Hall and his legal representatives.

Witness my hand this sixteenth day of February, 1868.

[5-cent revenue stamp.]

J. F. CROSSETTE.

15. FORM OF ASSIGNMENT OF THE ENTIRE INTEREST IN LETTERS PATENT.—

In consideration of \$500, to me paid by Nathan Wilcox, of Keokuk, Iowa, I do hereby sell and assign to the said Nathan Wilcox all my right, title, and interest in and to the letters patent of the United States, No. 41,806, for an improvement in locomotive head-lights, granted to me July 30, 1864, the same to be held and enjoyed by the said Nathan Wilcox to the full end of the term for which said letters are granted, as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

Witness my hand this tenth day of June, 1869.

[5-cent revenue stamp.]

HORACE KIMBALL.

16. FORM OF ASSIGNMENT OF AN UNDIVIDED INTEREST IN THE LETTERS PATENT AND EXTENSION THEREOF.—

In consideration of \$1,000, to me paid by Obadiah N. Bush, of Chicago, Illinois, I do hereby sell and assign to the said Obadiah N. Bush one undivided fourth part of all my right, title, and interest in and to the letters patent of the United States, No. 10,485, for an improvement in cooking-stoves, granted to me May 16, 1856; the same to be held and enjoyed by the said Obadiah N. Bush to the full end of the term for which said letters patent are granted, and for the term of any extension thereof, as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

Witness my hand this seventh day of January, 1869.

JOHN C. MORRIS.

[6-cent revenue stamp.]

17. FORM OF ASSIGNMENT OF EXCLUSIVE TERRITORIAL GRANT BY AN ASSIGNEE.—

In consideration of \$1,000, to me paid by William H. Dinsmore, of Concord, New Hampshire, I do hereby grant and convey to the said William H. Dinsmore the exclusive right to make, use, and vend within the State of Wisconsin and the counties of Cook and Lake, in the State of Illinois, and in no other place or places, the improvement in corn planters for which letters patent of the United States, dated August 15, 1867, were granted to Leverett R. Hull, and by said Hull assigned to me December 3, 1867, by an assignment duly recorded in liber X^s, p. 416, of the records of the Patent Office, the same to be held and enjoyed by the said William H. Dinsmore as fully and entirely as the same would have been held and enjoyed by me if this grant had not been made.

Witness my hand this nineteenth day of March, 1868.

ABRAHAM MOORE.

[6-cent revenue stamp.]

II. Licenses and Contracts.

SEC.

- 18. Licenses need not be recorded.
- 19. Construction and effect.
- 20. Assignee of license.
- 21. Licenses for single machines.

SEC.

- 22. Other contracts.
- 23. Form of license, shop-right.
- 24. Form of license with a royalty.

18. LICENSES NEED NOT BE RECORDED.—The patentee

may convey separate rights under his patent to make or to use or to sell his invention, or he may convey territorial or shop rights which are not exclusive. Such conveyances are mere licenses, and need not be recorded. (*Patent Office Rules, July, 1870.*)

A conveyance transferring a less or different interest in the patent than either the interest in the whole patent, or an undivided part of such whole interest, or an *exclusive* sectional interest, is a mere license, and need not be recorded. (*Potter v. Holland, 1 Fish., 327*; see also *Stevens v. Head, 9 Vt., 177*; *Brooks v. Byam, 2 Story, 541.*)

19. CONSTRUCTION AND EFFECT OF LICENSE.—A contract of license is like every other contract, and depends upon a fair construction of the acts of the parties. (*Bell v. McCullough, 1 Fish., 380.*) As to the principles upon which a license to manufacture under a patent should be construed, and their application to a license in particular cases, see *Washburn v. Gould, 3 Story C. C., 122*; *S. C., 1 West. Law Jour., 465*; *7 Law Rep., 276*; *Day v. Cary, 1 Fish., 424*; *Day v. Stellman, ib., 487.* H assigned to M, A & Co. all his right and interest under his patent in twenty-three counties in Ohio, including that in which the defendants' manufactory was carried on. M, A & Co. were to pay ten dollars for each machine made and sold by them, while H reserved the right of sending machines of his own manufacture into the territory named in the contract. Held, that this paper was not an assignment of the interest of H in the patent within the territory named, but a mere license. (*Hussey v. Whitely, 2 Fish., 120*; see also *Potts v. Jameson, 15 Barb., 315.*) A license to use vulcanized india-rubber

for coating cloths, for the purpose of japanning, marbling, and variegated japanning, is limited to the particular kinds of goods mentioned, and conveys no right to use the rubber for coating cloths for any other purpose, (*Goodyear v. Providence Rubber Company*, 2 *Fish.*, 499;) but the public cannot be compelled to notice or regard agreements between the patentee and his licensee as to the limitation of the use of articles made by them. (*Metropolitan Washing-Machine Company v. Earle*, 2 *Fish.*, 203.) The purchase of a license forms no bond of allegiance to the patentee or an estoppel to the licensee from averring or proving any defense in an action for the infringement of the patent which any other person might use, (*Burr v. Duryee*, 2 *Fish.*, 275;) but when the defendants were licensees of the plaintiff, and stamped every article made with the name and date of the patent, the act was a public acknowledgment that the articles were made under the patent, notwithstanding their protest that it should not be so considered. (*Jones v. Vankirk*, 2 *Fish.*, 586.) A covenant between a patentee and his licensees that they will not manufacture certain articles may be valid as between the parties, but it does not run with the article manufactured like a covenant as to land. Such a contrivance to destroy competition may be valid, but the covenant binds only the parties to it. If a stranger purchase the product from one licensed to use the process, he need look no further, and may use it for his own purposes, without inquiring for or regarding any private agreement of licensees not to compete with one another. (*Metropolitan Washing-Machine Company v. Earle*, 2 *Fish.*, 203.) Where a railroad fifty-eight miles long, having a license to use a patented improvement, subsequently acquired by con-

consolidation and change of name two hundred and ten miles more, held, that the license did not extend to or protect the newly acquired portion. (*Emigh v. Chicago, &c., Railroad Company*, 2 *Fish.*, 387.) Where a person agreed with a patentee to pay him a certain sum on every patented article manufactured by him, the patentee brought his action for money had and received, it was held that the jury might infer the receipt of money from the fact of the sale of the article, and that judgment should be rendered for the plaintiff as upon an executed contract. (*Stanley v. Whipple*, 2 *McLean*, 35.)

20. ASSIGNEE OF LICENSE.—A license to use a patented machine may be assigned, it not being a mere personal privilege, (*Woodworth v. Curtis*, 2 *Wood. & Minot*, 527; *Wilson v. Stolley*, 5 *McLean*, 2;) but a mere license to a party, without having his assigns, or equivalent words to them, showing that it was meant to be assignable, is only a grant of a personal power to the licensee, and is not transferable by him to another. (*Troy Iron and Nail Factory v. Corning*, 14 *How.*, 216.) Where D had an exclusive license to use the patent of G for a particular purpose, covenanting not to use it for other purposes, and to pay a specified tariff for such use, and C took an assignment of such license, it was held, that C took the license subject to the obligation to pay the specified tariff on what he should make under it. (*Goodyear v. Congress Rubber Company*, 3 *Blatchf.*, 449.)

21. LICENSE RELATIVE TO SINGLE MACHINES.—The limitation of the number of machines to be made or used under a patent is not inconsistent with the grant of an exclusive right in the patent within such territory. (*Washburn v. Gould*, 3 *Story*, 162.) Where one licensed

to run a patented machine sells such machine, the license to run does not necessarily pass with the machine. (*Wilson v. Stolley*, 4 *McLean*, 275.) The right of a licensee to use a patented machine may be assigned to a third person. A machine and the right to use it is personal property rather than a mere patent right, and has all the incidents of personal property, making it subject to pass by sale. (*Woodworth v. Curtis*, 2 *Wood. & Minot*, 524.) The right to use a machine, to be constructed according to a certain specification, involves the right to make or cause to be made the machine thus permitted to be used. (*Ib.*) A right or license to use one machine during the term of the patent does not mean any particular machine then sold, but has reference to what must be considered, therefore, one machine in number at one time. A second machine may be run if the first one wears out, or is destroyed by fire, or is constructed erroneously, or is disused entirely for want of repair. (*Ib.*; *Wilson v. Stolley*, 4 *McLean*, 275.) The right to construct a patented machine is distinct from the right to use it, the latter necessarily implying the right to repair, and also to purchase, when the one in use is worn out or destroyed. (*Bicknell v. Todd*, 5 *McLean*, 236.) Where the only right to use a patent was one which resulted from the purchase of a machine, such right is coextensive with the existence of the machine, and expires with it. (*Day v. Union Rubber Company*, 3 *Blatchf.*, 488.) A grant of a right by a patentee to make and use a patented machine within a term for which it has been granted will give the purchaser of machines from such grantee the right to use the machine patented as long as the machine itself lasts; nor will this right to

use a machine cease because an extension of the patent, not provided for when the patentee made his grant, has since been allowed, and the machine sold has lasted and is used by the purchaser within the term of time covered by this extension. (*Bloomer v. Millinger*, 1 Wall., 340.)

22. OTHER CONTRACTS.—A party has no authority to grant licenses under a patent upon a mere agreement with the patentee to assign such patent. Before such a party can grant licenses, the patent must be actually assigned. (*Day v. Hartshorn*, MS., 21, 1854.) While the exclusive rights of a patentee are specially guarded from intrusion, the contracts which he makes to share them with third persons are interpreted and enforced in the same manner as other legal engagements. (*Morse v. O'Reilly*, 6 Penn. Law Jour., 501; 2 Whart. Dig., 414.) Contracts in relation to a patented machine or implement are regulated by the laws of the several States, and are subject to State jurisdiction. (*Wilson v. Sandford*, 10 How., 99.) An agreement made between B and C and others, providing for the settlement of various matters, the discontinuance of certain suits, and also as to the manufacture of a certain article, as follows: "That the said parties may each hereafter manufacture and vend spikes of such kind and character as they see fit, notwithstanding their conflicting claims to this time," must be construed with reference to the situations of the parties to it. As B claimed that he had the exclusive right, under his patent, to make such spikes, which right the defendant, C, was infringing, but defendant, C, claimed that he did not infringe such patent, but made such spikes by an entirely different method: held, that such an agreement did not give C a license to make such spikes after B's patent, but only a

right to make them by the same process or machinery he had been before using. (*Troy Iron and Nail Factory v. Corning*, 14 *How.*, 193; reversing, *S. C.*, 1 *Blatchf.*, 467.) Where a patentee granted to V the exclusive right to construct and use and vend, within a certain territory, ten *planing, tonguing, and grooving* machines, and the grant declared that V was to enjoy an exclusive use of the patent within said territory, limited to said ten machines, and afterward the patentee granted to K the exclusive right under the patent of making, using, and vending within the same territory *molding planing machines*: held, that the grant first made to V conveyed the entire interest of the patentee, and that the subsequent grant to K was void. (*Ritter v. Serrell*, 2 *Blatchf.*, 379.) To an action of covenant upon an agreement, which granted a license to make and vend a patented article, the licensee agreeing to keep an account of the articles manufactured and to pay a fixed price per pound on those sold, it is no defense that the patent is invalid. (*Wilder v. Adams*, 2 *Wood. & Minot*, 329.)

23. LICENSE; SHOP-RIGHT.—

In consideration of \$50, to be paid by the firm of Simpson, Jenks & Co., of Huntsville, Alabama, I do hereby license and empower the said Simpson, Jenks & Co. to manufacture, at a single foundery and machine shop in said Huntsville, and in no other place or places, the improvements in cotton-seed planters, for which letters patent of the United States, No. 71,846, were granted to me November 13, 1868, and to sell the machines so manufactured throughout the United States to the full end of the term for which said letters patent are granted.

Witness my hand this 22d day of April, 1869.

JOEL NORCROSS.

[5-cent revenue stamp.]

24. LICENSE, NOT EXCLUSIVE, WITH ROYALTY.—

This agreement, made this 12th day of September, 1868, between Morrison White, party of the first part, and the Uniontown Agricultural Works,

party of the second part, witnesseth: That whereas letters patent of the United States for an improvement in horse-rakes were granted to the party of the first part, dated October 4, 1867; and whereas the party of the second part is desirous of manufacturing horse-rakes containing said patented improvement; now, therefore, the parties have agreed as follows:

I. The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the conditions hereinafter named, at their factory in Uniontown, Maryland, and in no other place or places, to the end of the term for which said letters patent were granted, horse-rakes containing the patented improvements, and to sell the same within the United States.

II. The party of the second part agrees to make full and true returns to the party of the first part, under oath, upon the first days of July and January in each year, of all horse-rakes containing the patented improvements manufactured by them.

III. The party of the second part agrees to pay to the party of the first part \$5, as a license fee upon every horse-rake manufactured by said party of the second part containing the patented improvements; provided, that if the said fee be paid upon the days provided herein for semi-annual returns, or within ten days thereafter, a discount of fifty per cent. shall be made from said fee for prompt payment.

IV. Upon failure of the party of the second part to make returns, or to make payment of license fees, as herein provided, for thirty days after the days herein named, the party of the first part may terminate this license by serving a written notice upon the party of the second part; but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

In witness whereof the parties above named (the said Uniontown Agricultural Works, by its president) have hereunto set their hands this day and year first above written.

MORRISON WHITE.
UNIONTOWN AGRICULTURAL WORKS,
By JABEZ REYNOLDS, *President.*

[5-cent revenue stamp.]

III. British Assignments.

Sec.	Sec.
25. Assignments should be by deed.	30. Estoppel.
26. Patentee may assign to himself and others.	31. Registry.
27. Assignment before patent.	32. Stipulations and covenants.
28. License.	33. Form of license.
29. Form of words required.	34. Form of agreement to purchase share before patent.

25. **ASSIGNMENTS OR TRANSFERS OF PATENTS SHOULD BE MADE BY DEED;** that is, by a document or instrument in writing, on paper or parchment, and signed by the parties, sealed with their seals, and formally “delivered” as their “act and deed,” like other deeds.

Assignments should contain such stipulations and provisos as the parties think desirable; they are in practice often restricted to the disposal of a share in the patent, such as a *half*, a *third*, a *twentieth* share, and so forth; but unless the deed stipulates how the patent is to be worked, it seems difficult to say what actual beneficial interest is thus conveyed, because coproprietorship in a patent does not seem to necessitate joint participation in profits. The proper course in such cases would appear to be to place the patent in trust, to be worked by the trustee or his agent for the benefit of all the creditors, in accordance with their respective shares.

26. **PATENTEE MAY ASSIGN TO HIMSELF AND OTHERS.—**As since the property-law amendment act, 22 and 23 Vict., cap. 35, sec. 21, the proprietor of personal property may assign to himself, or herself, and others, if such an arrangement be deemed suitable, the patentee can make an assignment in that manner, with stipulations

that he or she is to work the patent and pay over to the coproprietors their respective shares in the profits; or, under an assignment made in manner above stated, a receiver or manager may be appointed to work the patent and pay over the proceeds to the proprietors according to their respective shares. Sometimes assignments are clogged with a condition that the patentee shall be employed in carrying out the invention at a stipend to be paid by the assignees, and in such cases there are frequently stipulations that the patentee shall give his time to the carrying out of the invention; but according to the case of *Stocker v. Wedderburn*, 1857, (3 *Kay & Johnson Reports*, 393,) actual compliance with such a stipulation cannot be enforced by injunction, although it may entitle those interested to damages for default. An assignment of a patent may be made by way of mortgage. Further, such assignment will be good when there is a stipulation that upon the happening of a stated event the patent shall thereupon become and be transferred. (*Cartwright v. Amatt*, 2 *Davies's Patent Cases*.)

27. ASSIGNMENT BEFORE PATENT.—It not unfrequently happens that an inventor obtains pecuniary aid when applying for provisional protection, and in such case the party supplying the money wishes to have an assignment of the patent rights. The course then usually adopted is to have a memorandum of agreement prepared and signed by the parties, obliging the inventor to assign the patent as soon as it is obtained. For in such a case there seems to be a legal difficulty in the way of making a positive assignment to take effect upon the event of the grant of the patent being made, because the inventor has then no potential position with regard to the property therein,

for it does not depend on him whether it ever will be granted, but on the volition of the Crown. There are, however, several law cases which imply that, although in strict law no proper assignment can be made before the patent is granted, yet if the person assigning receive the consideration for the contract, and afterwards become possessed of the property, the court of chancery will compel him to perform the contract; and it appears that chancery will enforce the specific performance of an agreement by injunction, even where the payment of the purchase-money is all that is required. (*Cogent v. Gibson*, 33 *Beavan Reports*, 557, 1864; *Reeve v. Whitmore*, 12 *Weekly Reporter*, 113.) But the words must be clear in order to pass the property, per Lord Chancellor Westbury. (*Holroyd v. Marshall*, 9 *Jurist Reports*, 213, 1863.)

28. LICENSE.—A patentee may license others to make, use, exercise, and vend the said invention, still retaining the property in the patent to himself, even when such license may affect the whole term of the patent and the whole extent of territory for which it is granted. This is a *sole and exclusive* license; but licenses may be sole and exclusive with regard to a certain district or place, or they may be simple licenses to use, exercise, and vend, either limited as to place or district, or not, in which cases of simple licenses other licenses may be granted to other parties, the only effect of such simple licenses being to free the licenses from any action or proceeding for infringement.

29. FORM OF WORDS REQUIRED.—It is the proper and safe course to make the license by deed, especially in cases where sums of money as royalty payments may be stip-

ulated to be paid, or conditions may be imposed as to the manner of working under the patent.

There is no particular form of words required to be used in a deed of license or a deed of assignments, but as regards any stipulation or agreement which it is intended should have full legal force and effect given to it, that should be expressly stated as a "covenant" between the parties.

30. ESTOPPEL.—Moreover, the statements made in the document must be carefully considered, because they may work what is termed an "estoppel;" that is, they may hereafter stop the truth from being brought before the court, if the truth is at variance with what has been distinctly averred by the solemn act of executing the deed containing the former contrary statements.

This is apparent from the old cases of *Oldham v. Laymead*, (cited 3 *Term Reports*, 439,) and *Bowman v. Taylor*, (2 *Adolphus & Ellis Reports*, 278;) also the modern case of *Smith v. Scott*, (*Law Journal*, vol. xxviii, p. 325;) *Lawes v. Purser*, (6 *Ellis & Blackburn Reports*, p. 930.)

And it is usually understood that without a special statement reserving the right of the licensee or assignee or purchaser of a patent to question its validity, he cannot, after executing the deed, question the validity of the patent, so as to recover back any part of the purchase-money, unless, indeed, he can show fraud in the transaction; for he is considered to have acknowledged its validity by the deed, and to be thereby estopped. (*Noton v. Brooks*, 1861, 7 *Hurlstone & Norman Reports*, 499.)

31. REGISTRY.—The patent law amendment act, 1852, requires licenses and assignments to be registered; and this is an important point to be attended to. And by the

same act, as before stated, the register may be altered in certain cases, as there stated.

In Morey's patent, 1858, (25 *Beavan Reports*, 581,) alterations were made in the register by adding the entry of a non-registered assignment made previously to another assignment which had been duly registered. In this case there was evident fraudulent dealing.

Re Green's patent, 1858, (24 *Beavan Reports*, 145,) the patentee assigned the patent, which was omitted to be registered, and afterwards he assigned to another party, who registered at once. The first assignee then registered, and moved the master of the rolls to expunge the first entry, which he ordered to be expunged with costs.

32. STIPULATIONS AND COVENANTS.—Licenses in practice, whether sole and exclusive or otherwise, are made under various circumstances, imposing various conditions on the licensee. Sometimes the payment of a fixed sum is the consideration for granting the license; more often a certain sum is paid by way of premium, and a percentage or royalty is to be paid on all articles made under the patent. This royalty is not unfrequently simply a payment of a fixed amount per machine or article, or given quantity of articles. Stipulations are introduced as to the keeping of accurate accounts or verification of accounts by statutory declaration; for inspection by patentee of the books of accounts and of the manufactory or workshops of the licensee; and even the power of distraint for non-payment of royalties is in some cases stipulated for.

It may be advisable that in no case shall a license be granted without either a premium at the time of grant or a minimum sum per annum being reserved as pay-

able, as otherwise the licensee, after having obtained the license and led the patentee to believe that his patent has been put in working train, may possibly, from various circumstances, be induced to refrain from any operations under it, and deprive him of the expected benefit.

However, the stipulations and conditions of licenses and assignments must be such as the law will give effect to.

It is not unusual to introduce into licenses a condition that the licensee shall not make any machines or articles of a similar kind without the patent improvements being applied thereto; and it has been argued that this stipulation could not be supported in law, as being in restraint of trade.

In *Jones v. Lees*, 1868, (*Exchequer Reports, new series*, vol. i, p. 193,) such a covenant was upheld, it not being a covenant for an unreasonable time, but only for the term of the license.

The construction of the covenants in assignments and licenses follows the usual rules of law in construing deeds, as to which the case of *Webster v. Newsome*, (5 *Hurlstone & Norman*, 42,) may be referred to by those who wish to enter into details on that point.

In assignments, and perhaps in licenses, there may probably be covenants to pay the deferred stamp duties at the third and seventh years. In the case of *Hill v. Mount*, (18 *Common Bench Reports*, 72,) an agreement to assign and pay for letters patent was held not to compel the payment of the third year's stamp duty.

It is sometimes stipulated in licenses that the licensee shall use his best endeavors to detect infringers, and that the patentee shall prosecute them; and sometimes the licensee is left to prosecute them.

According to the case of *Renard v. Levenstein*, 1865, (Aniline dye patent,) an exclusive licensee has a right to use the name of the patentee to bring actions of infringement.

And in *Dunnicliff & Bagley v. Mallett, Dunnicliff & Bagley v. Berkin and another*, 1859, (7 *Common Bench Reports*, new series, p. 209,) an assignee of a part of a patent was adjudged to have a right to bring an action of infringement without joining the possessors of the other part or parts.

It may be remarked that both assignments and licenses, whether exclusive or otherwise, may have reference to *part* of any invention only. Thus they may refer to the use of the invention for a certain class of articles, or to some parts of a combination, and not to the whole, and so forth.

Both assignments and licenses usually contain covenants or clauses that all differences between the parties shall be submitted to arbitration; and a short way of doing this is to provide that the proceedings for arbitration shall be in accordance with the common-law-procedure act, 1854, (17 and 18 Vict., cap. 125,) as that act contains explicit directions on the subject. It is also desirable that all questions of the construction of the wording of the deeds should be required to be submitted to some particular conveyancing counsel or the conveyancing counsel of the court of chancery, either ultimately or primarily. In preliminary agreements it should always be provided that any further deed or document that may be deemed requisite shall be afterwards executed, in order to give legal effect to the transaction according to its true intent and meaning.

33. FORM OF LICENSE TO USE A PATENTED INVENTION.—

This indenture, made the — day of —, between [*grantor*] of, &c., of the one part, and [*licensee*] of, &c., of the other part: Whereas by letters patent dated the — day of —, her majesty Queen Victoria, granted unto [*grantor*,] his executors, administrators, or assigns, for the term of fourteen years, the exclusive privilege of using, exercising, and vending, within the united kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, the invention of a certain method of weaving: And whereas the said [*grantor*] hath become entitled to the patent and the benefit thereof: And whereas the said [*grantor*] hath agreed with the said [*licensee*] to grant to him a license to use the said invention to the intent and upon the terms herein expressed: Now this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the covenants and agreements hereinafter entered into by the said [*licensee*,] he, the said [*grantor*,] doth grant unto the said [*licensee*] full license and authority, within the limits granted by the said letters patent, to use and exercise the said invention so far as the same relates to the weaving or manufacturing of —, but not further or otherwise; and to vend all such — as shall have been woven or manufactured by him during the continuance of this license or agreement, by means of or according to the principle of the said invention, for and during the unexpired residue of the term granted by the said letters patent, if the said [*licensee*] should so long live, subject nevertheless to the restrictions and provisions hereinafter contained, yielding and paying therefor unto the said [*grantor*,] his executors, administrators, and assigns, at the times and in the manner hereinafter expressed, the royalties or sums of money hereinafter by the said [*licensee*] covenanted to be paid: And the said [*licensee*] doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [*grantor*,] his executors, administrators, and assigns, in manner following; that is to say:

1. That the said [*licensee*] shall pay to the said [*grantor*,] his executors, administrators, and assigns, the following rates and tributes: — for all — woven or manufactured according to the principles of the said invention, in which no silk shall be used, either in warp or weft, for every shuttle used and employed in weaving the above-mentioned fabrics, for every week of such use, if the said fabric shall not exceed in width — inches, the sum of —; if above — inches and not exceeding — inches, the sum of —; and for every additional inch in width above — inches, the further sum of —; and so in proportion for any less period of user than a week: And for all — woven or manufactured according to the principles of the said invention, in which silk shall be used, for

every shuttle used and employed in weaving the above-mentioned fabrics, for every week of such user, if the fabric shall not exceed in width _____ inches, the sum of _____; if above _____ inches and not exceeding _____ inches, the sum of _____; and for every additional inch in width above _____ inches, the further sum of _____; and so in proportion for any less period of user than a week; such payments to be made on the first day of any calendar month during the continuance of the license, the first payment to be made on the first day of the month ensuing the date hereof, provided that the said [*licensee*] shall in no case, either in silk or cotton, manufacture any webs of a greater width than _____ inches.

2. That the said [*licensee*] shall not use or employ any shuttle in manufacturing according to the principles of the said invention during the night, but only in the usual and ordinary hours of day labor, and for not more than _____ hours in each twenty-four hours.

3. That on or before the last day of each calendar month during the continuance of this license the said [*licensee*] shall, by notice in writing, inform the said [*grantor*,] his executors, administrators, or assigns, or his or their agent in that behalf, of the number of shuttles intended to be used or employed in the ensuing month in the weaving of the said _____, distinguishing those to be used for the weaving of fabrics in which silk shall be used, and of the place or places where such shuttles respectively are intended to be employed.

