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# The Patentee

His Own  
Selling Agent and  
Legal Adviser  
Here and  
Abroad



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W. HORNUNG, PH. D.  
DETROIT, MICH.  
U. S. A.

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## INTRODUCTION.

In the following treatise it is proposed to discuss the subjects which are usually encountered by those who after having secured a patent want to bring their newly-acquired privilege on a paying basis.

In this endeavor they are confronted by various questions which besides an idea of business dealings require a general knowledge of the law and fundamental decisions relating to patents and the practice of handling them. Points of interest bearing on foreign patents must also be known to some extent.

Special regard will be paid to United States patents, but the general principles of the patent laws being the same in Canada and England, the information and hints given here might well be applied to either of those countries.

The author, not intending to make the patentee his own lawyer, hopes that the reader will acquire such knowledge of dealings in patent matters as to arrive at a sober and unprejudiced estimate on the various points in question.



# Part A



## CHAPTER I.

### *Definition of patent rights, their protection and their relations to the State laws.*

A patent is an exclusive property right,<sup>1</sup> subject to the general law of the land, and confers by power of Congress a territorial monopoly to profit from it within the period for which letters patent are granted, becoming public property with the expiration of such time. The patent privileges the owner to all known and unknown uses to which his invention can clearly be applied, no matter whether he had conceived the idea of the use or not.

As well as property is entitled to protection a patent right enjoys the same. In some countries, like Germany, Mexico, Brazil, Argentine Republic, Chili and others, the violation of a patent right has even been made an offence punishable by considerable fine, while in the United States, Canada, and England an infringement is subject to civil proceedings.<sup>2</sup>

In order to sufficiently notify the public, it is declared to be the duty of the patentee to mark<sup>3</sup> the patented thing "patented" together with the day and

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<sup>1</sup>In countries with compulsory license and working it can scarcely be called an exclusive property right.

<sup>2</sup>The French patent law has taken very energetic measures in the provisional confiscation of the infringing articles.

<sup>3</sup>In France "breveté" or "brevet" and S. G. D. G. (sans garantie du gouvernement); in Germany it is customary to mark the words D. R. P. (Deutsches Reichspatent) or patent.

year the patent was granted, and this marking can be continued<sup>1</sup> after the expiration of the patent.

Where any unpatented article is marked "patent," "patented," "letters patent" or any word of like import, with the intent of counterfeiting or imitating the stamp of the patentee, for the purpose of deceiving the public and inducing them to believe that the thing in question was patented, the guilty person will be liable, for every such offence, to a penalty<sup>2</sup> of not less than 100 dollars; one-half of said fine goes to the person who is suing for the same, and the other to the use of the United States.

Patent rights do not, like other incorporeal rights, vest in a receiver; they cannot be seized and sold on execution, nor can a patentee be forced by his creditor to assign to him an interest in the patent, but a judgment at law may order the sale and satisfy the legal debts.

As the assignment can only be made by the actual owner, the court will require the patentee to make the assignment, and in default of such assignment within a limited time, will appoint a trustee, with authority to execute the same.

Whenever a patent is inoperative or invalid, by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new, the Commissioner can cause a new patent for the same invention in accordance with the corrected specification. The patentee is not entitled to have his patent reissued, unless he shows by satisfactory evidence, that the error he seeks to have cor-

<sup>1</sup>Not so in France where the patentee is liable to a fine if he uses the mark after the patent has expired.

<sup>2</sup>In Canada a fine of \$200, England } \$25, Germany \$250 can be imposed.

rected, was owing to inadvertence, accident or mistake; it also must be stated particularly wherein same consisted. Enlarged claim must be sought within five years, and other applications for reissue within a reasonable time after the grant of the patent.

As a patent right is not property within the state, no state in the union has any authority to limit or restrict the national privilege of a patent, and patent rights cannot be made subject to state taxation. But, as the congressional authority does not take from the state any portion of its general power of police, these rights, conferred by the Federal Government, must clearly be distinguished from the police powers of the different States. A State has the power to place a license tax upon patented goods, provided other merchandise is taxed as well; this, not being a tax upon the patent itself, does not in any way interfere with a patentee's exclusive rights which enjoy the protection of the patent law.

A city can issue an ordinance requiring a license to sell patented articles and prescribing a tax upon peddlers selling them; as long as such police regulation makes no difference between this or any other salable commodity and the way in which they come into existence, there is no encroachment upon the privilege of the patent.

A patentee must observe the Sunday law as much as any other vendor; he must show his letters-patent if it is required to prove the genuineness of an article being patented; he must put his contracts in writing under the same circumstances which require writings of others, and he must obey all other

regulations of police which are made for general observance.

Goods, patented or not, and manufactured in any State, can freely be brought into an other State of the Union, and any State undertaking to tax them, violates the constitutional provision vesting all commercial control into the Federal Government; such tax will therefore be invalid.

State courts are empowered to pass judgment upon all questions of title to patents, but they have no judicial authority as to infringement cases.

The final fee for a patent must be paid not later than six months from the time the application was passed and allowed; the Patent Office has no authority to extend said period or to accept such fee after the expiration thereof; the excuse which may be given for the delay is of no consequence. In case of non-payment, the application is forfeited and the patent will be withheld, but any person, whether inventor or assignee, who has an interest in such patent, may file a renewal of the application within two years.

If any patent is destroyed or lost, a certified copy can be issued in lieu thereof.

When a person owning a patent dies, the right vests in his heirs.

## CHAPTER II.

### *Characteristic feature of the various modes of transferring patents.*

Patents or any interest therein are assignable<sup>1</sup> in law; and the patentee may grant and convey an exclusive right under the patent to the whole or any specified part of the territory.

Interests in patents can be vested<sup>2</sup> in assignees, in grantees of exclusive sectional rights, in mortgagees, and in licensees.

ASSIGNMENT.—An assignee is a transferee of the whole interest of the original patent or of an undivided part of such whole interest, extending to every portion of the United States.

A patentee selling out all his rights —outright— under a patent assigns his entire interest to the full end of the term, giving up the proprietorship of the patent in the same manner as a person would sell a horse.

When he sells an undivided part, he assigns and transfers a part of the whole right, such as one-fourth or one-half, to be held by the purchaser for his own use to the full term and extent for which letters patent are granted. By assigning an undivided interest, the patentee is losing control of his patent as the assignee holds and enjoys that respective part assigned to him as fully and entirely as the same would have been held and enjoyed by the patentee had the assignment and sale not been made.

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<sup>1</sup>Separate claims of a patent are not assignable.

<sup>2</sup>See Chapter IV.

It gives each one of the assignees the right to practice the object without accounting, and each one may convey his share without referring to the other or others.

In case the patentee assigns his right, title and interest but retains for himself the exclusive right to employ the invention in the manufacture of a certain class of articles, such assignment is to be construed to be nothing more than a license, as an assignment in the meaning of the law requires the conveyance of the entire monopoly or an undivided part thereof. An assignment however conveying the exclusive right to make and sell ought to carry with it the right to use, and be regarded as a full assignment.

Assignments, made conditional on the performance of certain stipulations, as the payment of money, if recorded in the Patent Office, are regarded as absolute transfers, because the office has no means for convincing itself whether or not such conditions have been fulfilled, and has no power for proper adjudication. Such assignments can only be cancelled with the written consent of the parties to the conveyance.

GRANT.—While an assignment, as heretofore explained, conveys the entire interest or an undivided part thereof for the whole territory for which letters-patent are granted, a grant transfers an exclusive interest for a specified part of the whole territorial extent.

A grantee acquires by the grant the exclusive right, under the patent, to make, use and vend, and to grant to others the right to make, use and vend, the thing patented within and throughout



some specified section, excluding the patentee therefrom. The patentee sells, assigns and transfers all the right, title, and interest for, to and in a certain part but not elsewhere; the same to be held and enjoyed by the grantee for his own and sole use for the full end of the term.

