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## FRAUDULENT CLAIMS IN REISSUED PATENTS.

There are hopeful indications that a final stop may be put to the fraudulent acquisition of patent rights by means of reissues, the most fruitful source of complaint against the working of the Patent Office.

A characteristic illustration of this sort of proceeding was brought out in a case lately decided in the United States Supreme Court. A patent was taken out in 1860 for an alleged improvement in lamps. The patent described a combination of devices, including two domes, one over the other, elevated above a perforated cap through which a wick tube and a vapor tube ascended. It was claimed that this combination of devices, especially including the two domes (which admitted the external air between them for producing a more perfect combustion), would allow a chimney to be dispensed with. The invention was a failure, but the inventor and others found that a single dome, used with a chimney, would be a real improvement; and for fifteen years such lamps, as undisputed common property, were manufactured in large numbers for burning kerosene.

Notwithstanding its [illegible]rent worthlessness, a reissue of the patent was ask[illegible]d obtained in 1873, extending the time, but, as would appear, without any material change in the claims. Meantime, the holder of the patent (not the original patentee) had discovered that, had it covered only a single dome to be used with a chimney, the patent would have been valuable, whereupon another reissue was sought and obtained in 1876, the amended claims being made to cover the very thing the original patentee professed to avoid and dispense with. The object, of course, was to make all manufacturers of kerosene lamps tributary to the assignee of the extended patent.

Suit was brought in the Circuit Court of the United States for the District of Connecticut by the holder of the extended patent, Edward Miller & Company, against the Bridgeport Brass Company, to restrain the infringement of the patent and for an account of profits, etc. The court dismissed the bill on the ground that the second reissue was not for the invention claimed in the original patent. The case was appealed to the Supreme Court of the United States, and the decision of the Circuit was sustained.

In his decision Mr. Justice Bradley comments upon the case and upon the matter of reissued patents in a manner which indicates a clear determination on the part of the Court to discourage, so far as possible, further proceedings of this nature.

After pointing out the effrontery of claiming in the reissue a combination involving the specific device which it was the avowed purpose of the inventor to dispense with, the court points out another grave objection to the validity of the reissued patent, namely, that the suggestion of inadvertence and mistake in the original specification was a mere pretence, "too bald for human credence," or if not, the mistake was so obvious as to be instantly discernible, and the right to have it corrected was abandoned by unreasonable delay. "If two years' public enjoyment of an invention, with the consent and allowance of the inventor, is evidence of abandonment and a bar to an application for a patent, a public disclaimer in the patent itself should be construed equally favorably to the public. Nothing but a clear mistake or inadvertence, and a speedy application for its correction, is admissible when it is sought merely to enlarge a claim."

After tracing the historical development of the abuses which have arisen under the laws granting reissues, the court observes that it is clear that it was not the special purpose of the legislation on this subject to authorize the surrender of patents for the purpose of reissuing them with broader and more comprehensive claims, although under the general terms of the law such a reissue may be made where it clearly appears that an actual mistake has inadvertently been made. But, adds the court, by a curious misapplication of the law it has come to be principally resorted to for the purpose of enlarging and expanding patent claims. This is clearly wrong, except where an actual mistake has occurred, not from a mere error of judgment (for that may be rectified by appeal), but a real *bona-fide* mistake inadvertently committed; such, a court of chancery, in cases within its ordinary jurisdiction, would correct. The court adds: "Reissues for the enlargement of claims should be the exception and not the rule. And when, if a claim is too narrow, that is, if it does not contain all that the patentee is entitled to, the defect is apparent on the face of the patent, and can be discovered as soon as that document is taken out of its envelope and opened, there can be no valid excuse for delay in asking to have it corrected. Every independent inventor, every mechanic, every citizen, is affected by such delay, and by the issue of a new patent with a broader and more comprehensive claim. The granting of a reissue for such a purpose, after an unreasonable delay, is clearly an abuse of the power to grant reissues, and may justly be declared illegal and void. It will not do for the patentee to wait until other inventors have produced new forms of improvement, and then, with the new light thus acquired, under pretense of inadvertence and mistake, apply for such an enlargement of his claim as to make it embrace these new forms. Such a process of expansion carried on indefinitely, without regard to lapse of time, would operate most unjustly against the public, and is totally unauthorized by the law. In such a case, even he who has rights, and sleeps upon them, justly loses them."