4. That in case, at the expiration of any calendar month during the continuance of this license, the said [*licensee*] shall be desirous of increasing the number of shuttles employed by him for the purpose aforesaid, he shall, previously to such employment, give to the said [*grantor*,] his executors, administrators, or assigns, or his or their agent in this behalf, notice in writing of such intention and of the place or places where such increased number of shuttles are intended to be employed; and that the said [*licensee*] shall be deemed and taken to have used and employed for the purposes aforesaid, from the period of giving any such notice or notices as aforesaid until the expiration of the current calendar month for the time being, all the shuttles which in any such notice or notices as aforesaid he shall have signified his intention to use and employ, whether he shall in fact have so used or employed them or not.

5. That the said [*licensee*] shall, within the first three days of each calendar month during the continuance of this license, give unto the said [*grantor*,] his executors, administrators, or assigns, or his or their agent in that behalf, a statement in writing, signed by the said [*licensee*] or his agent, of the number of shuttles used and employed by the said [*licensee*] during the

preceding calendar month in the weaving of the said ———; distinguishing those used for the weaving fabrics in which silk shall be used, and also specifying and distinguishing the widths manufactured by the said shuttles respectively, and the respective times during which such shuttles shall have been employed.

6. That if at any time or times during the continuance of this license the said [*licensee*] shall use or employ any shuttles for weaving ——— by means of or according to the principles of the said invention, without previously giving to the said [*grantor,*] his executors, administrators, or assigns, or his or their agent in that behalf, such notice in writing as is hereinbefore agreed to be given of his intention to use the same; or if the said [*licensee*] shall at any time during the continuance of this license neglect or refuse to give in such notice as is agreed to be given during the first three days of every calendar month of the shuttles used during the preceding month, then and in such case (and when and so often as the same shall happen) the said [*licensee*] shall, on the first day of the calendar month next after such use or employment or neglect as aforesaid, pay unto the said [*grantor,*] his executors, administrators, or assigns, the sum of £——— for each and every shuttle which shall have been so used or employed or of which no notice shall have been given as aforesaid, contrary to the covenant in that behalf hereinbefore contained.

7. That the said [*licensee*] shall not, at any time or times during the continuance of this license, use or employ, or knowingly permit or suffer to be used or employed, any shuttle whatever for weaving the said ——— according to the principles of the said invention in any place or places other than such as shall have been specified in the notice in writing which shall have been given by the said [*licensee*] of his intention in that behalf.

8. That if at any time or times during the continuance of this license the said [*licensee*] shall use or employ, or knowingly permit or suffer to be used or employed, any shuttle for weaving the said ——— according to the principles of the said invention in any place or places other than such as shall have been specified in such notice as aforesaid, or otherwise contrary to any of the stipulations herein contained; then and in every such case the said [*licensee*] shall, on the first day of the calendar month next after such use or employment, pay unto the said [*grantor,*] his executors, administrators, or assigns, the sum of £——— for each and every shuttle which shall have been so used or employed contrary to any of the stipulations herein contained.

9. That it shall be lawful for the said [*grantor,*] his executors, administrators, or assigns, and his or their agent or agents, at all seasonable times

in the daytime during the continuance of this license, to enter into and upon any factory, shop, house, or other place where the said [*licensee*] may be carrying on any manufacture or business, and then and there to inspect any shuttles and machinery which may be employed by the said [*licensee*] in the weaving of such ——— as aforesaid, [or in any other weaving process,] and to ascertain the number of shuttles and the width of the fabrics woven therewith.

10. That the said [*licensee*] shall purchase of and from Messrs. ———, ———, or of such other persons as the said [*grantor*,] his executors, administrators, and assigns, shall nominate or appoint in that behalf, all the ——— which the said [*licensee*] shall during the continuance of this license use or employ in the manufacture of the said ——— fabrics as aforesaid, they, the said ———, ———, or such other person or persons as aforesaid, selling the same to the said [*licensee*] at the usual and accustomed price for the time being charged by them or him for such ———, and that the said [*licensee*] shall not, without the license and consent of the said [*grantor*,] his executors, administrators, and assigns, use or employ in their shuttles any other than the said ——— so purchased.

11. That if the said [*licensee*] shall, at any time or times during the continuance of this license, use or employ in the manufacture of such ——— as aforesaid any ——— other than such as shall be purchased by him of and from the said ———, or such other person or persons as aforesaid, then and in every such case he the said [*licensee*] shall, provided the said ———, or such other person or persons as aforesaid, shall have been willing to sell the same to him at the usual and accustomed price, pay unto the said [*grantor*,] his executors, administrators, and assigns, the sum of ——— for each and every pound weight of such ——— which he, the said [*licensee*,] shall so use as last aforesaid.

12. That he, the said [*licensee*,] will not at any time hereafter assign or transfer or underlet the license hereby granted, or in any manner exercise or permit the same to be exercised, for the benefit, either wholly or in part, of any person or persons whomsoever, as manufacturer or manufacturers, other than the said [*licensee*,] and that this license shall absolutely cease and determine on the said [*licensee*] making any attempt so to assign or transfer or underlet the same, or becoming bankrupt, or suffering his estate and effects to be vested in assignees in insolvency or bankruptcy or in trustees for the benefit of creditors.

13. That all the sums of money hereinbefore agreed to be paid on breach of any stipulation herein contained shall be the stipulated damages for such breach, and not penalties.

In witness, &c.

34. FORM OF AGREEMENT FOR PURCHASE OF A SHARE OF AN INVENTION AND OF THE PATENT TO BE OBTAINED FOR THE SAME.

Memorandum of an agreement indented, made, and entered into this 26th day of December, 1831, between ———, of ———, in the county of ———, of the one part, and ———, of ———, in the county of ———, of the other part:

Whereas the said ——— hath recently invented and discovered certain improvements in ———, never before known or used in this kingdom;

And whereas the said ——— intends forthwith to apply for her majesty's royal letters patent, for her special license and authority, for him, the said ———, his executors, administrators, and assigns, to make, use, exercise, and vend his said invention for his and their sole use and benefit during the term of fourteen years;

And whereas the said ——— hath contracted with the said ——— for the purchase of one-fifth share of and in the said invention, and the benefits thereof, and of the said letters patent, and all improvements thereof applicable thereto, and all future letters patent in respect thereof, and advantages arising therefrom, at the sum of ———, to be paid as hereinafter mentioned:

Now, these presents witness, that the said ——— agrees to sell, and the said ——— to purchase, one part or share of and in the said invention, of and in the said letters patent, and also of and in all improvements whatsoever which the said ——— shall, or may hereafter, make or discover in the said invention, and of and in all future letters patent (if any) which he, the said ———, shall or may obtain for or in respect of such improvements, and of and in all rights, profits, or advantages whatsoever incident to the said letters patent, whether the same shall arise from making or manufacturing the said improved ———, or by the vending or sale thereof, or of any part thereof, or from the granting or sale of any license or licenses for the using or manufacturing thereof, or of any part thereof, or from the working thereof, or by any other means howsoever; the same to be held by the said ———, together with all powers and remedies for recovering the moneys to arise as aforesaid for all the term for which the said letters patent shall be granted, and for such renewed term or terms as may hereafter be granted therein:

And it is hereby agreed, that the said ——— shall, and within ——— days next after the date of these presents, apply and petition for the said letters patent, and shall and will follow up such petition by all proceedings

and means necessary and usual in such cases, so that the said letters patent may be obtained and the specification duly enrolled as soon as circumstances will permit; the same letters patent to be at the costs and expenses in all things of the said — —;

And that the said — — shall and will, within — — days after the said letters patent, or any future letters patent, shall be granted, or at any time or times thereafter, if so required by the said — —, and at his expense, by such good and sufficient conveyances and assurances in the law as the said — — or his counsel shall advise and require, assign and make over the said — — part or share, as aforesaid, unto the said — —, his executors, administrators, or assigns; and shall and will, in such assignment or assurance, enter into all usual covenants for the quiet possession or enjoyment and further assurance of the said share; and also into a covenant not to do, or assent to, or cause to be done, any act, deed, matter, or thing whatsoever, whereby or in consequence of which the said letters patent shall or may be forfeited or invalidated, or the right of the said — — to his share thereof be affected or incumbered; and also that the business of the said letters patent shall be managed and conducted by the said — —, and that he shall keep regular accounts of the same, and that such accounts shall be at all times open to the examination and inspection of the said — —, and that he shall have full power to make copies of or extracts from the same; and that the said — — shall pay the said sum of £ — — in manner hereinafter mentioned, viz, — —; and that the sum of £ — — shall be applied by the said — — in payment of the fees and expenses incident to obtaining the said letters patent;

And it is hereby further agreed, that in case the said — — shall hereafter obtain letters patent for — —, then that he will, if and when thereunto requested by the said — —, and in consideration of the further sum of £ — —, to be paid to him by the said — —, assign to the said — — one — — part or share of such last-mentioned letters patent, and of all benefit and advantage arising therefrom;

And it is lastly agreed, that if the said — — shall hereafter be inclined to sell and dispose of any further share or shares of the said letters patent, or either of them, that he will, in the first instance, offer the same to the said — —; and the said — — agrees that he will not in any instance whatever sell and dispose thereof, or offer to sell and dispose thereof, to a third person, before the said — — shall have refused to purchase the same.

IV. French Assignments and Powers of Attorney.

SEC.	SEC.
35. Legal formalities.	38. Transfers by attorney.
36. Object and effect of registry.	39. Number of assignees unlimited.
37. Formalities when the assign- ment is not drawn up in France.	40. Acte de cession.
	41. Acte unilateral de cession.
	42. Pouvoir

35. LEGAL FORMALITIES.—Patents may be assigned by the patentees themselves, or by persons acting in their names with regular powers; the assignment may be of the whole or only of part; it may be for the time remaining, or for a portion of it. All deeds of assignment must be made in a particular manner, and according to forms prescribed by the French law. A notary public is the only person in France qualified to draw up a deed of assignment, which must afterwards be recorded in the office of the prefect of the department in which the parties reside, if they reside in the same department, or in the office of the prefects of their respective departments, if they do not reside in the same. Should both the parties reside outside of France, the recording may take place in Paris, at the prefect's office.

Patentees forfeit all their rights unless they have paid in due time their annual patent fees, and no total or partial assignment can take place until the entire patent fees are paid.

No assignment is to be registered, except on the production and delivery, 1st, of the receipt of the payment made in due time of the last annual patent fee, distinct from the first annual patent fee; 2d, of a receipt to the receiver general in the department of the central receiver

at Paris for the entire payment of the complimentary patent fees; and, 3d, of an authentic abstract of the deed, executed before a notary of the department, and establishing the total or partial transfer of the patent, either gratuitously or for a consideration. The assignment, if regularly made, is registered in the same manner as the demand for the patent, and, provided the forms above stated have been regularly followed in the drawing up of the deed of assignment, the registering can never be refused.

86. OBJECT AND EFFECT OF REGISTRY.—The authenticity of the assignment, and the publicity given to it, have been required by law to preclude the possibility of fraud. Otherwise a patentee might have sold his patent to two or three different persons, and received the value of it twice or thrice over, if the public at large had not been officially informed that the rights of the patentee had passed into other hands.

The law declares null all assignments with reference to which the above forms have not been followed. But this nullity, merely introduced for the protection of the public, cannot be opposed by one of the parties against the other, their heirs, or assigns, who would be estopped by their own acts from making such a defense. An irregular assignment, however, confers no right to the patent, as far as relates to a third party. And notwithstanding the first assignment, if the patentee make a second and regular one, it would stand good; but the first assignment, though it would not confer any legal right to the patent itself, would nevertheless enable the purchaser to recover from the original patentee the moneys paid, the expenses incurred, and also damages.

A person holding an original patent, to which several other patents have been annexed for improvements, cannot transfer the original patent without the improvements, nor the improvements without the original patent; the whole being considered as only one patent.

37. FORMALITIES WHEN THE ASSIGNMENT IS NOT DRAWN UP IN FRANCE.—If the deed of assignment be drawn up in a foreign country, it still must be made by a notary public, whose signature must afterwards be certified by the French consul residing in the town where the transfer is executed. It may also be necessary to observe that the execution of the party assigning must be attested by the signature of two witnesses besides that of the notary. This deed must then be sent to France, and there, after being translated by a sworn interpreter, it must be deposited in a French notary's office, who will deliver a copy certified, which will be as legal and as binding as if made in France. This transfer must likewise be recorded and published in the same way above mentioned.

It would be more expeditious and less expensive to have the deed drawn up in French, before a foreign notary public, whose signature should be afterwards certified by a French consul; there would then be no necessity for having the deed translated and deposited in a French notary's office, and it would be sufficient to get it recorded.

38. PATENTEE MAY AUTHORIZE TRANSFER BY POWER OF ATTORNEY.—The transfer of a French patent may be made in France for the patentee by the bearer of a regular power from him to that effect. The forms prescribed for the validity of the transfer of patents must likewise be followed with respect to the power; it must be drawn

up by a notary public and not by an attorney, and the execution of the party must be witnessed, signed, and certified in the same manner as the deed of transfer.

As the assignment of a patent must be accepted by the transferee, his presence and signature are required to make the transfer definitive; nevertheless, he may empower a person to accept in his name the assignment, and then the transfer is completely effected. The same forms are required for this power as the preceding one.

39. NUMBER OF ASSIGNEES UNLIMITED.—Nothing in the French law limits the number of persons to whom a patent may be assigned; therefore, no authority from the legislature is required to make an assignment to more than five persons, as it was formerly by the English law. On the contrary, the number of persons who are able to take an interest in a patent is unlimited.

All that has been said respecting the forms to be followed in the assignment of a patent is applicable to licenses, with the exception of the recording, which is not necessary.

40. ACTE DE CESSION.—

Par-devant moi notarie royal et public en la ville de——, en présence des témoins ci-après dénommés, domiciliés et qualifiés.

Est comparu en personne M. N——, mécanicien, demeurant à——, lequel a par ces présentes, cédé et transporté, sans autre garantie que celle de ses faits et promesses personnelles, à M. N——, demeurant à——, à ci présent et ce acceptant, le brevet d'invention (d'importation ou de perfectionnement,) pris en France, par le comparant, le —— mil huit cent —— pour cinq, dix, ou quinze années, pour (*mettre ici le titre textuel du brevet.*)

Le présent transport est ainsi fait, moyennant la somme de mille francs que le sieur N—— reconnaît avoir reçu, et dont il donne quittance. Et en outre à la charge par le cessionnaire, qui s'y oblige, de payer les frais du présent acte, et de remplir les conditions imposées aux cessionnaires par les lois spéciales.

Dont acte fait et passé en l'étude, le ———, en présence de M. R. ———, négociant, demeurant à ———, et M. S. ———, aussi négociant, demeurant à ———.

Et ont les parties signé avec les témoins, et ledit notaire après lecture faite.

41. ACTE UNILATERAL DE CESSION.—

Par-devant moi notaire royal et public en la ville de ———, en présence des témoins ci-après dénommés, domiciliés et qualifiés.

Est comparu en personne M. N. ———, mécanicien, demeurant à ——— lequel a, par ces présentes, cédé et transporté, sans autre garantie que celle de ses faits et promesses personnelles, à M. N. ———, demeurant à ———, le brevet d'invention (d'importation et de perfectionnement) pris en France par le comparant, le ——— mil huit cent ———, pour cinq, dix, ou quinze années pour (*mettre le titre du brevet.*)

Le présent transport est fait moyennant la somme de mille francs, que le comparant reconnaît avoir reçu des avant ce jour du sieur N. ———, et dont il donne quittance.

Et en outre à la charge par le cessionnaire de payer les frais des présentes et tous autres frais et honoraires auxquels la régularisation des présentes pourra donner lieu, et enfin d'accomplir les formalités imposées aux cessionnaires de brevets par les lois spéciales.

Le sieur N. ———, en acceptant la présente cession, devra s'obliger en même temps à accomplir toutes les conditions y stipulées.

Dont acte fait et payé en l'étude, le ——— en présence de M. R. négociant, demeurant à ———, et de M. S. aussi négociant, demeurant à ———.

Et a, le dit comparant, signé avec les témoins, et le notaire après lecture faite.

42. POUVOIR.—

Par-devant ——— ——— est comparu M. A. B. ——— ———.

Lequel a, par ces présentes, constitué pour son mandataire général et spécial ———, auquel il donne pouvoir de prendre, au nom du comparant, tous brevets d'invention pour découvertes qu'il peut avoir faites ou qu'il pourra faire; fixer la durée de ces brevets ainsi qu'il le jugera convenable; prendre pareillement tous certificats d'addition devant se rattacher, soit à des brevets obtenus par le comparant, soit à ceux qu'il pourra obtenir ultérieurement.

Aux fins que dessus, et dans les différents cas qui pourront se présenter, faire toutes déclarations, élire tous domiciles, signer et parapher toutes pièces, requérir tous procès-verbaux, signer et émarger tous registres, et en

general faire le nécessaire, promettant l'avoir pour agreable et le ratifiant par avance.

Dont acte fait en l'étude, le ———.

The following power, authorizing an attorney to prosecute an application for a patent, may be used for any European State:

Le soussigné ——— constitue pour ——— mandataire spécial aux effets ci-après:

M ———.

Auquel il donne pouvoir de pour ——— et en ——— nom, faire toutes les démarches nécessaires pour obtenir de S. M. l ——— d ——— un brevet d ——— de ——— ans, pour ———.

En conséquence, présenter à Sa dite Majesté l ——— ou à toute autre autorité compétente, toutes Demandes, Petitions et Requêtes; se présenter à tous Ministères, Bureaux, Greffes et Commissions que besoin sera; signer et approuver toutes pieces descriptives; requérir tous procès-verbaux, contracter tous engagements; verser ou retirer toutes taxes; en prendre quittance ou en donner décharge; faire toutes demandes de brevet d'addition ou de perfectionnement; les échanger ou retirer s'il y a lieu; consentir la radiation de toutes inscriptions; retirer également les titres définitifs ainsi que toutes les pieces y afférentes; signer tous actes ou proces-verbaux de désistement des privilèges d'Etranger: Prendre la parole et répondre pour le constituant à toutes réclamations qui pourront surgir relativement au Brevet dont il s'agit, pendant toute la durée de celui-ci. Aux fins sus énoncées, passer et signer tous actes, élire domiciles; substituer dans tout ou partie des présents pouvoirs, et dans les différent cas qui pourront se présenter, faire généralement tout ce qui sera utile pour arriver à l'obtention du privilège sus relaté, promettant le constituant avoir le tout pour agreable, et le ratifier au besoin.

Mil huit cent ———.

V. Assignment of Copyright.

Sec.

43. Copyright assignable.

44. Recording.

Sec.

45. Form of assignment.

43. COPYRIGHT ASSIGNABLE.—Copyrights shall be as-

signable in law by any instrument of writing. (*Act of July 8, 1870, § 89.*)

To be valid and operative, an assignment of an interest in a copyright must be in writing; but an agreement to assign may be by parol. (*Gould v. Banks, 8 Wend., 565.*)

An assignment of a "copyright" in general terms is to be referred to what was then in existence, and not to any future contingency. It should not be extended by construction beyond the first term, unless it seems to be so actually meant by the author, and to include a future contingency. (*Pierpont v. Fowle, 2 Wood. & Minot, 43-45.*) But if it uses language looking beyond the existing copyright, the rule is otherwise. (*Ib.*)

44. RECORDING.—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. (*Act of July 8, 1870, § 89.*)

An assignment of a copyright, although not recorded, is still valid as between the parties and as to all parties not claiming under the assignors. (*Webb v. Powers, 2 Wood. & Minot, 510.*)

45. ASSIGNMENT OF COPYRIGHT FOR ORIGINAL AND RE-NEWED TERMS.—

Indenture made this 23d day of April, 1870, between Charles Russell, of Brooklyn, State of New York, of the one part, and George Arnold, of the city and State of New York.

Whereas the said Charles Russell has written and composed a book, entitled "The Law of the Farm:"

Now this indenture witnesseth, that the said Charles Russell, for and in consideration of the sum of \$500, to him in hand paid by said George Arnold, the receipt of which is hereby acknowledged, has bargained, sold, and assigned, and by these presents does bargain, sell, and assign unto the said

George Arnold, his heirs, executors, administrators, and assigns, all the said book, and the manuscript thereof, and all his right, title, and interest, property, claim, and demand, of every kind and nature whatsoever, of, in, and to the same, and in any and all copyrights, and any and all renewals thereof, which may or can be had, or secured, or taken, in respect to said book or manuscript, under and by virtue of any acts of Congress, with any and all profit, benefit, and advantage that shall or may arise by or from printing, publishing, or vending the same, during the original or renewed terms of any such copyright. To have and to hold the same to the said George Arnold, his heirs, executors, administrators, and assigns forever.

And the said Charles Russell agrees to examine and correct the proof-sheets of said work as fast as they shall be furnished, and to make and complete a full and correct index therefor, as soon as may be after all the signatures of the text shall be furnished for that purpose.

And the said George Arnold, for himself, his heirs, executors, administrators, and assigns, covenants and agrees to furnish and deliver, free of cost, to said Charles Russell, twenty-five bound copies of said work, within three months after the said index shall or may be completed.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

CHARLES RUSSELL. [L. S.]

GEORGE ARNOLD. [L. S.]

Sealed and delivered
in presence of—

JOHN DOE,
RICHARD ROE.

VI. Forms of Procedure in Patent Causes.

- | | |
|---|---|
| <p>SEC.
46. Bill in equity.
47. Equity subpoena to appear and answer.
48. Equity precept for appearance.
49. Equity motion for leave to file supplemental bill.</p> | <p>SEC.
50. Equity answer.
51. Equity replication.
52. Equity notice for proofs under oral examination.
53. Declaration.
54. Plea and special notice.</p> |
|---|---|

46. BILL IN EQUITY.—

UNITED STATES CIRCUIT _____, } *In Equity.*
District of _____,

To the honorable the judges of the circuit court of the United States

for the _____ circuit, within and for the _____ district of _____, _____, a citizen of the State of _____, (or a corporation duly established under the laws of the State of _____,) brings this his bill of complaint against _____, a citizen (or citizens) of _____, in said district.

And thereupon your orator complains and says, that _____, a citizen of the United States, was the true and original inventor of a new and useful improvement in _____, which said improvement was not known or used by others before the invention and discovery thereof by _____, who thereupon did apply to the Commissioner of Patents of the United States for letters patent for said improvement, and fully and in all respects complied with all the requirements of the law in that behalf, and especially made oath that he verily believed himself to be the true inventor or discoverer of the said improvement, and also paid into the Treasury of the United States the sum of thirty dollars, and presented to the Commissioner of Patents of the United States a petition, setting forth his desire to obtain an exclusive property in said improvement, and praying that letters patent might for that purpose be granted unto him; and also delivered and filed in said office of the Commissioner of Patents a written description of his said improvement, in such full, clear, and exact terms as to enable any person skilled in the art with which the said improvement is most nearly connected to make and use the same; which said description was duly signed by the said _____ and attested by two witnesses; and thereupon the said Commissioner of Patents caused letters patent to be made out and issued in the name of the United States of America, in due form of law in all respects, bearing date the _____ day of _____, in the year one thousand eight hundred and _____, whereby was granted unto the said _____, his heirs, administrators, or assigns, for the term of _____ years from the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, which is entitled in said letters patent, "A new and useful improvement in _____;" and the said letters patent having been signed by _____, Secretary of the Interior of the United States, and countersigned and sealed with the seal of the Patent Office by _____, Commissioner of Patents of the United States, and the same, having been duly recorded, were issued and delivered unto the said _____.

And your orator further shows unto your honors, that the defendant, _____, since the _____ day of _____, has been engaged in making, using, and selling a large amount of _____, such as is described in said patents, and that the defendant refused to pay to your orator any of the profits which _____ made by such unlawful manufacture, use, and sales, or to

desist from making, using, and selling the same, in violation and infringement of your orator's rights, secured to him as aforesaid, and without his consent or allowance.

All which actings and doings are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator can only have adequate relief in this honorable court, where matters and things of this kind are made cognizable by statute: To the end, therefore, that the said defendant may, if — can, show why your orator should not have the relief hereby prayed, and may, upon — corporal oath and according to — best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the matters and things hereinbefore stated and charged:

And that the said defendant may answer the premises, and that — may be decreed to account with and pay over to your orator the profits which — has or might have made by — infringement of said letters patent in such unlawful manufacture, use, and sale of —.

May it please your honors, the premises considered, to grant unto your orator a writ of injunction, issuing out of and under the seal of this honorable court, (or issued by one of your honors, according to the form of the statute in such case made and provided,) enjoining and restraining the said — clerks, attorneys, agents, servants, and workmen from making any — as is described in such — letters patent,

And that your orators may have such further and other relief as the nature of the case may require and to your honors seems meet;

May it please your honors to grant unto your orator not only the writ of injunction conformable to the prayer of this bill, but also a writ of subpoena, directed to the said —, commanding —, on a day certain, therein to be named, to be and appear in this honorable court, then and there to answer the premises, and to stand to, perform, and abide such further order, direction, and decree as may be made against —:

And your orator, as in duty bound, will ever pray, &c.

Solicitor and of Counsel for Complainant.

UNITED STATES OF AMERICA, }
District of —. } ss.

At —, in the county of —, and district aforesaid, on — day of —, A. D. 18—, personally appeared the above-named —, who, being duly sworn according to law, deposeth and saith that —

complainant in the foregoing bill, and has read the same, and knows the contents thereof;

That the said bill is true of his own knowledge, except as to those matters which are therein stated to be on information and belief of the complainant, and as to those matters he believes it to be true;

That this deponent verily believes ——— to have been the first and original inventor of the improvements claimed in said ——— letters patent.

47. EQUITY SUBPENA TO APPEAR AND ANSWER.—

The President of the United States of America to ———, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States for the ——— district of New York, in the second circuit, on the ———, to answer to a bill of complaint exhibited against you in the said court by [L. S.] ———, and to do further and receive whatever said court shall have considered in that behalf; and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Hon. ———, Chief Justice of the Supreme Court of the United States, at the city of ———, in said ——— district, the ——— day of ———, eighteen hundred and ———.

