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THE SCIENTIFIC AMERICAN SUPPLEMENT

No. 236,

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THE MILLERS AND THE PATENT LAWS.

We doubt whether there has ever before been so large and complete an exhibition of the mechanical appliances of any trade, in practical operation, as that which was presented by the Millers' International Exhibition just closed at Cincinnati. The milling business has made great progress within a few years past—so great that a revolution may almost be said to have been effected therein—and old methods of making flour are everywhere being superseded by a radically different system, whereby the quality of the product is greatly improved. Nowhere else has the contrast between the old and the new method and their products been shown in such marked contrast, with such an extensive display of every kind of machinery, as in the Cincinnati Exhibition, and yet there is hardly a machine or an article for collateral use in the trade, which has materially contributed to its recent progress, that is not patented. It is our patent law, the protection it gives to inventors, the encouragement it offers to those who devote their time and means to improving old processes, that has chiefly made this splendid exhibition what it is.

And yet, strange as it may seem, with this practical proof before them of what the patent law has done for their business, the millers, in convention assembled, proceeded to make one of the most foolish and unreasonable attacks upon our patent system we ever remember to have seen formulated. The Millers' National Association of the United States have a standing committee on patents, and at their recent meeting in Cincinnati this committee made a report, which was adopted by the convention, avowedly to aid in "reforming" our patent laws and practice, and to "measurably free users of patented devices or processes from expensive litigation," etc. The "reforms" proposed include nearly every variety of objection to our patent laws which habitual infringers are in the habit of urging, and are as follows:

I. "More liberal appropriations by Congress to the Patent Department, enabling closer scrutiny of applications for patents, and consequent avoidance of the too frequent granting of patents on claims in which the essential features of novelty and usefulness are wanting." Is not the committee aware that the total expense of the Patent Office is paid by the inventors themselves, and that the examinations always involve a search through all like claims ever filed in the department? And if a patent be issued for anything that is not "useful," are not the millers aware that it is invalid and good for nothing, and is it any great hardship to ask the millers to let a thing alone if it is not useful?

II. "The abolition of the practice of reissue under new date or title, and sometimes for new things scarcely hinted at in original." If a miller obtains a defective title to real estate, through carelessness or error of his own, the courts will aid him to correct such title when it can be done without prejudice to the rights of others. Why should not a patentee, proceeding in good faith, have the like privilege? Further than this, a reissue is not valid if it covers "new things" involving different principles from what were set forth in the original patent.

III. "The establishment and maintenance of a special patent court at Washington to determine the validity of patents, before which court all parties directly or remotely interested in any case pending shall have ample time and opportunity to be legally and publicly heard." This is really a strange point to make in behalf of those who are now so vigorously protesting against the expense of patent litigation. It is proposed to have a new court, which cannot supersede, but must be auxiliary to the law machinery we now have, and to impose upon litigants in all parts of the country the necessity of a preliminary trial of their case at Washington, instead of having the trials take place as at present in the several districts where they reside.

IV. "The annual assessment of such a tax upon existing patents as can only be paid by owners of useful patents, and which, in default of payment of renewal tax, will free the records of worthless patents." It might just as rightfully be proposed that all flour mills making a low grade of flour should be taxed out of existence. The impositions of a tax on patents on such grounds would be nothing more nor less than direct robbery.

V. "A reasonable limit during which an inventor or patentee must successfully introduce his improvement to practical use and notice, in order to claim against any who may thereafter use the same." The present law makes seventeen years such reasonable limit, during which the inventor must not only introduce his improvement, but make therefrom all the profits which are to pay him for the time and means he has devoted to its development. This is the consideration which spurs him to effort, and the public, at the end of the seventeen years, becomes possessed of the free right to use his invention or discovery, whether or not they pay for its use before that time.

VI. "Some more reasonable measure of damages, with reference to actual benefits, in cases of established infringement." The courts always insist upon an accounting to show what gains or profits an infringer has made by his use, without permission, of the property of another. In this accounting the infringer has a right to show what other means were open to him whereby he might have avoided the use of the patent, and in this way it has often been shown that the patent he infringed upon was of no value at all to him. In many such accountings the damages for infringement have been placed at only six cents, and in all cases they are assessed by the court only after a full hearing of what both sides have to say. If a "reasonable measure" of damages cannot be arrived at on such investigation, we fail to see how in this fallible world such object is even to be attained—that it should *never* be reached would probably be nearer what the committee would recommend.

