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Scientific American Supplement

No. 1110.

For the Week Ending April 10, 1897.

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A BILL TO PROTECT INVENTORS.

A bill has recently been introduced into Congress which is designed to put a stop to the "Lottery System" as applied to the patent practice.

Senator Hansbrough has introduced the following bill into the United States Senate:

Section 1.—That hereafter it shall be unlawful for any person or persons, firm or corporation, engaged in procuring and prosecuting patent claims to offer or award to their business correspondents or clients any gift, prize, or chance to win one, medal of honor, certificate of stock, or any other article or thing of real or supposed value, intrinsic or otherwise; and any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall for each offense be punished by a fine of not less than $500 and not more than $1,000, or by imprisonment at hard labor for not less than six months nor more than one year.

Sec. 2.—That all applications for patents which may hereafter be filed by or through an attorney, or any person representing himself as such, shall be accompanied by an affidavit of such attorney or person that he has not violated the provisions of the first section of this act, and that false swearing thereto shall constitute perjury.

The granting of a valid patent by the government is properly regarded as an ample reward for a deserving invention, and one that is satisfactory to most inventors. The bill is so explicit in the description of the abuses it is intended to correct that further comment is unnecessary.

THE NEW COMMISSIONER OF PATENTS.

Hon. Benjamin Butterworth, of Ohio, has been nominated by President McKinley as Commissioner of Patents to succeed Commissioner Seymour. Mr. Butterworth was fourteen years a representative in Congress from Ohio, and has been for many years prominent in official and social circles in Washington. He was formerly Commissioner of Patents under President Arthur, from November 1, 1883, to March 23, 1885. During some years past he has made Washington his place of residence, and has built up a large law practice there, devoting his attention particularly to patent law. His preparation, therefore, has been an ideal one for satisfactorily filling this important office with great advantage to inventors and to the country. We congratulate the President in appointing to this important office a gentleman of such attainments and such unusual training for the position.

RELATION OF THE GOVERNMENT TO THE PATENTS OF NAVAL OFFICERS.

A bill has been introduced in the Senate and referred to the Committee on Naval Affairs, providing for the use by the United States of devices invented by its naval officers while engaged in its service, and covered by letters patent. In common with section 7 of the amendments to the patent statute, to which we referred in our last issue, the present bill is the outcome of an inquiry made by the Committee on Naval Affairs into the question of the prices of armor plate supplied for vessels of the navy. In its present form it shows several important modifications of the original draft, and Senator Chandler is to be congratulated on having proposed in this bill a just and conservative solution of a difficult question. The provisions of the bill are as follows: "Whenever, in the judgment of the Secretary of the Navy, the public interests require the use in the naval service of any invention or discovery covered by letters patent issued to any officer of the navy, whether retained in his ownership or assigned to others, said secretary shall proceed to use said invention or discovery in the manner and to the extent required by such naval service, and such royalties and compensation as may be equitably due such officer, considering all the circumstances connected with the making of the invention or discovery, and especially all facilities in originating, working out, or perfecting the invention which the officer may have enjoyed by reason of his official position, may be recovered by suit brought by said officer in the Court of Claims. Said court shall make rules for the trial of such cases, conforming as far as may be with the rules established by the Supreme court for the practice in courts of equity, and all cases shall be determined within one year from the filing of the petition therein, unless, in the discretion of the court, upon sufficient cause shown, the time is extended. The Secretary of the Navy is hereby prohibited from making any contract or payment for the use of any patent taken out by any naval officer."