The significance and importance of this decision need not be enlarged upon. The practice of expanding and idealizing claims in reissues has been the source of serious wrong to the public and of hazard to the entire patent system. The Patent Office, as well as honest inventors and the public at large, is interested in having it stopped.

## LOSSES BY FIRE IN 1881.

It is estimated that the losses by fire in the year 1881 are considerably in excess of any previous year, and that on account of the competition among fire insurance solicitors and their companies the fire insurance business of the country has, in the aggregate, been a losing business. The fire hazard has been, with many unscrupulous companies, a secondary consideration, and they have insured anything at more than its value for the sake of the premium, which is practically offering a bonus for incendiarism. Indeed some insurance men go so far as to say that six-tenths of all the fires that occur are of incendiary origin. Another important cause of destructive fires is faulty buildings, especially in villages and smaller cities, where they are built of wood without the least regard to protection against fire either from without or from within.

The *Fireman's Journal* publishes a list of 350 large fires that occurred in this country in the eleven months next preceding December, 1881. It foots up nearly $50,000,000, although it includes only those recorded fires that caused a loss of $50,000 or more. The average loss by each fire appears to be $145,000.

There is also a list of 122 fires in December which has such recorded fires as caused a loss of $10,000 and upward. The aggregate of this list is $7,500,000, and the average loss caused by each is $61,500.

Of unrecorded fires and those causing a loss of less than $10,000, there was probably enough to make the December total as much as $10,000,000.

At this monthly rate, and making due allowance for the season of the year, it appears that not less than $100,000,000 worth of property was destroyed by fire in the year 1881 in the United States, the territories, and the provinces.

A notable feature of the list is the very large percentage of the losses set against the various manufacturing industries. If this list was extended so as to include the smaller establishments that have been wholly destroyed, and the less destructive fires in large mills and factories that have occurred during the year, no doubt the proportion would be greatly increased.

As it is, the list for eleven-twelfths of the year does not include losses less than $50,000. Perhaps three-fourths of the fires in all kinds of factories and workshops caused average losses much less than that amount.

What we can glean from these lists is that there were over sixty woodworking establishments that suffered losses greater than $50,000, amounting in the aggregate to $5,750,000.

Establishments that grind or clean grain, causing the diffusion of fine carbonaceous dust in the closed rooms, stand next in number and in aggregate of losses. There were twenty-five of this class, including grist and flouring mills, breweries, distilleries, and elevators, their losses amounting to $3,000,000. Twenty-five cotton, woolen, and flax mills and cordage works were burned, the loss being $2,500,000.

Of oil works and lard rendering establishments there are in the lists twenty, whose losses foot up also $2,500,000.

## LEFT-HANDED GENEROSITY.

A year or two ago a Scotch firm of shipbuilders established what was widely noticed at the time as a "generous" scheme of awards to workmen in their employ who should invent or introduce any new machine or hand tool, or improve any existing tool, or make any other change of means or methods calculated to improve or cheapen the work of their shipyard. The policy was good, though, if our memory serves, it was characterized by shrewdness rather than generosity, since the granting of the award was conditioned upon the surrender by the inventor to the company of the right to use the new invention without further charge. The plan seems to have worked well for the company, who "have been encouraged to amend the scheme" in two important particulars. They now announce that should an invention or improvement be worthy of a greater reward than the sum ($50) originally fixed, the firm will either grant a higher sum, or, should the invention be considered worthy of being protected by patent, pay the inventor $50 and assist him pecuniarily in disposing of his patent or in completing it, at the same time reserving to the firm the right of using such invention themselves free from the payment of any royalty for patent rights.

These offers still keep well within the bounds of prudence, and indicate a sharp outlook for the main chance. The firm enjoy in consequence the pleasure of being generally lauded for generosity. We shall not be surprised if they discover in time that it will pay them to still further encourage the inventive faculty and habit among their workmen, if not by assisting them to take out patents for their inventions, at least without reserving any right of use without payment of royalty. Assistance so rendered might fairly be accredited to generosity; and yet, from a strictly selfish point of view, the generosity would pay handsomely, for the habit of constantly seeking better and more economical methods of working could not fail to make any workman more valuable to his employer, even if it did not lead him to invent anything worth patenting.