—————, *Clerk.*

—————,
Solicitor for Plaintiff.

Memorandum.—The defendant is to enter his appearance in the suit above mentioned in the clerk's office at ———, on or before the day at which the above subpoena is returnable, otherwise the bill may be taken *pro confesso*.

—————,
Solicitor for Plaintiff.

Marshal's Return.—I hereby certify that I served the within subpoena on ———, at ———, on the ——— day of ———, A. D. 18—, and on ———, at ———, on the ——— day of ———, A. D., 18—, by delivering to and leaving with them and each of them a copy of this subpoena, and at the same time showing them and each of them this original, with the seal of the court attached.

—————,
Deputy.

DISTRICT OF NEW YORK.

I hereby authorize and depute ——— to execute the annexed process and make due return according to law.

—————,
United States Marshal ——— District of New York

—————,
Deputy Marshal.

48. EQUITY PRECEPT FOR APPEARANCE.—

UNITED STATES CIRCUIT COURT ——— DISTRICT OF NEW YORK.

_____ }
vs. } *In Equity.*

The clerk of this court will please enter my appearance as solicitor for the defendant in the above-entitled cause.

Yours, &c.,

Solicitor for Defendant.

Dated _____, 18—.

49. EQUITY MOTION FOR LEAVE TO FILE SUPPLEMENTAL BILL.

UNITED STATES CIRCUIT COURT ——— DISTRICT OF NEW YORK.

_____ }
vs. } *In Equity.*

The complainants in the above-entitled cause move the court, upon the proposed supplemental bill of complaint herewith filed, for leave to file the same as a supplemental bill of complaint in said cause, and that the same stand filed therein as of the rule day for the first Monday of _____, A. D. 18—, (motion to be heard on said rule day before his honor _____, at _____ o'clock.)

Dated _____.

Solicitor for Complainant.

50. EQUITY ANSWER.—

UNITED STATES CIRCUIT COURT ——— DISTRICT OF NEW YORK.

_____ }
vs. } *In Equity*

The answer of _____ to the bill of complaint of _____, complainant.

The defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answers and says:

All of which matters and things the said defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and hereby prays to be hence dismissed with his reasonable costs and charges in that behalf sustained.

Solicitor and of Counsel.

DISTRICT OF NEW YORK, }
 County of _____ } ss.

_____, being duly sworn; says that he is the defendant in the above-entitled cause; that he has read the foregoing answer, and knows the contents thereof; and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

Sworn to before me this _____ day of _____, A. D. 18—.

51. EQUITY REPLICATION.—

UNITED STATES CIRCUIT COURT _____ DISTRICT OF NEW YORK.

_____ }
 vs. } *In Equity.*

The replication of the above-named complainant to the answer of _____, defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that _____ will aver, maintain, and prove _____ bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by repliant without this; that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things _____, repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by _____ said bill _____ has already prayed.

Solicitor for Complainant.

52. EQUITY NOTICE FOR PROOFS UNDER ORAL EXAMINATION.—

UNITED STATES CIRCUIT COURT _____ DISTRICT OF NEW YORK.

_____ }
 vs. } *In Equity.*

SIB: You will please take notice that the complainants in said cause desire the evidence to be adduced therein to be taken orally, under the 67th rule of the Supreme Court, as amended; and you will further take

668. CONTRACTS, ASSIGNMENTS, AND PRECEDENTS.

notice, that by an order made in said cause by _____, Esq., one of the examiners of said court, the examination of witnesses on the part of the said complainants will take place before said examiner at _____, in the city of _____, on _____ the _____ day _____, A. D. 18____, at _____ o'clock, _____ and proceed as said examiner may direct.

Dated _____.

Yours, &c,

Solicitor for Complainants.

To _____,

Solicitor for Defendants and _____, Defendants.

53. DECLARATION.—

UNITED STATES CIRCUIT COURT _____ DISTRICT OF NEW YORK.

vs. }

Of the _____ day of _____, 186____. As yet of _____ term, in the year of our Lord one thousand eight hundred and _____.

DISTRICT OF NEW YORK, *ss.*

_____, being a citizen of the United States of America, and a resident of _____, plaintiff in this suit, by _____, his attorney, complains of _____, defendant, of the said _____ district, of a plea of trespass on the case: For that whereas the said _____, of the town of _____, in the county of _____, and State of New York, and in said district, before and at the time of the making of the letters patent and of the committing of the grievances by the said _____, as heretofore mentioned, were the true, original, and first inventors of a certain new and useful improvement in _____, which was not known nor used before such invention or discovery as aforesaid, and were not at the time of the plaintiff's application for letters patent therefor, as hereinafter mentioned, in public use or on sale with the consent or allowance of said _____ or either of them; and whereas said _____, being such original and first inventors, and being citizens of the United States, obtained for said invention letters patent of the United States in due form of law, under seal of the Patent Office, bearing date the _____, and whereas the said letters patent having been wholly assigned by the said _____ to the said _____, and, having been surrendered by the said _____ for being partially invalid on account of a defective specification, were canceled and new letters ordered to issue to said _____ on the amended specification; and whereas the plaintiff

iff did accordingly obtain new letters patent for such invention in due form of law upon such amended specification, under the seal of the Patent Office, and signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, and bearing date the _____, eighteen hundred and _____, which said reissued letters patent did grant according to law to the said _____, his heirs, administrators, and assigns, for the term of _____ years from the said _____ day of _____, eighteen hundred and _____, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof was given in the words of the said _____, in a certain schedule to said letters annexed and made part thereof, as by reference to said letters patent and the said specification thereto annexed, which the plaintiff now brings here into court, will fully appear.

And the plaintiff further says, that from the time of the granting to him of the said letters patent hitherto he has made, used, and vended to others to be used, the said improvement, to his great advantage and profit. Yet the said defendant, well knowing the premises, but contriving to injure the plaintiff, did, on the _____ day of _____, eighteen hundred _____, and at divers other times before and afterwards, during the said term of _____ years mentioned in said letters patent and before the commencement of this suit at _____, in the county of _____, and State of New York, unlawfully and wrongfully, and without the consent or allowance, and against the will of the plaintiff, did use and cause to be used the said improvement, in violation and infringement of the exclusive right so secured to plaintiff by said letters patent as aforesaid, and contrary to the form of the statute of the United States in such case made and provided, whereby the plaintiff has been greatly injured and deprived of great profit and advantage, which he otherwise would have derived from said improvement, and has sustained actual damage to the amount of _____ dollars; and by force of the statute aforesaid an action hath accrued to him to recover the said actual damages and such additional amount, not exceeding in the whole three times the amount of such actual damage, as the court may see fit to order and adjudge, besides costs. Yet the said defendant, though requested, ha- never paid the same, or any part thereof, to the plaintiff, but ha- refused, and yet refuse- so to do, and therefore the plaintiff brings this suit.

Attorney and of Counsel for Plaintiff,

 _____ County, N. Y.

 _____ DISTRICT OF NEW YORK, ss.

_____, being duly sworn, says, that on the _____ day of _____,

1836—, he personally served on the defendant ———, within named, a copy of the within declaration and notice of rule to plead as herein indorsed.

Sworn before me this ——— day of ———, 186 —.

SIR: Please to take notice that the within is a copy of a declaration filed with the clerk of the United States circuit court at ———; that you are required to plead thereto within twenty days from service hereof on you, or judgment by default, &c.

Yours, &c.,

Plaintiff's Attorney, ——— *County, N. Y.*

To the above defendant.

54. PLEA AND SPECIAL NOTICE.—

UNITED STATES CIRCUIT COURT ——— DISTRICT OF NEW YORK.

————— }
vs. } *Plea.*
————— }

And the said defendant, ———, by ———, his attorney, comes and defends the wrong and injury, when, &c., and says that he is not guilty of the supposed grievances above laid to his charge, or any or either or any part thereof, in manner and form as the said plaintiff hath above thereof complained against ———, and of this the said defendant puts himself upon the country, and the said plaintiff doth the like, &c.

And it is suggested to the court, now here, that the defendant gives the following notices in writing of special matter to the plaintiff, thirty days before trial, under section 15 of the act of Congress passed July 4, 1836, entitled "An act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose:"

First, Notice of Special Matter.—Take notice that the above-named defendant will prove upon the trial of this cause, in bar of the said plaintiff's action, that the said ———, the assignor of the said plaintiff, was not the original or first inventor of (here describe the patent.)

And the said defendant will further prove, upon such trial as aforesaid, that the same principle was known to and had been previously combined by and invented by ———, who resides (or resided) at ———, in the State of ———, and that the same was known to and combined by said ——— as early as ———, 18—.

And the said defendant will further prove, upon said trial as aforesaid, that what is claimed in said declaration and in said letters patent therein mentioned, and the specifications and drawings thereto attached, as the invention of said assignors of said plaintiff named in said declaration, was

substantially and in principle known to _____, of _____, in the State of _____.

And the said defendant will further prove, upon said trial as aforesaid, that the thing patented in and by the letters patent was not first invented by or known to said _____, but the same was publicly known and used prior to the time when it is alleged in this action the same was invented by him.

And the defendant will prove that _____, who resides at _____, possessed such prior knowledge of the said thing mentioned as aforesaid in said declaration.

And that the said thing was in public use and on sale anterior to the said supposed discovery or invention thereof by said _____.

Second. Please take notice that, on said trial of this cause, in addition to the notices already served upon you, the defendant will prove by _____, of _____, and others, that they knew of the use of said thing, or substantially the same, as the alleged invention of said _____, and the same, or substantially the same, was used by _____ prior to the alleged invention thereof.

That the same, or substantially the same, was previously invented and patented _____, 18 —, by _____.

And the same was, previously to the time when it is claimed they invented or discovered the same, in public use with his consent and allowance, and upon sale with his consent and allowance, and subsequent to the time when it is claimed he invented or discovered the same.

SUPPLEMENT.

The following rules of practice in the supreme court of the District of Columbia, in appeals from the Commissioner of Patents, were adopted in general term, November 30, 1870, after this work had been stereotyped:

RULES OF PRACTICE.

1. The appellant's petition shall be addressed to the court, and shall be substantially as follows:

To the Supreme Court of the District of Columbia, in banc, ———, 187—.

The petition of ———, a citizen of ———, in the (*State, territory, district,*) of ———, respectfully shows as follows:

a. About the ——— day of ———, 18—, I invented, (*describe the subject of the desired patent in the identical words of the application to the Patent Office.*)

b. On the ——— day of ———, 18—, in the manner prescribed by law, I presented my application to the Patent Office, praying that a patent be issued to me for said invention.

c. Such proceedings were had in said office upon said application that, on the ——— day of ———, 18—, it was rejected by the Commissioner of Patents.

d. I thereupon appealed to this court, and gave notice thereof to the Commissioner, and filed in his office the following reasons for said appeal:

e. The Commissioner of Patents has furnished me a complete copy of all the proceedings in his office upon my said application, which copy has been filed herewith, and is to be taken as part hereof.

f. And thereupon I pray that the court do revise and reverse said decision, to the end that justice may be done in the premises.

2. This petition shall be filed in the clerk's office of this court, and as soon as the petitioner has made the deposit required by law at the commencement of suits in this court, or said deposit has been dispensed with, the clerk shall enter the case in a docket to be provided by him for the purpose, and in which a brief of said filing and of all subsequent proceed-

ings in the case shall be entered, as and when they successively occur, down to and including the final decision.

3. The clerk shall provide a minute book of his office, in which he shall record every order, rule, judgment, or decree of the court in each case, in the order of time in which said proceedings occur. And of this book there shall be two alphabetical indexes, one showing the name of the party applying for the patent, and the other designating the invention by its subject-matter or name.

4. The cases in the docket of causes shall be successively numbered from No. 1, onward, and each case shall also be designated by the number assigned to it on the records of the Patent Office.

5. This docket shall be called for the trial of the cases thereon on the first day of each session of this court in general term, provided the petition has been filed ten days before the commencement of the term.

6. The opinions of the court, when written, shall be kept by the clerk in the order of their delivery in a temporary book-file, indexed; and when so many have been delivered as will make a volume of convenient size, he shall cause them to be bound.

7. The clerk shall furnish to any applicant a copy of any paper in any of said appeals on payment of the lawful fees.

8. Hearing of said appeals shall be subject to the rules of the court provided for other causes therein.

9. When the testimony of the Commissioner or of any examiner, touching the principles of the invention in question, shall be deemed necessary, it shall be taken orally in open court, unless otherwise ordered by the court. And in such case the court may order it to be reduced to writing, and filed or entered on its minutes, if it think proper.

10. The final judgment or order of the court shall not recite any of the facts made to appear in the case, but shall be to the following effect:

"This appeal having been heard upon the record from the Patent Office, [and upon the testimony of the Commissioner of Patents,] [of one of the examiners,] touching the principles of the invention, and having been argued by [counsel for] the petitioner and [for] the Commissioner,

"It is thereupon ordered and adjudged that the [petition be dismissed] [Commissioner do issue to the petitioner a patent,] [as prayed,] [granting the petitioner (so and so.)]

"And that the clerk of this court transmit to the Commissioner of Patents a copy of this decree duly authenticated."

INDEX.

ABANDONMENT.

Statute provisions concerning, 9, 12, 13, 14.

More than two years' public use constitutes, 264.

May be within two years, 266, 267.

Use which amounts to, 264, 265.

What delay will amount to, 264, 269.

Evidence of, 267, 521.

in interference cases, 483-491.

by non-completion of an application, 260.

by non-prosecution of application, 265-268.

by non-payment of final fee, 343.

by neglect to prosecute application rejected prior to July 8, 1870, 345-348.

ABSTRACT PRINCIPLE.

When reduced to practice patentable, 219.

Invention should not be described as, 298.

ACTION AT LAW.

Arising under patent laws, 24, 25.
trade-mark laws, 39.

copyright laws, 50, 51.

Form of declaration in, 668.

ADMINISTRATOR.

May apply for letters patent, 13, 271.

ADMINISTRATOR (*continued*.)

for extension, 591.

Form of petition for letters patent by, 280.

for extension by, 604.

Form of oath on application for patent by, 318.

for extension by, 606.

AFFIDAVIT. (*See Oath, Deposition.*)

AFFIRMATION. (*See Oath.*)

AGENT. (*See Attorney.*)

ALIEN. (*See Foreign Inventor.*)

AMENDMENT. (*See Examination, Appeal, Application.*)

APPEAL.

To examiners-in-chief. (*See Examiner-in-chief.*)

To Commissioner in person. (*See Commissioner of Patents.*)

To the supreme court of the District of Columbia. (*See Supreme Court of the District of Columbia.*)

To the Supreme Court of the United States. (*See Supreme Court of the United States.*)

APPLICATION FOR LETTERS PATENT.

Fee of \$15, payable on filing, 32.

Subject-matter of, 218.

Abandonment of, (*See Abandonment.*)

APPLICATION (continued.)

When caveator is required to complete, 208.

May be made by citizens or aliens, 218.

For inventions patented abroad, 219.

Division of, when required, 254, 255, 339.

Number of inventions included in, 255.

When inventions must be patented under a prior, 255.

To be made in writing, 260.

Time to complete and prosecute, 260.

Clerical requirements of, 260.

Should be complete when filed, 261.

Correspondence with the office regarding, 261.

Preserved in secrecy pending, 262.

When information will be given concerning, 262.

Two years' use prior to, allowed, 264.

When considered as continuing, 268.

Is to be by way of petition, 271.
(See *Petition*.)

To be made by actual inventor if alive, 271.

When made by joint inventors, 271-274.

May be made by legal representatives, 13, 274, 280.

To include the specification, 284.

To be accompanied by oath, 317.
(See *Oath*.)

Examination of, (See *Examination*.)

APPLICATION (continued.)

Rejection of, 334-339.

Amendment of, 333, 334. (See *Examination*.)

Which take precedence, 331.

May be renewed, 343, 345.

On rejection of, applicant may appeal. (See *Appeal*.)

Right of purchasers prior to, 15.

ARGENTINE REPUBLIC, 59-61.

Law and date, 59.

Kinds of patents, 59.

Previous examination, 59.

Duration, 59.

Government fees, 60.

Documents required, 60.

Working, 61.

Assignment, 61.

Specification, &c., inspection and publication of, 61.

Infringements, 61.

Other legal provisions, 61.

ARRANGEMENT OF PARTS. (See *Combination*.)**ART. (See *Abstract Principle, Effect*.)**

Definition of, 231, 232.

When patentable, 233, 234.

Must be practical, 233.

Lost, 252.

ARTICLE. (See *Manufacture*.)**ASSIGNEE.**

Patent may issue to, 275, 276, 628.

Correspondence to be in the name of, 277.

Who is an, 278.

Rights of, unaffected by a reissue, 557.

Entitled to the benefit of a disclaimer, 612.

ASSIGNEE (continued.)

- Rights of, under extension, 599.
 - Rights of, under extension by act of Congress, 603.
 - Cannot apply for an extension, 585.
 - Form of petition for an, 279.
 - May apply for reissue if the inventor be dead, 556.
 - Form of petition for reissue by, 582.
 - Form of oath by, 583.
 - Of a partial interest, 276.
 - Of alien inventors, 633.
- ASSIGNMENT.** (See *Assignee, Licensee, British Assignments, French Assignments.*)
- Before letters patent are obtained, 14, 274-279, 629.
 - Patent may issue to assignee in case of, 13, 274, 276.
 - Should be recorded before patent issues, 277.
 - After rejection of, application valid, 275.
 - Of incomplete invention, only valid as a contract, 276.
 - Stamp required, 278, 627.
 - Requires no particular form of words, 278, 624.
 - Oath and application to be by inventor in case of, 318.
 - Interests which may be conveyed by, 624.
 - Recording of, 277, 628.
 - Unrecorded, good as between the parties, 627, 628.
 - Distinction between, and license, 629, 635.
 - Effect and construction of, 631.

ASSIGNMENT (continued.)

- Whether a particular instrument amounts to, 624, 625, 631.
 - Implies no warranty of title, 632.
 - Of extended term, 599.
 - In case of reissue, 556-558.
 - Forms of, 633.
 - Copy of evidence, 520.
- ASSISTANT COMMISSIONER.**
- How appointed, 1.
 - Duties of, 5.
- ATTORNEYS.** (See *Power of Attorney.*)
- Correspondence only with, 281, 281.
 - Conflicting interests represented by the same, 262.
 - Who may appear as, 281.
 - Patent Office not responsible for acts of, 281.
 - Commissioner may refuse to recognize, 6, 281.
- AUSTRIA, 61-67.**
- Law, date, and where recorded, 62.
 - Kinds of patents, 62.
 - Previous examination, 62.
 - Duration, 62.
 - Government fees, 62.
 - Documents required, and where to be left, 63.
 - Working and prolongation, 63.
 - Assignments, 63.
 - Other legal provisions, 63.
 - Specifications, inspections, and copies of, 63.
 - List of patents delivered, 64.
 - Specifications published, 64.
 - Proceedings to obtain a patent, 64.
 - Form of petition, 65.
- BADEN, (Grand Duchy of,) 67, 68.**

BAVARIA, 68-71.

Law, date, and where recorded,
68.

Kinds of patents, 68.

Previous examination, 69.

Duration, 69.

Annulment, 69.

Government fees, 69.

Documents required, and where
to be left, 69.

Working and extension, 69.

Assignments, 69.

Other legal provisions, 70.

Specifications, inspection, and
copies of, 70.

List of patents delivered, 70.

Specifications published, 70.

Proceedings to obtain a patent,
70.

BELGIUM, 71-77.

Law, date, and where recorded,
71.

Kinds of patents, 71.

Previous examination, 71.

Duration, 71.

Government fees, 71.

Documents required, and where
to be left, 72.

Working and extension, 72.

Assignments, 72.

Specifications, inspection, and
copies of, 72.

List of patents delivered, 73.

Specifications published, 73.

Originals of specifications, 73.

Jurisdiction and legal proceed-
ings, 73.

Causes of nullity, 73.

Proceedings to obtain a patent,
73.

BELGIUM (continued.)

Declaration, 75.

Form of a patent, 76.

Form of transfer of patent, 77.

Form of certificate of reception
of a patent by transfer, 77.

BILL IN EQUITY. (See *Equity*.)**BOND.**

Official, of Commissioner, 4.

Of chief clerk, 4.

CANADA, 112-114.

Patent Office constituted, 113.

Seal, 113.

Rules and regulations, 114.

Deputy Commissioner, 114.

Report, 114.

Who may obtain Patents, 115-117

Who may obtain a patent, 115.

An original inventor, having
foreign patent, must apply
within six months, 116.

Right of assignment, 116.

A resident may obtain, but not
vend, a patent, 116.

Joint applications to be made
by joint inventors, and pat-
ents issue accordingly, 116.

Conditions and Formalities, 117-119.

Oath or affirmation as to inven-
tion must be made by appli-
cants, 117.

Applicants to elect a domicile in
Canada, 117.

Nature of petition and specifi-
cations, 118.

Drawings to be furnished in
duplicate, with references,
118.

CANADA (continued.)

- Working model of invention, or samples of ingredients, if a discovery, required, 119.
- Contents, Duration, Surrender, Re-issue of Patents, and Disclaimers*, 120-123.
- Contents of the patent and powers granted thereby, 120.
- Duration of patent 120.
- Patent to be examined and certified by minister of justice before delivery, 121.
- New patent in case of error, 121.
- Patentee may make disclaimer, 122.
- Assignment and Infringement of Patents*, 123-125.
- Government of Canada may use any patented invention by making reasonable compensation, 123.
- Patents to be assignable, 123.
- Penalty for infringement, 124.
- Prosecution for infringement, 124.
- Court may discriminate in certain cases, 125.
- Defense in such cases, 125.
- Nullity, Impeachment, and Voidance of Patents*, 126-128.
- Patents to be void in certain cases, or valid for only part, 126.
- Patents to be conditioned on manufacture in Canada within three years; importing the article patented, 126.
- Proceedings for impeachment of patent, 127.

CANADA, (continued.)

- Certificate of judgment voiding patent to be entered, 128.
- Judgment to be subject to appeal, 128.
- Patents Issued under former Laws*, 128, 129.
- Existing provincial patents to remain in force, 128.
- Handing over records of patent offices to Commissioner, 129.
- Tariff of Fees*, 129-131.
- With reference to fees, how and to whom to be paid, 129.
- The Commissioner to have the power of returning one-half of the Government fee, 131.
- Miscellaneous Provisions*, 131-137.
- Applicant may file a caveat, 132.
- Causes why Commissioner may refuse to grant a patent, 132.
- Commissioner to notify applicant of rejection, 133.
- Appeal to Governor in Council, 133.
- Interfering applications, 133.
- Documents in Patent Office to be open to inspection of the public, except caveats, 134.
- Clerical errors, 134.
- Lost or destroyed patent may be replaced, 134.
- Use of patented inventions allowed in foreign ships, 134.
- Patent not to affect previous purchaser of invention, 135.

CANADA (continued.)

- Patented articles to be stamped with date of patent, 135.
- Punishment of parties who stamp an article as patented when such is not the case, 135.
- Punishment of offenders for making false entry or copy, 136.
- All acts inconsistent with present act repealed, 136.
- Title of act: The patent act of 1869, 137.
- Act to commence and take effect July 1, 1869, 137.
- Rules, Regulations, and Forms of the Canadian Patent Office, 137-147.*
 - Date of approval, 137.
 - Personal appearance, 138.
 - Applicant responsible, 138.
 - Correspondence, 138.
 - Clerical requirements, 138.
 - Address, 138.
 - Forms, 138.
 - Petition, 138.
 - Joint application, 139.
 - Oath, 139.
 - Specification, 140.
 - Drawings, 141.
 - Extension, 142.
 - Form of patent, 143.
 - Model, 144.
 - Fees, 144.
 - Time for perfecting application, 144.
 - Separate inventions cannot be claimed in one application, 145.

CANADA (continued.)

- Protest, 145.
- Cases of doubt, 145.
- Caveat, 145.
- Intricate cases, 146.
- General remarks, 146.
- CAPE OF GOOD HOPE, 147-149.**
 - Law, date, and where recorded, 147.
 - Kinds of patents, 147.
 - Duration, 147.
 - Government fees, 147.
 - Documents required, and where to be left, 148.
 - Assignments, 148.
 - Specifications and drawings, 148.
 - Other legal provisions, 148.
- CAVEAT.**
 - Who may file, 16, 207.
 - When alien may file, 17, 207.
 - For incomplete invention, 207.
 - What may be set forth by, 207, 209.
 - To be preserved in secrecy, 207.
 - Term for which operative, 208.
 - May be renewed, 208.
 - Secures notice of interfering application, 208, 210.
 - Caveator to complete his application after notice, 208.
 - Not entitled to notice of pending application, 208.
 - Notice to Commissioner only, 216.
 - Need not contain a specific description, 209.
 - Need not be accompanied by a model, 209.

CAVEAT (continued.)

Purpose and office of, 209.

Rights secured by, 208, 210.

Papers not to be withdrawn, 215.

Copies of, furnished, 215.

Copies of evidence, 28, 497.

Effect of, upon a subsequent patent, 213.

How far evidence of invention, 215, 216, 520.

Powers and duties of Commissioner as to, 208, 216.

Form of petition for, 216.

description attached to, 217.

of oath accompanying, 217, 323.

Fee payable on filing, 207.

CERTIFICATE.

Trade-mark, 450.

Of officer concerning depositions, 504.

Forms of, 505.

CEYLON, 149, 150.

Law, date, and where recorded, 149.

Kinds of patents, 149.

Duration, 149.

Government fees, 149.

Documents, where to be left, 149.

Specification, inspection, and copies of, 149.

Assignments, 149.

Other legal provisions, 150.

CHANGEBY. (See Equity.)**CHANGE. (See Novelty, Improvement, Combination.)****CHEAPNESS. (See Utility.)****CHEMICAL COMPOSITION. (See Composition of Matter.)****CIRCUIT Court. (See Action at Law, Subpena.)****CLAIM. (See Specification.)****CLASSIFICATION.**

Of subjects of invention, 324, 329.

Of models and specimens, 8.

