

THE PROPOSED NEW TRADE-MARK LAW.

BY ARTHUR T. GREELEY, LATE ASSISTANT COMMISSIONER OF PATENTS.

Registration of trade marks under the present trade-mark law of the United States is of no practical value to American owners of trade marks. The law requires a registration fee far in excess of that required in any European country, and the certificate of registration adds nothing to the protection enjoyed by owners of trade marks under the common law doctrine of "unfair competition" without registration. Registration under the present law is of importance only as a prerequisite to registration in foreign countries, and even in this respect the law falls far short of its intended purpose.

The law, instead of providing that all marks which would be held by the courts are entitled to protection under the common law, makes the Commissioner of Patents the sole judge of what shall be registered as a trade mark, without appeal from his decision and without the possibility of mandamus to compel him to register a mark even though it were held by the courts to be a valid trade mark. A section of the law evidently intended to permit the registration of marks for the purpose of enabling their owners to register them abroad and so protect them, is so obscurely worded that it is without effect. With the increase of our foreign trade in manufactured articles and the consequent increase in importance of the protection abroad of the trade marks of our manufacturers and exporters, the rulings of the Patent Office, instead of growing more liberal in the matter of registration, have grown more and more technical and arbitrary, until it has become impossible for either an American or a foreign owner of a trade mark to secure its registration in the form in which it is used even if registration can be secured at all. As a result, foreign owners of trade marks have been deprived of rights to which they were entitled under the provisions of treaties and conventions solemnly entered into by the United States, and American owners of trade marks, instead of being aided in their efforts to secure protection for their trade marks abroad, have been hampered and hindered and even absolutely prevented from securing such protection and compelled to see their trade marks counterfeited in the foreign markets and their trade destroyed without the possibility of redress. It is no uncommon thing for American manufacturers to find that the trade marks which they have made valuable as the distinctive marks of their goods have been not only copied and used by foreign competitors, but have even been registered abroad and thus become the property of such competitors, the possibility of this usurpation of their trade marks being, it is true, due oftentimes to their own neglect, though largely due to the impossibility of securing registration under the present law as construed by the Patent Office, and the consequent impossibility of securing registration abroad.

The rapid development of our foreign trade in manufactures has awakened American manufacturers to the importance of securing relief from the defects of the present trade-mark law. The matter of the revision of the trade-mark law has been before Congress for many years and it is gratifying to everyone interested in the growth of our foreign trade that at last there is an excellent prospect that the relief so long sought will not be long delayed. The Committee on Patents of the House of Representatives, on December 19, 1904, reported, with a recommendation that it pass, a bill introduced by Mr. Bonyng of that committee (H. R. 16,560), which is calculated to make a radical change in the present practice of the Patent Office in the matter of the registration of trade marks and to give, as stated in the Committee's report, "the relief which the owners and users of trade marks are justly asking at the hands of Congress."

This bill has been ably drawn after a full consideration of the defects of the present law, the limitations on the power of Congress under the Constitution, and the necessities and rights of the owners and users of trade marks. The bill is based on the clause of the Constitution which gives to Congress the power to regulate commerce "with foreign nations and among the several States" and is within the lines of the recommendation made by Thomas Jefferson to the Second Congress respecting the protection of what are now known as trade marks. The bill is also within the lines of the recommendations made by the Commission to revise the patent and trade-mark laws, appointed under the act of June 4, 1898, and embodies many of the provisions of the proposed trade-mark bill recommended by me as a member of that Commission, as well as some of the provisions of the bill recommended by the other members of the Commission. The bill in its present form has the approval and support of the American Bar Association, the National Association of Manufacturers, the Patent Law Association of Washington, the New York Bar Association, and, when its provisions are understood, will receive the support, it is believed, of manufacturers and users of trade marks throughout the country.

As stated by the Committee on Patents, the main objects sought to be accomplished by the bill are: "First, to make provision for the registration of trade marks used in interstate commerce, as well as those used in foreign commerce and in commerce with the Indian tribes; second, to provide a procedure which will give uniformity to the laws governing the registration of trade marks; third, to provide additional penalties for the infringement of a registered trade mark; fourth, to reduce the fee required on filing an application for the registration of a trade mark; fifth, to regulate the procedure for the registration of a trade mark governing cases of interfering or conflicting claims to the use of trade marks; sixth, to make our statutes conform to treaty stipulations entered into between the United States and certain other governments."

Stated more in detail, the bill provides for the following advantages to owners of trade marks not enjoyed under the present trade-mark law:

The registration fee is reduced from \$25 to \$10.

Marks used in interstate commerce are registrable, thus permitting the owner of a trade mark to secure registration here before using his mark in foreign trade, and, having secured registration here, to protect the mark by registration abroad, before actually sending his goods bearing the mark to the foreign markets. This will prove to be of very great advantage to our exporting manufacturers.

All marks which could under the common law be regarded as trade marks are registrable and cannot be refused registration because of including what may be considered non-essential matter. This is of very great importance in permitting trade marks to be registered in the precise form in which they are used instead of in the mutilated form in which they are now permitted to be registered.

All marks which have been in actual use for the past ten years are registrable, thus providing for the protection of marks which even if not strictly trade marks at the date of their adoption, have, by long-continued use, become the recognized distinctive marks of the goods of those who have used them.

The final decision as to whether or not a mark is registrable no longer is to rest with the Commissioner of Patents, but with the Court of Appeals of the District of Columbia, thus insuring stability of the practice.

The registration of trade marks by any other than the real owner is carefully guarded against by providing for the publication of the applications in advance of actual registration, so that the real owner may have an opportunity to oppose the registration.