Territorial grants can be made in any number and for any portion of the whole territory, so that the patentee can form state, county, farm and town rights or rights for any part thereof; a shop right, however, is held to be a mere personal license.

A territorial grantee cannot be restrained from advertising and selling within his territory, even though the purchasers may take the patented article outside of the vendor's territory; the purchaser of such article becomes possessed of an absolute property in such goods unrestricted in use, time and place.

**MORTGAGE.**—A mortgage by a patentee means and is substantially the same as a mortgage of land or any other personal property, i. e., a security of a debt or the performance of a certain obligation. Such mortgage vests in the mortgagee the whole title to the patent rights, and its transfer can be extinguished and the title revested in the grantor by payment of the mortgage indebtedness when due, so that, if the indebtedness is truly paid, according to the covenants, then the assignment is null and void.

The recording of a mortgage in the Patent Office is equivalent to a delivery of possession and makes the title of the mortgagee complete toward all other persons, as well as against the mortgagor; and the mortgagee is the only person who can thereafter

sue for an infringement of the patent by third persons.

Mortgages of patents are generally regarded as assignments and can only be cancelled by both parties.

Assignments,<sup>1</sup> grants and mortgages of patents must be written or printed and be duly signed; they must be recorded in the Patent Office within three months from the date of their execution and will be void as against any subsequent purchaser or mortgagee unless such notice is given in due time.

Purchasers and mortgagees, to be sure that the letters patent is free from all prior grant, mortgage or other incumbrance, should therefore investigate, if assignments are already granted, and should carefully keep the term prescribed by law in order to be protected against possible future claims.

The patentee, in granting a license, retains some right and certain interest, so that the licensee, contrary to the assignee and grantee, is not independent in his rights conferred upon him by a license.

Although an assignment is not recorded within the above mentioned period, it is binding on the assignor, and he can not sell it again. An oral agreement for the sale and assignment of a patent right does not answer the requirements of the patent law; however, a decision of the Supreme Court of the United States says, that such agreement may be specifically enforced in equity upon sufficient proof thereof. Neither a mortgage, nor a

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<sup>1</sup>Inventors who intend to have their patents issued to an assignee, must record such assignments in the Patent Office at a date not later than the day on which the final fee is paid.

grant, nor an assignment require sealing, witnessing, or acknowledgment.

LICENSES.—After having given a general outline of assignments, grants and mortgages, we will now take up the last mode of conveyance, the license and royalty plan, which permits of a great many different ways.

A licensee takes an interest less than or different from either of the other transferees.

By “royalty” is meant a designated constant license fee payable for the privilege of manufacturing or selling a protected article. The words “royalty” and “license” are frequently used to indicate the same.

An “exclusive” license is one that gives the licensee the sole right to work the invention, prevents its use by the assignor and restrains him from granting other licenses to any one else; it can be exclusive in regard to manufacture, sale and use or either of these rights, and also exclusive within the entire territory or any part thereof. A licensee is not the owner of an interest in the patent, but he has by contract acquired a right to make, or use, or sell the patented device. Such right given in a license for a term of years, will terminate upon death of the licensee within the period, unless the contract extends the right to executors.

The rights to make, use, or sell are completely severable rights, and the owner of a patent may confer such qualified privilege as he sees fit, whether within specified limits, or under limitations of quantity, or members, or restricted use. He therefore may grant with or without certain restrictions the right to make and use, and not to sell; or to make

and sell, and not to use;<sup>1</sup> or to use and sell, but not to make; or he may convey the right to make, use and sell but either or all of these rights limited.

A license to manufacture or use patented articles at a certain place, is a personal license; it is not transferable, and if given for use or make under the clause "at own establishments" does not authorize to profit from it at works occupied by the licensee and others.

When a license is granted to a partnership concern which is afterwards dissolved and the business continued by one of the partners, the latter has the claim to the license.

While the law requires that assignments and grants must be written, a license may be oral,<sup>2</sup> written or printed, and if written or printed, must be duly signed. A written license has the advantage that it can usually be proved with more certainty.

When an inventor, in consideration of assistance given him, verbally agrees to give an interest in the manufacture of his invention, but does not make an assignment of such interest in legal form by filing it for record in the Patent Office, and when he subsequently makes an assignment of the patent to another party, without notice of the previous verbal interest, the verbal license has no effect as against the subsequent assignee, and a title conveyed by such assignment would be perfect.

If not provided in the contract, a licensee cannot subdivide or transfer his license without the patentee's consent, as the former is not the owner of an

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<sup>1</sup>The right to make and sell entitles generally also to the use.

<sup>2</sup>In Canada and England a license must be written.

interest in the patent; he also has no authority to sue infringers in his own name. His right, however, is protected against forfeiture, should he not comply with the covenants of the contract in regard to the payment of royalties<sup>1</sup> or otherwise; consequently a decree of a court will be necessary for the declaration of said forfeiture, unless the terms of the license expressly give the licensor power of revocation.

A bill of complaint to recover royalties reserved in a transfer of patents and alleged to be wrongfully withheld, does not prevent a case arising under the jurisdiction of the United States courts as long as it is only a suit upon the contract to recover royalties and not a suit upon the right, title, or interest under the patent laws. Mere breaches of contracts which do not authorize a forfeiture are generally to be decided by the State courts.

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### CHAPTER III.

#### *Practical hints on the sale of patents.*

It means a considerable profit to sell patents without middlemen; it also is a fact that the manufacturers prefer to deal with the patentee directly; moreover they use to consider it lack of confidence on the part of the patentee, when a patent is offered to them through an agent, as no one better than the inventor is in the position to demonstrate the construction and operation of his invention, and to set

<sup>1</sup>A claim for royalties is not a lien on the articles manufactured.

forth its merits and advantages he claims. There can be no doubt, the patentee himself is the best and most economical selling agent and it is to be warned against unscrupulous people who offer their help in the conducting of the sale, without having the slightest personal influence or any other facilities to fulfill what they claim often in swindling schemes.

They generally ask for a certain payment in advance alleging, that some money will be necessary for creating competition, for corresponding and for pushing the sale by means of advertising with the object of finding a purchaser, or they will try to bind the patentee by his signing an enclosed well worded contract, looking like an official document, fixed up in the best of style.

There are some attorneys and solicitors of patents combining the business of soliciting with that of selling patents. Doubtless it may be and is done honestly with good profit to the inventor, and many times, by this method, inventors and investors are brought together to their mutual advantage; but propositions for undertaking the sale of inventions which require the payment of a cash fee in advance are as a rule justly condemned. Any firm of standing with experience in selling patents has in the writer's opinion no reason to require an advance fee; in accepting an order they ought to be convinced by all means to turn the patent into money, if not at the price anticipated, so at a smaller amount from which they can deduct their commission. In dealing with a patent selling firm the inventor might do well to fix a minimum price and a certain time within which the sale has to be accomplished, in case of failure thereof the inventor hav-

ing free play to cancel the order. It might also be arranged that the commission is payable on the day the sale is closed and the purchase money paid.

To successfully negotiate the sale of patents requires a certain knowledge of practical business methods through which to reach interested parties, capitalists and manufacturers. Though a great many inventors are not accustomed to business dealings, they might nevertheless well succeed in disposing of their patents by themselves, if they facilitate the negotiations by means of some good printed matter presenting the invention in illustration and description and setting forth its merits and commercial value. Another way to make an invention publicly known is by advertising in newspapers<sup>1</sup> with large circulations or in trade journals;<sup>2</sup> a favorable critical discussion therein will be of great value.

Of less value might be those papers which are exclusively devoted to the sale of patents in general, as people who intend to invest in patents are usually interested in only one line of trade and its connecting branches, and will therefore not look for papers which bring all kinds of patents mixed together.