CLERKS.

Of United States courts to issue subpena, 18, 19, 495.

Of the Patent Office, 2, 3.

Incapable of acquiring interests in patents, 6.

COMBINATION. (See Improvement, Double Use, Equivalents, Identity.)

What constitutes a technical, 295, 296, 535, 536, 537.

The word "arrangement" synonymous with, 295.

May include an element not described, 289.

Of old parts patentable, 535.

Substitution of a substantially different element constitutes a new, 243.

COMMISSIONER OF PATENTS.

Appointed by the President, 2.

Salary of, 2.

Official bond of, 4.

Powers, duties, and discretion of, 4.

as to caveats, 208, 216.

in issuing patents, 8, 362, 269.

in determining as to utility, 231.

as to the division of an invention, 255.

as to dispensing with model, 315, 428.

as to the specification, 299.

respecting examiners-in-chief 351.

COMMISSIONER (continued.)

- in regard to rehearing after appeal, 358, 359.
- in case of appeal to the supreme court of the District of Columbia, 381, 387, 407.
- in cases of reissue, 570.
- in cases of extension, 598.
- as to attorneys, 281.
- in cases of mandamus, 409-427.
- to make rules, 7, 18, 495, 498.
- All correspondence in the name of, 260, 261.
- to and from free, 4, 262.
- Appeal from examiners-in-chief to, 20, 365-377.
- time of hearing on, 366.
- motion on, 366.
- oral argument on, 366.
- continuance of cases on, 366.
- questions of fact on, 367.
- case may be remanded after, 372.
- form of, 377.
- action of former Commissioner not reversed on, 366.
- Appeal from primary examiner to, 340, 373. (See *Examination*.)
- Appeal from, to the supreme court of the District of Columbia, 377, 408.
- COMMISSIONER, Acting. (See *Assistant Commissioner*.)
- COMMON USE. (See *Abandonment*.)
- COMPOSITION OF MATTER. (See *Utility, Process, Manufacture*.)
- What is included by the term, 243.
- Substitution of ingredients in, 244.
- When patentable, 244.
- Variable proportions need not be stated in a specification for, 290.

CONCEALMENT, (fraudulent.) (See *Fraud*.)**CONGRESS.**

Patent may be extended by a special act of, 602. (See *Extension*.)

CONSTRUCTION. (See *Evidence*.)

Of patent in connection with the specification, 286.

Of the specification. (See *Specification*.)

Of reissued patent. (See *Reissues*.)

Of extended patents. (See *Extension*.)

Of assignments, &c. (See *Assignments*.)

Of the words "substantially as described," 293.

Of the word "arrangement," in the claim, 295.

CONSUL. (See *Oaths*.)**CONTINUING APPLICATION. (See *Abandonment*.)**

For letters patent, what constitutes, 268.

CONTRACT. (See *Assignment, License*.)**COPIES. (See *Evidence, Fees*.)**

Of caveat papers furnished to caveator, 215.

To be evidence, 26.

Of Patent Office records to be evidence, 26, 519.

To be furnished on application, 310.

Commissioner cannot refuse to furnish, 310.

Of foreign patent to be evidence, 26, 527, 534.

Of drawings, cost of, 309.

Of specification, drawings, and references on rejection of application, 334.

COPIES (continued.)

On appeal to supreme court of D. C., appellant to furnish, 303.

Applicant for the registry of trademark to furnish five duplicates, 448.

Of testimony in contested cases may be obtained, 501.

COPYRIGHT.

Librarian of Congress to have control of matters appertaining to, 42-47.

to give bond, 42.

to furnish record under seal, 42.

to make annual report, 42.

to record assignments of, 44.

to record copyright books, 45.

Who may obtain a, 43.

What may be protected by, 43.

Term for which granted, 43.

Extension of term of, 43.

Applicant for, to forward copy, 44.

may send copyright matter free of postage, 46.

liable to penalty for non-delivery, 46.

entitled to a copy of the record of, 45.

may demand a receipt from postmaster, 46.

Fees payable for recording, 45.

Copies under seal, 45.

Recording assignment of, 45.

Copies of assignment, 45.

Assignment of, 44, 661.

to be recorded, 44, 661.

form of, 661.

Action for infringement of, 47-52.

not maintainable unless notice is inserted, 47.

COPYRIGHT (continued.)

Of a book, 48.

Of maps, engravings, photographs, &c., 48.

Of dramatic compositions, 49.

Of manuscripts, 49.

Pleading in, 50.

Cognizable by circuit court, 50.

Appeal to the Supreme Court, 50-58.

Full costs to be allowed, 51.

Notice to be inserted on title page, 47.

Penalty for false notice of, 47.

to be recovered by action, 47.

limitation of action for, 50.

Transfer of books, &c., relating to, 51.

CORRECTION. (See *Reissue, Disclaimer, Examination, Clerical Error.*)

CORRESPONDENCE. (See *Application, Examination*)

With the Patent Office free of postage, 262.

Must be in the name of Commissioner, 261.

When power of attorney has been filed, 261.

Should be in writing, 262.

In case of assignment, 277.

Information not furnished by, 263

COSTS. (See *Disclaimer.*)

COURT. (See *Action at Law, Equity Subpena, Supreme Court of District of Columbia.*)

CUBA, PORTO RICO, AND THE PHILIPPINE ISLANDS, 150, 151.

Law, date, and where recorded, 150.

Kinds of patents, 150.

CUBA, &c., (continued.)

- Duration, 150.
- Documents, where to be left, 151.
- Government fees, 151.
- Specification, inspection of, 151.
- Assignments, 151.
- Working, 151.

DAMAGES. (See *Action at Law.*)**DEATH. (See *Administrator, Assignee.*)****DECLARATION. (See *Action at Law.*)**

- Form of, in action for infringement, 668.

- Of parties. (See *Evidence.*)

DEDICATION. (See *Abandonment.*)**DEED. (See *Assignment.*)****DEFENSE. (See *Action at Law, Equity.*)****DEPOSITIONS. (See *Evidence, Extension, Interference, Oath.*)**

- Commissioner may establish rules for taking, 495, 498.

- Before whom taken, 495.

- Clerk to issue subpoena, 495.

- Penalty for refusing to testify, 495.

- Notice to be given to opposite party before taking, 496.

- To be sealed up and entitled, 497.

- Ex parte testimony, 495.

- Notice of objection to, 468.

- Technical objection to, 501.

- Service of notice for taking, 499.

- Requisites of notice for taking, 500.

- To be taken in answer to interrogatories, 500.

- Magistrate's certificate appended to, 500.

DEPOSITIONS (continued.)

- Parties may have access to, 501.

- cannot be taken before interested parties, 501.

- May be received by consent of parties, 502.

- Taken on a former interference admissible, 502.

- Assignment of time for taking, 503.

- Postponement of taking, 503.

- Form of notice of taking, 503.

- Form of, 504.

- Form of certificate attached to 504

DESCRIPTION. (See *Specification, Re-issue.*)

- Caveat need not contain specific, 209.

DESIGNS.

- Patents for, 427-445.

- citizens and aliens may take, 427.

- subject-matter of, 427, 428.

- terms of, 428.

- applicant to elect on application, term of, 437.

- term of may be extended, 428.

- classification of, 429.

- what may be embraced in, 431.

- trade-mark not now included in, 448.

- may embrace a genus or class of ornaments, 431.

- may be granted on account of utility, 435.

- cannot include mode of operation or construction, 437.

- number of claims allowed in, 440.

DESIGNS (continued.)

Application for letters patent for, 428.

the same as for other patents, 428.

need not generally be accompanied by model, 428.

may be illustrated by photographs, 429.

requisites of photographs accompanying, 429.

no provision made for use or sale prior to, 438.

application for mechanical invention cannot be changed into, 442.

fee payable on filing, 618.

form of petition accompanying, 445.

form of specification accompanying, 445.

form of oath accompanying, 445.

DIRECTIONS.

To persons skilled in the art. (See *Specification.*)

DISCLAIMER. (See *Action at Law, Examination, Extension, Reissue.*)

When allowed and by whom made, 609, 610.

To state the interest of disclaimant, 610, 611.

To be in writing, witnessed, and recorded, 610.

To be considered a part of the specification, 610.

A mode of amending imperfect specification, 609-612.

If not filed before action, costs not recoverable, 610, 614.

DISCLAIMER (continued.)

Effect of delay in filing, 613.

Inures to the benefit of assignees, 612.

Cannot affect prior grantee, 612.

Owner of sectional interest may file, 612.

Effect of, upon actions for infringement, 610, 613, 614.

Form of, 615.

DISCOVERY. (See *Abstract Principle, Art, Effect.*)

Meaning of, judicially ascertained, 226.

To be patentable, must be reduced to practice, 227.

Of a lost art patentable, 252.

DOUBLE USE. (See *Novelty.*)**DRAUGHTSMEN.** (See *Clerk.*)

What constitutes, 221, 222.

DRAWINGS. (See *Copies, Specification, Reissue.*)

To accompany caveat papers, 209.

Application for patent accompanied by one copy of, 308.

A part of the specification, 286, 308.

To be attested by two witnesses, 308.

May be signed by inventor or attorney, 308.

Patent Office requisites concerning, 308, 309.

Patent Office to furnish copies of, 309, 310.

Cost of copies of, 309.

Relation of, to the specification, 308, 311.

May be resorted to to aid the description, 311.

- DRAWINGS** (*continued.*)
 How described in specification, 312, 214.
 Manner of lettering, 312, 313.
 Use of dotted lines in, 314.
- ERROR.** (*See Abstract Principle, Art, Double Use, Novelty, Utility.*)
 Alone not patentable, 220.
 May become the test of invention, 221.
- EMPLOYEES.** (*See Clerks.*)
- ENTIRETY.** (*See Unity.*)
- EQUITABLE TITLE.** (*See Assignment.*)
- EQUITY.**
 Suits in, cognizable in the United States circuit courts, 24.
 Proceedings in, to prevent violation of patent right, 25.
 Damages upon decree in, 25.
 Appeal from decree in, to Supreme Court, 25.
 Proceedings in, in case of interfering patents, 26, 27.
 Remedy by bill in, in case of refusal of Commissioner to grant a patent, 21, 22.
 Forms of procedure in, 662, 667.
 Form of bill in, 662.
 Subpena to appear and answer, 665.
 Precept for appearance, 666.
 Motion for leave to file supplemental bill, 666.
 Answer, 666.
 Replication, 667.
 Notice for proof under oral examination, 667.
- EQUIVALENTS.** (*See Mechanical Equivalents.*)
- EVIDENCE.** (*See Deposition, Oaths.*)
 Model may be used as, 316.
 Presumptive divided into two classes, 505.
 Presumption in regard to public officers, 509.
 Of knowledge of preceding patent, 510.
 That the patentee is the first inventor, 510, 512.
 That reissued patent is for the same invention as the original, 510.
 That the patent was lawfully issued, 511, 512.
 Of acquaintance with the state of the art, 511.
 That the constructor of a machine is the inventor, 511, 512.
 As to oath of invention, 323.
 Parol and secondary, 517-519.
 Patent Office records to be, 519, 520.
 On appeal to the supreme court of District of Columbia, 383.
 Of abandonment, 520, 521.
 Of priority of invention, 522, 527.
 Of prior knowledge or use in a foreign country, 527-535.
 Copy of foreign patent to be, 26.
 Of novelty and utility, 535-546.
 Of declaration and acts of parties, 513-516.
 Of third parties, 516.
 Competency of witnesses, 546-550.
 Of parties in patent causes, 546-547.

EVIDENCE (continued.)

In cases before the Patent Office,
547.

Of witnesses in interference cases,
548.

Of experts, 549, 550.

EXAMINATION.

Of officers of the Patent Office on
appeal to Supreme Court,
381.

Of application for letters patent,
12, 330-342.

Commissioner shall cause, to be
made, 330.

To be made within two years after
filing petition, 300.

Duties of primary examiner on,
342.

To be made in the order in which
applications are completed,
331.

Cases which take precedence on, 331.

Attendance of applicant unneces-
sary on, 341.

References given if any claim is
rejected on, 333.

Division of the application may
be required on, 339.

Correction of specification may be
required on, 339.

Closed on appeal, 337.

Will be reopened if amendments
are allowed on appeal, 337,
372, 373.

On rejection, applicant may amend
specification, 334.

may demand specific references,
334.

may demand a re-examination,
376.

EXAMINATION (continued.)

may amend as often as new ref-
erences are given, 335, 336.

may demand copies and draw-
ings, 334.

cannot require the return of
specification for amendment,
341.

may obtain copy of specification,
341.

may appeal to the board of ex-
aminers-in-chief, 340-352.

may appeal directly to the Com-
missioner in certain cases, 340,
353.

may file special amendments,
338.

requirements of amendments,
338.

Form of amendment of specifica-
tion, 343.

**EXAMINERS, (primary.) (See *Exam-
ination, Reissue, Extension.*)**

Appointed by the Secretary of the
Interior, 2.

Divided into three classes, 2.

Salary of, 3.

Executive, ministerial, and judi-
cial functions of, 343.

May be examined on appeal to the
supreme court of D. C.,
381.

EXAMINERS-IN-CHIEF.

Appointed by the President, 2.

Salary of, 2.

Duties of, 349, 365.

Résumé of the laws constituting,
349.

To be governed by the rules of
the Commissioner, 351.

EXAMINERS-IN-CHIEF (*continued.*)

When applicant may appeal to, 20, 352.

Appeal to, is from the judicial acts of examiner, 352.

cannot be taken from executive acts, 353, 354, 357, 361.

from adverse decisions only, is from the action of the examiner, not from his reasoning, 357.

rehearing on, only by order of Commissioner, 358.

examiner cannot reopen a case after, 359.

case may be remanded for further examination after, 360.

petition on, to set forth reasons, 364.

amendment after, 337.

examination closed before primary examiner after, 337.

form of, 365.

When Commissioner not bound by decision of, 362.

Appeal to Commissioner from decision of, 365.

EXECUTION.

Patented machine may be sold on, 632.

EX PARTE. (*See Evidence*)**EXPERIMENT.** (*See Novelty.*)

Inventor may avail himself of prior, 252.

Unsatisfactory, evidence of abandonment, 521.

EXTENSION.

Statute provisions concerning, 30, 31, 32.

Résumé of the law concerning, 584.

EXTENSION (*continued.*)

Patentee may apply for, 585.

Assignee cannot apply for, 585.

When attorney may apply for, 586.

Administrator may apply for, 591.

Duty of party applying for, 585.

Publication of notice of application for, 591.

Application for, to be referred to primary examiner, 591.

When patent has been divided on reissues, 593.

Any person may oppose, 591.

Party opposing, to give notice, 592. must file reasons of opposition, 592.

In cases of opposition to, testimony may be taken, 592.

on whom notice to take testimony may be served, 592.

Assignment of time on application for, 593.

Hearing in cases of, 593.

Applicant for, to furnish statement under oath, 593.

Questions considered on application for, 594.

Proof required on application for, 594.

as to novelty, 595.

as to value and importance, 596.

as to remuneration, 596.

as to policy, 597.

Granting the, 597.

To be for seven years from expiration of first term, 598.

Effect of, 598.

Action of Commissioner in granting, not re-examinable, 598.

Rights of assignees on, 599-602.

EXTENSION (continued.)

- By act of Congress, 603.
 - By special act of Congress, 602.
 - Form of petition for, by patentee, 604.
 - Form of petition for, by administrator, 604.
 - Form of statement of account on, 604.
 - Form of oath by patentee, 606.
 - Form of oath by executor, 606.
 - Form of reasons of opposition to, 606, 607.
 - Form of certificate of, 608.
 - Form of oath to loss of letters patent, 608.
 - Of patents for designs, 428.
- EXPERTS. (See Evidence.)**
- Who are, 541.

FALSE MARKING.

- Penalty for, 15, 16.

FEEs OF THE PATENT OFFICE.

- To be paid in advance, 617.
- Tariff of, 618.
- On issuing patent, to be paid within six months, 343, 619.
- How may be paid, 619.
- Paid by mistake to be refunded, 620.

FOREIGN INVENTOR.

- May obtain a United States patent, 10, 219.
- When may file a caveat, 208.
- Form of oath by, 318.

FOREIGN PATENTS.

- Not a bar to obtaining a patent in the United States, 219.
- When will avoid a United States patent, 254.

FOREIGN PATENTS (continued.)

- United States patent expires with, 527-535.
- Oath by inventor who has taken out, 318.
- Date of, how determined, 527-535.
- The Argentine Republic, 59-61.
- Austria, 61-67.
- The Grand Duchy of Baden and Petty States of Germany, 67, 68.
- Bavaria, 68-71.
- Belgium, 71-77.
- Great Britain and Ireland, 77-84.
- Analysis of the British Patent Laws, 84-102.
- Forms and proceedings to obtain a patent, 102-112.
- Patent Laws of the Dominion of Canada, 112-114.
- Who may obtain patents, 115-117.
- Conditions and formalities, 117-119.
- Contents, duration, surrender, re-issue of patents, and disclaimers, 120-123.
- Assignment and infringement of patents, 123-125, 649-654.
- Nullity, impeachment, and voidance of patents, 126-128.
- Patents issued under former laws, 128, 129.
- Tariff of fees, 129-131.
- Miscellaneous provisions, 131-137.
- Rules, regulations, and forms of Canadian Patent Office, 137-147.
- Cape of Good Hope, 147-149.

FOREIGN PATENTS (continued.)

- Ceylon, 149, 150.
- Cuba, Porto Rico, and the Philippine Islands, 150, 151.
- France, 151-156.
- Greece, 156.
- British Guiana, 156-158.
- India, 158-164.
- Italy, 164-169.
- Jamaica, 169-171.
- Mauritius and Dependencies, 171, 172.
- Mexico, 172, 173.
- The Netherlands, 173-175.
- Newfoundland, 175-177.
- New South Wales, 177, 178.
- New Zealand, 178, 179.
- Portugal, 179-181.
- Prussia, 181-183.
- Queensland, 183.
- Russia, 183-185.
- Saxony, 186, 187.
- Spain, 188-191.
- Sweden, 191-193.
- Tasmania, 193-195.
- Trinidad, 195.
- Victoria, (Australia,) 195-199.
- West Indies, (Dutch,) 200, 201.
- Wurtemberg, 201-203.

FOREIGN PUBLICATION.

- When, will avoid a patent, 252-254, 527-535.

FORM.

- Change of, when patentable, 238.

FORMS.

- Of petition for letters patent, 271.
- Of petition for patent by inventor for assignee, 279.
- Of petition for patent by joint inventors, 274.

FORMS (continued.)

- Of petition for patent by administrator, 280.
- Of petition for patent by executor, 280.
- Of petition with power of attorney, 282.
- Of power of attorney, 283.
- Of revocation of power of attorney, 284.
- Of specification for a machine, 304.
- Of specification for a process, 306.
- Of specification for a composition of matter, 306.
- Of oath on application for patent, 323.
- Of amendment of the specification, 343.
- Of petition for the renewal of an application, 345.
- Of appeal from examiner to examiners-in-chief, 365.
- Of appeal from the examiners-in-chief to the Commissioner, 377.
- Of petition on appeal to the supreme court of D. C., 407.
- Of certificate of Commissioner on appeal to supreme court of D. C., 408.
- Of notice and reasons of, to supreme court of D. C., 408.
- Of appeal to the supreme court of D. C., furnished by the office, 380.
- Of oath on application for patent for a design, 445.
- Of petition for the registry of trademark, 449.
- Of oath on the registry of trademark, 449.

FORMS (continued.)

- Of transfer of trade-mark, 450.
- Of certificate of registry of trade-mark, 450.
- Of notice of taking testimony, 503.
- Of deposition, 504.
- Of certificate of officer, 504, 505.
- Of petition for reissue by inventor, 582.
 - by assignee, 582.
- Of oath of applicant for reissue, 583.
 - assignee, 583.
- Of petition for extension by patentee, 604.
 - By an administrator, 604.
- Of statement of account, 604.
- Of oath by applicant for extension, 606.
- Of reason of opposition to extension, 607.
- Of disclaimer, 615.
- Of United States letters patent, 616.
- Of assignments, 633, 634.
- Of license, 640, 641.
- Of British assignments, 649-654.
- Of French assignments, 658-660.
- Of assignments of copyright, 661.
- Of bill in equity, 662.
- Of subpoena to appear and answer, 665.
- Of precept of appearance, 666.
- Of motion for leave to file supplemental bill, 666.
- Of answer, 666.
- Of replication, 667.
- Of notice for proofs under oral examination, 667.
- Of declaration, 668.
- Of plea and special notice, 670.

FRANCE; 151-156.

- Law, date, and where recorded, 151.
- Kinds of patents, 152.
- Previous examination, 152.
- Duration, 152.
- Government fees, 152.
- Documents required, and where to be left, 152.
- Working and prolongation, 152.
- Assignments, 152, 655, 660.
- Specifications, inspection, and copies of, 153.
- List of patents delivered, 153.
- Specifications published, 153.
- Originals of specifications, (models, 153.)
- Jurisdiction, local proceedings, 153.
- Proceedings to obtain a patent, 153.
- Form of French letters patent, 155.

FRANKING PRIVILEGE.

- Of Commissioner, 4.

FRAUD.

- In the specification, 300.
- In the oath of invention, 319, 322.

GENERAL ISSUE. (See *Action at Law.*)**GREAT BRITAIN AND IRELAND, 77-84.**

- Law, date, and where recorded, 78.
- Kinds of patents, 78.
- Previous examination, 78.
- Duration, 78.
- Stamp duties to be paid, 78.
- Documents required at the Patent Office, 79.

GREAT BRITAIN, &c., (continued.)

- Assignments and licenses, 80 649.
- List of patents at their different stages, 80.
- Specifications, disclaimers, alterations, provisional specification, assignments, and licenses, 80.
- Specifications, disclaimers, alterations, and indexes, 80.
- Originals of specifications, etc., 81.
- Free public library of the Commissioners of Patents, 81.
- Commissioners of Patents' Journal, 81.
- Infringements, 83.
- Other legal provisions, 83.
- Analysis of British Patent Laws*, 84-102.
 - Acts of Parliament; rules, 85.
 - Commissioners, 85.
 - Seal, 86.
 - Petition and declarations, 86.
 - Only one invention to be included in a patent, 86.
 - Copy of specification, &c., to accompany application, 86.
 - Petitions, &c., to be left at office; size, 87.
 - Size of drawings, 87.
 - Applications referred, 87.
 - Law officer may amend title, 87.
 - Applicant may not amend provisional specification, 88.
 - Nature of invention, 88.
 - Fee on leaving petition, 88.
 - Provisional protections, 88.
 - Complete specifications, 88.
 - Fraud, 89.

GREAT BRITAIN, &c., (continued.)

- Complete specification advertised 89.
- Complete specification stamp, £5, 89.
- Notice to proceed, 89.
- Notice to proceed advertised, 89.
- Opposition, 90.
- Applications for or against sealing, 90.
- Notice to proceed fee £3, 90.
- Objections to be referred, 90.
- Law officer to decree cost, 90.
- Warrant for sealing patent, 90.
- Complete specification filed, 91.
- Patent fee £5; stamp £5, 91.
- Future payments, 91.
- Issue of letters patent, 91.
- Issued three months from warrant, 92.
- Accidental delay, 92.
- Case of death, 92.
- If lost, new patent may issue, 93.
- Date of letters patent, 93.
- Patents for foreign inventions, 93.
- Foreign ships, 93.
- Copy of drawings, 93.
- Size of specifications, 94.
- Size of drawings and scale, 94.
- Extra copy of specification, 94.
- Documents to be legibly signed, 94.
- Period of notice, 95.
- Public inspection of documents, 95.
- Documents to be printed, 95.
- Documents evidence in courts, 96.

GREAT BRITAIN, &c., (continued.)

Chronological register; copy of license may be had and is evidence, 96.

Number of persons interested, 96.

Falsification of register, 96.

Entries in registry expunged, 97.

Disclaimers, 97.

Confirmation of prolongation, 98.

Infringement, 98.

Judge's order, 99.

Taxing costs, 99.

Schedules of fees and stamps, 99.

Forms and Proceedings to obtain a Patent, 102-112.

Form of petition, 102.

How to be written, and stamp, 103.

Declaration to accompany petition, 103.

Petition and declaration, accompanied by specification, 104.

Reference indorsed on petition, 104.

Form of provisional specification, 104.

Form of complete specification, 105.

Reference to law officer, 106.

Notice to proceed to be made two months before end of provisional term, 106.

Form of warrant, 107.

Form of letters patent, 107.

The specification, 111.

GREECE.

Government may grant privileges for inventions, 156.

GULANA, (British,) 156-158.

Law, date, and where recorded 156.

Kinds of patents, 156.

Previous examination, 157.

Duration, 157.

Government fees, 157.

Documents required, and where to be left, 157.

Assignments, 158.

Originals of specifications, &c., 158.

Other legal provisions, 158.

IDENTITY. (See *Combination, Double Use, Improvement, Novelty.*)

Of principle, 241, 243.

What constitutes substantial, 242.

IMPROVEMENT. (See *Combination, Double Use, Novelty.*)

Definition of, 245.

When patentable, 245-247.

How set forth in the specification, 247.

INCOMPLETE INVENTION. (See *Caveat, Novelty, Priority of Invention.*)

Subsequent inventor may avail himself of, 248.

Not patentable, 250.

INDIA, 158-164.

Law, date, and where recorded, 158.

Kinds of patents, 158.

Duration, 159.

Government fees, 159.

Documents required, and where to be left, 159.

Extension, 159.

Disclaimer, 159.

INDIA (continued.)

Specification, inspection, copies of, 159.

Assignments, 160.

List of patents delivered, 160.

Jurisdiction, 160.

Chief legal provisions, 160.

Proceedings to obtain a patent, 161.

Form of petition, 161.

Form of declaration to accompany petition, 162.

Form of declaration to accompany specification, 163.

Form of declaration by agent, 163.

Form of petition, 164.

INFRINGEMENT. (See *Action at Law, Equity.*)

INJUNCTION.

To prevent the violation of patent rights, 25.

