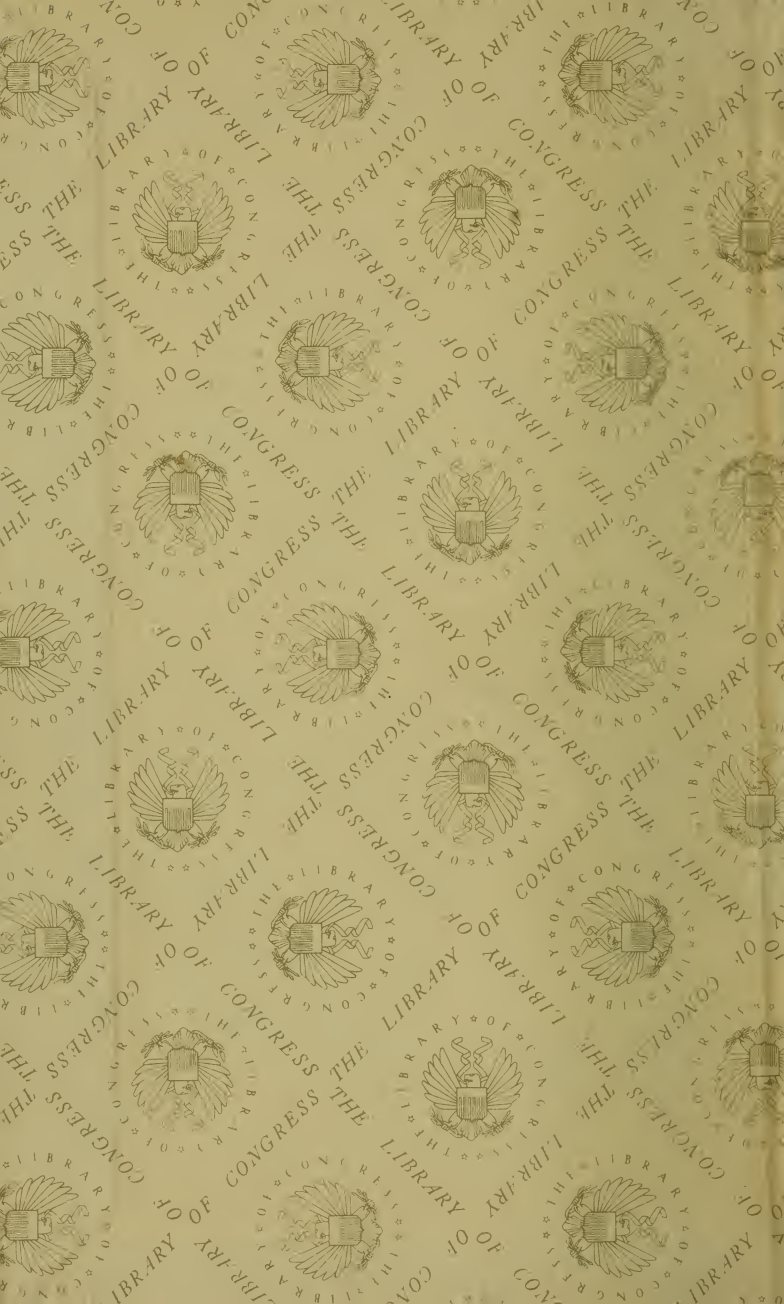


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PATENTS.

A PRIMER OF PATENT LAW,

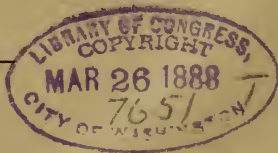
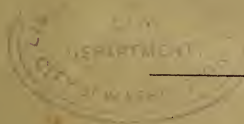
FOR

INVENTORS AND MANUFACTURERS.

WITH TABLES OF TERMS OF AND FEES FOR
PATENTS IN ALL PATENT-GRANTING
COUNTRIES.

BY

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(SOLICITOR OF PATENTS.)



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INTRODUCTION.

AN experience in the business of a solicitor of patents continuing since 1869, has induced me to believe that the following pages will answer a great many inquiries of inventors and owners of patents respecting the operations of the patent office, what is and what is not patentable invention, and the different kinds of protection afforded by the patent law.

I have tried, also, to state in a brief and comprehensive manner the question of fees; and have outlined in a general way the matter and costs of foreign patents, pointing out the way to obtain foreign patents so that they will not abridge the life of the United States patent, and, reciprocally, they will not be impaired or invalidated by the United States patent.