<sup>1</sup>New York Herald, Philadelphia Times, Boston Herald, Pittsburg Dispatch, Buffalo Courier, Cleveland Leader, Detroit Free Press, Chicago Tribune, Milwaukee Sentinel, Cincinnati Enquirer, Louisville Courier-Journal, St. Louis Republican, New Orleans Times, Kansas City Journal, Denver Rocky Mountain News, St. Paul Pioneer-Press, Seattle Post-Intelligencer, San Francisco Chronicle. Canada: Toronto Globe, Montreal Gazette. England: London Daily Telegraph, London Times.

<sup>2</sup>Iron Age, Railroad Gazette, Metal Worker, American Machinist, Engineering Record, Iron Trade Review, Engineering and Mining Journal, American Engineer and Railroad Journal, Railroad Gazette, Street Railway Journal, Power, Electrical Review, Electrical World and Engineer, Electrochemical Industry, Scientific American. England: Engineering, London; Engineering Magazine, London and New York; Ironmonger, London.

If a person is taking such extraordinary interest in patents in general, he would certainly prefer to subscribe for the official publications of the Patent Office which the latter will furnish at very reasonable price to anyone asking for it.

In order to give some idea of the form for advertising an invention, the following pro-forma advertisements are given. The statements should not be exaggerated as otherwise the effect might be contrary to expectations:

**NEW FIRE STOVE.**—Gives three times more cooking and heating, and consuming only a third of the fuel used by other ranges. No smoke; no chimney sweep. Will assign one-half share of the patent or sell outright or on royalty. Also English and German patent rights for disposal. Interested parties may address .....

**IMPROVED AUTOMATIC RAILWAY SIGNAL.**—A pressing want. Applicable in connection with the "block system" as well as generally. Wrecks thwarted. Sure to command ready sale. Capitalists or manufacturing firms required to finance or take it up. Can be seen in working order. For particulars apply to.....

**PATENTED IMPROVED BLOW-OFF VALVE.**—Designed for boilers to provide an inexpensive and durable device for cleaning boilers, effectively removing mud and other sedimentary deposits. Several orders already in hand. Patent rights, territorial grants or licenses, for disposal and offers invited for same. Descriptive and illustrative circular can be had from .....

**TO PROMOTERS.**—Advertiser will be glad to communicate with a firm of promoters who would be willing to form a company to work the patent of an *Automatic Fire Escape*. Ready in a second. 50% cheaper to manufacture than the best now in use. Favorably criticised in trade journals. Working model can be seen by appointment with.....

Every invention supplying a want is in demand and the greater the demand the higher the value,



and the broader the claims of the letters-patent the less the possibility of competition. But in estimating the commercial value of a patent, it cannot be disregarded that an overhauling by any similar improved device is by no means excluded. Said circumstances will be taken into consideration by the investor in patents, and he will calculate which profits can be derived in undertaking the manufacture and sale of the article. This estimated profit must stand in a certain proportion to the amount to be invested and accordingly an approximate value will result from the calculation.

Before closing a transaction, it will eventually be a precautionary measure to send the assignment so that the equivalent can be collected on delivery. No assignment or grant can be revoked<sup>1</sup> on the ground of partial failure to pay the price agreed upon.

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#### CHAPTER IV.

*Illustration and criticism of the different methods, and what to observe when making assignments and contracts, with an appendix of general forms of assignments.*

The various methods<sup>2</sup> at disposal for handling a patent will more or less take up the time of the patentee, however, the amount realized in one way or the other might also considerably differ.

Selling a patent outright or complete is the easiest and quickest method which will generally be advis-

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<sup>1</sup>The assignment cannot be stricken from the record, but a second document having the effect of nullifying the first one will, if presented, be recorded, leaving the effect to be determined by the courts.

<sup>2</sup>See Chapter II.

able for inventions of inferior importance. It remunerates the patentee for his inventive genius and releases him from all possible failure of his patent in the commercial and financial success, leaving it to the buyer to make the most of it. An entire interest in the usual form is often assigned before the issue of the patent, but the judicious patentee should not assign an undivided interest unconditionally, as the nature of such assignment produces very peculiar relations between him and the assignee, and if the latter is a man of questionable character, complications will be the rule.

Each of the co-owners in an undivided ownership is an independent sole owner of one portion of the property, and each having as good a right as the other, can practise his individual right how and where he sees fit, either by using, making or selling the patented articles, also by assigning interests<sup>1</sup> or granting licenses at liberty and at his own benefit without consent or accountability to the other owners. The latter cannot be compelled to join in any action of the other, and they are not liable for losses incurred thereby; no power vests in a joint owner to control the other, and no recovery of damages or profits can be had against a co-owner. Licenses given by one have full validity just the same as if granted by all, and as long as the entire monopoly is not exercised and the separate rights of the other owners remain unaffected, the co-owners as well as their licensees, in manufacturing, using or selling specimens of the patent, do not appropriate to themselves anything which does not belong to them.

<sup>1</sup>He cannot increase the original number of assignees.

Therefore, if it is not the intention to convey such privileges described as peculiar to the joint ownership, the patentee must add to the assignment an express contract forming an inseparable part thereof and defining the position and rights of the parties to the instrument. Such agreement may set forth, that neither shall have any right or power to grant licenses or other privileges under or relating to the patent, without that all the owners of the letters patent join in the same in writing; that neither shall have separately the right to make, use or sell anything under the patent, and that neither is to be accountable for losses made by one of the parties on account of any independent action in manufacturing, using or selling; further that proper books are to be kept, which are open to inspection, and finally that the profits are to be divided in proportion to the share.

All difficulties are so overcome; none of the partners can deal with the patent separately or dispose of any interest therein without the concurrence of the others, and each has a direct liability to account for profits which may arise from the patent.

It will generally pay well to divide up the monopoly and sell by territorial grants, the approximate value of which can be fixed by taking the population<sup>1</sup> of the different sections as a basis. There are undoubtedly always manufacturers in the different territories who would undertake to buy an exclusive right for the state or county in which they live but would not venture the risk of investing in

<sup>1</sup>Statistic statements of states, counties, incorporated cities, towns and villages of the U. S. are given in Rand, McNally's "Pocket Atlas of the World" or in the yearly almanac, "The World."

an entire interest; those applicants owing to their thorough knowledge of the commercial possibility of the patent in their section are in the position to value the invention accordingly and pay a better price than other people possibly can.

When the inventor has succeeded to place his patent in one territory further transactions may soon follow, the quicker the more important from a financial point of view that portion was which he has disposed of. Having thus turned a part of his monopoly into money, he may now profit from the experience of his grantees and perhaps conclude to grant further territorial rights with the restriction to use and sell only, the inventor supplying the patented article either by manufacturing it himself or by making an agreement with a manufacturing firm to cover the demand for the goods at stipulated prices.

Granting licenses with the privilege to sell throughout the monopolized territory will in many cases prove less lucrative to the patentee; it takes from him the opportunity of granting exclusive territorial rights for which there are generally a good many interested parties, and it will be more difficult to interest further manufacturers when competition can meet the sale everywhere.

A license combined with the royalty plan will always be advisable, if the invention is undoubtedly a meritorious and promising one. The licensor is hereby profiting in proportion to the commercial success of his patent to the end of the term of the monopoly, during which time he will have a continuous and very likely increasing revenue.

In such contract the licensee agrees to pay the inventor a certain license fee "royalty" upon every article manufactured or sold.

The contract may further provide that the right and privilege is given for personal exercise, and that the license therefore is not transferable; that there will be no expenses whatever for the patentee; that a certain minimum amount as royalty, irrespective whether the same was secured from the sales or not, yearly is guaranteed by the manufacturer who has to use due diligence<sup>1</sup> in manufacturing and selling; that the licensee agrees to make (monthly, quarterly or semi-annual) full and true returns (under oath), and to keep proper books of account to contain entries of each article manufactured or sold, the patentee having access to the books when desired; some license contracts provide a discount from the fee agreed upon for prompt payment of the royalties. It is finally to be agreed that upon failure to make returns or payments of license fees, the patentee can terminate the license by giving written notice, but without discharging the licensee from any liability to comply with the covenants of the license in all its details.

