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SCIENTIFIC AMERICAN SUPPLEMENT

No. 541.

For the Week Ending May 15, 1886.

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STATE INTERFERENCE WITH PATENTS.

The Supreme Court of the United Statesdecided long ago that all State laws for regulating the sale or disposition of patented inventions were unconstitutional and void, for the reason that the exclusive authority in such matters is by the Constitution exclusively vested in the Congress.

For some unexplained reason, the authorities of the State of Indiana have for years treated the Supreme Court decisions with contempt, and there are to-day among the Indiana statutes several laws relating to patents that are at variance with the paramount authority of the United States. The most recent Indianian effort in this line is the new State law that regulates the price at which patented telephones may be sold. The law specifies that no telephone company shall charge more than $3 a month for use of same; thus taking entirely away from the patentee all voice in or control of his invention. The validity of this law has been sustained by the highest tribunal of the State of Indiana, and is now in force there. The result is that the Bell telephone companies have in several of the cities of the State withdrawn their instruments from use, as the amount allowed by the local law is not sufficient to pay them any profit.

This action of the telephone company has proved so inconvenient to the Indiana law givers that they have applied for Congressional relief, and the Hon. Mr. Holman, Representative of the State, has introduced the following curious bill:

"A bill to secure to the public the use of patented inventions.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all persons or corporations, whether owners or licensees of patents granted by the United States, are prohibited from withdrawing any machine or process from public use because of any regulation of the tariff of charges by the Legislature of any State or Territory wherein such machine or process is being used, without the consent of such Legislature."

This bill adds one more to the various schemes of legislation hostile to inventions now before Congress; like the others, let us hope it will suffer defeat.

Indiana has profited vastly, in common with all of the States, from the many new industries and manufactures which inventive genius has created and given the country. The industrial prosperity of the State is largely based upon the wealth which has been brought in to her by the use of new improvements and inventions. If they are to be withdrawn or discouraged, property values must necessarily decline, and manufacturing industries must be removed to more congenial places. With a strange inconsistency, the Indianians, by their own laws, deal themselves injurious blows, and then seek the aid of Congress to avert the resulting mischief.

THE PROPOSED EXTENSION OF PATENTS.

We have already given a summary statement of a number of bills that have been brought before the present Congress for the practical nullification of patents. As patents are a source of wealth to the country, and therefore to be fostered, not attacked, these bills, in their objects, deserve condemnation. Whether an invention be regarded as a property *per se*, or as only acquiring that status after patenting, the simple material interest of the Government requires that inventors should be encouraged, not repressed. Hence it is a matter of some interest to find a bill presented (H. R. 4,034) that on its face at least seems designed to protect, not assail, the inventor. In this sense it is a decided novelty; but it only goes a certain distance on the right way, but not far enough.

The bill applies to all patents ever issued, or issued and extended, or reissued, expired or unexpired. On application, the Commissioner of Patents is authorized to extend them for an additional period of eight years. Such extension is not to confer the right to damages for any infringement committed between the expiration of the original patent and its renewal. The interested party, who may be inventor, or administrator, or executor, must prove the value of the invention, and show what profit it yielded such party or parties. Publication in the District papers and elsewhere of the proposed extension is provided for. Should the patent be shown eligible for extension, a total fee of twelve hundred dollars is to be paid. Two hundred is a preliminary fee, to be paid before publication; one thousand dollars is the final fee, to be paid before issue.

On its face, as providing for the possible extension of all patents ever granted, this bill might appear revolutionary. But it is hedged in with so many provisions that this character is to a great extent repressed. Thus, the size of the fee required would cut off many applications. All expired patents that are to be renewed under it must have their application filed within six months of the date of the passage of the bill. This provision would operate in the same way as the high fee. The bill would insure a busy six months among the patent lawyers and in the Patent Office. The amount of applications that would be filed in that period would exceed all precedent. Many a device, duly patented, that yielded the patentee a very poor return for his ingenuity, has now, as the basis of improvements, mounted into great importance. Many of the early patents covering the modern straw cutter, the plow, washing machine, churn, sewing machine, mower and reaper, the planing machine, the vulcanized India rubber, the telegraph, and hundreds of other great inventions, would certainly claim the new lease of life. The amount of revenue to be derived from some of these patents, if revived and extended at this day, would be simply fabulous.

Not only would this bill benefit some of the early inventors. The patent lawyers in the new infringement suits which it would occasion would reap a rich harvest. The circuit courts would have more of their time than ever devoted to patent cases. It would be interesting to see how the old patents would now be treated when they reached the Supreme Court. There would be a probability of more rigid construction being awarded their claims than they received in former days.

The limited time within which application under this bill is to be made would prevent many extensions. But all unexpired paying patents would certainly be extended under it if allowed. In other words, the terms of many important patents would be extended to twenty-five years.

In this there would seem little objection. The award of a patent right is by the best authorities considered a bonus from the Government. Property in ideas has never been recognized. All protection accorded them is considered artificial, and in the nature of a monopoly. The term of a patent is the measure of the bonus. Otherwise, as a matter of simple justice, patents should be awarded for all time, and the Patent Office would become a simple office of registry. A twenty-five years' term would not from this standpoint seem too great a reward, especially when it is remembered that the last eight years would be conditional on an insufficient return having been yielded by the term of the original grant.

The bill has a great deal of good in it. Any provision for the indiscriminate extension of all expired patents would be so revolutionary as to deserve opposition. But the present bill has so many limitations that it would not seem destined to do any harm in this regard. Indeed, it may be considered to err in the other direction.

If expired patents are only to have a limited time for securing their extension, six months does not seem enough. The amount of the fee is quite disproportionate to the prevailing rates of the Office. These two features give the bill a disagreeable aspect, as, to say the least, they suggest the possibility of its being presented in the interest of some particular corporation or patentee.

The one and only restriction needed is contained in the provision that the applicant must show that he has been insufficiently rewarded for his work. This properly acted on would suffice. No high fee or restriction of period of application is proper.

In such a bill as this, it would be well to insert some special clause relating to extension of claims. Many an old patent of greatest merit would be useless on account of its restricted claims. If justice dictated the extension of a patent, the same quality would suggest the propriety of seeing that its claims were made to cover the essential features of the device, and its points of novelty judged by the state of the art at the period of its original date of issue. The scope of the claims might justly be determined in the extension proceedings. The present treatment of expanded claims of reissues by the Supreme Court is a subject of general criticism among patent lawyers.

New Process of Manufacturing Car Wheels.

At the works of the Dickson Manufacturing Co., in Wilkesbarre, a new machine and process, patented by J. J. Carr, has been tested with satisfactory results. It is claimed that while on the old method of moulding, casting, dressing, and boring the wheels the average product of three men per day of twelve hours is eighteen wheels, with the new process the same number of men can turn out one perfect wheel every minute, or 720 wheels per day. The principal feature seems to be the substitution of a steel core for one of sand in casting the wheel. This has been tried before, but no one had hit upon a means of getting this core out of the wheel after it was cast. This is now accomplished by a center key, which falls out upon a single stroke of the hammer and lets the steel core drop out, leaving the hole in the wheel perfectly true, and ready to be put upon the axle without any dressing or boring. The sand is run into the moulding boxes by a hopper, and both matrices are moulded and the pattern drawn out by the single revolution of a shaft driven by steam power. The matrices are borne away upon movable platforms to the cupola, and then the piece is cast as under the old process. The moulding is done as rapidly as a revolving disk can carry the boxes under the pressers.