INTENTION. (See *Abandonment.*)

INTERFERENCE. (See *Depositions, Evidence, Identity.*)

When declared, with a renewed application, 345.

Duty of Commissioner in case of, 18, 450.

When patent will issue to prior inventor in case of, 451.

Definition of, 451.

When, will be declared, 452.

In case one of the parties has obtained a patent, 454.

Each party to file a statement under oath upon declaration of, 466.

Adjudication by default in case of, 467

INTERFERENCE (continued.)

When, may be set for hearing, 467.

Appeal in cases of, 467.

Notice of declaration of, 467.

Notice of declaration of, by publication, 468.

First applicant presumed to be the prior inventor, 468.

Assignment of time for taking testimony, 470.

Postponement of hearing of, 470.

Affidavit required, 471.

Will be tried before the examiner in charge of interferences, 471.

When, will be dissolved, 471.

Primary examiner cannot dissolve, 472.

Two years' public use, 473.

May be a second time declared, 474, 481.

Withdrawal of claims not in, 481.

No amendments received during, 482.

Refiling of application after, 482.

May be opened to admit new parties, 482.

Abandonment in cases of, 483.

Classes of, 491.

INTERFERING PATENTS. (See *Equity.*)

INTERIOR DEPARTMENT.

Patent Office attached to, 1.

INVENTION.

Foreign, may be patented in United States, 219.

Harmful, not patentable, 230.

Assignment of, 274-279.

Embodying abstract principle, 219.

INVENTION (continued.)

Consisting of an application of a law of nature, 219.
 Not patentable if of an effect, 220.
 Of a new application, 221.
 Mechanical equivalents not, 222.
 Mere mechanical skill not, 225.
 Distinction between, and discovery, 226.
 Novelty of, 227.
 Utility of, 229.
 Of an art, 231.
 Of a process, 234.
 Relating to machines, 236
 Mere change of form not, 238.
 Unity or diversity of, 255.
 When, must be included in a single patent, 254-259.
 Specification of, 284.
 Drawings of, 303.
 Model of, 309.
 How classified at the Patent Office, 324-329.
 Examination of, on application for patent, 329-343.

INVENTOR.

Who is a prior, 247.
 He who first perfects a machine is, 249-252.
 May avail himself of prior experiments, 252.
 Application for patent to be made by, if alive, 271.
 Form of petition for patent by joint, 271.
 Foreign, may obtain a United States patent, 219.
 When foreign, may file a caveat, 208.

INVENTOR (continued.)

Legal representatives of, 279, 280
 May appear by attorney, 281-283.
 Oath of an, on application for patent, 317.
 Specification to be signed by, 285.
 May testify in interference cases, 547.
 Must apply for reissue if living, 556.
 Must apply for extension although the whole invention has been assigned, 585.

ITALY, 164-169.

Law, date, and where recorded, 165.
 Kinds of patents, 165.
 Previous examination, 165.
 Duration, 165.
 Government fees, 165.
 Documents required, and where to be left, 166.
 Working and prolongation, 166.
 Annulment, 166.
 Infringements, 166.
 Assignments, 166.
 Specifications, inspection, and copies of, 167.
 List of patents delivered, 167.
 Specifications published, 167.
 Proceedings to obtain a patent, 167.
 Petition, 168.
 Description, 169.
 Memorandum, 169.

JAMAICA, 169-171.

Law, date, and where recorded, 170.
 Kinds of patents, 170.
 Previous examination, 170.

JAMAICA (*continued.*)

Documents required, and where to be left, 170.

Working, 170.

Duration, 170.

Assignments, 170.

Specifications, inspection, and copies of, 170.

Penalty for use, or for imitation, or counterfeit without consent, 171.

Government fees, 171.

JOINT INVENTORS.

Entitled to a joint patent, 271.

Who are, 272.

Should join in application for patent, 272.

Neither, can demand one separately, 271-273.

Relation subsisting between, 273, 274.

JOINT OWNERSHIP. (*See Assignment.*)**JURISDICTION.** (*See Action at Law, Equity, Supreme Court District of Columbia.*)**JURY.** (*See Evidence.*)**KNOWLEDGE, PRIOR.** (*See Priority of Invention, Novelty, Prior Foreign Patent.*)**LAW.**

Presumptions of. (*See Evidence.*)

LAW OF NATURE. (*See Abstract Principle, Effect.*)

Application of, patentable, 219.

LEGAL REPRESENTATIVES. (*See Administrator.*)**LIBRARY.**

Attached to the Patent Office, 6.

LICENSE. (*See Assignment.*)

Who is a licensee, 278, 629.

Distinction between, and assignment, 624-629.

Need not be recorded, 635.

Construction of, 635.

Effect of, 635-637.

Assignment of, 637.

Relative to single machines, 637-639.

Assignee may grant, 639.

Forms of, 640-641.

LICENSEE. (*See License.*)**LOST ART.**

Discoverer of, entitled to a patent, 252.

MACHINE. (*See Combination, Identity.*)

Definition of, 236.

When patentable, 236, 538-546.

Includes new combination, 237.

Invention as respects, 237.

Product of, 237.

Divided into four classes, 238.

MAGISTRATE. (*See Deposition, Interference.*)

May administer oaths, 318, 495.

Certificate of, to deposition, 500, 504.

MANDAMUS.

To the Commissioner of Patents, 409, 427.

A remedy against public officers, 409.

To compel the performance of ministerial duties, 410.

Principles of the law of, applied to the Commissioner of Patents, 415.

MANDAMUS (*continued.*)

Power of the supreme court of District of Columbia to issue the writ of, 415.

Commanding the Commissioner to perform act enjoined by law, 417-425.

Parties in, 425.

Proceedings in, 425.

MANUFACTURE. (*See Composition of Matter, Art.*)

Definition of, 231, 232, 239.

Article of, when patentable, 240, 241, 540.

MARKS.

Required to be put on patented articles, 15.

Penalty for using false, 15.

MATERIAL. (*See Double Use, Composition of Matter, Novelty.*)**MAURITIUS, 171, 172.**

Law, date, and where recorded, 171.

Kinds of patents, 171.

Government fees, 171.

Documents required, 171.

Specifications, inspection, and copies of, 171.

Duration, 171.

Annulment, 172.

Working, 172.

MECHANICAL EQUIVALENT. (*See Double Use, Improvement, Novelty.*)

What is a, 222-224.

Substitution of a, 222-225.

MECHANICAL SKILL. (*See Improvement, Novelty.*)

Does not constitute invention, 225.

MEXICO, 172, 173.

Jurisdiction of patents, 172.

Applications to Government or local authorities, 172.

Prolongation of patents, 173.

Fees, 173.

Who patentee may employ, 173.

MISTAKE. (*See Clerical Error, Re-issue.*)

Money paid by, refunded, 34, 620.

MODE. (*See Process, Manufacture.*)**MODELS.**

Not required with caveat, 209.

Applicant to furnish, 11, 314.

To be classified, 6, 315.

Commissioner may dispense with, 315.

Requisites of, 315.

When, will be returned, 6, 316.

As evidence, 316.

Of design may be dispensed with, 428.

MOTION.

Notice of, 386.

NATURE. (*See Law of Nature.*)**NETHERLANDS, 173-175.**

Law, date, and where recorded, 173.

Kinds of patents, 173.

Previous examination, 173.

Duration, 173.

Government fees, 174.

Documents, where to be left, 174.

Working and extension, 174.

Assignments, 174.

Annulment, 174.

List of patents delivered, 174.

Specifications published, 174.

Proceedings to obtain patent, 174

NEW APPLICATION.

Of an old thing to a new purpose,
221.

NEWFOUNDLAND, 175-177.

Law, date, and where recorded,
176.

Documents required, and where
to be left, 176.

Duration, 176.

Kinds of patents, 176.

Specifications, copies of, 176.

Assignments, 176.

Working, 176.

Government fees, 176.

Other legal provisions, 176.

NEW PATENT. (See *Reissue.*)**NEW SOUTH WALES, 177, 178.**

Law, date, and where recorded,
177.

Kinds of patents, 177.

Government fees, 177.

Duration, 177.

Documents required, 177.

Proceedings to obtain a patent,
177.

NEW ZEALAND, 178, 179.

Law, date, and where recorded,
178.

Kinds of patents, 178.

Duration, 178.

Government fees, 178.

Documents required, where left,
178.

Assignments, 179.

Specifications, inspections, &c.,
179.

Other legal provisions, 179.

NON-PAYMENT. (See *Fees.*)**NOTARY PUBLIC. (See *Magistrate.*)****NOTICE.**

Of appeal to the supreme court of
District of Columbia, 378.

Of special matter in actions for
infringement, 28,

Of taking testimony, 496, 500.

Of objection to testimony, 498.

Service of, for taking testimony,
499.

Of opposition to extension, 591.

Of extension, 591.

NOVELTY.

What constitutes, 227, 535-
546.

Presumption of, 228.

Examples of, 538-546.

OATH. (See *Deposition.*)

By applicant for letters patent,
11, 317.

When invention has been patent-
ed abroad, 318.

By an administrator or executor
applying for letters patent,
318.

In case of assignment, 318.

Before whom taken, 318, 495.

Who may administer, 319.

Should not be to blank papers,
319.

Not essential to validity of patent,
321.

Extends to all in the specification,
322.

False suggestion in, 322.

Prima facie evidence of novelty,
323.

Form of, by sole inventor on ap-
plication for letters patent,
323.

OATH (continued.)

Of invention on application for patent for a design the same as in other cases, 429.

Form of, on application for patent for a design, 445,

Form of, on registration of trademark, 449.

Form of, by applicant for reissue, 583.

Form of, by applicant for extension, 606.

Of office of employee of the Patent Office, 3.

OMISSION. (See *Reissue.*)

PAROL EVIDENCE. (See *Evidence.*)

PARTIES. (See *Evidence, Interference.*)

In mandamus, 425.

PATENT.

Specification a part of, 284.

Subject-matter of application for, 9, 218-259.

Requisites of application for, 259-271.

Petition for,

Specification of, 270-283.

Oath of invention not essential to the validity of, 321.

Oath prima facie evidence of validity of, 323.

Validity of, may be contested after appeal to the supreme court of District of Columbia, 384.

Cannot be ordered to issue by supreme court of District of Columbia on appeal, 387.

For design, 427-445.

For design may be extended, 428.

PATENT (continued.)

Officers and employees not to acquire interest in, 6.

Issuing, signing, and recording, 8, 616.

Contents and grant of, 9.

Date of, 9.

May issue to assignees, 12.

May issue to legal representatives, 13.

Right of purchasers before, 15.

Examination of application for, 329-343.

Renewal of application for, 345-348.

Interfering application for, 450-494.

Reissue of, 551-584.

Extension of, 584-609.

Assignment of, 623-634.

Form of, 616.

PATENTABILITY. (See *Invention, Novelty, Utility, Combination.*)

PATENTED ARTICLES.

To be marked or labeled, 15.

Falsely marking, 15, 16.

PATENTEE. (See *Application, Inventor.*)

PATENT OFFICE.

Establishment of, 1.

Officers and employees of, 12.

Additional employees of, 2.

Annual report of, 4.

Seal of, 5.

Display of models in, 5, 6.

Library of, 6.

Rules of, 7.

Records of, (See *Copies.*)

PENALTIES.

For false marking, 15, 16.

- PERSONAL REPRESENTATIVES.** (See *Administrator.*)
- PETITION.** (See *Application.*)
- Application for patent to be by way of, 271.
- To be by inventor if alive, 271.
- When by executor, 271.
- Form of, by a sole inventor, 271.
- Form of, by joint inventors, 274.
- In case of assignment before patent, 274-279.
- Form of, by inventor for assignee, 279.
- Legal representatives may apply by, 279.
- Form of, by administrator, 280.
- Form of, by executor, 280.
- May contain power of attorney, 281-283.
- Power of attorney contained in.
- May be revoked, 283.
- To be signed by inventor in case of assignment of invention, 274, 279, 318.
- For renewal of an application on which the final fee has not been paid, 344.
- For renewal of rejected applications, 345.
- On appeal, to set forth reasons, 364.
- For a design, the same as in other cases, 429.
- Form of, for letters patent for a design, 445.
- Form of, for registry of trademark, 449.
- For reissue, 582.
- For extension, 604.
- For disclaimer, 615.
- PHOTOGRAPHS.**
- Of design received only, 429.
- PLEADINGS.** (See *Action at Law, Equity.*)
- PORTUGAL, 179-181.**
- Law, date, and where recorded, 179.
- Kinds of patents, 180.
- Previous examination, 180.
- Duration, 180.
- Government fees, 180.
- Documents, where to be left, 180.
- Working and prolongation, 180.
- Assignments, 180.
- Annulment, 180.
- Other provisions, 181.
- Specifications, inspection, and copies of, (models,) 181.
- POSTPONEMENT.**
- Of cases pending before the Commissioner, 366.
- POWER OF ATTORNEY.**
- To be filed before an attorney will be recognized, 281, 282.
- After filing, correspondence held with attorney only, 281.
- Clause of substitution in, 282.
- Associate attorney must file, 282.
- Revocation of, 283.
- Stamp required, 282.
- Form of petition with, 282.
- Form of, 283.
- Form of revocation of, 283.
- PRESUMPTION.** (See *Evidence.*)
- PRIMA FACIE EVIDENCE.** (See *Evidence.*)
- PRINCIPLE.**
- Abstract, 219.
- Identity of, 241.
- PRINTED PUBLICATIONS.** (See *Publication.*)

PRINTING.

- Copies of specifications, &c., 7
- Papers not legibly written, 7

PRIOR FOREIGN PATENT, 254, 527, 535.

PRIORITY OF INVENTION.

- What constitutes, 247, 522-527.
- Evidence of, 522.
- When invention must be reduced to practice to constitute, 247-252, 522.

Patent prima facie evidence of, 522.

PRIOR PUBLICATION.

- When, will avoid a patent, 30, 232, 527-535.

PROCESS.

- When patentable, 234, 235, 236.

PRODUCT.

- When patentable, 234-237.

PROOF. (See *Evidence*.)

PRUSSIA, 181-183.

- Law, date, and where recorded, 181.
- Kinds of patents, 181.
- Previous examination, 182.
- Duration, 182.
- Government fees, 182.
- Documents required, and where to be left, 182.
- Working, 182.
- Assignments, 182.
- Other legal provisions, 182.
- Specifications, inspection, and copies of, 182.
- List of patents delivered, 182.
- Specifications published, 183.
- Proceedings to obtain a patent, 183.

PUBLICATION.

- When prior, will avoid a patent, 252-254, 527-535.

59*

PUBLIC USE.

- What is, 252, 254, 527-535.
- Two years prior to application allowed, 264.
- What constitutes, 264.

PURCHASER.

- Before patent, rights of, 15.

QUEENSLAND, 183.

(See *Commissioners of Patents' Journal*, No. 559.)

QUESTIONS OF LAW. (See *Evidence*.)QUESTIONS OF FACT. (See *Evidence*.)

- Decisions turning upon, not in general reversed on appeal, 367-372.

REASONS OF APPEAL.

- To supreme court of District of Columbia, 379, 382.

RECORD.

- Of assignment of invention, 277.
- How authenticated, 5.

RECORDING. (See *Assignment*.)

REFERENCES.

- Given on rejection of an application for letters patent, 17, 354.

REHEARING.

- After rejection by primary examiner, 333.
- How often allowed before primary examiner, 335.
- After appeal to the board of examiners-in-chief, 337, 338, 360.
- Before the examiners-in-chief, 358.
- Examiners-in-chief may remand a case for, 360.
- By order of the Commissioner, 358, 359.

REHEARING (*continued.*)

Of a case decided by one Commissioner will not be granted by his successor, 366.

REISSUE.

Of letters patent, 22, 551.

Résumé of the, concerning, 551-555.

To whom granted, 555.

Inventor, if living, to make application for, 556.

Petition for, must show concurrence of part owners, 556.

Rights of assignees on, 556.

Statement of title on, 558.

Application for, immediately acted on, 558.

Defects cured by, 558.

There may be more than one, 551.

Use under defective patent no bar to, 561.

May be granted after extension, 561.

When clerical error may be cured by, 562-568.

Divisions of, action of the Commissioner on, 570.

Must be for the same invention, 574-579.

Specification subject to revision on, 579-580.

Surrender of patent does not take effect until the granting of, 580.

Rights conferred by, 581-582.

Form of petition for, 582.

Form of oaths for, 583.

REJECTION.

Of application for patent, 17, 334.

Invention may be assigned after, 275.

Of an application for patent, which would be sustained in law 299.

REJECTION (*continued.*)

Rehearing after, 333, 335, 337, 338, 358, 360.

Amendment after, 334-343.

REMEDY. (See *Action at Law, Equity.*)

RENEWAL.

Of an application on which the final fee has not been paid, 13, 343-345

Who may petition for, 344.

To be made within two years from the notification of allowance, 344.

New specification not required in case of, 344.

When interference will be declared, 345-346.

Form of petition for, 345.

Of withdrawn and rejected applications filed prior to July 8, 1870, 13.

Consequences of neglect in applying for, 345.

Formal, 346.

Intent of the act of July 8, 1870, concerning, 346.

Petition for, to be accompanied by a demand for action, 347.

REPAIR.

Owner of patented machine may, 638.

REPLICATION. (See *Equity.*)

REPORT.

Of Commissioner to Congress, 4.

RESULT. (See *Effect.*)

RULES.

Power of Commissioner to make, 7.

Of the supreme court of District of Columbia, on appeal, 385.

RUSSIA, 183-186.

Law, date, and where recorded, 184.

Kinds of patents, 184.

Previous examination, 184.

Duration, 184.

Government fees, 184.

Documents, where to be left, 184.

Working and prolongation, 184.

Assignments, 185.

Specifications, inspection, and copies of, 185.

List of patents delivered, 185.

Specifications published, 185.

Proceedings to obtain a patent, 185.

SALARIES.

Of the Commissioner of Patents, 2.

Of the Assistant Commissioner, 2.

Of the examiner-in-chief, 2.

Of the chief clerk of the Patent Office, 2.

Of principal examiners, 3.

Of first assistant examiners, 3.

Of clerks of the Patent Office, 3.

SALE. (See *Assignment, License.*)

SAXONY, 186, 187.

Law, date, and where recorded, 186.

Kinds of patents, 186.

Previous examination, 186.

Duration, 186.

Government fees, stamps, &c., 186.

Documents, where to be left, 186.

Working and extension, 187.

Assignments, 187.

Annulment, 187.

SAXONY (*continued.*)

Lists of patents delivered, 187.

Specifications, 187.

Proceedings to obtain a patent, 187.

SCIENCE.

Mere discovery in, not patentable, 219, 226, 227.

SEAL.

Of the Patent Office, 5.

SECRETARY OF THE INTERIOR.

To exercise general supervision, 4.

To appoint clerks of the Patent Office, 2.

Refusal to recognize an attorney subject to the approval of, 7.

Rules of the Patent Office subject to the approval of, 7.

SERVANT.

When presumed an inventor, 494.

SKILL.

Mechanical, 225.

Specification addressed to persons of competent, 287.

SPAIN, 188-191.

Law, date, and where recorded, 188.

Kinds of patents, 188.

Previous examination, 188.

Duration, 188.

Government fees, 188.

Documents, where to be left, 188.

Working and extension, 189.

Infringements, 189.

Assignments, 189.

Specifications, inspection, and copies of, 189.

List of patents delivered, 189.

Originals of specifications, (models,) 189.

SPAIN (continued.)

Proceedings to obtain a patent, 189.

Form of petition to the king, 190.

SPECIFICATION.

A part of the patent, 284.

Correction of, may be required on examination, 340.

Statute requisites of, 10, 284.

Rules of the Patent Office concerning, 285.

Construed together with letters patent, 286:

Occupies a different position from that in England, 286.

Annexed drawings form a part of, 286.

Object of, 286.

Addressed to persons of competent skill, 287.

Must enable skilled workmen to apply without invention of their own, 288.

What need not be stated in, 288.

Variable proportions need not be stated in, 290.

Object of the claim to ascertain what is new, 291, 297, 303.

No particular mode of claiming what is new in, prescribed, 292, 297.

Object of the claim not to aid the description, 291.

Construction of the claim, 291, 292.

Claim a means of clearly presenting the subject-matter, 292.

Must distinguish between the old and the new, 291, 292, 297.

Language employed in, 293.

Words *substantially as described* and the like, 293.

SPECIFICATION (continued.)

Strictures upon the use of present participles, 294, 295.

The words *producing, so constructing, &c.*, 294, 295.

Construction of the word *arrangement*, 295.

How improvements should be set forth, 297.

Implication in regard to parts not claimed, 297, 298.

Invention should not be described as a mode or function, 298.

Should not be vague or ambiguous, 298, 299.

May be saved by construction which ought not to have been allowed, 299, 300.

Duty of Commissioner of Patents concerning, 300.

Must disclose the patentees' best knowledge, 300.

Fraudulent concealment in, 300.

False suggestion in, 300.

Order of, 301.

Statement of object of invention in, 301.

Description of detail in, 302.

Should not be signed in blank, 319.

Form of, for a machine, 304.

Form of, for a process, 306.

Form of, for a composition of matter, 307.

Will not be returned for amendment, 341.

Amendment of, after rejection, 334, 343.

New, not required on renewal of an application, 344.

SPECIFICATION (*continued.*)

For a design, the same as in other cases, 429.

Form of, for a design, 445.

SPECIMEN OF INGREDIENTS.

Applicant to furnish, 11, 315

STAMP.

Five-cent revenue, for each sheet of an assignment, 278.

Fifty-cent revenue, for power of attorney, 282.

SUBJECT-MATTER

Of application for letters patent, 218, 259.

Of patents for designs, 427.

SUBPENA.

Clerks of United States courts may issue, 18, 19, 495.

SUBSTITUTION. (See *Double Use, Equivalents.*)**SUPREME COURT, D. C., APPEAL TO.**

From the decision of Commissioner, 20, 21, 377-408, 673.

To the court sitting in banc, 378.

Appellant to notify Commissioner on, 378.

Papers accompanying notice of, 378.

Time of filing reasons of, 379.

Reasons of, should not be vague, 379.

Forms furnished by the office on, 380.

Appellant to furnish certified copies on, 380.

Duties of Commissioner in case of, 381.

Reasons of Commissioner in case of, 381.

Commissioner and examiner may be examined on, 381, 674

SUPREME COURT (*continued.*)

Duty of the court, 382, 674.

Revisions to be confined to reasons of, 382.

Case tried upon evidence before Commissioner, 383.

Decision of, to govern further proceedings, 384.

Validity of patent may be contested after, 384.

Rules to govern, 385, 674.

When, does not lie, 386.

Whether a patent can be ordered to issue by, 387.

When specification must have been examined before, 387.

Jurisdiction on, 387-401.

When decision on, is binding, 401.

Decisions on, to be followed as precedents, 407.

Form of petition, 678.

Form of certificate of Commissioner, 408.

Form of notice and reasons of, 408.

SUPREME COURT, U. S. (See *Action at Law, Equity.*)**SURRENDER.** (See *Reissue.*)**SWEDEN, 191-193.**

Law, date, and where recorded, 191.

Kinds of patents, 191.

Previous examination, 191.

Duration, 192.

Government fees, 192.

Documents required, and where to be left, 192.

Working and extension, 192.

Assignments, 192.

Other legal provisions, 192.

Specifications, inspection, and copies of, 192.

SWEDEN (*continued.*)

- List of patents delivered, 193.
- Specifications published, 193.
- Originals of specifications, (models,) 193.

TASMANIA, 193-195.

- Law, date, and where recorded, 193.
- Kinds of patents, 193.
- Duration, 193.
- Government fees, 193.
- Documents required, and where to be left, 194.
- Assignments, 194.
- Originals of specifications, &c., 194.
- Other legal provisions, 194.

THEORY. (*See Principle.*)

- Must be reduced to practice to be patentable, 226.

TIME.

- To complete and prosecute application for a patent, 260, 330.
- Two years' use prior to application allowed, 264.
- Effect of delay at the Patent Office, 265.
- Invention may be abandoned within two years, 266.
- Renewal of an application on which the final fee has not been paid to be made within two years, 343.
- Of hearing before the Commissioner, 366.
- Of filing reasons of appeal to the supreme court of the District of Columbia, 379.

TIME. (*continued.*)

- For which design patents are granted, 428, 437.
- For taking testimony postponed, 503.
- For taking testimony in interference cases, 503.
- To complete application after caveat, 208.

TRADE-MARKS

- Common-law remedies preserved concerning, 41.
- Object and effect of the law of July 8, 1870, concerning, 446.
- Patent Office requirements concerning, 448.
- Five duplicate copies of, to be furnished, 448.
- Assignment of, to be recorded, 81, 449.
- Form of petition for the registry of trade-mark, 449.
- Form of oath, 449.
- Form of transfer of, 450.
- Form of certificate, 450.
- Who are entitled to, 36.
- Requirements of the law, 36, 37.
- Term of, 38.
- Renewal of, 38.
- Protection afforded by, 38.
- Remedy for wrongful use of, 39.
- Proof of registration of, 40.
- Penalty for fraudulent registration of, 40, 41.

TRANSFER.

- Form of, of a trade-mark, 450.

TRINIDAD, 195.

- Law, date, and where recorded, 195.
- Duration, 195.

Government fees, 195.
 Kinds of patents, 195.
 Documents required, &c., 195.
 Specifications, 195.

UNITED STATES COMMISSIONER. (See *Magistrate.*)

UNITED STATES CONSUL. (See *Oaths.*)

UNITY OR DIVERSITY OF INVENTION.
 What inventions may be included in a single patent, 254-259.

Discretion of the Commissioner to decide, 255-259.

When invention cannot be patented in a second application, 255.

USE. (See *Abandonment.*)

Two years, prior to application, allowed, 264.

Definition of public, 264.

Definition of common, 264.

For two years, of designs not provided for by law, 438.

USEFUL.

Meaning of the word in the patent laws, 229.

UTILITY.

What constitutes, 229, 535.

Discretion of Commissioner to determine, 230.