By making assignments of patents in foreign countries the following extra provisions will be advisable: That the assignee covenants to pay all fees and taxes<sup>2</sup> in due time, and observe all other regulations of the government, and in the event of his causing to lapse the patent by reason of non-pay-

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<sup>1</sup>i. e. that good material and workmanship will be employed; that the articles are marked "patented," and that everything will be observed to maintain a good reputation for the invention.

<sup>2</sup>In France the taxes are to be paid before an assignment can be recorded.

ment of taxes, non-working, importation or otherwise, he forfeits damages to a certain amount; the assignee shall further agree to prosecute, on his cost, persons infringing the invention.

The royalty is to be based upon the probable profit on each article and 15 to 30 per cent. thereof can be considered a reasonable demand.

Regarding the selling price of a patent, it may be said that the value depends upon the success the patented article promises to have in the vast commercial and industrial field; a proper judgment of the value can only be expected from a person who knows the invented article thoroughly in its trade, merits and manufacture which might allow him to anticipate the probable market it will find.

If the patentee himself is not sufficiently acquainted with the trade to which his invention appertains, he might interest someone of executive ability by granting him a small license; he so makes a start and gains the services of an experienced man who, in working for himself, will pave the way for the licensor's future success.

No particular form is required for transfers of patents and the following general forms may be given as guide.

## APPENDIX TO CHAPTER IV.

## GENERAL FORMS OF ASSIGNMENTS.\*

1. *Assignment of the Entire Interest* in letters patent.

WHEREAS, I, ....., of ....., county of ....., State of ....., did obtain letters patent of the United States for an improvement in ....., which letters patent are numbered ....., and bear date the ..... day of ....., in the year 19..; and whereas I am now the sole owner of said patent and of all rights under the same; and whereas ....., of ....., county of ....., and State of ....., is desirous of acquiring the entire interest in the same:

Now, THEREFORE, to all whom it may concern, be it known that, for and in consideration of the sum of ..... dollars to me in hand paid, the receipt of which is hereby acknowledged, I the said ....., have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said ....., the whole right, title, and interest in and to the said improvement in ..... and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said ....., for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of term for which said letters patent are or may be granted, as fully and entirely as the same would

\*As given by the Rules of Practice in the United States Patent Office.

have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY HEREOF, I have hereunto set my hand and affixed my seal at ....., in the county of ....., and State of ....., this ..... day of ....., 19...

In presence of

.....  
.....

..... (L.S.)

2. *Assignment of an Undivided Interest in letters patent.*

WHEREAS, I, etc., (as No. 1.)

NOW, THEREFORE, to all whom it may concern, be it known that, for and in consideration of the sum of ..... dollars to me in hand paid, the receipt of which is hereby acknowledged, I the said ....., have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said ....., the undivided one-half part of the whole right, title and interest in and to the said invention and in and to the letters patent therefor aforesaid; the said undivided one-half part to be held and enjoyed, etc. (as No. 1).

3. *Grant of Territorial Interest.*

WHEREAS, I, ....., of ....., county of ....., State of ....., did obtain letters patent of the United States for improvement in ....., which letters patent are numbered ....., and bear date the ..... day of ....., in the year 19..; and whereas



I am now the sole owner of the said patent and of all rights under the same in the below recited territory; and whereas ....., of ....., county of ..... State of ....., is desirous of acquiring an interest in the same:

Now, THEREFORE, to all whom it may concern, be it known that, for and in consideration of the sum of ..... dollars to me in hand paid, the receipt of which is hereby acknowledged, I the said ....., have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said ..... all the right, title and interest in and to the said invention, as secured to me by said letters patent, for, to, and in the State of ....., and for, to, or in no other place or places; the same to be held and enjoyed by the said ..... within and throughout the above specified territory, but not elsewhere, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal at ....., in the county of ....., and State of ....., this ..... day of ....., 19...

In presence of

.....

.....(L. S.)

4. *Not Exclusive License with Royalty.*

THIS AGREEMENT, made this ..... day of ....., 19.., between ....., of ....., in the county of ....., and State of ....., party of the first part, and ....., of ....., in the county of ....., and State of ....., party of the second part, witnesseth, that whereas letters patent of the United States No. ....., for an improvement in ....., were granted to the party of the first part on the ..... day of ....., 19..; and whereas the party of the second part is desirous of manufacturing ..... containing said patented improvements:

NOW, THEREFORE, the parties have agreed as follows:

I. The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the conditions hereinafter named, at their factory in ....., and in no other place or places, to the end of the term for which said letters patent were granted, ..... containing the patented improvements, and to sell the same within the United States.

II. The party of the second part agrees to make full and true returns to the party of the first part, under oath, upon the first days of ..... and ..... in each year, of all ..... containing the patented improvements manufactured by them.

III. The party of the second part agrees to pay to the party of the first part ..... dollars as a license fee upon every ..... manufactured

by said party of the second part containing the patented improvements; provided, that if the said fee be paid upon the days provided herein for semi-annual returns, or within ..... days thereafter, a discount of ..... per cent shall be made from said fee for prompt payment.

IV. Upon a failure of the party of the second part to make returns or to make payments of license fees, as herein provided, for ..... days after the days herein named, the party of the first part may terminate this license by serving a written notice upon the party of the second part; but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

IN WITNESS WHEREOF the parties above named have hereunto set their hands the day and year first above written at ....., in the county of ..... and State of .....

In the presence of  
.....  
.....

5. *Shop-Right License.*

IN CONSIDERATION of the sum of ..... dollars, to be paid by the firm of ....., of ....., in the county of ....., I do hereby license and empower the said ..... to manufacture in said ..... (or other place agreed upon) the improvement in ....., for which letters patent of the United States No. .... were granted to me the ..... day of ....., in the year 19.., and to sell the machines so manu-

factured throughout the United States to the full end of the term for which said letters patent are granted.

Signed at ....., in the county of.....  
and State of ....., this ..... day of  
....., 19...

In presence of

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## CHAPTER V.

*Organizing and incorporating of stock companies and their capitalization with reference to patents.*

Valuable inventions are not seldom handled in organizing stock companies which manipulation affords to finance patents upon co-operative principles which have brought up to success many financiers of this country. The advantages of co-operation are increased facilities and saving power, restriction of the risks from bad management, errors of judgment or dishonesty of partners, limitation of individual liability and the support of every one owning a share of the stock.

This method of disposing of patent rights will attract investors who would like to participate in the enterprise without personal obligation and with a proportional small amount of capital, beyond which they do not run any risk as they would by entering into a business as partner; also people would be interested who want to secure a position

as vice-president, treasurer, or secretary through investment.

The patentee could carry out the incorporating procedure by himself with the aid of a few persons who are willing to subscribe for some shares and act as incorporators; or he might communicate with a promotor who will finance the company and attend to every detail of the organization.

As the corporation law greatly differs in the various states, it is first of all necessary to determine under which state the company shall be incorporated, and hereby are to investigate the legal requirements in regard to the following points:

1. Amount of capital to be paid in. Some states require the full amount of capital stock to be actually paid in, in cash or cash value, others, so New Jersey, the home of the trusts, permit the incorporators to value its "property" and "services rendered" ad libitum, which usually results in watering "over value" of the stock.

2. Liability of stockholders. The stockholder is generally only liable for debts to the full value of his stock; if he has not yet paid in said amount in full, he can in case of insolvency of the corporation be held for the balance. Some states do not allow to issue stock under par.

3. Location of office. There are corporation laws requiring the main office within its sphere, according to others the business may be carried on, also the meetings of the stockholders be held anywhere outside of the state where the charter is secured. Most of the states, however, require to maintain a branch office within their territory, but this is very often only a nominal condition which

easily can be complied with; the same can be said regarding regulations which demand that some of the incorporators are residents of that state.

Further important questions are the power to adopt by-laws; if the charter is perpetual or limited; if annual and detailed reports are required; and if new capital can be introduced without applying for a new chapter.

