Scientific American.

ESTABLISHED 1845.

MUNN & CO., - - - EDITORS AND PROPRIETORS.

PUBLISHED WEEKLY AT

No. 361 BROADWAY, - - NEW YORK.

TERMS FOR THE SCIENTIFIC AMERICAN.

(Established 1845.)

One copy, one year, for the U.S., Canada or Mexico.................. $3.00
One copy, six months, for the U.S., Canada or Mexico................ 1.50
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(Established 1876)

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NEW YORK, SATURDAY, JANUARY 9, 1897.

Contents.

(Illustrated articles are marked with an asterisk.)

Air, mountain.......... 26
Alcohol, absolutely pure.......... 26
Assimilation, arrest of.......... 25
Ballooning, military.......... 24
Books, overproduction of.......... 19
Cathedral of Treves pulpit*.......... 25
Chicago drainage canal, the.......... 22
Docks, new, at Gibraltar.......... 25
Drawings, shop.......... 20
Drill, McSweeney's hand*.......... 20
Du Bois-Reymond, Prof. Emil.......... 25
Electric sea railway, Brighton, England*.......... 17
Electric water wheel governor*.......... 21
Engines, compound hoisting*.......... 27
Expensive product, the most.......... 20
Explorations in Central Asia.......... 22
Explosion, traction engine boiler*.......... 20
Exposition, Swiss, 1897.......... 23
Fenwick, R. W.......... 22
Frosting window glass (7073).......... 29
Gas, work of a pennyworth.......... 19
Geological Society of America, the.......... 19
Harbor, a new German.......... 25
Harvester, the self binding*.......... 24
Invention, a needed.......... 23
Inventors and Inventions.......... 18
Mails, the, in early days.......... 25
Nobel, Alfred.......... 22
Paper clothing.......... 27
Patent methods, dishonest.......... 18
Petroleum, artificial.......... 26
Pigeons, homing.......... 20
Pitman, Nichols*.......... 21
Railroad progress.......... 27
Railway through the sea, a*.......... 17
Science notes.......... 26
Shoe polish (7078).......... 29
Spiders on plants.......... 20
Steel, nickel.......... 23
Surgical instruments, keeping bright (7076).......... 29
Traction engine boiler explosion*.......... 20
Water, drinking.......... 22
Water wheel regulator*.......... 21
Wrench, Hall's*.......... 20
Woad, the manufacture of.......... 21

TABLE OF CONTENTS OF

Scientific American Supplement

No. 1097.

For the Week Ending January 9, 1897.

Price 10 cents. For sale by all newsdealers.

PAGE

I. AGRICULTURE.—The Chemistry and Mechanics of Plowing.—A valuable article on the advanced systems of plowing, the construction of the plow and its fertilizing operation.......... 17528

II. ARCHITECTURE.—The Fireproofing Tests of Full Size Columns and Girders.—Tests of iron buildings as regards the resistance thereof to fire.—Reports on actual fires and description of extensive apparatus for carrying out tests of materials on the full size.—9 illustrations.......... 17534

III. CHEMISTRY.—Preparation and Properties of Uranium.—By HENRI MOISSAN, in Comptes Rendus.—Recent investigations by the great French chemist into the properties of this remarkable metal.......... 17532

IV. CYCLING.—Work Done by Wheelman and Pedestrian.—By H. K. LANDIS, E.M.—An elaborate article on the tubular subject, with exhaustive diagrams and tables.—4 illustrations.......... 17539

V. ELECTRICAL ENGINEERING.—Quick Methods of Testing for Faults in Electric Wiring.—By A. E. HUTCHINS.—A very valuable and practical article on testing wires in complicated systems of electric lighting and distribution.......... 17537

VI. METALLURGY.—The Tin Plate Industry.—The production of tin and terne plates in the United States during the last fiscal year.......... 17536
To Experiment with Different Alloys for Coinage.—Experiments in alloys executed in the United States Mint, Philadelphia.—A suggestive article.......... 17536

VII. MISCELLANEOUS.—A Ride on a Moving Roller.—A feat as executed in a famous German circus.—1 illustration.......... 17531
How American Apples are Sold in England.—The extensive business done in American apples in Liverpool.......... 17541
Selected Formulæ.......... 17532
Engineering Notes.......... 17533
Electrical Notes.......... 17533
Miscellaneous Notes.......... 17533

VIII. MUNICIPAL GOVERNMENT.—Note on the Paris Street Cleaning Department.......... 17536
Note on New York City Parks.......... 17536

