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Scientific American Supplement

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IMPORTANT AMENDMENTS TO THE UNITED STATES PATENT STATUTES.

A bill, H. R. 10,223, embodying important amendments to the Patent Statutes of the United States, has recently been enacted by Congress and became a law on the day of the inauguration of our new President. In the past we have, on several occasions, noticed the progress of these particular amendments, which are the most serious ones which have been proposed for many years—serious in the good sense of conservatism and proper origin, not serious in the sense of subverting the rights either of the public or of the inventor. We publish elsewhere in parallel column the portions of the old patent statutes affected by the amendments, together with the same portions as amended. An interesting feature in the case is that the bill passed the Senate on March 3, and was signed early on the morning of March 4, this being one of the last official acts of President Cleveland.

The first amendment enacts that publication or patenting of an invention here or abroad, more than two years prior to the application for a patent in the United States, will prevent the obtaining of a patent here. Thus, if the matter of an invention has been published or patented, perhaps by some one who was not the first and original inventor, the original inventor will be prevented from obtaining a patent unless he applies for it within two years of such publication. The doctrine of public use is to the effect that, if an invention has been in public use or on sale in this country over two years, no patent can be obtained, abandonment being virtually construed as heretofore. Now the same obtains for patenting or publication here and abroad. The inventor's resource against this restriction on his right to a patent is perfectly good and effective; namely, diligence. He has the very adequate period of two years given him within which to protect his rights in this country.

Another amendment, really subsidiary to the above, establishes a plea to the effect that such publication or patenting is a valid defense in a patent suit.

About the most radical of the amendments applies to section 4,887 of the patent statutes. Hitherto an inventor could patent abroad and then at any time within the life of his foreign patent or patents could obtain a patent here. But the life of his United States patent was limited by the life of the earliest expiring foreign patent. It sometimes happened that he would not apply here until some years after obtaining foreign patents and not until the invention had proved to be a success. This is all changed. After a foreign patent has been issued, the United States patent must be applied for within seven months of the date of filing of the foreign application, or no patent can be obtained. The life of the foreign patents of earlier date of expiration, however, has no longer any effect upon the term of the United States patent.

The theory of the old provision for limiting the life of a patent here by the term of a foreign patent to the same inventor has been much discussed. The limitation of the period, however, often worked great injustice to the patentee, and it is for his benefit that it is done away with. At the same time, by the adoption of the seven months' period, the inventor is urged to use diligence, and without such diligence forfeits his patent rights absolutely. The period of seven months was selected in order to harmonize the practice with the articles of the international convention, and in practice does not affect the interests of American inventors.

The old system of giving to an applicant for letters patent successive periods of two years each for action on pending applications afforded an opportunity of keeping a patent application alive for years. In several well-known cases this led to great abuses. Recently the Commissioner of Patents has, without any special legislation, endeavored to abbreviate the period within which amendments should be filed to six months. It was at first intended to so amend the statutes as to make them harmonize with this present practice in the Patent Office, but so much pressure was brought to bear by attorneys and inventors that it was finally decided to make the term within which action must be taken one year, and the bill was so amended.

A somewhat more technical amendment provides that a properly acknowledged assignment, grant or conveyance of a patent shall be prima facie evidence of its execution. This prevents the necessity for sending a commission to distant parts of the world or for arranging for such with local counsel simply to get statutory evidence of such transactions upon the record in a patent suit.

Another amendment fixes the period over which an accounting for damages may extend. Hitherto this has been a very variable quantity. Sometimes it was fixed by the laws of the State within which the action was brought. In the absence of such laws, the accounting might go back for many years. Thus it has happened that a patent had expired a number of years, yet damages were asked for infringements committed during the life of the patent. Most of the witnesses would, in such a case, be either dead or impossible to find. The patent might be in the hands of speculators who had bought it simply to use as a weapon to obtain damages as hard to disprove as to prove.

Again, accountings are too often used to frighten parties to the suit into a settlement. Such a settlement may barely pay the expenses of the accounting; the amount paid may be but a tithe of the damages allowed by the master, but the moral effect in inducing other alleged infringers to pay royalty is very great. Instances are too numerous where, on accountings, the most exorbitant claims were made and allowed. With a period extending through twenty or thirty years in the past, the counsel had a field for the exercise of much ingenuity in establishing damages. Now the period of an accounting covers only the six years prior to the filing of the bill of complaint or issuing of the writ in the suit or action in question. This seems an ample period. It is not policy for the law to encourage an inventor to let his rights lie in abeyance until some infringer, perhaps an innocent one, shall have accumulated enough obligation to make him a valuable object of attack. The new amendments here, as elsewhere, are in the direction of inspiring diligence.