The expenses<sup>1</sup> for incorporating differ also in the states; organization and other fees and annual taxes are imposed varying with the amount of capital stock.

Favorable corporation laws are in New Jersey, West Virginia, Delaware, Arizona, South Dakota and District of Columbia. The corporation law of the United States in the District of Columbia has recently been provided by Congress and the author might be inclined to recommend the incorporation there, as the fact that Congress itself issues the charter could be of advantage to the prestige of the company; there are no annual taxes required.

In making application for a charter, it must be specified the corporate title and purposes of the corporation, place of business, amount of capital stock and number of shares of common and preferred stock, names of incorporators, directors and officers; 3 or 5 of them must sign the application.

The first incorporators are legally authorized to do duties as board of directors, and their actions are lawful and binding until the first general meeting of the stockholders; they can elect the persons

	N. J.	W. V.	Del.	Ariz.	S. D.	D. C.
<sup>1</sup> Capital stock, \$25,000.00.						
Organization and filing fee...	\$35.00	\$35.00	\$35.00	\$10.00	\$10.00	\$ 8.00
Annual taxes .....	25.00	20.00	12.50	none	none	none

for the officers of the new company and can determine by majority the cash exchange for the assignment of the patent or, should the patentee want to stay in the business, the amount of shares belonging to him; the latter are considered fully paid and non-assessable and are subscribed as given in property.

The right to control the actions of the company is vested in the majority, so that the inventor who holds alone or with his friends the bulk of the shares, has secured a controlling interest, for instance with 251 by 500 shares.

After having settled the question of the equivalent for the patent, say 40 to 50 per cent. of stock value, the commission of the promoter will be paid with 5 to 15 per cent to be subscribed as services rendered, then the remainder of the capital stock will go to the treasury stock which is to be turned into cash by selling the shares in order to make working capital.

The proposed plan of the organization is brought before the public with an invitation to subscribe for the shares. The stock may be divided into any number of shares, made of any value, a portion thereof can form a preferred stock at an agreed rate of interest to be paid out of the profits before any dividends are payable on the common stock.

When the subscription is completed, a meeting of the stockholders will be called in, to elect the board of directors and to conclude upon all business affairs which have been left by the original incorporators for consideration in the general assembly.

If the patentee should later find it convenient to dispose of his shares, he could do that by and

by and, taking opportunity of the fluctuation, sell them at an agio. It must be borne in mind that it will always bring confidence to outsiders and create credit when the inventor himself remains interested.

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## CHAPTER VI.

### *Infringement of patents and judicial procedure in infringement cases.*

Every patented device is exposed to danger of being infringed. An infringement is defined as consisting in the manufacture, use or sale of something already claimed in a patent, and each claim will eventually be dealt with by itself. Only claims can be infringed, not anything which is described in the specification without being claimed. The almost stereotypical expression, "substantially as described," is immaterial and unnecessary as everything must be clearly and definitely stated in the claim.

Infringement is not avoided by immaterial variation and change of forms or dimensions, substitution of mechanical equivalents or of one material for another, adding of anything which is superfluous, etc. It will generally be considered an infringement, when a study is made to avoid the literal definition of the claims without establishing a substantial difference. The omission of a part, the presence or absence of which does not essentially affect the mode of function and operation, is of no significance, and in order to avoid infringement, an



important element must be dropped out; in England even this is not sufficient.

The actual use or sale of a patented device is not a necessary condition to arise the question of infringement; the mere making with the intention to use or sell is already unlawful.

A person whose license is forfeited is an infringer, when he continues to work the patent; the owner of a territorial interest commits infringement, in making contracts to deliver patented goods in a territory for which another owns an exclusive right; his only way to dispose of goods outside of his district is by selling in the ordinary course of trade and business. A co-owner of an invention, finding it profitable to use an infringing device, becomes an infringer and is liable for damages in proportion to the relative interest the other co-owner has in the patent.

A patentee, supposing an infringement has occurred, can bona-fide warn against it by explaining his rights to the respective party, and by giving notice of his intention to sue, should the violation not be stopped. When the warning is disregarded, he can sue the infringer for damages or apply to a court of equity for an injunction to restrain immediately from the continuance of the infringement.

Suits must not be delayed, say more than three months, as a longer delay may constitute laches and the injunction be refused; on the other hand, before beginning a suit, it must not be omitted to thoroughly investigate if the complaint can be sustained, and this particularly when the alleged infringer is basing his act upon a similar patent he owns.

Actual damages for the infringement can be brought in any district in which the act is committed, provided that the infringer has a regularly established place of business there. Upon a decree being rendered in a case of infringement, the complainant is entitled to recover, in addition to the profit to be accounted for by the defendant, the damages the complainant has sustained thereby. The profits consist of the difference between cost and yield; where no profits have been derived from the use, there can be no decree for profits, and the plaintiff's only remedy is by action at law for damages. The court assesses the latter or causes the same to be assessed under its direction.

In measuring the damages, the profits realized by the defendant from the unlawful use, or actually paid license fees "royalties" are usually taken as standard measurement for a just estimate; if the license fee is not established by several uniform licenses, the gains have to be fixed which the patentee would have had in case of non-infringement.

No damages or profits can be recovered for an infringement committed more than six years before the filing of the bill of complaint.

As previously set forth the patented article must be marked;<sup>1</sup> if it is omitted to give such notice of the article being patented, no damages<sup>2</sup> can be recovered in an action for infringement, unless it can be proven that the infringer knew of the existence of the letters patent or that he was notified of his unlawful act, but continued to infringe. Absence of intent to infringe is no excuse for the defendant.

<sup>1</sup>In England there is no obligation to mark.

<sup>2</sup>In Canada damages can be asked whether the protected manufacturers were marked or not, but there is a penalty for failure to mark.

A thing which is marked patented as of a date of its patent, but of the date of an earlier patent to the same patentee, upon which it is an improvement, this marking is not properly done and secures to the patentee no right to damages on proof of infringement of the improvement.

The plaintiff in an infringement action may be the patentee or sole assignee; or any grantee may sue alone for infringement within the territory in which he owns the entire right, exclusive of the patentee himself; also executors and administrators are entitled to bring an action.

Co-owners must bring their actions for infringement jointly<sup>1</sup>, so that the patentee cannot sue without joining his assignee of an undivided part of the patent. The holder of a specified territorial right, either as licensee or assignee, is not a necessary party complainant to a suit for infringement outside his own territory; has the infringement taken place within the territory of a grantee of an undivided interest, he must join in an action of his grantor for infringement.

A licensee cannot sue infringers in his own name; he must do that in the name of the owner with whom the title remains. The only exception where the licensee is authorized to prosecute in his own name, is, when the patentee himself commits an act of infringement, for instance, by violating an exclusive right of the license to manufacture or sell, in making or selling himself.

Suits for infringement or for an injunction raise not merely questions of contract but those under the

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<sup>1</sup>In England they can sue alone.

patent laws, and must therefore be brought under the jurisdiction of the United States circuit courts. The commissioner of patents has no jurisdiction in said cases as well as he has no judicial authority to take action in disputed questions of title under an assignment.

## Part B



## CHAPTER I.

*The taking out and peculiarities of Foreign Patents; International Convention for the protection of industrial property.*

No other leading country is equally favorable to inventors as the United States<sup>1</sup> where the life of the patent, with a few exceptions,<sup>2</sup> is the longest and the fees are the smallest; there are no taxes, no obligation to manufacture, and the territory, second only to Russia in size, offers, though comparatively sparsely peopled, better facilities for selling a patent than any other country in the world. So if a patent does not prove valuable or is not likely to advance in public favor in the United States there is little chance to make it worth getting it patented anywhere else.

No less than about seventy-five of the countries of the world have recognized the importance of encouraging the industrial progress by adopting patent laws, but the form under which protection is obtained under them is very different both in principle and practice.