Some suggestions are offered also, which have been found of value in developing and proving the history of an invention; and a word of warning added as to purchasing patents.

I have endeavored to avoid, on the one hand, writing a mere advertisement of myself, and on the other, presenting a purely legal treatise; and while the "eye to business" has not been shut, still the hope is expressed that these pages may be found by inventors and others interested in patents, to have intrinsic merit, and to be helpful in appreciating the value and importance of the most admirable system of American patent law.

WILLIAM H. FINCKEL.

WASHINGTON, D. C., March, 1888.

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PATENTS.

PRESENT ORGANIZATION OF THE UNITED STATES PATENT OFFICE.

THE head of the office is the Commissioner of Patents, with an Assistant Commissioner taking his place when absent, or when specially designated to act as Commissioner. The Commissioner does not perform any duties respecting the granting of patents, excepting where individual cases come to him on appeal, and the signing of the grants. He has general supervision of the office in all its branches, and all questions arising in the practice of the office are referable to him, more or less directly, for decision. But there are comparatively few cases that ever come before him, and the bulk of the work of examining and allowing or rejecting applications, is done by the examiners.

Inventions of all kinds are distributed by kinds or in classes among twenty-nine principal Examiners, who are heads of examining divisions, and pass upon the patentability of inventions, but have no jurisdiction of the question of infringement, that question being relegated by the statute to the courts. Each principal Examiner has a corps of assistants. From the adverse decisions of these Examiners, appeal lies to a Board of three Examiners-in-chief, and from this Board appeal lies to the Commissioner of Patents in person, and

from him to the Supreme Court of the District of Columbia, and then to the Supreme Court of the United States.

One of the principal Examiners has charge also of the examination of trade-marks, and labels and prints; and another passes upon the patentability of all designs.

An Examiner of interferences first tries cases of conflicting or interfering applications for registration of trade-marks, applications for patents and reissue of patents, and for designs, and from his decision appeal lies to the Board of Examiners-in-chief, and from them to the Commissioner in person.

The clerical work of the office, under a chief clerk, is subdivided appropriately to insure promptness, uniformity and accuracy.

Further on more of the details of the functions and working of this organization will be stated.

Applications are examined in the order of their filing, but as there are twenty-nine examining divisions, there are also as many orders of examination. Hence it constantly occurs that patents are granted by one examining division which were filed months after others in other divisions. Some examining divisions have and keep their work well up to date, while others are many months behind.

The solicitor or applicant can do nothing to hasten examination. The only cases examined out of turn are those previously patented abroad, and those recommended as urgent by the head of some department of the government.

When an application for patent is filed in the Patent Office, it is examined in the "application room" to see that it is complete in all its parts, when it is sent to

the proper examining division, and there awaits its turn for examination. When reached for examination the Examiner inquires into the novelty and utility of the invention, cites any references he may find impeaching its novelty, and is presumed in his first action to make all the objections to the case which in his judgment apply. Applicant then is at liberty to amend, or to refuse to amend. So long as any new references are cited, applicant may amend, but when the Examiner rejects finally, then applicant's remedy is by appeal to the Board.

The Patent Office rule relating to amendments, in respect to what they may contain, is as follows :

"69. In original applications, which are capable of illustration by drawing or model, all amendments of the model, drawings, or specification or of additions thereto must conform to at least one of them as they were at the time of the filing of the application. Matter not found in either involving a departure from the original invention can be shown or claimed only in a separate application. If the invention does not admit of illustration by drawing or model, amendment of the specification is permitted upon proof satisfactory to the Commissioner that the matter covered by the proposed amendment was a part of the original invention."

After the invention is decided to be patentable, either by the Examiner, the Board, or the Commissioner, or on appeal to the courts, and the patent is ready to issue, the patent may be withheld and the case put into interference with another pending application or a patent for the same thing. Or a caveat may be on file which shows the same invention. In the case of the caveat, the person filing it will be notified to file an application within three months, to be put in interference; failing in which, the first applicant's patent issues.

The nature of an interference is stated in Part III.,
 "Interference."

I. WHAT IS AND WHAT IS NOT INVENTION UNDER THE UNITED STATES PATENT LAW.

An invention is a substantive, tangible object or thing—possessing originality; the word itself means some object or thing that is new. The fathers of the patent law have constructed, therefore, the statute to read :

"Any person who has invented or discovered any *new* and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof . . . may obtain a patent therefor."