Designs may be patented for their, 435.

VENDOR. (See *Assignment, License.*)

VICTORIA, (Australia,) 195-199.

Law, date, and where recorded, 195.

VICTORIA (*continued.*)

Kinds of patents, 196.

Previous examination, 196.

Duration, 196.

Government fees, 196.

Documents, where to be left, 197.

Assignments, 197.

Specifications and indexes, 197.

Lists of patents delivered, 197.

Penalties and fines, 198.

Proceedings to obtain a patent, 198.

Form of application, 199.

WEST INDIES, (Dutch,) 200, 201.

Law, date, and where recorded, 200.

Kinds of patents, 200.

Duration, 200.

Government fees, 200.

Documents required, &c., 200.

Working, 200.

Assignments, 200.

Annulments, 200.

List of patents delivered, 201.

Specifications published, 201.

Originals of specifications, (models,) 201.

WITNESSES. (See *Deposition, Evidence.*)

May be subpoenaed, 19, 495.

Fees and rights of, 19, 496.

Competency of, 548.

WORKMAN.

When presumed inventor as against employer, 492-494.

WRIT OF ERROR.

To the Supreme Court of the United States in patent causes 25.

WURTEMBERG, 201-203.

Law, date, and where recorded,
201.

Kinds of patents, 202.

Previous examination, 202.

Duration, 202.

Government fees, 202.

Documents required, and where
to be left, 202.

Working and prolongation, 202.

WURTEMBERG, (*continued.*)

Assignments, 202.

Specifications, inspection, and
copies of, 202.

Annulment, 202.

List of patents delivered, 202.

Specifications published, 203.

Other provisions, 203.

Proceedings to obtain a patent,
203.

APPENDIX.

APPENDIX.

I.

PUBLICATION OF THE SPECIFICATIONS AND DRAWINGS OF THE PATENT OFFICE.

JOINT RESOLUTION providing for publishing the specifications and drawings of the Patent Office.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled,
That the publication of the abstracts of specifications and of the engravings heretofore accompanying the annual report of the Commissioner of Patents be discontinued after the publication of that portion of the report for eighteen hundred and sixty-nine, for which the plates have already been prepared; and that, in lieu thereof, the Commissioner be authorized to have printed, for gratuitous distribution, not to exceed one hundred and fifty copies of the complete specifications and drawings of each patent subsequently issued, together with suitable indexes to be issued from time to time, one copy to be placed for free public inspection in each capitol of every State and Territory, one for the like purpose in the clerk's office of the district court of each judicial district of the United States, except

when such offices are located in State or Territorial capitols, and one in the Library of Congress, which copies shall be taken and received in all courts as evidence of all matters therein contained, and shall be certified to under the hand of the Commissioner and seal of the Patent Office, and shall be taken and received in all courts as evidence, said copies not to be taken from said depositories for any other purpose than to be used as evidence; and the Commissioner of Patents is hereby authorized and directed to have printed such additional numbers of copies of specifications and drawings, certified as hereinbefore provided, at a price not to exceed the contract price for such drawings, for sale, as may be warranted by the actual demand for the same; and the Commissioner is also hereby authorized to furnish a complete set of such specifications and drawings to any public library which will pay for binding the same in volumes to correspond with those in the Patent Office, and for the transportation of the same, and which shall also provide proper custody for the same, with convenient access for the public thereto, under such regulations as the Commissioner shall deem reasonable: *And provided, also,* That all contracts for making copies of drawings shall be made under the provisions of chapter one hundred and fifty-five, section nine, of act of Congress approved June twenty-five, eighteen hundred and sixty-four, which reads as follows:

“SEC. 9. *And be it further enacted,* That all lithographing and engraving, where the probable total cost of the maps or plates illustrating or accompanying any one work exceeds two hundred and fifty dollars, shall be awarded to the lowest and best bidder for the interests of the Government, due regard being paid to the execution of the

work, after due advertisement by the Superintendent of Public Printing, under the direction of the Joint Committee on Printing: *Provided*, That the Joint Committee on Public Printing be authorized to empower the Superintendent of Public Printing to make immediate contracts for engraving, whenever, in their opinion, the exigencies of the public service will not justify waiting for advertisement and award."

Approved, January 11, 1871.

CHAP. V.—AN ACT to further regulate the publication of the specifications and drawings of the Patent Office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if, in the judgment of the Joint Committee on Printing, the provisions of the joint resolution providing for publishing specifications and drawings of the Patent Office, approved January eleventh, eighteen hundred and seventy-one, can be performed under the direction of the Commissioner of Patents more advantageously than in the manner provided in said joint resolution, it shall be so done, under such limitations and conditions as the Joint Committee on Printing may, from time to time, prescribe.

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

Approved, March 24, 1871.

II.

REGISTRATION OF PRINTS AND LABELS.

By the following act of Congress, approved June 18, 1874, (to take effect on and after the 1st day of August, 1874,) it is provided that certain prints and labels may be registered in the Patent Office.

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 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.

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.

Approved June 18, 1874.

By the word "print," as used in the said act, is meant any device, picture, word or words, figure or figures (not a trade-mark) impressed or stamped directly upon the articles of manufacture, to denote the name of the manufacturer, or place of manufacture, style of goods, or other matter.

By the word "label," as therein used, is meant 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, and bearing an inscription, (not a trade-mark,) as, for example, the name of the manufacturer or the place of manufacture, the quality of goods, directions for use, &c.

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

But no such print or label can be registered unless it properly belong to an article of commerce, and be as above defined; nor can the same be registered as such print or label when it amounts in law to a technical trade-mark.

To entitle the owner of any such print or label to register the same in this office, it is necessary that five copies of the same be filed, one of which copies shall be certified under the seal of the Commissioner of Patents, and returned to the registrant.

FORM OF APPLICATION FOR REGISTRATION.

[Making necessary changes to suit each case.]

[FOR AN INDIVIDUAL.]

To the Commissioner of Patents:

The undersigned, John Fisher, of the city of Brooklyn, county of Kings, and State of New York, and a citizen of the United States, [or resident

therein, as the case may be,] hereby furnishes five copies of a print, [or "label," as the case may be,] of which he is the sole proprietor.

The said print [or "label"] consists of the words and figures as follows, to wit: [Description.]

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

BROOKLYN, N. Y., August 1, 1874.

_____,
Proprietor.

[FOR A CORPORATION.]

The applicant, a corporation created by authority of the laws of the State of New York, [or other authority, as the case may be,] and doing business in said State, hereby furnishes five copies of a label [or "print," as the case may be] of which it is the sole proprietor.

The said label consists of the words and figures as follows, to wit: [Description.]

And it is hereby requested that the said label be registered in the Patent Office, in accordance with the act of Congress to that effect, approved June 18, 1874.

Witness the seal of said corporation at _____, 1874.

[SEAL.]

_____,
[President or other officer.]

The certificate of such registration will continue in force for twenty-eight years.

The fee for registration of a print or label is six dollars, to be paid in the same manner as fees for patents.

The benefits of this act seem to be confined to citizens or residents of the United States.

III.

CANADIAN PATENT LAW OF 1872.

CAP. XXVI. AN ACT respecting patents of invention.

[Assented to 14th June, 1872.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

I. Patent Office Constituted.

1. MINISTER OF AGRICULTURE TO BE COMMISSIONER OF PATENTS OF INVENTION.—There shall be attached to the Department of Agriculture, as a branch thereof, an office to be called the Patent Office; and the Minister of Agriculture for the time being shall be the Commissioner of Patents; and it shall be the duty of the said Commissioner to receive all applications, fees, papers, documents, and models for patents, and to perform all acts and things requisite to the granting and issuing of patents of invention; and he shall have the charge and custody of the books, records, papers, models, machines, and other things belonging to the said office.

2. SEAL.—The Commissioner shall cause a seal to be made for the purposes of this act, and may cause to be sealed therewith patents and other instruments and copies proceeding from the Patent Office; and all courts, judges, and other persons whomsoever, shall take notice of such seal, and receive impressions thereof in evidence, in like

manner as impressions of the Great Seal are received in evidence, and shall also take notice of and receive in evidence, without further proof and without production of the originals, copies or extracts certified under the seal of the said office to be copies of or extracts from documents deposited in such office.

3. COMMISSIONER TO MAKE RULES.—The Commissioner may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations, and prescribe such forms as may appear to him necessary and expedient for the purposes of this act, and notice thereof shall be given in the *Canada Gazette*; and all documents, executed in conformity with the same and accepted by the Commissioner, shall be held valid so far as relating to the proceedings in the Patent Office.

4. DEPUTY COMMISSIONER AND CLERKS.—The Deputy of the Minister of Agriculture shall be the Deputy Commissioner of Patents of Invention; and the Governor in Council may, from time to time, appoint such clerks and officers under him as may be necessary for the purposes of this act, and such clerks and officers shall hold office during pleasure. No officer or employee of the Patent Office shall buy, sell, or acquire, or traffic in an invention or patent, or rights to patents therefor; and every such purchase and sale, and every assignment or transfer thereof, by or to any officer or employee as aforesaid, shall be utterly null and void. But this shall not apply to any original inventor, or to the acquisition by bequest.

5. ANNUAL REPORT AND LIST OF PATENTS.—The Commissioner shall cause a report to be prepared annually and laid before Parliament of the proceedings under this act, and shall, from time to time, and at least once in each

year, publish in the *Canada Gazette* a list of patents granted, and may, with the approval of the Governor in Council, cause such specifications and drawings as may be deemed of interest, or essential parts thereof, to be printed from time to time for distribution or sale.

II. Who may obtain Patents.

6. WHO MAY OBTAIN A PATENT.—Any person having invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture, or composition of matter, not knowing or used by others before his invention thereof, and not being in public use or on sale, for more than one year previous to his application, in Canada, with the consent or allowance of the inventor thereof, may, on a petition to that effect presented to the Commissioner, and on compliance with the other requirements of this act, obtain a patent granting to such persons an exclusive property therein; and the said patent shall be under the seal of the Patent Office and the signature of the Commissioner, or the signature of another member of the Privy Council, and shall be good and avail to the grantee, his executors, administrators, or assigns, for the period mentioned in such patent; but no patent shall issue for an invention having an illicit object in view, nor for any mere scientific principle or abstract theorem.

7. INVENTIONS FOR WHICH FOREIGN PATENTS HAVE BEEN TAKEN OUT.—But an inventor shall not be entitled to a patent for his invention, if a patent therefor in any other country shall have been in existence in such country more than twelve months prior to the application for such patent in Canada; and if, during such twelve

months, any person shall have commenced to manufacture in Canada the article for which such patent is afterwards obtained, such person shall continue to have the right to manufacture and sell such article, notwithstanding such patent; and under any circumstances, where a foreign patent exists, the Canadian patent shall expire at the earliest date at which any foreign patent for the same invention expires.

8. REPRESENTATIVES OF INVENTOR MAY OBTAIN PATENT.—The patent may be granted to any person to whom the inventor entitled under the sixth section to obtain a patent has assigned or bequeathed the right of obtaining the same, or, in default of such assignment or bequest, to the executors or administrators or assigns of the deceased inventor.

9. PATENTS FOR IMPROVEMENTS ON PATENTED INVENTIONS.—Any person who has invented any improvement on any patented invention may obtain a patent for such improvement, but shall not thereby obtain the right of vending or using the original invention, nor shall the patent for the original invention confer the right of vending or using the patented improvement.

10. JOINT APPLICATION FOR A PATENT.—In cases of joint applications, the patent shall be granted in the names of all the applicants; and in such cases, any assignment from one of the said applicants or patentees to the other, or to any person, shall be registered in like manner as other assignments.

III. Conditions and Formalities.

11. DECLARATION TO BE MADE BY APPLICANT FOR A PATENT.—Every inventor, before a patent can be ob-

tained, shall make oath, or, when entitled by law to make an affirmation instead of an oath, shall make an affirmation, that he verily believes that he is, or, in the case of the inventor being deceased, the applicant shall make oath or affirm that the person whose assignee or representative he is, was the inventor of the invention for which the patent is solicited, and that the several allegations in the petition contained are respectively true and correct. Such oath or affirmation may be made before any Justice of the Peace in Canada; but if the inventor or the applicant is not at the time in Canada, the oath or affirmation may be made before any Minister Plenipotentiary, *chargé d'affaires*, consul, vice-consul, or consular agent, holding commission under the Government of the United Kingdom, or any Judge of the country in which the applicant happens at the time to be.

12. APPLICANT TO ELECT A DOMICILE IN CANADA.—The petitioner for a patent shall for all the purposes of this act elect his domicile at some known and specified place in Canada, and mention the same in his petition for a patent.

13. PARTICULARS REQUIRED IN APPLICATION.—The applicant shall, in his petition for a patent, insert the title or name of the invention, and shall, with the petition, send in a specification in duplicate.

14. SPECIFICATION AND DRAWING.—The specification shall correctly and fully describe the mode or modes of operating contemplated by the inventor; and shall state clearly and distinctly the contrivances and things which he claims as new, and for the use of which he claims an exclusive property and privilege; it shall bear the name of

the place where it is made, the date, and be signed by the inventor, if he be alive, (and if not, by the applicant,) and two witnesses; in the case of a machine, the specification shall fully explain the principle and the several modes in which it is intended to apply and work out the same; in the case of a machine, or in any other case where the invention admits of illustration by means of drawings, the applicant shall also, with his application, send in drawings in duplicate showing clearly all parts of the invention; and each drawing shall bear the signature of the applicant or of his attorney, and shall have written references corresponding with the specification, but the Commissioner may require further drawings or dispense with any of them, as he may see fit; one duplicate of the specification and of the drawings, if there are drawings, shall be annexed to the patent of which it forms an essential part, and the other duplicate shall remain deposited in the Patent Office.

15. **WORKING MODEL, &c., TO BE DELIVERED TO THE COMMISSIONER.**—The applicant shall also deliver to the Commissioner, unless specially dispensed from so doing for some good reason, a neat working model of his invention on a convenient scale, exhibiting its several parts in due proportion, whenever the invention admits of such model; and shall deliver to the Commissioner specimens of the ingredients, and of the composition of matter sufficient in quantity for the purpose of experiment, whenever the invention is a composition of matter; provided such ingredients and composition are not of an explosive character or otherwise dangerous, in which case they are to be furnished only when specially required by the Commissioner,

and then with such precautions as shall be prescribed in the said requisition.

II. Contents, Duration, Surrender, Reissue of Patents, and Disclaimers.

16. **CONTENTS OF PATENTS.**—Every patent granted under this act shall contain the title or name of the invention, with a reference to the specification,—and shall grant to the patentee, his executors, administrators, and assigns, for the period therein mentioned from the granting of the same, the exclusive right, privilege, and liberty of making, constructing, and using, and vending to others to be used, the said invention, subject nevertheless to adjudication before any court of competent jurisdiction.

17. **DURATION OF PATENTS.**—Patents of invention issued by the Patent Office shall be valid for a period of five, ten, or fifteen years at the option of the applicant; but at or before the expiration of the said five or ten years the holder thereof may obtain an extension of the patent for another period of five years, and after those second five years, may again obtain a further extension for another period of five years, not in any case to exceed a total period of fifteen years in all; and the instrument delivered by the Patent Office for such extension of time shall be in the form which may be from time to time adopted, to be attached, with reference to the patent, and under the signature of the Commissioner, or of any other Privy Councillor in case of absence of the Commissioner.

18. **PATENT OR EXTENSION TO BE EXAMINED BY MINISTER OF JUSTICE BEFORE GRANTED.**—Every patent and instrument for the extension of time as aforesaid shall, before it is signed by the Commissioner or any other member of the

Privy Council, and before the seal hereinbefore mentioned is affixed to it, be examined by the Minister of Justice, who, if he finds it conformable to law, shall certify accordingly, and such patent or instrument may then be signed and the seal affixed thereto, and being duly registered, shall avail to the grantee thereof.

19. **IN CASES OF ERROR, COMMISSIONER MAY CAUSE NEW PATENT TO ISSUE.**—Whenever any patent shall be deemed defective or inoperative by reason of insufficient description or specification, or by reason of the patentee claiming more than he had a right to claim as new, but at the same time it appears that the error arose from inadvertence, accident, or mistake, without any fraudulent or deceptive intention, the Commissioner may, upon the surrender of such patent and the payment of the further fee hereinbefore provided, cause a new patent, in accordance with an amended description and specification to be made by such patentee, to be issued to him for the same invention, for any part or the whole of the then unexpired residue of the period for which the original patent was or might have been, as hereinbefore directed, granted. In case of the death of the original patentee, or of his having assigned the patent, a like right shall vest in his assignee or legal representative. The new patent, and the amended description and specification, shall have the same effect in law, on the trial of any action thereafter commenced for any cause subsequently accruing, as if the same had been originally filed in such corrected form before the issue of the original patent.

20. **PATENTEE MAY DISCLAIM ANYTHING INCLUDED IN THE PATENT BY MISTAKE.**—Similarly, whenever by any mistake, accident, or inadvertence, and without any willful intent to

defraud or mislead the public, a patentee has made his specification too broad, claiming more than that of which he or the party through whom he claims was the first inventor, or has in the specification claimed that he or the party through whom he claims was the first inventor of any material or substantial part of the invention patented, of which he was not the first inventor, and to which he had no legal right;—the patentee may, on payment of the fee hereinafter provided, make disclaimer of such parts as he does not claim to hold by virtue of the patent or the assignment thereof. Such disclaimer shall be in writing, and in duplicate, and attested in the manner hereinbefore prescribed for a patent, one copy to be filed and recorded in the office of the Commissioner, the other copy to be attached to the patent and made a part thereof by reference, and such disclaimer shall thereafter be taken and considered as part of the original specification. Such disclaimer shall not affect any action pending at the time of its being made, except in so far as may relate to the question of unreasonable neglect or delay in making it. In case of the death of the original patentee, or of his having assigned the patent, a like right shall vest in his assigns or legal representatives respectively, any of whom may make disclaimer. The patent shall thereafter be deemed good and valid for so much of the invention as is truly the disclaimant's own and not disclaimed, provided it be a material and substantial part of the invention, and definitely distinguished from other parts claimed without right; and the disclaimant shall be entitled to maintain a suit for such part accordingly.

V. Assignment and Infringement of Patents.

21. **GOVERNMENT MAY USE PATENTED INVENTION.**—The Government of Canada may always use any patented invention, paying to the patentee such sum as the Commissioner may report to be a reasonable compensation for the use thereof.

22. **PATENTS TO BE ASSIGNABLE.**—Every patent for an invention, whensoever issued, shall be assignable in law, either as to the whole interest or as to any part thereof, by any instrument in writing; but such assignment, and also every grant and conveyance of any exclusive right to make and use and to grant to others the right to make and use the invention patented, within and throughout Canada or any part thereof, shall be registered in the office of the Commissioner, in the manner from time to time adopted by the Commissioner of Patents for such registration; and every assignment affecting a patent for invention shall be deemed null and void against any subsequent assignee unless such instrument is registered as hereinbefore prescribed, before the registering of the instrument under which such subsequent assignee may claim.

23. **REMEDY FOR INFRINGEMENT OF PATENT.**—Every person who, without the consent in writing of the patentee, makes, constructs, or puts in practice any invention for which a patent has been obtained under this act or any previous act, or procures such invention from any person not authorized to make or use it by the patentee, and uses it, shall be liable to the patentee in an action of damages for so doing; and the judgment shall be enforced, and the damages and costs that may be ad-

judged shall be recovered in like manner as in other cases in the court in which the action is brought.

24. ACTION FOR INFRINGEMENT OF PATENT.—An action for the infringement of a patent may be brought before any court of record having jurisdiction to the amount of damages asked for, and having its sittings within the province in which the infringement is said to have taken place, and being, at the same time, of the courts of such jurisdiction within such province, the one of which the place of holding is nearest to the place of residence or of business of the defendant; and such court shall decide the case and determine as to costs. In any action for the infringement of a patent, the court, if sitting, or any judge thereof in chambers, if the court be not sitting, may, on the application of the plaintiff or defendant respectively, make such order for an injunction, restraining the opposite party from further use, manufacture, or sale of the subject matter of the patent, and for his punishment in the event of disobedience to such order, or for inspection or account, and respecting the same and the proceedings in the action, as the court or judge may see fit; but from such order an appeal shall lie under the same circumstances and to the same court as from other judgments or orders of the court in which the order was made.

25. COURT MAY DISCRIMINATE IN CERTAIN CASES.—Whenever the plaintiff fails to sustain his action, because his specification and claim embrace more than that of which he was the first inventor, and it appears that the defendant used or infringed any part of the invention justly and truly specified and claimed as new, the court

may discriminate, and the judgment may be rendered accordingly.

26. DEFENSE IN ACTIONS OF INFRINGEMENT.—The defendant, in any such action, may specially plead as matter of defense any fact or default which, by this act or by law, would render the patent void; and the court shall take cognizance of that special pleading and of the facts connected therewith, and shall decide the case accordingly.

VI. Nullity, Impeachment, and Avoidance of Patents.

27. PATENT MAY BE DECLARED VOID IN CERTAIN CASES, OR VALID ONLY FOR PART.—A patent shall be void, if any material allegation in the petition or declaration of the applicant be untrue, or if the specifications and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, such omission or addition being willfully made for the purpose of misleading; but if it shall appear to the court that such omission or addition is simply an involuntary error, and it is proved that the patentee is entitled to the remainder of his patent *pro tanto*, the court shall render a judgment in accordance with the facts, and determine as to costs, and the patent shall be held valid for such part of the invention described; and two office copies of such judgment shall be furnished to the Patent Office by the patentee, one to be registered and to remain of record in the office, and the other to be attached to the patent, and made a part of it by a reference.

28. PATENTS TO BE CONDITIONAL FOR THE MANUFACTURE IN CANADA OF THE THING PATENTED.—Every patent granted under this act shall be subject and expressed to be subject to the condition that such patent and all the rights

and privileges thereby granted shall cease and determine and the patent shall be null and void at the end of two years from the date thereof, unless the patentee, or his assignée or assignees, shall within that period have commenced, and shall, after such commencement, continuously carry on in Canada the construction or manufacture of the invention or discovery patented, in such manner that any person desiring to use it may obtain it, or cause it to be made for him at a reasonable price, at some manufactory or establishment for making or constructing it in Canada, and that such patent shall be void if, after the expiration of twelve months from the granting thereof, the patentee, or his assignee or assignees, for the whole or a part of his interest in the patent, imports, or causes to be imported into Canada, the invention for which the patent is granted; and provided always, that in case disputes shall arise as to whether a patent has or has not become null and void under the provisions of this section, such disputes shall be settled by the Minister of Agriculture, or his deputy, whose decision shall be final.

2. COMMISSIONER MAY EXTEND THE TERM FOR MANUFACTURE IN CANADA.—Whenever a patentee has been unable to carry on the construction or manufacture of his invention within the two years hereinbefore mentioned, the Commissioner may grant to the patentee a further delay, on his adducing proof to the satisfaction of the Commissioner that he was for reasons beyond his control prevented from complying with the same, but no such further delay shall be thus granted in any case in advance of the time hereinbefore prescribed.

29. PROCEEDINGS FOR IMPEACHMENT OF PATENT.—Any person desiring to impeach any patent issued under this

act may obtain a sealed and certified copy of the patent, and of the petition, affidavit, specification, and drawings thereunto relating, and may have the same filed in the office of the Prothonotary or Clerk of the Superior Court for the Province of Quebec, or of the Court of Queen's Bench or Common Pleas for the Province of Ontario, or of the Supreme Court in the Province of Nova Scotia, or of the Court of Queen's Bench in the Province of New Brunswick, according to the domicile elected by the patentee as aforesaid, or in the court of highest jurisdiction in the Province of Manitoba or British Columbia, which Courts shall adjudicate on the matter and decide as to costs. The patent and documents aforesaid shall then be held as of record in such Court, so that a writ of *scire facias* under the seal of the Court grounded upon such record may issue for the repeal of the patent, for cause as aforesaid, if upon proceedings had upon the writ in accordance with the meaning of this act the patent be adjudged to be void.

30. JUDGMENT VOIDING PATENT TO BE FILED IN PATENT OFFICE.—A certificate of the judgment voiding any patent shall, at the request of any person or party filing it to be of record in the Patent Office, be entered on the margin of the enrollment of the patent in the office of the Commissioner, and the patent shall thereupon be, and be held to have been, void and of no effect, unless and until the judgment be reversed on appeal, as hereinafter provided.

31. TO BE SUBJECT TO APPEAL.—The judgment declaring any patent void shall be subject to appeal to any court of appeal having appellate jurisdiction in other cases over the court by which the same was rendered.

VII. Patents Issued under former Laws.

32. EXISTING PROVINCIAL AND DOMINION PATENTS TO REMAIN IN FORCE.—All patents issued under any act of the Legislature of the late Province of Canada, or of Nova Scotia, or of New Brunswick, or of British Columbia, and all patents issued for the Provinces of Ontario and Quebec, under any act of the late Province of Canada, and all patents issued under the “Patent act of 1869,” to the date of the coming into operation of the present act, shall remain in force for the same term, and for the same extent of territory, as if the act under which they were issued had not been repealed, but subject to the provisions of this act in so far as applicable to them.

2. EXTENSION OF PROVINCIAL PATENTS TO OTHER PROVINCES.—And it shall be lawful for the Commissioner, upon the application of the patentee named in any such patent, being the inventor of the subject-matter of the patent, if the subject-matter of the patent has not been known or used, nor with the consent of the patentee on sale in any of the other Provinces of the Dominion, to issue, on payment of the proper fees in that behalf, a patent under this act, extending such provincial patent over the whole of the Dominion for the remainder of the term mentioned in the provincial patent.

33. RECORDS OF PROVINCIAL PATENT OFFICES TO BE HANDED OVER TO THE COMMISSIONER.—All the records of the Patent Offices of the late Province of Canada and of the Provinces of Ontario and Quebec, or Nova Scotia and New Brunswick, and British Columbia, shall be handed over by the officers in charge of them to the Commissioner of Patents of Invention, to form part of the records of the Patent Office for the purposes of this act.