Some countries as Great Britain, France and others<sup>3</sup> grant patents without preliminary examination<sup>4</sup> into the novelty, so that the grant of letters patent in these states is no proof that the invention

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<sup>1</sup>The number of patents issued far exceeds other States.

<sup>2</sup>The term is longer in Canada, Mexico, Belgium and Spain.

<sup>3</sup>Germany (Gebrauchsmuster), Italy, Belgium, Spain, Portugal, Switzerland, Mexico, Brazil, Tunis.

<sup>4</sup>Preliminary examination has been adopted in the United States, Canada, Germany, Austria, Russia, Denmark, Sweden, Norway, Japan, Argentine Republic, Chili, Hawaii, Liberia.

has not been previously patented, or otherwise become public property. It is easy to get patents there but they are worthless if afterwards it should be proved that the invention was not new, or that the claims are too broad<sup>1</sup> and not clear, or that the prescribed formalities were not observed, or finally that the invention was not patentable at all under the laws of the particular country.

An invention is not considered new when, at the time of making the application, the discovery is already known and used by other persons, or described in printed publications in any country; even the publication of patents in the Official Gazette of the Patent Office, the book may have reached the foreign country or not, can in some cases be sufficient to invalidate the grant of a patent. In some countries the applicant loses the filing fee when the patent according to the provisions of the law cannot be granted.

Many States<sup>2</sup> grant patents to anyone who is the first applicant, irrespective if he is the inventor or not, but it is advisable to keep the inventor's consent as a proof that the person was duly authorized to apply for the patent, as otherwise the patent might be invalid. Some patent laws<sup>3</sup> transfer the letters patent to the true inventor when the patent for his invention was already granted to another; in India and Ceylon the unlawful patentee must pay over to the actual inventor the profits derived from the invention.

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<sup>1</sup>When something already patented is claimed.

<sup>2</sup>So Germany, France, Belgium, Portugal.

<sup>3</sup>Great Britain, Austria, Finland, Japan, Australia, etc.



In most of the foreign countries annual taxes<sup>1</sup> are to be paid, the first tax generally being due at time of application, and should the payments be not promptly made the patent will lapse; a few States allow a short period of grace on the payment.

Working i. e., the commercial production of the invention, is usually required; sometimes it is only nominal to comply with the law and certificates of working are then easily obtained. In some countries<sup>2</sup> the patentee can be bound to grant permission to use if the reasonable requirements of the public in reference to the invention have not been satisfied by reason of the patentee's refusal to manufacture or to license the patent.

Some laws of foreign countries<sup>3</sup> require non-residents to place themselves within the jurisdiction of the laws by appointing a person within the State with power to represent the patentee in all legal matters concerning the patent; in other States<sup>4</sup> an address within the national limits must be designated where notice of any kind can be given; in Russia and Turkey the application must be presented through an agent domiciled within the State.

Certain classes of inventions as articles of food or medicine or a composition produced by chemical process are excluded in the States named in the foot note.<sup>5</sup>

<sup>1</sup>Malta takes 5 per cent. of the profits arising from the invention.

<sup>2</sup>Compulsory licenses are in Great Britain, Germany, Austria, Hungary, Denmark, Norway, Finland, Japan, India, Commonwealth of Australia, Luxemburg, Peru, Malta, Transvaal, South African Republic.

<sup>3</sup>Germany, Austria, Hungary, Denmark, Finland, Sweden, Norway, Switzerland, Brazil, Japan, India, Ceylon.

<sup>4</sup>Canada, India, Ceylon, Transvaal, Mysore, Negri Sembilan, Straits Settlements.

<sup>5</sup>Germany, France, Austria, Hungary, Denmark, Sweden, Norway, Russia, Finland, Luxemburg, Switzerland, Italy, Spain, Portugal, Turkey, Japan, Venezuela, Peru, Uruguay, Argentine Republic, Tunis.

Patents of addition i. e., a patent for improvements on an original invention can be obtained in the countries named below.<sup>1</sup> The expense for additional patents is generally a small filing fee and a single tax.

In nearly all the different patent laws of the world provisions are made for the transfer of patent rights; cases of infringements are also taken into consideration.

In order to bring about a certain conformity in regard to patents an International Union has been established, and though the commercial and industrial relations as well as the legislation of the parties widely differ, the treaty arrangements are now almost in full force and effect.

The International Convention<sup>2</sup> for the protection of industrial property has its office at Berne, Switzerland, and its members are: United States, Great Britain with New Zealand and the Commonwealth of Australia, Germany, Austria, Hungary, France with Tunis, Algeria and the French Colonies, Italy, Swiss Confederation, Denmark, Sweden, Norway, Belgium, Netherlands with Dutch East and West Indies, Spain, Portugal, Turkey, Servia, Mexico, Cuba, Guatemala, Salvador, Dominican Republic, Brazil, Chili, Ecuador.

The salient points of the Convention are:

Anyone who shall have regularly deposited an application for a patent of invention in one of the

<sup>1</sup>New Foundland, Brazil, Argentine Republic, Uruguay, Jamaica, Japan, Congo Free State, Germany, France, Austria, Hungary, Italy, Spain, Portugal, Belgium, Switzerland, Denmark, Sweden, Norway, Luxemburg, Turkey.

<sup>2</sup>The official language of the "Convention pour la protection de la propriété industrielle" is French.

contracting States shall enjoy for the purpose of making the deposit in the other States, and under reserve of the rights of third parties, a right of priority during a period of twelve months.

In consequence, the deposit subsequently made in one of the other States of the Union before the expiration of said period cannot be invalidated by acts performed in the interval, especially by another deposit, by the publication of the invention or its working, by the sale of copies of the design or model.

Patents applied for in the different contracting States shall be independent<sup>1</sup> of the patents obtained for the same invention in the other States, adherents or non-adherents to the Union.

In the States whose legislation does not admit of seizure on importation, such seizure may be replaced by prohibition of importation.<sup>2</sup>

The patentee, in each country, shall not suffer forfeiture because of non-working until after a minimum period of three years, to date from the deposit of the application in the country concerned, and in the case where the patentee does not justify the reasons of his inaction.

Finally, it shall be given temporary protection to patentable inventions which are shown at officially recognized international exhibitions.

In making applications under the aforesaid treaty regulations of the International Convention a certified copy of the foreign documents and an authorized translation is required; besides this the special

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<sup>1</sup>In countries which are not members of the International Union patents do not exceed the unexpired time limit of the original foreign patent.

<sup>2</sup>Importation is usually permitted in the United States, Great Britain and Colonies except Canada, in France, Germany, Austria-Hungary, Belgium, India, Paraguay.

administrative forms of the particular country in regard to the petition, specification and drawings must be observed. Application must be made in the name of the same person, or a certified assignment is required.

If an inventor has secured a patent in England the preparation of the application in the various English colonies will be comparatively simple as their rules of practice are similar; the petition under certain declarations and formalities must be filed in the Office of the Colonial Secretary or Commissioner and be accompanied by a specification identical as far as practicable with the one filed on petition for letters patent in England.

Some foreign patent laws allow to draw up the papers in one language or the other, so, for instance, Italy in Italian or French, Portugal in Portuguese or French, Switzerland in French, German or Italian, Belgium in French, German or Flemish; in some countries the form of the drawings are the same, so in Hungary, Sweden and Norway same as in Germany.

In a number of countries without patent laws protection for inventions may be obtained by special grant and the specifications will be registered, so in the Philippines, Porto Rico, China, Egypt, Dominican Republic, but doubt is expressed if such protection is as reliable as a general patent law.

It is remarkable that neither Holland nor Greece have any law which protects inventions though there are trademark laws.

## CHAPTER II.

### *Compendium of foreign patent laws.*

#### AMERICA.\*

*Canada.*—Patents are granted to the inventor or his assignee for a term of six, twelve or eighteen years, but it is at the option of the applicant to pay the three partial fees, and the patent shall cease at the end of the term for which such fee has been paid. The patent expires with the first expiring foreign patent. A fee of \$20.00 is to be paid upon application, \$20.00 before the end of the sixth year and further \$20.00 before the expiration of the twelfth year.