VII. "Greater restrictions in the granting of injunctions, before the validity of a patent has been tried and established, and also preventing the fixing of excessive bonds in cases where temporary injunctions are granted." The general practice now is not to grant injunctions until the validity of a patent has been established, unless it is evident that the alleged infringer is deliberately endeavoring to avoid the consequences of his infringement and escape the jurisdiction of the court. The amount of the bonds which must be given are in each case regulated by the probable measure of damages, and are so fixed by the courts only after an examination in which the infringer has an equal right with the patentee to be heard.

VIII. "An amendment to the effect that, when new suits are begun under the same patent, in which a decision has already been made in a lower court, and appealed to a higher court, the defendant may demand a stay of proceedings pending decision in the higher court, and that he may become a party in the pending suit, avoiding the unnecessary expense of special defense, requiring the taking of testimony, and construction and explanation of models already on record." This is according to the general practice of our courts at the present time, except that the defendant has no *right* to this stay, and to be made a co-defendant in another suit, unless in accordance with the judgment of the court. When a stay of proceedings is granted in such case it would be a grave injustice to the patentee to allow his rights to go by default during the pendency of a long litigation, but by the giving of proper bonds by the defendant the court will generally grant the stay.

Finally, to "give force to these recommendations," as the committee say, it is urged that the association should make itself "financially strong," to prevent the granting of what they are pleased to style "fraudulent patents or reissues," for which they would have paid lawyers constantly "on the alert" in Washington, all the millers in the country contributing to funds for such a purpose. Is not this a direct proposal to attempt to circumvent laws passed in pursuance of an important provision of the Constitution? And are not the beneficent effects of those laws written in every leading feature of the great exhibition now just closing? If the millers, or representatives of any other industry, combine to obstruct the equitable administration of our patent laws, is it not just possible that inventors and patentees may, by like combinations, even more energetically defend their legal rights?

It is matter of astonishment to us that the millers of this country, supposing they are truly represented by the committee, have seen fit to take this view of our patent law. We should rather have thought that a system which has done so much for them would have met with nothing but kindly words, and that inventors would have received that encouragement from them which alone will induce them to put forth vigorous efforts to perfect that system of milling improvements which has already made such progress, but which is yet far from having attained perfection.

"THERE'S ROOM AT THE TOP."

The young man ambitious to succeed in any line of business should always bear this in mind. There are those in plenty of mediocre ability, superficial acquirements, and inadequate preparation, but the thoroughly trained and competent are scarce. The standard of modern professional requirements has been greatly elevated by the advances which the world has made within a few years past, and still higher demands are constantly being made. The demand for men who have a complete knowledge of every department of their business has always been felt. The extent of that knowledge widens every year, as improved methods and facilities are introduced. The ship captain, for instance, who a few years ago needed only to be acquainted with centuries-old theories of navigation, with what more recent geographical explorations had added thereto, now finds himself, in this age of steam, working under totally different conditions. What he formerly knew is equally necessary now, but the successful management of a ship propelled by steam calls for an entirely new set of ideas and experiences, and the captain who would at present be a thorough master in his profession should not only know how to run a steam engine, but be a practical hydraulic engineer, with a good knowledge also of pneumatics and electricity, in order to avail himself of all the advantages which recent discoveries and inventions have placed at the disposal of navigators, whereby more efficient work may be done and a higher degree of safety attained. There are captains in plenty who are sailing masters only, but in proportion as they are also competent in these other departments, whereby they become in fact independent of their subordinates, do they attain the higher positions and greater responsibilities of their profession.

And what is true in this instance may be said of nearly every branch of business, as we find a like necessity for greater amplitude and thoroughness of preparation in all lines of professional activity. The discoveries in chemistry within a few years past have been of far reaching importance, and many of them have been such that a first-class doctor cannot remain ignorant of the advances made and retain his position in the front rank of his profession. With lawyers, also, a greater familiarity is expected with all departments of modern science, so that many members of the bar