VIII. Tariff of Fees.

34. **TARIFF OF FEES.**—The following fees shall be payable to the Commissioner, before an application for any of the purposes hereinafter mentioned shall be entertained, that is to say :

On petition for a patent for 5 years.....	\$20 00
On petition for a patent for 10 years.....	40 00
On petition for a patent for 15 years.....	60 00
On petition for extension from 5 to 10 years.....	20 00
On petition for extension from 10 to 15 years.....	20 00
On petition for extension from 5 to 15 years.....	40 00
On lodging a caveat.....	5 00
On asking to register a judgment <i>pro tanto</i>	4 00
On asking to register an assignment.....	2 00
On asking to attach a disclaimer to a patent.....	2 00
On asking for a copy of patent with specification..	4 00
On petition to reissue a patent after surrender, and on petition to extend a former patent to the Do- minion, for every unexpired year of the duration of such patent, the fee shall be at the rate of.....	4 00

On office copies of documents, not above mentioned, the following charges shall be made:

For every single or first folio of certified copy.....	\$0 50
For every subsequent hundred words (fractions from and under fifty being not counted, and over fifty being counted for one hundred).....	0 25

35. **COPIES OF DRAWINGS.**—For every copy of drawings the party applying shall pay such sum as the Commissioner considers a fair remuneration for time and labor expended thereon by any officer of the department or person employed to perform such service.

36. FEES TO BE IN FULL OF ALL SERVICES.—The said fees shall be in full of all services performed under this act, in any such case, by the Commissioner or any person employed in the Patent Office.

37. FEES TO FORM PART OF THE CONSOLIDATED REVENUE FUND.—All fees received under this act shall be paid over to the Receiver General and form part of the Consolidated Revenue Fund of Canada, except such sums as may be paid for copies of drawings when made by persons not receiving salaries in the Patent Office.

38. RETURN OF FEES.—No fee shall be made the subject of exemption in favor of any person; and no fee, once paid, shall be returned to the person who paid it, except:

1. When the invention is not susceptible of being patented.

2. When the petition for a patent is withdrawn.

And in every such case the Commissioner may return one-half of the fee paid.

And in the case of withdrawal, a fresh application shall be necessary to revive the claim, as if no proceeding had taken place in the matter.

IX. Miscellaneous Provisions.

39. INTENDING APPLICANT FOR A PATENT MAY FILE A CAVEAT.—An intending applicant for a patent, who has not yet perfected his invention, and is in fear of being despoiled of his idea, may file in the Patent Office a description of his invention so far, with or without plans, at his own will; and the Commissioner, on reception of the fee hereinbefore prescribed, shall cause the said document to be preserved in secrecy, with the exception of delivering copies of the same whenever required by the said party or

by any judicial tribunal—the secrecy of the document to cease when he obtains a patent for his invention; and such document shall be called a *caveat*: *Provided, always,* That if application shall be made by any other person for a patent for any invention with which such *caveat* may in any respect interfere, it shall be the duty of the Commissioner forthwith to give notice by mail to the person who has filed such *caveat*, and such person shall, within three months after the date of mailing the notice, if he would avail himself of the *caveat*, file his petition, and take the other steps necessary on an application for patent; and if, in the opinion of the Commissioner, the applications are interfering, like proceedings may be had in all respects as are by this act provided in the case of interfering applications: *Provided further,* That unless the person filing any *caveat* shall, within one year from the filing thereof, have made application for a patent, the Commissioner of Patents shall be relieved from the obligation of giving notice, the *caveat* then remaining as a simple matter of proof as to novelty or priority of invention, if needed.

40. COMMISSIONER MAY OBJECT TO GRANT A PATENT.—The Commissioner may object to grant a patent in the following cases:

1. When he is of opinion that the alleged invention is not patentable in law.

2. When it appears to him that the invention is already in the possession of the public with the consent or allowance of the inventor.

3. When it appears to him that there is no novelty in the invention.

4. When it appears that the invention has been described in a book or other printed publication before the

date of the application, or is otherwise in the possession of the public.

5. When it appears that the invention has already been patented in Canada, (or elsewhere, when the case is one within the seventh section of this act,) except, however, when the case is one in which the Commissioner has doubts as to whether the patentee or the applicant is the first inventor.

41. COMMISSIONER TO NOTIFY GROUND OF OBJECTION TO APPLICANT.—Whenever the Commissioner objects to grant a patent as aforesaid, he shall notify the applicant to that effect, and shall state the ground or reason therefor with sufficient detail to enable the applicant to answer, if he can, the objection of the Commissioner.

42. APPEAL BY APPLICANT TO GOVERNOR IN COUNCIL.—Every applicant who has failed to obtain a patent by reason of the objection of the Commissioner as aforesaid may, at any time within six months after notice thereof has been addressed to him or his agent, appeal from the decision of the Commissioner to the Governor in Council.

43. ARBITRATION IN CASE OF INTERFERING APPLICATIONS.—In case of interfering applications for any patent, the same shall be submitted to the arbitration of three skilled persons, one of whom shall be chosen by each of the applicants, and the third person shall be chosen by the Commissioner or by his deputy or the person appointed to perform the duty of that office; and the decision or award of such arbitrators, or any two of them, delivered to the Commissioner in writing, and subscribed by them or any two of them, shall be final as far as respects the granting of the patent.

2. APPOINTMENT OF ARBITRATORS.—If either of the ap-

plicants refuses or fails to choose an arbitrator, when required so to do by the Commissioner, the patent shall issue to the opposite party; and when there are more than two interfering applicants, and the parties applying do not all unite in appointing three arbitrators, the Commissioner or his deputy or person appointed to perform the duty of that officer, may appoint the three arbitrators for the purposes aforesaid.

3. OATH OF OFFICE.—The arbitrators so named shall, before a judge of any court in any of the Provinces of Canada, subscribe to the following oath:

“I, the undersigned, (A. B.,) being duly appointed an arbitrator under the authority of the forty-third section of the Patent act of 1872, do hereby solemnly swear (or affirm, *as the case may be,*) that I will well and truly perform the duty of such arbitrator on the interfering applications of (C. D. and E. F.) submitted to me.”

4. POWERS OF ARBITRATORS.—The arbitrators, or any one of them, after having been so sworn, shall have the power of summoning before them any party or witness, and of requiring him to give evidence on oath, orally or in writing, (or on solemn affirmation, if the person be entitled to affirm in civil matters,) and to produce such documents and things as such arbitrators deem requisite to the full investigation of the matters into which they are appointed to examine, and shall then have the same power to enforce the attendance of such witnesses, and to compel them to give evidence as is vested in any court of law in civil cases, in the Province in which the arbitration is to be had; and any willfully false statement made by any such witness on oath or solemn affirmation shall be deemed to be willful and

corrupt perjury ; but no such party or witness shall be compelled to answer any question, by his answer to which he might render himself liable to a criminal prosecution.

5. FEES TO ARBITRATORS.—The fees for the services of arbitrators shall be a matter of agreement between the said arbitrators and the parties, and shall be paid by the parties naming them respectively, except those of the arbitrator or arbitrators when named by the Commissioner of Patents, which shall be paid by the applicants jointly.

44. DOCUMENTS TO BE OPEN TO INSPECTION.—All specifications, drawings, models, disclaimers, judgments, and other papers, except *caveats*, shall be open to the inspection of the public at the Patent Office, under such regulations as may be adopted in that behalf.

45. CLERICAL ERRORS.—Clerical errors happening in the framing or copying of any instrument of the Patent Office shall not be construed as invalidating the same, but when discovered they may be corrected under the authority of the Commissioner.

46. DESTROYED PATENT MAY BE REPLACED.—In case any patent be destroyed or lost, others of the like tenor, date, and effect may be issued in lieu thereof, on the party paying the fees hereinbefore prescribed for office copies of documents.

47. USE OF PATENTED INVENTION IN FOREIGN VESSELS.—No patent shall extend to prevent the use of any invention in any foreign ship or vessel, where such invention is not so used for the manufacture of any goods to be vended within or exported from Canada.

48. PATENT NOT TO AFFECT A PREVIOUS PURCHASER OF THE INVENTION.—Every person who before the issuing of

a patent has purchased, constructed, or acquired any invention for which a patent has been obtained under this act, shall have the right of using and vending to others the specific article, machine, manufacture, or composition of matter patented, so purchased, constructed, or acquired before the issue of the patent therefor, without being liable to the patentee or his representatives for so doing; but the patent shall not be held invalid as regards other persons by reason of such purchase, construction, or acquisition, or use of the invention by the person first aforesaid, or by those to whom he may have sold the same, unless the same was purchased, constructed, or acquired or used for a longer period than one year before the application for a patent therefor, which circumstance would then have the effect of making the invention one having become public and in public use.

49. **PATENTED ARTICLES TO BE MARKED AS SUCH.**—Every patentee under this act shall stamp or engrave on each patented article, sold or offered for sale by him, the year of the date of patent applying to such article, thus:—“Patented 1872,”—or as the case may be; and any such patentee selling or offering for sale any such patented article not so marked, shall be liable to the punishment of a fine not to exceed one hundred dollars, and, in default of the payment of such fine, to imprisonment not to exceed two months.

50. **FALSELY MARKING ANYTHING AS PATENTED TO BE A MISDEMEANOR.**—Whosoever writes, paints, prints, molds, casts, carves, engraves, stamps, or otherwise marks upon anything made or sold by him, and for the sole making or selling of which he is not the patentee, the name or any imitation of the name of any patentee for the sole mak-

ing or selling of such thing without the consent of such patentee—or without the consent of the patentee, writes, paints, prints, molds, casts, carves, engraves, stamps, or otherwise marks upon anything not purchased from the patentee, the words, “Patent,” “Letters Patent,” “Queen’s Patent,” “Patented,” or any word or words of like import, with the intent of counterfeiting or imitating the stamp, mark, or device of the patentee, or of deceiving the public and inducing them to believe that the thing in question was made or sold by or with the consent of the patentee, or whosoever puts to sale as patented any article not patented in Canada, for the purpose of deceiving the public,—shall be deemed guilty of misdemeanor, and shall on conviction be punished therefor by fine, or by imprisonment, or both, in the discretion of the court, before which the conviction shall be had; but the fine shall not exceed two hundred dollars, nor shall the imprisonment exceed three months.

51. **MAKING FALSE ENTRY OR COPY.**—Any person willfully making or causing to be made any false entry in any register or book, or any false or altered copy of any document relating to the purposes of this act, or who shall produce or tender any such false or altered document, knowing the same to be such, shall be guilty of a misdemeanor, and shall be punished by fine and imprisonment accordingly.

52. **INCONSISTENT ENACTMENTS REPEALED.**—Chapter thirty-four of the Consolidated Statutes of the late Province of Canada, respecting Patents for Inventions, chapter one hundred and seventeen of the Revised Statutes of Nova Scotia, (third series,) chapter one hundred and eighteen of the Revised Statutes of New Brunswick, and

“The Patents Ordinance, 1867,” of British Columbia, “The Patent act of 1869,” and any act amending any of the said acts or laws, or any other act relating to patents, are hereby repealed, in so far as they or any of them may be inconsistent with this act, or make any provision in any matter provided for by this act, except only as respects all rights acquired and penalties or liabilities incurred under the said laws or any of them, before the coming into force of this act, as to which they shall remain in force, and nothing in this act contained shall affect any suit pending in any court of law or equity at the time of the coming into force of this act.

53. TITLE OF ACT.—In citing this act, it shall be sufficient to call it “The Patent act of 1872.”

54. COMMENCEMENT OF ACT.—This act shall commence and take effect on the first day of September, 1872.

CHAP. 44.—AN ACT to amend “The Patent Act of 1872.”

[Assented to 23d May, 1873.]

Whereas it is expedient to amend the several sections of “*The Patent Act of 1872*” hereinafter specified: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The words “in the *Canada Gazette*” in the fourth line of section five of “*The Patent Act of 1872*,” are hereby repealed.

2. The word “assigns” in the last line of section eight of the said act is hereby repealed, and the words “other legal representatives” substituted in lieu thereof.

3. The following words are hereby inserted after the

word "of" in the last line but one of section eleven of the said act: "a court of record or a public notary, or the mayor or other chief magistrate of any city, borough, or town corporate in."

4. The following words are hereby added and inserted at the end of section fourteen of the said act: "But the said Commissioner may, in his discretion, dispense with the said duplicate specification and drawing, and in lieu thereof cause copies of the specification and drawing, in print or otherwise, to be attached to the patent, of which they shall form an essential part."

5. The said act shall be amended by inserting the words "legal representatives" after the word "administrators," in the sixteenth section thereof.

6. This act shall be read and interpreted as forming one and the same act with the act hereby amended.

IV.

**RULES, REGULATIONS, AND FORMS OF THE CANADA PATENT
OFFICE, 1ST SEPTEMBER, 1872.**

GENERAL RULES.

1. A personal appearance of the applicant or his representative at the Patent Office is not required, unless specially called for by the Commissioner or Deputy Commissioner, the business being transacted in writing.

2. In all cases the applicant or depositor of any paper is responsible for the merits of his allegations and the validity of the instruments furnished by him or his agent.

3. Correspondence will be carried on with the applicant or his agent, but only with one person.

4. All documents must be legibly and neatly written on foolscap paper, (say 13 inches long and 8 wide,) with an inner margin of one inch and a half wide.

5. All communications are to be addressed: "*To the Commissioner of Patents, Ottawa.*"

6. As regards proceedings not specially provided for in the forms, any form being conformable to the letter and spirit of the laws will be accepted, and if not conformable will be returned for correction.

7. Models must be neat and substantial working ones, not to exceed eighteen inches on the longest side, unless otherwise allowed by special permission; such models must be so constructed as to show exactly every part of

the invention and its mode of working. In cases where samples of ingredients are required by law, they must be contained in glass bottles properly arranged ; but dangerous or explosive substances are not to be sent. Both models and bottles must bear the name of the inventor, the title of the invention, and the date of the application ; and must be furnished to the Patent Office free of charge and in good order.

8. All fees required to be paid by law must be transmitted with the application, in current, bankable funds, inclosed in registered letters. Post Office orders are preferred. In no case should money be sent inclosed with models.

9. An application for a patent must be proceeded with and perfected within two years after the lodging of the petition, in default of which it will be regarded as abandoned ; and all previous proceedings and payment of fees will be held at the expiration of that period as of no avail.

10. Two or more separate inventions cannot be claimed in one application, nor patented in one patent. But if separate matters are represented to be so dependent on and connected with each other as to be necessarily taken together to obtain the end sought for by the inventor, the Commissioner of Patents shall be the judge whether or not the pretensions of the applicant in such respect can be entertained.

11. The filing of a protest against the issuing of a patent shall not be taken in itself as sufficient reason to withhold the granting of such patent to an applicant.

12. A *caveat* shall be composed of a specification (*and drawings*) certified on oath, (see form No. 24,) and the filer thereof may lodge with it additional papers during

its currency, provided they are relevant exclusively to the same invention. The person filing a *caveat* will not be entitled to notice of any application pending at the time of filing his *caveat*.

13. All drawings must be made on one or more sheets of tracing linen (eight by thirteen inches) neatly executed, without colors.

14. In the matter of a reissue, under section 19 of the act, whatever is really embraced in the original application and so described or shown in the same that it might have been embraced in the original patent, may be the ground for a reissue. No new matters shall be introduced into the specification, nor shall the model and drawings be amended, except each by the other. In the absence of model or drawing, the reissue may contain amendments, upon satisfactory proof to the Commissioner that such amendments were a part of the invention, although omitted in the original application.

15. Information in relation to pending cases will be furnished only so far as it becomes necessary in conducting the business of the office.

16. The office cannot respond to inquiries as to the probability of an alleged invention being patented in advance of an application for a patent; nor to inquiries founded upon brief and imperfect descriptions, propounded with a view of ascertaining whether alleged improvements have been patented, and, if so, by whom; nor can it act as an expounder of the patent law, nor as counsellor for individuals, except as to questions arising within the office.

17. All business with this office should be transacted in writing. The action of the office will be based ex-

clusively on the written record. No attention will be paid to any alleged verbal promise or understanding in relation to which there is any disagreement or doubt.

18. Assignments of patents are to be accompanied by a copy thereof. Such copy will be kept in the Patent Office, and the original will be returned to the person sending it, with certificate of registration thereon. The copy to be neatly written on foolscap paper, (8 by 13 inches,) with an inner margin of one inch and a half wide.

19. All cases connected with the intricate and multifarious proceedings arising from the working of the Patent Office, which are not specially defined and provided for in these rules, will be decided in accordance with the merits of each case, under the authority of the Commissioner; and such decision shall be communicated to the interested parties, through the departmental correspondent of the Patent Office.

NOTICE.

I. Correspondence with the Department is carried through the Canadian mail free of postage.

II. Every paper forwarded to the office should be accompanied by a letter, and a separate letter should be written on every distinct subject.

III. In order to avoid unnecessary explanations and useless loss of time and labor, it is particularly recommended that reference be made to the law before writing on any subject to the Department; and it is also recommended, in every case, to have the papers and drawings prepared by competent persons, in the interest both of the applicant and of the public service.

IV. Although it is optional for the applicant to annex drawings to the specification of a *caveat* or not, still it is important, in the interest of the inventor, always to attach drawings to such specification.

V. It is in the interest of the applicant that the greatest possible care should be taken with the papers, as dispatch and regularity in the proceedings are thereby promoted.

VI. A copy of the rules with a particular section marked, sent to any person making an inquiry, is intended as a respectful answer by the office.

PETITIONS.

1. BY A SOLE INVENTOR.

To the Commissioner of Patents, Ottawa:

The petition of John Smith, of the city of Toronto, in the Province of Ontario, carpenter, sheweth—

That he hath invented now and useful improvements on a machine for breaking stone, not known or used by others before his invention thereof, and not being in public use or on sale for more than one year previous to his application in Canada with his consent or allowance as such inventor, the title or name whereof is Smith's Stone-Breaking Machine.

Your petitioner therefore prays that a patent may be granted to him for the said invention, and, for the purposes of the Patent act of 1872, your petitioner elects his domicile in the city of Ottawa, Province of Ontario.

JOHN SMITH.

TORONTO, 1st September, 1872.

2. BY JOINT INVENTORS.

To the Commissioner of Patents, Ottawa:

The petition of James Thomas, blacksmith, and George Robert Major, tinsmith, both of the city of Ottawa, in the county of Carleton, in the Province of Ontario, sheweth—

That they have jointly invented a new and useful improvement on the art or process of separating smut from wheat, not known or used by others before their invention thereof, and not being in public use or on sale for

more than one year previous to their application in Canada with their consent or allowance as such inventors, the title or name whereof is Smith and Major's Process for Separating Smut from Wheat.

Your petitioners therefore pray that a patent may be granted to them jointly for the said invention, and, for the purposes of the Patent act of 1872, your petitioners elect their domicile in the city of Ottawa, in the Province of Ontario.

JAMES THOMAS,
GEORGE ROBERT MAJOR.

OTTAWA, 1st September, 1872.

3. BY AN ASSIGNEE, OR LEGATEE "MUTATIS MUTANDIS."

To the Commissioner of Patents, Ottawa:

The petition of Solomon Lang, of the city of Montreal, Province of Quebec, laborer, sheweth—

That Thomas Tardy, of the city of Ottawa, Province of Ontario, saloon keeper, hath invented new and useful improvements on planing machines not known or used by others before his invention thereof, and not being in public use or on sale for more than one year previous to this application in Canada with the consent or allowance of the said Thomas Tardy as such inventor.

That your petitioner by assignment, bearing date 1st September, 1872, acquired the right of obtaining a patent from Thomas Tardy aforesaid, for the said invention.

Your petitioner therefore prays that a patent may be granted to him, as assignee of the said Thomas Tardy, for the said invention, the title or name whereof is Tardy's Improved Planing Machine, and, for the purposes of the Patent act of 1872, your petitioner elects his domicile in the city of Ottawa, Province of Ontario.

SOLOMON LANG.

MONTREAL, 1st September, 1872.

4. BY AN INVENTOR AND AN ASSIGNEE.

To the Commissioner of Patents, Ottawa:

The petition of John Smith, of the city of Toronto, in the Province of Ontario, carpenter, and David Brown, of the city of New York, in the State of New York, one of the United States of America, painter, sheweth—

That the said John Smith hath invented new and useful improvements on a machine for breaking stone, not known or used by others before his invention thereof, and not being in public use or on sale for more than

one year previous to this application in Canada with his consent or allowance as such inventor.

That by assignment, dated on the 1st September, 1872, the said John Smith transferred to the said David Brown an undivided one half interest in the said invention.

Your petitioners therefore pray that a patent may be granted to them jointly for the said invention, the title or name whereof is Smith's Stone-breaking Machine, and, for the purposes of the Patent act of 1872, your petitioners elect their domicile in the city of Ottawa, Province of Ontario.

JOHN SMITH,
DAVID BROWN.

TORONTO, 1st September, 1872.

5. BY AN ADMINISTRATOR OR EXECUTOR.

To the Commissioner of Patents, Ottawa:

The petition of James Clayton, of the city of Kingston, in the Province of Ontario, stone cutter, administrator of the estate (or executor of the last will and testament) of Thomas Clayton, in his lifetime of the said city of Kingston, deceased, millwright, (as reference to the duly certified copy of letters of administration (or letters testamentary) hereto annexed will more fully appear,) sheweth—

That the said Thomas Clayton did invent a new and useful composition of matter for making artificial stone, not known or used by others before his invention thereof, and not being in public use or on sale for more than one year previous to this application in Canada with the consent or allowance of the said Thomas Clayton as such inventor.

Your petitioner therefore prays that a patent may be granted him as administrator (or executor) of the estate of the said Thomas Clayton for the said invention, the title or name whereof is Clayton's Composition for making Artificial Stone, and, for the purposes of the Patent act of 1872, your petitioner elects his domicile in the city of Ottawa, Province of Ontario.

JAMES CLAYTON.

KINGSTON, 1st September, 1872.

6. FOR A REISSUE, (BY THE INVENTOR.)

To the Commissioner of Patents, Ottawa:

The petition of Thomas Brown, of the city of Ottawa, in the Province of Canada, lumber manufacturer, sheweth—

That your petitioner obtained a patent bearing date the twelfth day of August, A. D. 1870, for a new and useful improvement on churns.

That your petitioner is advised that the said patent is deemed defective or inoperative by reason of insufficient description or specification, and that the errors arose from inadvertence, accident, or mistake, without any fraudulent or deceptive intention.

Your petitioner being desirous of obtaining a new patent, in accordance with an amended description and specification in duplicate, transmitted herewith, therefore prays that he may be allowed to surrender the aforesaid patent, and a new patent be granted to him in accordance with the amended specification and description for the said invention for the unexpired period for which the original patent was granted.

THOMAS BROWN.

OTTAWA, 1st September, 1872.

7. FOR A REISSUE, (BY THE ASSIGNEE.)

To the Commissioner of Patents, Ottawa:

The petition of David Lane, of the town of Cobourg, in the county of Northumberland, Province of Ontario, tanner, sheweth—

That your petitioner, by assignment bearing date the 24th day of June, 1872, obtained the exclusive right to a patent granted to Thomas Tardy, of the city of Ottawa, Province of Ontario, broom maker, on the 1st July, 1869, for new and useful improvements on planing machines.

That your petitioner is advised that the said patent is deemed defective or inoperative by reason of insufficient description or specification, and that the error arose from inadvertence, accident, or mistake, without any fraudulent or deceptive intention.

Your petitioner being desirous of obtaining a new patent, in accordance with an amended description and specification in duplicate, transmitted herewith, therefore prays that he may be allowed to surrender the aforesaid patent, and a new patent, be granted to him as assignee of the said Thomas Tardy, in accordance with the amended specification and description for the said invention for the unexpired period for which the original patent was granted.

DAVID LANE.

COBOURG, 1st September, 1872.

The above form is to be altered to suit the case when the reissue is to the administrator or executor of a deceased inventor.

8. FORM OF SURRENDER, TO BE WRITTEN ON THE ORIGINAL PATENT.

To all to whom these presents shall come: Thomas Brown, of the city of Ottawa, in the Province of Ontario, lumber manufacturer, within named, sends greeting:

Whereas the within written patent for an improvement on churns is deemed defective or inoperative by reason of insufficient description or specification, and the error arose from inadvertence, accident, or mistake, without any fraudulent or deceptive intention, and the Commissioner of Patents accordingly, in pursuance of the statute in such respect, hath agreed to accept a surrender of the same:

Now know ye that the said Thomas Brown within named doth by these presents surrender and yield up the within written patent, granted to him for improvements on churns, and bearing date the 8th day June, 1872.

In witness whereof the said Thomas Brown hath set his hand and affixed his seal this first day of September, A. D. 1872.

THOMAS BROWN. [L. S.]

Signed, sealed, and delivered at the city of Ottawa, in the county of Carleton, in the Province of Ontario, in the presence of

HENRY COCKBURN.

9. FOR THE EXTENSION OF THE PERIOD OF A PATENT, (INVENTOR.)

To the Commissioner of Patents, Ottawa:

The petition of Martin Scott, of the city of Montreal, in the Province of Quebec, cooper, showeth—

That on the 23d June, 1870, your petitioner obtained a patent for the period of five years from the said date, for new and useful improvements on churns.

That he is the holder of the said patent, and therefore prays that it may be extended for another period of five years.

Signed this first day of September, eighteen hundred and seventy-two.

MARTIN SCOTT.

10. FOR THE EXTENSION OF THE PERIOD OF A PATENT, (ASSIGNEE.)

To the Commissioner of Patents, Ottawa:

The petition of Simon Smith, of the city of Halifax, in the Province of Nova Scotia, mariner, showeth—

That by assignment, dated 1st July, 1871, he obtained from John Brown of the village of Bridgetown, in the county of Annapolis, in the Province of Nova Scotia, stone-mason, the exclusive right to a patent granted on the 29th June, 1870, for a period of five years from the said date, to the said John Brown, for new and useful improvements in ploughs.

That your petitioner being the holder of the said patent, therefore prays that the said patent may be extended for another period of five years.