The inquiry by the Naval Affairs Committee was too lengthy to allow of our making any detailed reference to it at present. It turned chiefly upon the history of the Harvey and other patents for the manufacture of armor plate; the relations of certain naval officers to these patents and their use by the navy; and the question of certain contracts for armor which had been made by the Secretary of the Navy without previous advertisement and competition. The record of the inquiry and the concluding recommendations of the committee seem to carry a color of unfriendliness to the patentee, at least so far as he may "become a burden upon the government." If such unfriendliness was shown, it was because of a misapprehension of the true relation of the government to the patent system, and of the intrinsic value of the patent to the government, considered as a user. For it is certain that the government will never adopt a patented invention unless it is of the opinion that, all things considered, it will be a gainer thereby. The fact that it is willing to pay a royalty is surely sufficient proof that the patent is not in any sense a burden, and it is certain that the payment of royalties can no more justly be termed a "burden upon the government" than the fulfillment of any other financial obligations for which a valuable equivalent is given.

In the case of the Harvey patents, which figured so prominently in the investigation, it transpired that Mr. Harvey's first patent, taken out in 1888, was for making a steel suitable for tools; that, at the suggestion of Commander Folger, he applied his hardening device to the manufacture of armor plate; that the consideration of his application was expedited at the request of the Secretary of the Navy; that, as the result of contracts made with the Harvey Steel Company, it received $96,056 as a royalty on armor plates used up to July 19, 1892, and a royalty of half a cent a pound on any additional plates that might be used. Such, in brief, is the history of the government's connection with the Harvey patents. To an impartial reader it can simply suggest that the Navy Department was desirous of using a valuable device, and that it paid only a reasonable amount for the privilege. No doubt $96,056 is a large sum of money, considered by itself; but it sinks into insignificance in comparison with the enormous benefits which accrued to our navy when it adopted Harveyized armor for its ships. Face-hardened armor gave to our battle ships an efficiency which was unapproached by any navy of the world, and raised our prestige to as high a position as it held during the naval operations of the civil war.

The question of the use by the government of devices invented by its naval officers is complicated by the fact that such officers enjoy special facilities for experimental work, and that the invention of a naval officer may be due as much to the extraordinary opportunities afforded by his official position as to his own individual ability. In this respect he has a material advantage over the civilian inventor, and it is only natural and just that the government should be in a position to determine the amount of royalties and compensation which are due such an officer.

As we have already said, the present bill is admirably adapted to cover the case. It is relieved of a certain fatal clause which was carried by the previous bill introduced by Senator Chandler during the last Congress. This clause declared that "hereafter no patent shall be issued to any naval officer without the written approval of the Secretary of the Navy"—a restriction which, for obvious fundamental reasons, would have effectually barred the passage of the bill. The provision for the recovery of all claims for compensation in the Court of Claims, the rules of trial being made in conformity with the rules of practice in courts of equity, will commend itself as being the most satisfactory and constitutional method of dealing with such cases. It safeguards the interests of the government without interfering with the rights of naval officers under the patent laws.

Another commendable feature of the bill is the clause which requires that all cases shall be determined within one year from the filing of the petition therein. This enables the government to make immediate use of a valuable invention—as it might wish to do in time of war—and at the same time secures an early settlement of the claims of the inventor for compensation.

AMENDMENTS TO THE COPYRIGHT LAW.

To meet cases of wrongful marking of chromos and other imported publications, an amendment to the copyright law was passed at the last session of Congress and became law March 3. It had become the practice with some foreign publishers to mark articles as "copyrighted," thus giving the impression that the articles had been copyrighted in the United States when such was not the case, and this was often done with matter not properly subject to copyright, as mere advertisements, circulars, ruled sheets, etc. It was difficult under the old law to reach the domestic dealer in such wrongly marked publications.

It will be remembered that the former copyright law imposed a penalty of one hundred dollars for marking as copyrighted articles for which a copyright had not been obtained. The new law, which is an amendment to section 4,963 of the copyright laws of 1891, makes the penalty of one hundred dollars further apply to the marking as copyrighted of articles not subject to copyright, and to the issuing, selling or importing of books, chromos, photographs, etc., bearing a copyright notice, but not copyrighted in the United States. Further than this, such importations of articles bearing notice of copyright, but not actually copyrighted here, are prohibited, and the courts are authorized to enjoin the