An invention, therefore, under the patent act, is a product that is new and useful.

As to Novelty: The invention may be original and new with the inventor; he may know of nothing like it at all; he may conscientiously swear that he is the first, original and sole inventor of it; but the prior patents in this country or abroad may disprove his oath; publications here or elsewhere may show the contrary; or, removed from his locality, the invention original with him, so far as he knows, may have been in public and common use or on sale for more than two years prior to his application for a patent; and any of these facts defeat his right to a patent, and would invalidate his patent if granted.

If the invention be an improvement on an existing invention, the improvement must show itself to be a new and useful addition to that existing invention, and must add something of value to it. If it be a combination of known devices, the thing as a whole must be new in result. If it be a reconstruction of an old in-

vention, or of several of them, the reconstruction must evince novelty and utility in effect. If the invention be a new process or method of doing an old thing not obvious from the old, it is a patentable invention. If the process consists in adding a new step to the old mode of doing a thing, the new step must confer improved results to make the process patentable invention or discovery. A mere cheapening of the product, either in its construction or process of making, is not invention. The substitution of one device or process for another is not invention, unless it radically changes the character and working of the device or process. The arranging upon one frame, or as a whole, of a number of different things, does not constitute invention unless such arrangement affects the character and operation of each, and makes them work together (co-operate) as a whole. A machine may be novel as a whole, or in its parts, or both, and is so patentable invention.

As to Utility: An invention is useful when it is neither harmful nor frivolous. If an invention is morally or physically hurtful, it is not patentable; and if it be trivial or frivolous it cannot be patented. Inventions of food adulterations would not be patentable, for the double reason of being morally and physically hurtful; and inventions of so-called perpetual motion, or converting iron or brass into gold, as for example, under the old alchemists' arts, could not be patented because trivial and frivolous in view of their utter absurdity and impossibility of accomplishing practical results, so far as present human knowledge extends.

Schemes of advertising, book-keeping, transacting business, and the like, are not patentable invention; they may be, however, subject matter for copyright;

but mechanical advertising devices, modes of binding or constructing books, mechanical accountants, computers, and the like, are patentable. Anything evincing originality in mechanical skill or chemical investigation, and possessing the requisites of novelty and usefulness, is patentable invention or discovery.

A machine for doing a given thing is an invention; the product of that machine is an invention; the process carried on by the machine in making the product is an invention, and each, if new and useful, is patentable. If a new way of making an old product be discovered, it is the way, method or process, and not the product, that is new. The product is the same however produced.

If one finds he can make wrought nails with a pin machine, it is not invention, because the pin machine inventor is entitled to all the uses to which his machine can be put. This is obvious if one remembers that a water-proof coat may be as protective against cold as it is against rain, and no one would consider himself an inventor in realizing this fact.

An invention, therefore, stating the case again, is something that is new in all or some of its parts, and it is patentable when all or some of such parts are new and useful, and they must be both new and useful.

II. WHO IS AN INVENTOR.

An inventor is any person, male or female, youth or adult, native or foreigner: who has invented or discovered something new, original, not before known or used. The inventor under our law must be the actual creator or maker of the thing sought to be patented. He or she may invent the thing outright, or may give the idea and principles to others to put into form, and

yet be just as truly the inventor. He who puts the ideas or principles of others into such form is the mere mechanic or chemist, and not the inventor; he may even experiment in testing the correctness of these ideas or principles of others, and yet be the mere mechanic or chemist, and not the inventor; but as soon as the mechanic or chemist varies the original ideas or principles, changes them, or adds others of his own in order to produce the desired result, the original ideas and principles having failed of accomplishing such result, he becomes either the sole inventor or else a joint inventor with the original, and the invention is the joint product of the two.

Any number of persons may contribute to the making of an invention, but each must actually invent something of the whole to be raised to the dignity of an inventor. If the invention is composed of parts which are capable of manufacture and sale by themselves, and such parts are invented outright by different ones of the several contributors to the whole, the invention, as a rule, will be most safely patented in parts, each contributor taking a separate patent for so much as he has invented. If each part is necessary to the making of a complete machine, and such parts are separately invented with a view to their fitness to the others, and to the whole, and have no value outside of that, then the invention as a whole is a joint one, and must be protected by a single patent for it. The prime essential in supporting a joint invention is, not that each contributor made a part of the whole, but that such part was necessary to make the whole operative, and it was inoperative without it. The contribution must be of the essence of the complete thing.