In order to provisionally protect a patent from being manufactured by some one in the Dominion, the law provides to give "notice of intention to apply for a patent" within three months to the Commissioner of Patents, and no other person, having commenced to manufacture the same device during one year from the date of the issue of the foreign patent, shall then be entitled to continue the manufacture after the inventor has obtained a patent therefor. The fee for such caveat is \$5.00.

A patent becomes void at the end of two years if the manufacture of the invention is not commenced within that period. The working must be continuously carried on, in such manner that any person desiring to use it can obtain it at a reasonable price.

Canada is not yet a party to the International Convention for the protection of industrial prop-

erty, but applications can be filed within one year after the date of a foreign patent and the patented article can be imported during the first year of the life of the patent; after that time the patent will be rendered invalid as to the interest of the person importing the patented manufactures.

*Mexico.*—Term is twenty years which can be extended for five years longer. The tax has recently been greatly reduced and is very low now; \$5.00 for the first year and \$35.00 for the remaining period. The examination is purely administrative, and will on no account turn upon the novelty or utility nor upon the clearness of the specification and patents are granted without prejudice to third parties.

Exploitation is not obligatory; but if after the expiration of three years the patent is not worked industrially within the national territory, or if after said time the working is suspended for more than three months, the Patent Office can grant a license to another party, in which case one-half of the net earnings obtained by such licensee will go to the patentee. The license can be revoked.

The Patent Office will at the request of an interested party, make, with respect to the novelty of a patent asked for, an examination without guaranty. The examination will also be made at the request of any one for the purpose of ascertaining whether an article is patented in Mexico or is public property.

*Cuba.*—Term, seventeen years. No taxes. Fee of \$35.00 is to be paid after acceptance of the application which is to be directed to the Department

of Agriculture, Industry and Commerce. In case a foreign patent exists, a certified copy of its registration with the signature of the Commissioner of patents is required. Documents must be accompanied by a Spanish translation. Invention must be commercially produced within one year.

*Colombia.*—Term, from five to twenty years. Patent expires with a foreign patent. With the application a deposit of \$4.00 must be made at the General Treasury which amount is forfeited if the patent is not granted. Annual taxes of from \$2.00 to \$4.00. Foreign patents can be protected provided the discovery has not become public property.

*Venezuela.*—Term, five, ten or fifteen years and patents are forfeited in six months, one, or two years if during that time the discovery is not put into practice. Tax is \$16.00 per annum. With the application the tax for one-half the number of years for which the patent is applied for is payable. Should no patent be issued the applicant loses the amount paid in. Foreign letters patent are not an obstacle provided the invention has not been published; such patent will lapse with the expiration of the foreign patent.

*Brazil.*—Term, fifteen years. Besides expenses and fees incurred, the patentee must pay annual taxes of \$20.00 in the first year, increasing each year by \$10.00. Patent of improvement is subject to a single tax. Applicant must be the inventor and the discovery must not have been publicly known. No previous examination except in case of food products. Effective use is required within three years.

*Argentine Republic.*—Term, five, ten or fifteen years. Tax \$80.00, \$200.00 or \$350.00. A foreign patent is limited to ten years and expires with the original patent. Payment to be made one-half at time of application, remainder by successive yearly rates. Certificates of addition are issued at a cost of one-fourth part, also precautional patents upon payment of \$50.00. Invention must not have been public within the Republic. Applicant can be inventor or his assignee.

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\*Patent laws are further in New Foundland, Guatemala, British Honduras, Costa Rica, British Guiana, Chili, Paraguay, Uruguay, Bolivia, Peru, Ecuador, Bahama Islands, Barbadoes, Jamaica, Leeward Islands, Trinidad and Tobago.

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## EUROPE.\*

*Great Britain.*—Term, fourteen years. Patent covers England, Ireland, Scotland, Wales, the Channel Islands and Isle of Man, but does not afford protection in the colonies as they have laws of their own.

On filing the complete specification a fee of \$20.00 is payable; it is further required a tax of \$25.00 for the fifth year, \$30.00 for the sixth year and so on, increasing \$5.00 each year so that the whole amount of taxes is \$495.00.

There is a mode of procedure, the provisional patent, whereby an invention is protected for nine months at a cost of \$5.00, the subsequent completion being optional. An article only provisionally pro-



tected is not "patented" and cannot be marked so, nor can an action be taken for infringement.

The inventor or an importer can apply for a patent to the Patent Office. The application is subjected to an official examination with the object of ascertaining whether the specification is properly made up. Should it after the issue of the patent be shown that the invention was already patented or has previously been made public by books, the patent is invalid. When the patent was issued to a person not entitled to the privilege, it can be transferred to the true inventor.

If the patent is not worked or the reasonable requirements of the public with respect to the invention cannot be supplied or any person is prevented from working or using, the Board may order the patentee to grant licenses on terms as may deem just.

*Germany and Colonies.*—Term, fifteen years. With the application a fee of \$5.00 must be paid for the cost of proceeding. Before the patent is issued, a fee of \$7.50 is due, then in the second year an annual tax of \$12.50, which tax is increasing each year by \$12.50, aggregating to a total sum of \$1,320.00 during the life of the patent. Patents of addition expire with the original patent.

There is, besides the other one, an unusual kind of patents, the "Gebrauchsmuster," model of utility, a design patent, which embraces small inventions such as tools, toys, models of implements, etc. Term is three years; fee of \$3.75 to be paid on application. Term can be prolonged for a further period of three years on payment of \$15.00.

Anyone can apply for a patent of a new invention to the Patent Office, and a representative must be appointed with power to act in all proceedings.

Invention must be worked within three years provided a demand springs up but may be imported. Patents can be revoked after a period of three years, if it appears to be in the interest of the community that licenses to others should be granted, but the patentee declines to do so though reasonable compensation and adequate security was offered to him.

*France and Colonies.*<sup>1</sup>—Patents are granted for a term of five, ten or fifteen years. Annual taxes of \$20.00 are levied, amounting to a total of \$300.00 for fifteen years, and they must be paid before an assignment can be registered. A patent of addition for improvements can be obtained on payment of \$4.00, and it expires with the original patent; no further taxes are to be paid.

Anyone can apply for a patent by making a petition to the Minister of Agriculture and Commerce. Invention must not have been published in print, but a previous foreign patent is not a bar to a valid patent. No preliminary examination takes place and patents which afterwards shall prove to be not new are null and of no effect.

Working is required within three years but importation is permitted.

A patentee who omits to add to the marking the words "without guarantee of the government" is subject to a fine. Marking is not allowed after the expiration of the term for the patent.

<sup>1</sup>Corsica, Algeria, Tunis, Senegambia, Guinea, Madagascar, Réunion, Cochin-China, Cambodia, Anam, Tonquin, New Caledonia, Martinique, Guadeloupe, French Guiana.

Articles said to be infringed can be seized on request of the patentee who, however, must furnish a security; he also is obliged to sue, either by civil or criminal proceedings, within eight days.

*Austria.*—Term, fifteen years. Fee of \$4.00 payable on filing; taxes commence at the rate of \$8.00 for the first year, and increase gradually until the tax in the fifteenth year is \$136.00, which makes an aggregate of about \$800.00. There are also patents of addition at a cost of \$14.00.

The originator of an invention can make application by addressing the patent office. Invention must not have been published or become known otherwise. Applicant must appoint a representative within the Empire, and delivery to him shall have the same legal effect as if it had been to the owner himself.

Working is required within three years, but no objection to the patented article being imported. Compulsory license if the invention is not worked to a suitable extent, or the patent can be withdrawn. Should a patent already be issued to a person who was not entitled to it, the letters patent can be transferred to the true inventor.