A brief résumé of the amendments may be thus put: The inventor, if he finds that his invention has been published or patented, must apply for his patent within two years of the date of such publication or patenting. The foreign patentee must seek to protect his rights here within the seven months of filing his application in the country of origin. The applicant in the Patent Office has a year only allowed him, except by special allowance from the Commissioner, within which to take action on his application. The patentee can only establish damages for infringement within a definite period, whose extent was determined by the general sense of State statutes of limitation. A United States patent is good for the period fixed by its date. The expiration of a prior foreign patent does not limit as heretofore the life of the United States patent.

These amendments are the results of the work of the American Bar Association, and carry with them a weight of authoritative backing that is seldom found in parallel cases. They were formulated by a special committee under the chairmanship of Edmund Wetmore, one of the leaders of the American Patent Bar, and the roll of the committee included such names as Wilmarth H. Thurston, ex-Patent Commissioner Charles G. Mitchell, Paul Bakewell and many other leading patent lawyers. Extensive correspondence was had with solicitors and others concerned in the amendments. They were finally presented to Congress and have passed with but little change.

At the end of the amendments thus far considered, and which may be grouped together, comes an entirely new statute. It provides that whenever the head of any department of the government shall request the Commissioner of Patents to expedite the forwarding of an application for a patent, such head of a department must be represented before the Commissioner in order to prevent the improper issue of a patent.

The bill, when first presented to Congress, received a good deal of criticism from attorneys and others, but rarely has a bill ever received such a strong backing, and the fact that it was the production of the committee of the Bar Association appointed to formulate and present the bill brought it at once to the favorable consideration of Congress. Many believe that the rights of the inventor have been curtailed thereby, and that in that respect it works a wrong; but we believe that this is not the case, and that it will correct many abuses that have arisen in the past, and that it is for the interest of the community that due diligence should be used, not only in filing and prosecuting applications for patents, but in seeking damages for infringements when infringement has taken place. This new law does not go into operation until January 1, 1898. Another bill, H.R. 10,202, was also approved by the President which is intended to facilitate the bringing of infringement suits.

THE PROPOSED MAMMOTH RELIEF MAP OF THE UNITED STATES.

A resolution was recently passed by the Senate and favorably reported by the library committee, which provided for the appointment of a commission of five to investigate the practicability of building a mammoth ground map of the United States. In the wording of the resolution the commission was to "examine into and report to Congress upon the practicability, advisability and cost of establishing at or near the city of Washington a ground map of the United States of America, on a scale of one square yard of map surface for each square mile of actual area, said ground map to be as nearly as may be our country in miniature, reproducing in earth and other materials, on scale, the boundaries and the topography, all the natural and artificial features of the surface, showing geographical divisions, also mountains, hills and valleys, forests, lakes and streams, cities and villages, and that said commission is to serve without compensation." The matter did not meet with favorable consideration in the House and failed to pass. For certain very obvious reasons, it is not likely that in its present form it will ever become a law.

The proposal to establish a national map at the capital city of the United States is certainly, on the face of it, not unattractive, and no doubt it commanded the ready support of the members of the Senate. It is safe to say, however, that the gentlemen who cast their complacent vote on this occasion had not the least conception of the financial burden which they were preparing to lay upon the tired shoulders of the taxpayer; for it now appears, according to a competent authority, that the proposed map, if carried out strictly on the lines of the resolution, would cost in round numbers some $500,000,000!

Of course the commission of five would not have gone far in its inquiry before it began to realize the gigantic nature of the undertaking; and if it had included an expert in relief map construction, it would have seen at the very outset that the scale proposed, namely, "one square yard of map surface for each square mile of actual area," was altogether out of the question. Indeed, the most cursory estimate of the size of the completed work shows the impossible dimensions which it would attain, and we think the august body that committed itself to the scheme will learn with unmixed astonishment that it would be a six or seven mile drive to get round the map if it were built.