Foreign owners of trade marks are permitted to register their marks on showing that they are in fact the owners by reason of having registered the marks in their own countries, and without requiring them to show use of their marks in commerce with or within the United States, thus giving effect to treaty agreements.

By reason of these provisions, it will be possible to place on the register practically all trade marks in use in the United States, as very few trade marks are used wholly within any State.

The provisions for the protection of registered trade marks are such as to make registration of great importance aside from the question of their use in foreign trade. Under the provisions of the bill the owner of a registered mark has a right of action in the United States courts against anyone who uses an infringement of it in interstate commerce or in foreign commerce, thus reaching, through the United States courts, all infringers except those who use the infringement in merely local trade. If the infringement is proved, not only may the actual damages be recovered as at common law, but three times the actual damages may be recovered, if, in the opinion of the court, the circumstances warrant such recovery. This will probably prove of material importance in cases of willful and persistent infringements. The bill also provides that in case infringement is proved the owner of the registered mark may compel the infringer to deliver up all labels and receptacles bearing the infringing mark. Another important provision is that in case an owner of a registered trade mark secures an injunction against an infringer in one circuit, he can enforce the injunction anywhere in the United States without the necessity of bringing a separate suit in every circuit into which the infringer may shift his business.

Other features of the bill provide for giving to foreign trade-mark owners all of the rights enjoyed by domestic trade-mark owners, thus giving effect to treaty agreements.

The provision for opposition and cancellation of trade marks protect the rightful owners of trade marks against the registration of their marks by others so that the bill, when it becomes a law, will neither permit protection to be refused to the rightful owners of trade marks nor permit any advantage to be gained by anyone not actually the owner. There is

nothing in the bill which interferes with the common law rights of owners of trade marks and the passage of the bill cannot be detrimental to any rights of the public or of owners of trade marks, but, on the contrary, will be of great and lasting benefit, not only to the foreign trade of the United States, but also to domestic trade. No effort should be spared to secure the early passage of the bill.

ENGINEERING NOTES.

The Italian submarine boat "Delfino" is built of steel plates 1.2 inches in thickness. She is cigar-shaped, her length being 78.4 feet and her beam 9.5 feet. Her displacement varies, according to the extent of her submersion, from 95 to 107 tons. Her engines are worked solely by electricity furnished by 300 accumulators. She has three propellers—one aft for movement ahead or astern, and the other two above for the work of submersion and emersion. The little turret is glazed so that a lookout may be maintained when the boat is submerged. Her sole armament consists of two torpedo tubes forward. Her oxygen supply is not sufficient for officers and crew more than twelve in number.

Sanction is being sought in the next session of the British Parliament for the inauguration of a cross-Channel railroad ferry between Dover on the English and Calais on the French coast. The possibility of such a scheme has been raised several times, and on the last occasion when the question was brought forward, a submersible bridge was projected. This idea, however, has been superseded by a more practical proposal—the establishment of a system of railroad ferries such as are in operation in Denmark, across the Carquinez Strait in California, and across Lake Michigan. There are several difficulties which present themselves in connection with the realization of such a project. A strong current of from 3 to 3½ miles runs between the two opposite coasts at this the narrowest part of the English Channel. There is also a rise and fall in the tide varying from 15 feet to 20 feet. The landing stages at each terminus of the French and English railroads would have to be constructed to allow for this great fluctuation, so that the trains might run direct on to the ferries at any stage of the tide.

A new invention which will exercise far-reaching results in the manufacture of glass has been devised by the English firm of Messrs. Jules Lang & Son. One of the greatest difficulties in connection with the glass trade, which to a great extent is responsible for the expense entailed in manufacture, is in connection with the pot in which the constituent materials of the glass have to be placed. Owing to the nature of these pots now in vogue, several hours must necessarily elapse before the glass materials in the crucible can be withdrawn from the furnace. By means of this new Lang device, however, the waste of time is obviated. Owing to an ingenious arrangement of its construction, an uninterrupted flow of glass may be obtained, and the manufactured article is equal in clearness and other respects to the product obtained by the present system. Furthermore, the Lang pot can be constructed very cheaply, is easily made, and costs very little to maintain. The pot has capacity for a ton of glass, and is placed in the furnace in such a manner that only two openings are necessary, the mouth and the arch opening. Without any extra fuel consumption, three times as much glass can be manufactured by this pot as by the older method. Furthermore, the product is of a fine or crystal nature, as there are facilities for preventing air entering the pot while the pouring of the molten material is in progress.

A turbine steam yacht containing several new and interesting features has been recently constructed for Sir George Newnes, M. P., by Messrs. Swan, Hunter & Wigham Richardson, of Newcastle-on-Tyne, from the designs of Sir William White, formerly naval constructor to the British Admiralty. The experience gained by the owner during numerous cruises in various parts of the world has led to the incorporation of some novel features in this new vessel, which is of 1,260 tons. A fundamental idea in the design is the adoption of moderate speed and the utilization of the relatively large dimensions in the best possible accommodation. According to the contract, the maximum speed is to be fifteen knots, and for this speed ample power has been provided. With regard to the turbines, it has been stipulated that there shall be an unprecedented economy of coal at cruising speeds, which involves a new departure as compared with other turbine-propelled yachts. Very large bunker capacity has been provided. Although primarily coal is to be used, the bunkers have been built so as to be available for oil fuel, for the use of which the cylindrical boilers can be readily adapted. Electric power is to be used for nearly all auxiliary purposes—steering, cable work, warping, boat hoisting, ventilation, and heating.