IX. PHOTOGRAPHY.—The Demeny Chronophotographic Projection Apparatus.—A description of a machine for producing moving images by magic lantern projection.—3 illustrations.......... 17527

X. PHYSICS.—Becquerel Rays.—By A. F. MCKISSICK.—Recent experiments in photography through opaque substances by fluorescent and phosphorescent substances.......... 17542

XI. PHYSIOLOGY AND HYGIENE.—A Century of Vaccination.—A very striking presentation of the benefit of vaccination, the centennial of whose discovery was reached during the year just passed.......... 17542
The Formation of Blood from Inorganic Iron.—A very valuable article on a much mooted question in physiological chemistry, examined experimentally.......... 17541

XII. RAILROAD ENGINEERING.—Express Compound Locomotive.—Imperial royal Austrian state railways.—Continental practice in locomotive building.—Description and records made by this engine.—1 illustration.......... 17538

XIII. TECHNOLOGY.—Champagne.—A full description of the manufacture of this favorite wine as conducted in France.......... 17540

XIV. TELEGRAPHY.—Submarine Telegraphy.—Proposed French lines of ocean cable.—A simple form of siphon recorder described.—2 illustrations.......... 17537

XV. TRAVEL AND EXPLORATION.—An Excursion to Paiolive Woods and the Gorges of Ardeche (France).—An article on a little known region of France.—With views of its wonderfully striking and picturesque scenery.—2 illustrations.......... 17530
Kashmir.—Its people and its products.—By WALTER R. LAWRENCE, I.C.S., C.I.E.—A recent lecture on Kashmir, giving a popular account of the peculiarities of the people and its system of government.......... 17528

DISHONEST PATENT METHODS DETECTED.

Our recent comments on the lottery system of patent practice have attracted so much attention that it is evident that the evil is a great one. It is well to be able to punctuate remarks in abstract with examples from practice, however unfortunate it may be that such examples should exist. The public, however, it is to be hoped, are awaking to the fact that the personal element in patent practice needs purification. Under existing conditions, inventors themselves must do the purifying by selecting reputable firms for their representatives in Patent Office proceedings.

The disreputable practitioner generally lays himself open to identification—distinctive earmarks are to be discerned in his ways and methods. Anything savoring of the gift enterprise should excite suspicion. A flaring colored circular offering to give something for nothing, one which tries to impress upon the constitutionally sanguine inventor that it is a simple matter to make a paying invention, suggesting speciously the probable sale of a patent under such terms as to read almost like a guarantee on the part of the firm issuing the circular to effect the sale—such are means of identification.

The preliminary search requires a certain time for its execution, and a definite responsibility attaches to it. Among the inducements offered by one of the firms which we allude to is a free Preliminary Examination. The effect of a preliminary search is often to show the invention has been anticipated, and it is therefore obvious that a firm anxious only for fees has no inducement to make it a thorough one. As they claim to make it for nothing, a reasonable view of this case would be that the examination would be worth to the client precisely what it cost him, viz., nothing at all.

We have received unsolicited, and from a stranger, an amusing account of how he tested the value of the free Preliminary Examination methods. He procured from the Patent Office a copy of a patent, and copied one of its drawings accurately, and from its specifications compiled what purported to be a description of an invention. The alleged invention thus composed was submitted to a Washington firm who advertise exclusively in the papers, and also offer to make free Preliminary Examinations. After a sufficient lapse of time, he received what purported to be a typewritten letter, evidently a lithographed form, in terms quite general and applicable to various cases, praising the invention. This circular said as the result of the preliminary search that the invention seemed to be new and patentable and of so much value and importance that the work of preparing the papers had already been begun, in order to file the application in the Patent Office before any one could steal the idea. The letter is now in our possession, with a copy of the patent from which the decoy was constructed. The report did not cite any patents or references as touching or resembling the invention, and the inference to be drawn from the report was that the invention was entirely new.

Of course, no Preliminary Examination whatever had been made, the firm in question not using any such method to enlighten their clients at the risk of losing a dishonest or questionably earned fee. The skillful make up of the letter is interesting. The appearance of poorly impressed typewriting is reproduced perfectly. The name and title of invention are struck in with precisely the same colored ink as that in the text or body of the letter. We have designated certain practices as being in the order of lottery and gift enterprises. It is hardly too much to say that here we are brought face to face with methods, if possible, even more questionable.

There is no patent bar, and no provision for adequately coping with acts which are unprofessional, perhaps not dishonest in the statutory degree, but in morals thoroughly bad. The professions of lawyer or of physician are far better safeguarded, and it is to be hoped that we shall yet see a patent bar established, admission to which shall only be granted to reputable practitioners, membership in which should almost guarantee responsibility and honor, and whose members should be subject to suspension from practice for deeds of questionable honesty and unquestionable dishonor.