The United States have an east and west measurement of 3,000 miles and they extend north and south about 1,900 miles. On the proposed scale of 3 feet to the mile the ground map would be over a mile and a half long and over a mile wide, and there would be 5,700,000 square yards of ground surface to be modeled. If the model were to be given the proper degree of curvature, it would rise to a height of 1,440 feet above the ground level, or to over two and a half times the height of the Washington monument! But supposing that the scheme as it presented itself to the mind of the Senate was more modestly outlined, and that the proposed map was to be built on the flat, the cost, judged by the current prices that are paid for such work, would more than absorb the whole annual revenue of the United States government. Models that have heretofore been made for the scientific bureaus of the government have cost, we are told, $10 to $50 a square foot, and generally the higher price. If the work could be done at the lowest rate, it would cost, as anyone may readily estimate for himself, over $500,000,000.

The passage of this peculiar resolution has brought to this office a characteristic contribution from Mr. Cosmos Mindeleff, of Washington, in which the utter impracticability of the scheme is set forth. The writer, who is entitled to speak with authority on a matter of this kind, makes this incident the occasion for a lengthy and interesting account of the art of relief map construction. The paper, which is illustrated by diagrams and a map, will be found in the current issue of the SUPPLEMENT.

The utter impracticability of the scheme is shown by a consideration of some of the details of the cost, as worked out by Mr. Mindeleff. As a material of construction, earth is out of the question, that is, if the model is not to be quickly worn away by the elements. Asphalt or cement is suggested; but the first costs over $2 a square yard, and cement more. If the asphalt surface could be laid for $1 per yard, this would require an appropriation of over $5,000,000 for surfacing the model. To build up the contours in wood, as would have to be done to secure permanent work, would require some 1,000,000,000 feet of lumber, and the total cost of the material of all kinds would be not less than $30,000,000. At 50 cents per square foot for modeling, instead of $50 (the price which has been sometimes paid), this item would cost $25,000,000, and taken altogether, the estimate for the completed map cannot be brought down below $75,000,000.

At the same time, if the scheme were properly modified, there is no doubt but an effective work could be produced. On a sale of 3 miles to 1 inch, the map would be less than 100 feet in diameter, and the whole of it could be placed under cover. The scale would allow the topographical details to be brought out with sufficient distinctness, and the cost would be about fifty thousand dollars—a by no means prohibitive figure.

JAPANESE PATENTS.

The interest that is being taken by American manufacturers in the extension of the rights of protection by letters patent in Japan to American citizens is shown by the great number of inquiries that have been received by the Department of State during the past two months for information concerning the new convention between the two countries. The Japanese patent laws were established some years ago, but the privileges of the patent system were only extended to natives. The Japanese, being a progressive and inventive people, eagerly sought after and introduced American inventions and devices which could not be protected by the foreign inventor. On January 13 of this year a treaty was drawn up providing for the reciprocal protection of patents, trade marks and designs. The exchange of ratifications took place at Tokio on February 8, and on March 9 President McKinley issued a proclamation promulgating the terms of the treaty. This is a great step forward for Japan in the march of civilization, and will serve to develop the country industrially and will doubtless serve to advance greatly our commercial relations with that country.

A commercial museum is being established at Osaka, and Americans should protect their wares by letters patent before sending them to Japan for exhibition.

AMENDMENTS TO THE PATENT STATUTES.