*Hungary.*—Term, fifteen years. Fee of \$4.00 on application to the patent office, then annual taxes, commencing with \$8.00 and gradually increasing until the tax amounts to \$101.50 for the last year. The aggregate sum is \$572.00. Patents of addition may be obtained upon payment of \$12.00. Applicant must declare that he is the inventor or holder of an interest and must be represented in the Kingdom.

Discovery must be worked within three years after the grant of the patent. Compulsory license can be granted when the reasonable requirements have not been satisfied.

*Russia.*—Patent is granted for fifteen years and is subject to annual and increasing taxes, commencing with \$7.75 in the first and ending with \$206.00 in the last year, amounting to a total of \$1,097.00; the application fee is \$15.50. The patent of addition costs \$15.50.

The inventor or his assignee can make the application by petition to the Committee of Technical Affairs of the Department of Commerce and Manufactures. The inventor, on making application, must be represented by an agent domiciled within the Empire. A valid patent can be obtained after the grant of a foreign patent. In case of the refusal of the application the money paid in will be repaid.

Invention must be worked within five years of the date of the patent.

*Denmark.*—Term, fifteen years. On application a fee of \$5.50 is to be paid; annual taxes increasing in periods of three years begin with \$6.75 and end with \$80.50, amounting to a total of \$543.00. Patents of addition may be obtained for improvements on the original patented invention; they expire with the latter. Preliminary examination as to formalities and patentability.

The owner of the discovery or his representative may make the application to the Patent Commission. Invention must not have been made public through publication. An attorney residing in the

Kingdom is to represent the patentee in all matters concerning the patent.

Working must take place within three years. The patentee can be bound to grant permission to use in case the invention is not worked to an adequate extent.

*Sweden.*—Term, fifteen years. \$5.50 is due on filing the application; then annual taxes, from the second to the fifth year \$6.75 each, from the sixth to the tenth \$13.50 each, and then \$20.00 annually, amounting to a total of \$210.00 for the life of the patent. Patents of addition as in Denmark.

Application can be made by the true inventor or his representative to the Bureau of Patent and Registry. A legal representative within the Kingdom is required. No valid patent can be had, if discovery has been published in print. Preliminary examination as to patentability.

If the King considers it necessary that a patented invention shall be open to the free use of the public, the patent is no obstacle, but the inventor is entitled to full compensation.

*Norway.*—Term, fifteen years. The filing fee of \$8.00 includes first annuity. Annual taxes commence with \$2.70 in the second year and increase each year by \$1.35 aggregating to a total of \$168.00. Patents of addition and application as in Denmark.

Publication in print does not prevent the grant if within six months is applied for.

A representative within the Kingdom must be appointed. Invention must be worked within three years but a prolongation up to four years will be

allowed on request. Patent is forfeited if the owner fails to comply with the conditions.

A patented invention which is of essential value to any particular trade or industry may, by royal decision, be appropriated to private use but full compensation is given.

*Belgium and Colonies.*—Term, twenty years. Annual tax of about \$2.00 for the first year and increasing annually by same amount which makes \$405.00 for the twenty years. Patents of improvement may be obtained terminating with the original patent; no taxes.

The first applicant can get the patent by applying to the Minister of the Interior. A foreign patent is not a bar. No previous examination.

Working is required within three years; the importation of the article or the granting of a license is deemed sufficient as working.

*Italy.*—Patents are granted for a term of from one to fifteen years; they can be prolonged to the full duration and also patents of improvement are issued. Small annual taxes increasing every third year amounting to a total of about \$260.00. Application is to be addressed to the Minister of Agriculture, Industry and Commerce; there is no preliminary examination as to novelty. Working is due within three years.

*Spain and Adjacent Islands.*—Term, twenty years. Annual tax beginning with \$2.00 for the first year and increasing annually by same amount making an aggregate sum of \$410.00 for the patent's life. Patents of addition can be obtained

at an expense of \$5.00 and expire with the original patent. An importer of an invention, which is the subject of a prior foreign patent, can obtain only a five or ten-year patent, and he must apply for same within two years.

Application is to be made by the owner to the Minister of Commerce. There is no previous examination and at the head of the letters patent is printed: "Patent of invention without guarantee of the Government as to novelty, fitness, or utility." Working is required within three years.

*Portugal and Colonies.*—Patents are granted to the first applicant for one, five, ten or fifteen years; prolongation for the full term may be obtained before the expiration of the term previously applied for. During the existence of the principal patent, improvements and modifications may be added which enjoy the privilege of a patent right. Applications are to be addressed to the Division of Industry, at the Ministry of Public Works, Commerce and Industry.

The taxes are \$3.25 per annum; with the application the tax for one year is due. An invention is not considered to be new if it has been described in any publication, or has been in public use.

Working is required within three years.

*Switzerland.*—Term, fifteen years. Application fee is \$4.00; annual and progressive tax of \$4.00 in the first year and increasing each year by \$2.00, amounting to a total of \$260.00. Additional patents may be obtained on payment of above filing fee.

Applications for patents can only be made by the true inventor, his assignee or representative and

must be addressed to the Bureau of Intellectual Property. Applicant must nominate an attorney domiciled in the State. The patent shall be forfeited if the patented article is imported from abroad, or if the invention is not worked within three years, or if the patentee refuses applications offered on equitable terms for licenses.

Patented articles must be marked with the Federal Cross and the number of the patent.

*Turkey in Europe and Asia.*—Patent is granted for five, ten or fifteen years and is subject to the payment of a tax of \$45.00, \$90.00 or \$135.00 respectively. This tax is payable by annuities of \$9.00 at the commencement of each year.

Patentee, on making application, must be represented by an agent domiciled within the Empire. Applications are to be directed to the Ministry of Commerce and Agriculture.

No invention will be considered new which, before the application, was made publicly known so that it could be worked.

Invention must be put into practice within three years. The law as to marking is similar as in France; patentee must add to the mark "without guarantee of the government," and he is not entitled to mark after expiration of patent.

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\*Further European patent laws are in Finland, Luxemburg, Herzegovina, Bosnia, Gibraltar, Malta.



## ASIA.\*

*British India.*—Term, fourteen years. Application fee \$13.00; before the expiration of the fourth year a tax of \$15.00 is due and the same amount after the fifth, sixth and seventh year; in the following years \$30.00 annually. Application can be made within one year after the date of the foreign patent. Invention must be properly worked or compulsory licenses can be granted.

*Japan.*—Term, ten or fifteen years. Fee \$5.00 or \$10.00, which is returned if application is denied. Preliminary examination. Applicant must appoint a person domiciled in the Empire to be his agent. Patents which become known through printed publications are generally refused. Patent can be revoked or compulsory licenses be granted when the owner without reasonable cause has failed to work and publish his invention within three years.

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\*There are also special patent laws in Ceylon, Straits Settlements, Perak, Selangor, Negri Sembilan, Mysore, British North Borneo, Hong Kong, French Indo-China.

## AFRICA.\*

*Cape Colony.*—Term, fourteen years. Fees: On depositing specification \$12.50, on obtaining letters patent same amount, at or before the expiration of the third year \$50.00, at or before the end of the seventh year \$100.00. True inventor or his assignee

may apply. Extension of term is granted if the patentee was unable to obtain a due remuneration for his expenses and labor.

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\*Patent laws are further in Natal, Transvaal, Orange Free State, South African Republic (Rhodesia, etc.), Congo Free State, Liberia, Tunis, Algeria, St. Helena, Mauritius.

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### AUSTRALIA.\*

*Commonwealth of Australia.*—The patent is granted for a term of fourteen years and gives protection in Western and South Australia, Victoria, New South Wales, Queensland and Isle of Tasmania. There is a small fee payable on filing and another fee due before the expiration of the first moiety of the patent's life. Discovery must be commercially produced within two years or compulsory license can be granted. Applicant can be the owner of the patent or his representative.

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\*Further countries with patent laws are: New Zealand, British Guinea, Fiji Islands, Hawaii.



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