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THE NULLIFICATION OF THE PATENT LAWS.

It is a common averment of inventors that in the absence of a reasonable hope of substantial reward, made possible by the exclusive control of their inventions as guaranteed by the patent laws, they would rarely have the will or the ability to devote to the practical development of their ideas the time and labor and money usually necessary for their realization.

Accordingly, to lessen in any way the stimulus which the law gives by protecting patentees and manufacturers under patent rights, is to strike at the very heart of the system as a means of encouraging useful inventions. If inventors cannot enjoy the fruits of their labors in this direction, they will naturally turn their thoughts into other channels, and that would be equivalent to a suspension of all progress in American arts, and our speedy decadence as a manufacturing nation. And seeing how largely our agricultural interests are bound up with and dependent upon our manufacturing interests, it is obvious that our pre-eminence in this field also would not be long sustained, if our inventors were to lessen their efforts.

There would be little need of reciting undisputed truths like these, if the urgency of private interests did not continually threaten to override public interests, and the desire to gain favor with local powers induce legislators sometimes to act without due regard for the larger interests of the nation.

Under the guise of amendments looking to the correction of real or pretended evils in the working of the patent laws, Congress is annually beset with bills that would practically nullify the most beneficent features of the patent system. Not the least dangerous of these attempts to break down the legal safeguards of the rights of patented property are those which would make a very elastic and undeterminable "good faith" a pretext for invading the rights of patentees. House Bill No. 1,081, introduced by Mr. Ray, of New York, is a fair example. Its caption is:

"A bill to provide for the protection of *bona fide* manufacturers, purchasers, venders and users of articles, machines, machinery, and other things for the exclusive use, manufacture, and sale of which a patent has been or hereafter may be granted."

Assuming that the existing laws are inadequate for the protection of the parties described, nothing would seem more fair and reasonable than the enacting of a law to that end. Unfortunately it is not that end, but the reverse which the bill in question would secure. Everything turns on what a "*bona fide*" manufacturer or user may be.

In all sincerity, the only man who can manufacture a patented article in good faith is he in whom is lawfully vested the right to manufacture it, as provided by the patent laws. Whoever has not properly acquired such right, or has not substantial reasons for believing that he has lawfully acquired it, cannot possibly proceed in good faith to manufacture an article presumedly the exclusive property of another.

In the face of this obvious truth the bill in hand calmly bases good faith on the absence of a written notification by the patentee of the existence of the patent. The first section of the bill runs thus:

"Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, that no person, corporation, or joint stock association, who shall in good faith purchase, use, manufacture, or sell any article, machine, machinery, or other thing for the exclusive use, sale, or manufacture of which any patent has been or hereafter may be granted to any person, persons, or corporation whatever, shall be liable in damages and otherwise for an infringement of such patent until after written notice of the existence thereof shall have been personally served on such person, persons, or corporation, as the case may be, and such infringement shall thereafter continue."

Under a law like this what chance would the majority of patentees have of reaping any benefit from their inventions? A string of pirates from Maine to Oregon could, separately or in collusion, flood the market year after year with pirated inventions, taking anything and everything they chose, and yet never lay themselves open to a suit for damages or transgress the law by continuing to manufacture after being formally warned to desist. In a large class of profitable novelties the demand is expected to be very limited as to time; with all these the established manufacturer, on the lookout for such things and helped by the Official Gazette, could supply the trade before the inventor could turn himself. And with more serious things the patentee would be quite as much at a disadvantage. Unless gifted with fore-knowledge absolute, with omniscience and omnipresence thrown in, it would be absolutely futile for him to try to protect his property from such organized invasion "in good faith"!

What would be thought of a legislator who should seriously propose a general law exempting from penalty for robbery all who could plead that the rightful owner had never served them with a written notification of ownership? The rights of patented property are as real as those of any other species of property, and the injustice of wantonly invading them is as clear as in any other case. To legalize such injustice as proposed would be morally as atrocious as it would be constitutionally unwarrantable. Better abolish the patent system at once than take inventors' money for letters patent which would serve only to facilitate the operations of infringers upon the "exclusive privileges" nominally granted.