THE OLD STATUTES.	THE AMENDED STATUTES.
SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor.	SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, not known or used by others in this country before his invention or discovery thereof, *and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application*, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor.
SEC. 4920. In any action for infringement the defendant may plead the general issue, and having given notice in writing to the plaintiff or his attorney, thirty days before, may prove, on trial, any one or more of the special matters:	SEC. 4920. In any action for infringement the defendant may plead the general issue, and having given notice in writing to the plaintiff or his attorney thirty days before, may prove on trial any one or more of the following special matters:
. . . . .	. . . . .
Third. That it had been patented or described in some printed publication prior to his supposed invention or discovery thereof; or,	*Third. That it has been patented or described in some printed publication prior to his supposed invention or discovery thereof, or more than two years prior to his application for a patent therefor; or,*
SEC. 4887. No person shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid, by reason of its having been first patented or caused to be patented in a foreign country, unless the same has been introduced into public use in the United States for more than two years prior to the application. But every patent granted for an invention which has been previously patented in a foreign country shall be so limited as to expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest term, and in no case shall it be in force more than seventeen years.	SEC. 4887. No person *otherwise entitled thereto* shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid, by reason of its having been first patented or caused to be patented by the inventor or his legal representatives or assigns in a foreign country, *unless the application for said foreign patent was filed more than seven months prior to the filing of the application in this country, in which case no patent shall be granted in this country.*
SEC. 4894. All applications for patents shall be completed and prepared for examination within two years after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within two years after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable.	SEC. 4894. All applications for patents shall be completed and prepared for examination within *one year* after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within *one year* after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable.
SEC. 4898. 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. An 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.	SEC. 4898. 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. An 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.
	If any such assignment, grant, or conveyance of any patent shall be acknowledged before any notary public of the several States or Territories or the District of Columbia, or any commissioner of the United States Circuit Court, or before any secretary of legation or consular officer authorized to administer oaths or perform notarial acts under section seventeen hundred and fifty of the Revised Statutes, the certificate of such acknowledgment, under the hand and official seal of such notary or other officer, shall be prima facie evidence of the execution of such assignment, grant or conveyance.
SEC. 4921. The several courts vested with jurisdiction of cases arising under the patent laws shall have power to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for an infringement, the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby; and the court shall assess the same or cause the same to be assessed under its direction. And the court shall have the same power to increase such damages, in its discretion, as is given to increase the damages found by verdicts in actions in the nature of actions of trespass upon the case.	SEC. 4921. The several courts vested with jurisdiction of cases arising under the patent laws shall have power to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for an infringement the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby; and the court shall assess the same or cause the same to be assessed under its direction. And the court shall have the same power to increase such damages, in its discretion, as is given to increase the damages found by verdicts in actions in the nature of actions of trespass upon the case.
	But in any suit or action brought for the infringement of any patent there shall be no recovery of profits or damages for any infringement committed more than six years before the filing of the bill of complaint or the issuing of the writ in such suit or action, and this provision shall apply to existing causes of action.
	SEC. 7. *That in every case where the head of any Department of the Government shall request the Commissioner of Patents to expedite the consideration of an application for a patent it shall be the duty of such head of a Department to be represented before the Commissioner in order to prevent the improper issue of a patent.*
	SEC. 8. That this Act shall take effect January first, eighteen hundred and ninety-eight, and sections one, two, three and four, amending sections forty-eight hundred and eighty-six, forty-nine hundred and twenty, forty-eight hundred and eighty-seven and forty-eight hundred and ninety-four of the Revised Statutes, shall not apply to any patent granted prior to said date, nor to any application filed prior to said date, nor to any patent granted on such an application.
	Approved, March 3, 1897.

ANOTHER NEW PATENT LAW.

An act defining the jurisdiction of the United States circuit courts in cases brought for the infringement of letters patent. H. R. 10,202.

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That in suits brought for the infringement of letters patent the circuit courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and have a regular and established place of business. If such suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of business, service of process, summons, or subpœna upon the defendant may be made by service upon the agent or agents engaged in conducting such business in the district in which suit is brought.

Approved, March 3, 1897.

PATENT ATTORNEYS APPEAL.

Charges of violation of the law have been made by a number of local patent attorneys before Postmaster-General Wilson against the National Recorder, a periodical devoted to patents, and John Wedderburn & Co. The spokesmen were J. R. Edson, Walter R. Rogers, ex-Commissioner W. H. Doolittle, and Ernest Wilkinson, who claimed in substance that Wedderburn & Co. publish and circulate through the mails the National Recorder, which it was said had for its chief object the advertisement of a private business which is ostensibly that of securing patents for inventors. It was asked that the paper be barred from the mails as a fraud, and that a fraud order be issued against the company for obtaining money under false pretenses.

It was alleged that the company offers to subscribers prizes for valuable inventions; the originators of ideas in certain cases receive also from the firm certificates of patentability from a "board of experts." The prizes and certificates, it was claimed, by their manner of issue, are calculated to deceive inventors. Some fifty-five patent attorneys signed the charges left with the Postmaster-General. Among them were F. L. Middleton, F. L. Dyer, W. H. Myers, ex-Commissioner Ellis Spear, ex-Commissioner E. M. Marble, James L. Norris, Butterworth & Dowell, W. A. Bartlett, Whitaker & Prevost, Franklin Hough, V. R. Catlin, and E. B. Stocking.—Washington Post.