INVENTORS AND THEIR INVENTIONS.

A contemporary technical journal on the other side of the water is lending its columns to the discussion of the question as to how the results of invention can best be secured to the inventor. In a recent issue it publishes a lengthy letter, in which the writer makes some sweeping suggestions looking to the reform of patent practice. The fact that a leading journal should have requested such a letter, as the writer states, and given it a prominent insertion, shows that its subject matter is considered to be timely, and, to a certain degree, indicative of the trend of public opinion on the question of patent practice as it exists in England.

Briefly stated, the proposed reform consists of a scheme for the examination and certification of the results of invention by an independent and competent authority, and the watchword of reformers in the matter of invention is to be—"a title for the results of invention founded, not upon 'novelty,' but upon such novelty as renders invention of practical value to the public." In other words, "novelty" is always to be construed "novelty of practical value" in the public sense.

The writer opens his argument by virtually begging the question, or a large share of it, in stating that there is no such thing as novelty in invention. He makes this statement on the basis of the following considerations: That the inventive faculty consists, first, in the power, conscious or unconscious, of tracing the threads of intercausation which connect natural phenomena, and, secondly, in the power of grasping the definite results which follow; that this faculty is present more or less in all men; that it is so rapid in its action in some men that its results seem to be intuitive in their nature—as something born de novo; that the history of all great inventions includes a prolonged preparatory study of the subject, followed by the "occurrence" of an idea and a long period of hard work in evolving that idea to a practical result; and that, therefore, the novelty so generally considered as a necessary condition of invention "does not, in point of fact, exist as an intrinsic quality in any invention; it only exists as a sort of convenient fiction to mark the individual value of results."

To all of which it is sufficient to reply that the novelty of patent law is relative and not absolute, being based upon a careful comparison with previous inventions, and that in this restricted sense it is not a "convenient fiction," but an exact term with a clearly defined meaning.

The writer then proceeds to show that so long as the inventor is satisfied to find his sufficient reward in the attainment of results, no one has any business either with his labor or the nature of his results. But so soon as he steps beyond this boundary, and turns to his fellows for recognition, and seeks from them a reward based on the result of his labors, and if they respond to his appeal, in the nature of things, real and mutual obligations arise.

On the part of the inventor, it is claimed he should be prepared to demonstrate the truth and "practical novelty" of his results, because he is seeking from the public something to which he has no right unless he can prove these qualities to exist in what he offers to their consideration, this proof constituting his title to a right of property in these results. In other words, the writer would not have a patent granted, as it now is, upon novelty, but upon novelty and utility combined. With a view to ascertaining the extent of this "practical novelty," he would have all inventions submitted to a "competent authority," presumably some board of experts, who would examine and certify as to results. If the invention proved on trial to be practical and useful, it would be favorably reported for the grant of a patent; if not, it would be recommended that none be given.

We refer to this matter at length because it is not by any means the first time it has been agitated. Some ten or twelve years ago a similar proposal was made in the English technical press, and attracted the usual attention which is drawn to a novel and radical scheme. It was shown to be altogether Utopian and impracticable, and the agitation died a natural death.

Such a scheme would be fatal in principle and impossible to operate. It would be fatal to the progress of invention, because many incomplete devices, which contained the germs of a valuable invention, would be refused a patent on the ground that they were not in their incomplete condition commercially useful. That very protection which at present makes sure to the inventor the earlier steps of his progress, and is an inducement to persevering effort, would be removed. If we were to erase from our own Patent Office records all inventions which, while they showed "novelty," would have failed to show "practical novelty," the residue would be a small one. The instances of inventions which have contained all the elements of practical utility in their first patent are comparatively rare. We think that Elias Howe's poor little baster plate sewing machine might have fared badly if submitted to a board of "examination and certification," especially if its members chanced to be interested in any of the hand sewing establishments of the day. Such, at least, is the teaching of history. And if the practical novelty, the commercial utility of the first Bessemer patents had determined their granting or rejection, we are afraid that expert opinion, necessarily more or less prejudiced, might have set back the steel industry for a full generation. The chief effect of such a scheme would be to discourage invention, especially among people of limited means and opportunities. Comparatively few would have the faith and courage to undergo the long years of toil which have often been necessary before the last detail which makes a device commercially useful has been worked out, and do this without receiving the protection and encouragement of the law. Under existing conditions, as soon as an inventor has put his device into its first crude operative form, he may patent it; and being so far secured, he

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