Signed this first day of September, eighteen hundred and seventy-two.

SIMON SMITH.

11. EXTENSION OF A PROVINCIAL PATENT TO THE WHOLE DOMINION.

To the Commissioner of Patents, Ottawa:

The petition of William Coe, of the town of Belleville, in the county of Hastings, in the Province of Ontario, railway agent, sheweth—

That your petitioner is the inventor of the subject-matter of a patent granted to him on the 30th day of May, 1865, in the Province of New Brunswick, (Nova Scotia, &c.,) for a new and useful improvement on railway signals.

That the subject-matter of the said patent has not been known or used, nor with his consent on sale in any of the other Provinces of the Dominion.

Your petitioner therefore prays that a patent under the Patent act of 1872 be granted to him, extending the privileges of such provincial patent over the whole Dominion for the remainder of the term mentioned in the provincial patent.

WILLIAM COE.

BELLEVILLE, 1st September, 1872.

Duplicate copies of the original specifications and drawing, certified by inventor, to accompany the above petition, and to have certificate thereon, as follows:

Duplicate copy of the original specification (or drawing) relative to patent, bearing date the thirtieth day of May, one thousand eight hundred and sixty-five, and granted under the seal of the Province of New Brunswick to William Coe.

(Here insert copy of specification or drawing.)

I, William Coe, of the town of Belleville, in the county of Hastings, in the Province of Ontario, railway agent, do hereby certify that the forego-

ing is a true and correct copy of the original specification (or drawing) of patent granted to me.

WILLIAM COE.

BELLEVILLE, 1st September, 1872.

Signed in the presence of PATRICK LYNCH.

12. POWER OF ATTORNEY.

To the Commissioner of Patents, Ottawa :

The undersigned, John Brown, of the town of Cornwall, in the county of Stormont, in the Province of Ontario, storekeeper, hereby appoints John Smith, of the city of Ottawa, Province of Ontario, his attorney, with full powers of substitution and revocation, to prosecute an application for a patent for new and useful improvements on sewing machines; to sign the drawings, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at Cornwall this first day of September, one thousand eight hundred and seventy-two.

JOHN BROWN.

In the presence of JOHN SMITH.

13. REVOCATION OF POWER OF ATTORNEY.

To the Commissioner of Patents, Ottawa :

The undersigned, John Brown, of the town of Cornwall, in the county of Stormont, in the Province of Ontario, storekeeper, having on or about the 1st September, 1872, appointed John Smith, of the city of Ottawa, Province of Ontario, his attorney, to prosecute an application for a patent for new and useful improvements on sewing machines, hereby revokes the power of attorney then given.

Signed at Cornwall this thirtieth day of September, one thousand eight hundred and seventy-two.

JOHN BROWN.

In the presence of JOHN SMITH.

SPECIFICATIONS.

14. FOR A MACHINE.

To all whom it may concern :

Be it known that I, William Woodworth, of the town of Poughkeepsie, in the county of Dutchess, and State of New York, gentleman, have invented certain new and useful improvements on planing-machines, and I

do hereby declare that the following is a full, clear, and exact description of the same:

The first part of my invention relates to the combination of rotary cutters and feeding-rollers, in such a manner that the said feeding-rollers shall be capable of feeding the lumber to the cutters, and also of effectually resisting the tendency of the cutters to draw the lumber upward toward them; the object of this part of my invention being to reduce the lumber operated upon to an uniformity of thickness, and to give it a planed and even surface upon one side thereof.

The second part of my invention relates to the combination, with feeding-rollers and rotary cutters, for planing one of the principal surfaces of the lumber, of rotary machine cutters, so as to form a tongue or groove, or both, upon the edge or edges of the lumber, at the same time that one of its principal surfaces is planed.

Figure 1 is a side elevation of a machine embodying my invention.

Figure 2 is a plan of the same.

Figure 3 is an elevation showing that end of the machine which is at the right hand in figure 1.

Figure 4 is a vertical transverse section, showing those parts of the machine which are at the right hand of the line $x x$, drawn across figures 1 and 2.

A is the frame of the machine, which frame should be substantially constructed to resist the vibrations of the operating parts. B is the driving-pulley, which is hung on the main shaft, C, of the machine, from which latter, motion is communicated to the operating parts. D is the shaft of the rotary cutters by which the lumber is planed. This shaft is made flat upon two of its sides, between its bearings, for the reception of the cutters, E E, which are firmly secured to it by bolts $a a$, the holes through these cutters for the reception of these bolts being elongated in the direction of the width of the cutters to allow the necessary adjustment of the cutters. The shaft D is hung in adjustable bearings, by which it may be elevated and depressed to regulate the thickness of the planed lumber. F is a pulley on the shaft D, which receives motion by belt G, from the band-wheel H, on the driving-shaft. I I and J J are the feeding-rollers, each pair of which is connected by finger pinions $b b$, and the upper roller of each pair is hung in spring bearings which allow it to yield slightly upward to pressure, to adapt it to any differences or inequalities in the thickness of the lumber. The lower roller of each pair is provided with a worm-wheel c , which meshes into a worm or endless screw d on the shaft k , which is

propelled by a bevel-wheel *l* on the main shaft, working into the bevel-wheel *f* on the shank *k*.

L and *M* are cutters hung upon vertical shafts *N* and *O*, one set of these cutters being adapted to form a groove, and the other to form a tongue upon the edge of the board to be operated upon. These cutters are attached to the shafts in the manner already described with relation to the cutters *E E*.

The shafts *N* and *O* are provided with pulleys *g g*, and rotation is communicated to them by belts *h h*, from pulleys *i i*, on the main shaft: rotation being given in the direction of the arrow to the driving pulley.

The lumber to be planed is introduced from the end of the machine, which is shown at the right hand in figures 1 and 2, and being grasped by the rollers *I I*, is by them drawn forward to the cutters *E E*, which, being rapidly revolved towards the advancing lumber, plane it to the proper thickness; and as the lumber continues to advance, it is grasped by the rollers *J J*, which aid in the feeding motion and discharge the board after it has passed the cutters. The upper rollers *I* and *J*, being hung in spring bearings, always exert a pressure on the top of the board, and thus prevent its being raised up by the action of the cutters *E E*.

When the lumber is designed for floors or ceilings, or other purposes for which it is required to be matched, a tongue is formed upon one edge of it and a groove on the other by the cutters *L* and *M*, which both revolve toward the advancing board; and these operations are performed at the same time that the upper surface of the board is planed, the whole being done at a single operation.

When the lumber is required to be matched, it should be first reduced to a uniform width, and guided in its introduction into the machine by a gauge *P* attached to the bed *Q* of the machine.

When the lumber is not to be matched, this gauge and the cutters *L* and *M* should be taken off and dispensed with.

I make no claim to the mode in which the cutters are secured upon their shaft, nor to the adjustable bearings which permit of the elevation or depression of the shaft, for I am aware that these are not new; but I claim as my invention—

1. The combination of the cutters *E E* and the feeding rollers *I I* and *J J*, substantially as and for the purpose hereinbefore set forth.

2. The combination with the cutters *E E* and the feeding rollers *I I* and *J J* of the cutters *L* and *M*, substantially as and for the purpose hereinbefore set forth.

WILLIAM WOODWORTH.

POUGHKEEPSIE, 1st September, 1872.

Signed in the presence of: JETHRO WOOD,

OLIVER EVANS.

15. DRAWINGS.

Each sheet shall contain the following: The name of the invention, brief references, (A shaft, B valve,) place, date, signatures of two witnesses, the following certificate: "Certified to be the drawings referred to in the specification hereunto annexed," and the signature of the inventor or his attorney.

16. FOR AN ART OR PROCESS.

To all whom it may concern:

Be it known that we, Marion Ellsworth, of Chicago, county of Cook, and State of Illinois, gentleman, and Joseph Richard Shaw, of Indianapolis, county of Marion, and State of Indiana, gentleman, have jointly invented—

A new and useful improvement on the art or process of separating smut and other impurities from wheat, and we do hereby declare that the following is a full, clear, and exact description of the same:

Take of lime, newly slacked, and while yet warm, one and a half pounds to each one hundred pounds of wheat. Mix the lime well with the wheat, let it stand one hour, then pass it through a smut-mill in the usual way, and it will be found that all the lime, smut, dirt, and other impurities attached to the wheat, of every kind, and which no smut-mill, without our liming process, will fully separate, will be entirely removed, and the flour will be as white and as sweet as though made from the best of wheat.

We are aware that lime has before been used for the purpose of cleaning wheat, being first mixed with the grain as above proposed, and the whole being then passed through a smut-mill; but in all previous processes, so far as we are aware, the lime has been used in a cold state; and for this reason such processes proved ineffectual. We propose to take lime *newly slacked, and while yet warm.*

We claim as our invention the process of cleaning wheat by mixing with it lime newly slacked and warm before passing it through a smut-mill, so as to cleanse the wheat from all impurities, substantially as described.

MARION ELLSWORTH,
JOSEPH R. SHAW.

CHICAGO, 1st September, 1872.

Signed in the presence of: MAURICE JONES,
HENRY ELIAS.

17. FOR A COMPOSITION OF MATTER.

To all whom it may concern:

Be it known that I, Ebenezer Whitney, of the city of Charleston, in the district of Charleston, and State of South Carolina, gentleman, am the administrator of the estate of Benjamin Browning, in his lifetime of the said city, gentleman, and that the said Benjamin Browning did invent a certain new and useful composition of matter to be used in the manufacture of wool; and I do hereby declare that the following is a full, clear, and exact description of the same:

The nature of the invention of the said Benjamin Browning consists in mixing olive, lard, or rape-seed oil with a solution of oil of soap dissolved in hot water.

To prepare the wool oil, take a quantity of oil soap of any kind, provided the quality be good, and dissolve the same in hot water, say about thirty pounds of oil soap to thirty gallons of water, or a sufficient quantity of soap to saturate the water. Then take equal parts, by measure, of olive, lard, rape-seed, or any other kind of oil which can be used on wool in the process of its manufacture, and mix it with the preparation aforesaid, to wit, the soap solution, which, after such mixture, is ready to be used on wool with as beneficial an effect as if pure oil only had been used. This wool oil will not decompose by age, because the oil of soap neutralizes the stearine in the oil; hence there is nothing to decompose. And for the same reason spontaneous combustion cannot be produced.

I claim as the invention of the said Benjamin Browning a compound composed of any of the oils ordinarily used on wool in its manufacture, and a solution of oil soap, substantially in the proportions and for the purposes set forth.

EBENEZER WHITNEY,
Administrator.

CHARLESTON, 1st September, 1872.

Signed in the presence of: JOHN JAMES,
HENRY SMITH.

O A T H S .

18. BY SOLE INVENTOR.

CANADA, PROVINCE OF ONTARIO,
County of York.

I, John Smith, of the city of Toronto, in the county of York, in the Province of Ontario, carpenter, make oath and swear that I verily believe

that I am the first inventor of new and useful improvements on a machine for breaking stone, described and claimed in the annexed specifications, and for which I solicit a patent by my petition, dated 1st September, 1872. And I further make oath that the several allegations contained in the said petition are respectively true and correct. JOHN SMITH.

Sworn before me at the city of Toronto this first day of September, one thousand eight hundred and seventy-two. THOMAS BROWN,
J. P. for the County of York.

19. JOINT INVENTORS.

CANADA, PROVINCE OF ONTARIO,
County of Carleton, to wit:

We, James Thomas, of the city of Ottawa, in the county of Carleton, in the Province of Ontario, in the Dominion of Canada, blacksmith, and George Robert Major, of the same place, tinsmith, do hereby severally make oath, and solemnly swear and say, and

1st. I, this deponent, James Thomas, for myself do hereby solemnly swear and say that I verily believe that I and the said George Robert Major are the true inventors of a new and useful improvement on the art or process of separating smut from wheat, described and claimed in the annexed specification, for which we solicit a patent by our petition to the Commissioner of Patents, dated 1st September, 1872. And I further make oath that the several allegations contained in the said petition are respectively true and correct.

And 2d. I, this deponent, George Robert Major, for myself do hereby make oath and solemnly swear that I verily believe that I and the above named James Thomas are the true inventors of a new and useful improvement on the art or process of separating smut from wheat, described and claimed in the annexed specification, for which we solicit a patent by our petition to the Commissioner of Patents, dated 1st September, 1872. And I further make oath that the several allegations contained in the said petition are respectively true and correct.

JAMES THOMAS,
GEORGE ROBERT MAJOR.

Sworn before me by the said James Thomas and George Robert Major this 1st day of September, 1872, at the city of Ottawa.

JOHN SMITH,
J. P. for the County of Carleton.

20. When the invention has been assigned before the issue of patent, the affidavit must be made by the "inventor," not by the "assignee."

21. If the inventor is dead, the administrator or executor will make the affidavit that the person named as inventor was the first inventor.

22. FOR A REISSUE (INVENTOR.)

CANADA, PROVINCE OF ONTARIO,

County of Carleton.

I, Thomas Brown, of the city of Ottawa, in the Province of Ontario, lumber manufacturer,

Make oath and solemnly swear that the several allegations contained in my petition to the Commissioner of Patents, dated 1st September, 1872, for a reissue of the patent granted to me on the 4th September, 1871, for a new and useful improvement on churns, are respectively true and correct.

That I am the sole owner of the said patent.

And that I am the inventor of the improvements set forth and claimed in the amended specification.

THOMAS BROWN.

Sworn before me at the city of Ottawa, in the county of Carleton, in the Province of Ontario, this first day of September, one thousand eight hundred and seventy-two.

WILLIAM WILLS,

J. P. for the County of Carleton.

If the patent has not been exclusively assigned, the affidavit must state that the application for reissue is made with the consent of all the assignees.

23. FOR A REISSUE—(ASSIGNEE OF THE ENTIRE INTEREST.)

CANADA, PROVINCE OF ONTARIO,

County of Carleton.

I, David Lane, of the town of Cobourg, in the county of Northumberland, Province of Ontario, tanner, make oath and solemnly swear that the several allegations contained in my petition to the Commissioner of Patents, dated 1st September, 1872, for a reissue of the patent granted to Thomas Tardy, of the city of Ottawa, Province of Ontario, broom maker, for new

and useful improvements on planing machines, are respectively true and correct.

That I am the sole owner of the said patent.

And that Thomas Tardy was the inventor of the improvements set forth and claimed in the amended specification.

DAVID LAKE.

Sworn before me at the town of Cobourg, in the county of Northumberland, Province of Ontario, this first day of September, one thousand eight hundred and seventy-two.

THOMAS PARSONS,

J. P. for the County of Carleton.

24. CAVEAT.

To the Commissioner of Patents, Ottawa:

The undersigned, James Thompson, of the village of New Edinburgh, in the county of Russell, in the Province of Ontario, school teacher, an intending applicant for a patent, who has made certain new and useful improvements on locomotive engines, and has not perfected his invention, prays that this specification may be filed as a caveat in the Patent Office, (here describe the invention as far as possible, and refer to letters in drawing, as in specification given before.) (Form No. 14.)

JAMES THOMPSON.

Signed in the presence of: CHARLES STEWART,
GEORGE HALL.

CANADA, PROVINCE OF ONTARIO,

County of Russell.

I, James Thompson, of the village of New Edinburgh, in the county of Russell, Province of Ontario, school teacher, make oath and solemnly swear that I am the first inventor of the invention described in the foregoing specification, and that the allegations contained in the above specification are respectively true and correct.

JAMES THOMPSON.

Sworn before me at New Edinburgh, this first day of September, one thousand eight hundred and seventy-two.

ALEXANDER BUSH,

J. P. for County of Russell.

ASSIGNMENTS.

25. OF AN ENTIRE INTEREST (OR AN UNDIVIDED ONE HALF INTEREST) IN AN INVENTION BEFORE THE ISSUE OF PATENT.

In consideration of the sum of ten dollars, to me paid by Solomon Lang, of the city of Montreal, I do hereby sell and assign to the said Solomon Lang all (or an undivided half of all) my right, title, and interest in and to my invention for new and useful improvements on planing machines, as fully set forth and described in the specification which I have signed preparatory to obtaining a patent. And I do hereby authorize and request the Commissioner of Patents to issue the said patent to the said Thomas Lang, (or jointly to myself and the said Thomas Lang,) in accordance with this assignment.

Witness my hand and seal this first day of September, one thousand eight hundred and seventy-two, at the city of Montreal.

THOMAS LORD. [L. S.]

26. OF AN ENTIRE INTEREST IN A PATENT.

In consideration of five hundred dollars, to me paid by Nathan Wilcox, of Keokuk, Iowa, I do hereby sell and assign to the said Nathan Wilcox all my right, title, and interest in and to the patent of Canada, No. 1200, for an improvement in locomotive head lights, granted to me July 30, 1864, the same to be held and enjoyed by the said Nathan Wilcox to the full end of the term for which said patent is granted, as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

Witness my hand and seal this first day of September, one thousand eight hundred and seventy-two, at Keokuk, Iowa.

HORACE KIMBALL. [L. S.]

27. DISCLAIMER, TO BE IN DUPLICATE.

I, William Look, of the village of Hull, in the county of Ottawa, Province of Quebec, do hereby, on the 1st September, 1872, obtained a patent for the Dominion of America for new and useful improvements on wagon brakes:

And through mistake, accident, or inadvertence, without any willful intent to defraud or mislead the public, I have made the claim in my specification too broad, (or as being the first inventor of a material or substantial part of the invention patented of which I was not the first inventor, and to which I had no legal right:)

I, therefore, hereby disclaim the part of the claim in the specification which is in the following words:

"I also claim the use of the lever A, in combination with crank D, as described."

WILLIAM LOOKUP.

HULL, 30th September, 1872.

Signed in duplicate in the presence of: DAVID BROWN,
FRANCIS LEMEUX.

Addition to the Rules and Regulations, (September, 1872,) of the Canada Patent Office, January 14th, 1873.

I. DRAWING.

In order to allow the Patent Office to have a Patent Office Record printed and published, containing the claims and drawings of all patents issued, it is further directed, in addition to the requirements of Rule 13 and Form 15, that—

One drawing on a sheet of card board, 8×13 inches, will be required of each invention, in addition to those ordered by Rule 13 and Form 15; the sheet is to be without writing on its face, merely the usual lettering required on the drawing; written title, references, certificate, signature, &c., not being necessary.

Where several sheets and figures are furnished in accordance with Rule 13, any one figure, which will best give a general idea of the invention, will be sufficient.

The card board to be used must have a smooth or calendered surface. A sheet of "double thick Bristol board" or "Whatman's drawing paper" is recommended.

All drawings must be clear, sharp, well defined, not too fine, and *perfectly black*.

NOTICE.

Lines that are pale, ashy, very fine, ragged, or rotten, give bad results when photo-lithographed.

Brush-shading, tinting, and imitation surface-graining should never be used; and in fine shading the result should be attained with as few lines as possible.

Section lines also should be as open in their spacing as the case will admit of, and these, as well as all right lines, in order to insure clearness, should be made with a ruling pen. The shading of convex and concave surfaces may be dispensed with when the invention is otherwise well illustrated.

Shade lines may sometimes be used with good effect, but heavy shadows, where they would obscure lines or letters of reference, should be avoided.

The card board drawing should be rolled on a roller for transmission to the office, as folding will prevent its usefulness for photo-lithography.

2. SPECIFICATIONS.

The duplicate specifications, in every application, must each be identified by the justice or judge, who takes the affidavit of the inventor, as "the specification referred to in the inventor's affidavit annexed." Such identification to be, by certificate, written at end of, and in each, such specification. Thus:

"This is the specification referred to in the affidavit of _____, hereto annexed. Sworn before me this _____ day of _____, A. D. 18—."

Judge or J. P.

3. AFFIDAVIT.

In all cases of applications for patents, where the affidavits are made out of Canada, and before a judge, the seal of the court, presided over by such judge, must be affixed to such affidavit.

V.

THE LAW OF COPYRIGHT IN THE UNITED STATES.**IN FORCE AUGUST 1, 1874.**

From the Revised Statutes of the United States, in force December 1, 1873, as amended by act approved June, 18, 1874.

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.

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. Any citizen of the United States, or resident therein, who shall be the author, inventor, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, photograph or negative thereof, or of a painting, drawing, chromo, statue, 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 may reserve the right to dramatize or translate their own works.

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 and a citizen of the United States or resident therein, 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.

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.

SEC. 4956. No person shall be entitled to a copyright unless he shall, before publication, 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 printed copy of the title of the book or other article, or a description of the painting, drawing, chromo, statue, statuary, or model or design for a work of the fine arts, for which he desires a copyright; nor unless he shall also, within ten days from the publication thereof, 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, two copies of such copyright book or other article, or, in case of a painting, drawing, statue, statuary, model or design for a work of the fine arts, a photograph of the same.

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.

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.

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, within ten days after its publication, two complete printed copies thereof, of the best edition issued, or description or photograph of such article as hereinbefore required, and a copy of every subsequent edition wherein any substantial changes shall be made.

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."

SEC. 4963. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, 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.

SEC. 4964. Every person who, after the recording of the title of any book as provided by this chapter, shall 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, or import, or, knowing the same to be so printed, published, 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.

SEC. 4965. If any person, after the recording of the title of any map, chart, musical composition, print, cut, engraving, 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 chapter, shall, 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, engrave, etch, work, copy, print, publish, 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, 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.

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.

SEC. 4967. Every person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained, (if such author or proprietor is a citizen of the United States, or resident therein,) shall be liable to the author or proprietor for all damages occasioned by such injury.

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.

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 district 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.

SEC. 4971. Nothing in this chapter shall be construed to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, written, composed,

or made by any person not a citizen of the United States nor resident therein.

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

VI.

DIRECTIONS FOR SECURING COPYRIGHTS

UNDER THE REVISED ACT OF CONGRESS WHICH TOOK EFFECT AUGUST 1,
1874.

1. **PRINTED TITLE FOR ENTRY BEFORE PUBLICATION.**—A printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or a description of the painting, drawing, chromo, statue, statuary, or model or design for a work of the fine arts, for which copyright is desired, must be sent by mail or otherwise, prepaid, addressed “Librarian of Congress, Washington, D. C.” This must be done before publication of the book or other article.

2. **COPYRIGHT FEES.**—A fee of 50 cents, for recording the title of each book or other article, must be inclosed with the title as above, and 50 cents in addition (or \$1 in all) for each certificate of copyright under seal of the Librarian of Congress, which will be transmitted by return mail.

3. **WHAT IS REQUIRED TO PERFECT COPYRIGHT.**—Within ten days after publication of each book or other article, two complete copies of the best edition issued must be sent, to perfect the copyright, with the address, “Librarian of Congress, Washington, D. C.” It is optional with those sending books and other articles to perfect copyright, to send them by mail or express; but, in either case, the charges are to be prepaid by the senders. Without the

deposit of copies above required the copyright is void, and a penalty of \$25 is incurred. No copy is required to be deposited elsewhere.

4. NOTICE OF COPYRIGHT TO BE GIVEN BY IMPRINT.—No copyright is valid unless notice is given by inserting in every copy published, on the title page or the page 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 as a work of the fine arts, by inscribing upon some portion thereof, or on the substance on which the same is mounted, the following words, viz: “*Entered according to act of Congress, in the year ———, by ———, in the office of the Librarian of Congress, at Washington;*” or, at the option of the person entering the copyright, the words: “*Copyright, 18—, by ———.*”

The law imposes a penalty of \$100 upon any person who has not obtained copyright who shall insert the notice “*Entered according to act of Congress,*” or, “*Copyright,*” etc., or words of the same import, in or upon any book or other article.

5. TRANSLATIONS, &c.—Any author may reserve the right to translate or to dramatize his own work. In this case, notice should be given by printing the words “*Right of translation reserved,*” or “*All rights reserved,*” below the notice of copyright entry, and notifying the Librarian of Congress of such reservation, to be entered upon the record.

6. DURATION OF COPYRIGHT.—Each copyright secures the exclusive right of publishing the book or article copyrighted for the term of twenty-eight years. At the end of that time, the author or designer, or his widow or

children, may secure a renewal for the further term of fourteen years, making forty-two years in all. Applications for renewal must be accompanied by explicit statement of ownership, in the case of the author, or of relationship, in the case of his heirs, and must state definitely the date and place of entry of the original copyright.

7. **TIME OF PUBLICATION.**—The time within which any work copyrighted may be issued from the press is not limited by any law or regulation, but depends upon the discretion of the proprietor. A copyright may be secured for a projected work as well as for a completed one.

8. **ASSIGNMENTS.**—Any copyright is assignable in law by any instrument of writing, but such assignment must be recorded in the office of the Librarian of Congress within sixty days from its date. The fee for this record and certificate is one dollar, and for a certified copy of any record of assignment, one dollar.

9. **COPIES OR DUPLICATE CERTIFICATES.**—A copy of the record (or duplicate certificate) of any copyright entry will be furnished under seal, at the rate of fifty cents each.

10. **SERIALS OR SEPARATE PUBLICATIONS TO BE COPYRIGHTED SEPARATELY.**—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 is to be taken out for each volume or part of a book, or number of a periodical, or variety, as to size, title, or inscription, of any other article.

11. **COPYRIGHTS FOR WORKS OF ART.**—To secure a copyright for a painting, statue, or model or design intended to be perfected as a work of the fine arts, so as to prevent infringement by copying, engraving, or vending such design, a definite description must accompany the appli-

cation for copyright, and a photograph of the same, at least as large as "cabinet size," must be mailed to the Librarian of Congress within ten days from the completion of the work.

12. **NO LABELS COPYRIGHT.**—Copyrights cannot be granted upon Trade-marks, or Labels intended to be used with any article of manufacture. If protection for such prints or labels is desired, application must be made to the Patent Office, where they are registered at a fee of SIX DOLLARS for labels, and TWENTY-FIVE for trade-marks.

13. **FULL NAME OF PROPRIETOR REQUIRED.**—Every applicant for a copyright must state distinctly the name and residence of the claimant, and whether the right is claimed as author, designer, or proprietor. No affidavit or formal application is required.

OFFICE OF THE LIBRARIAN OF CONGRESS,
Washington, 1874.