Scarcely less fatal to all that is valuable in the patent laws are such measures as are proposed in House Bills numbered 311 and 419. The latter provides that "hereafter in any suit brought in any court having jurisdiction in patent cases for an alleged use or infringement of any patented article, device, process, invention, or discovery, where it shall appear that the defendant in the suit purchased the same in good faith for his own personal use from the manufacturer thereof, or from a person or firm engaged in the open sale or practical application thereof, and applied the same for and to his own use, and not for sale, if the plaintiff shall recover a judgment for five dollars or less as damages, the court shall adjudge that he pay all costs of suit; and if the plaintiff shall not recover the sum of twenty dollars or over, the court shall adjudge him to pay all his own costs, unless it shall also appear that the defendant at the time of such purchase or practical application had knowledge or actual notice of the existence of such patent."

The first section of No. 311, introduced by Mr. Calkins, of Indiana, is substantially the same as the foregoing, but the second goes further and provides that at the commencement of the suit the plaintiff shall give bond to pay all costs and attorney's fees adjudged against him; and if the defendant shall finally prevail, the court shall allow costs and a sum not exceeding fifty dollars for counsel fees to the defendant. Also that a failure to give such bond shall be ground for the dismissal of the suit.

Bearing in mind the fact that a very large proportion of all patented articles are sold for less than twenty dollars, it goes without saying that a law like either of those we have cited would deprive a very large class of patentees of any hope of profit from their inventions. With such marked and positive discrimination against them in the courts, not one patentee in ten could afford to defend his rights against infringement.

Let the reader run over in his mind the all but endless list of articles of utility, convenience, comfort, and adornment, not exceeding twenty dollars in price, that go, for example, to the furnishing of his home; add those used in the construction of the house or employed in making its furniture; add the multitude of patented implements, machines, and materials used in the production and marketing of the daily food supplies of the table, by the various manufacturers of textiles, clothing, and other necessaries, conveniences, and luxuries, of less than twenty dollars cost, that help to make modern life what it is.

Review in short the entire range of the useful arts, and note how largely they produce or employ patented articles and processes that would be practically outlawed by the twenty dollar test, and then try to estimate the injury that would fall upon our productive industries in ~~consequence of~~ depriving such properties of the protection which the law now properly affords. Almost every industry would be impaired, and the prosperity of every manufacturing establishment would be endangered.

And what excuse can be given for the proposed invasion of property rights and disturbance of legitimate enterprises? Simply that misinformed, careless, or designing purchasers and users of patented articles improperly obtained have been subjected to inconvenience and loss through suits for infringement at the hands of the rightful owners. In some cases unquestioning good faith has no doubt brought hardship to unintentional infringers; but their loss is as nothing compared with that which would certainly accrue to equally innocent patentees through the operation of the proposed amendments; and the wronged patentees would not have the easy means of protecting themselves that the infringers now have by exercising due caution with regard to what they buy and use. Instead of making ignorance an excuse for infringements, it would be far more equitable to adjudge the losing defendant to pay all costs of suit unless he could satisfy the court that before purchasing or using the article or process he made diligent search and examination in the Official Gazette and among the printed patents, and failed to find the patent in question.

It may be urged that the innocent purchaser cannot afford the time and trouble of investigating the legal rights involved in the thousand and one patented inventions he may wish to use. It is not necessary that he should investigate them, provided he makes it a rule not to buy such things of unknown and irresponsible sellers. Such reasonable caution on the part of buyers would soon spoil the trade of "patent sharps," and prove of immense advantage to all legitimate manufacturers under patent rights, while practically doing away with any real evils in this connection, the correction of which is popularly demanded. To seek their correction through such measures as are now before us would simply rob a score of Peters to pay one Paul for losses which he has no good reason for incurring.

Yet absurdly, even outrageously, unjust and impolitic as the proposed measures may be, they are before Congress; and there is danger that, in the multiplicity of bills to be acted on, and through the skill with which their mischievous measures are hidden under a plausible phraseology, there may slip through some that shall grievously affect the security of patents and manufacturers' rights under them.

In the emergency it would seem highly desirable that our inventors and manufacturers should impress upon their senators and representatives in Congress the importance of the issues at stake and the need of watchfulness.

A sufficient number of well put and well directed communications and remonstrances now may prevent much mischief by and by.

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