From these facts, it is obvious that a mere money

interest in an invention does not elevate the person holding it to the dignity of an inventor. Regard for the sanctity of an oath, also, ought to open the eyes of such persons to this fact, since no patent can be granted except upon the oath of the persons applying for it that they are the original, first and joint *inventors* of the thing sought to be patented; or in the case of a single applicant, he must be able to swear that he is the original, first and sole *inventor*. Whatever interest a person other than the actual inventor may have in an invention must be held by assignment or license from the inventor.

There is no natural right to an invention, and it is open to everybody until the inventor avails himself of the monopoly or privilege of a patent; and no redress can be had prior to the grant of the patent for the use of an invention. The grant of the patent, however, stops all unauthorized manufacture, use, and sale of the patented invention. However, if before the grant of the patent, the inventor sells his machine or whatever he has invented, or allows any person to make, use, or sell it, that particular machine or whatever else it is, may be freely used and sold, but no others.

The rights, therefore, of the inventor and of the holder of an interest in the invention are only maintainable when duly acquired by process and form of law.

A patent or any part of or interest in it may be assigned by law. The assignee's right is co-extensive with that of the inventor for the respective interests. The assignee's right may be exclusive, or it may be territorial, or undivided; in other words, the assignee may purchase or acquire the entire right, or the right in a certain territory or portion of the country, or a right expressed by such terms as one-fourth, or one-half, and

the like, and in this last case it is an undivided right, making him equal to that extent with the inventor, and wholly beyond his control in the working or use and disposal of that right, unless the conveyance otherwise expressly ordains.

A patent can be issued to an inventor or to his assignee of the whole, or to the inventor and the assignee of an undivided right upon written request and authorization to the Commissioner of Patents to that effect.

III. PATENTABILITY. INTERFERENCE. INFRINGEMENT.

The compass of this book is too small to admit of the discussion of the question of patentable subject matter in its various aspects of novelty, equivalence, utility, substitution of parts and materials, change of form, etc., but enough has been said in Part I. to indicate generally what is and what is not patentable. But some propositions, as it were, may be briefly stated.

Patentability: An invention is patentable if it be new and useful. It is not new if it be simply an equivalent of some other known thing for the same purpose, and with the same result.

It is not patentable if it be a mere substitute of one of the known principles of mechanics or force, or chemistry, for another, without new function or result.

It is not patentable if it be simply a change of form without effecting change in operation or result.

A new combination and arrangement of old things in which the thing as a whole gives a new or improved result is patentable.

The addition of a new element to an old combination, the new element infusing a new mode of operation into or effecting a new or improved result in such com-

combination, is patentable, and the new element is susceptible of a claim or patent of itself, if it be in the nature of an entirety, or capable of use by itself.

It is not patentable invention to take several things from as many machines and organize them into a machine, if the result is merely the sum of the results of said several things rather than a *new* machine.

These several propositions merely state in general terms the pith of concurrent decisions, and an almost uniform practice under our several statutes; but from the very nature of the cases decided, there are and must be exceptions, and such exceptions occur only as the facts show improvement, material benefit, greater utility, and the practical accomplishment of what had theretofore been crude, imperfect, useless and undesirable.

Interference: An invention may be patentable, but in the Patent Office a rival claimant may appear. The law has established the machinery of an interference proceeding in such case to determine who is the *prior* inventor, and thereby entitled to the patent. To entitle one to the patent in such case, he must prove by regularly taken evidence, under the ordeal of cross-examination, not only that he was the first to think of (conceive) the invention, but to put it into practical or demonstrative form. An applicant for a patent can contest the right of a patentee to the same invention, and if he prevail a patent will be granted to him also. The theory of the law is that the *first* inventor shall receive the patent, and all its powers are directed to this proper end.

Infringement: In view of what has already been said as to patentable subject matter, it is apparent that patents must be granted that will overlap one an-

other. The prior patent has presumably and on its face the best right, and subsequent patents in the same line of invention become subject to it, and to one another, chronologically. It happens thus that there are *infringing* patents." The Patent Office determines the question of interference, but has no jurisdiction of infringement. An invention may be a direct and obvious infringement of an existing patent, and yet be patentable over it. The patent, however, for the infringing invention must forever remain an infringement of the right of the prior patentee; and while the prior patentee can stop the manufacture, use, and sale of the infringing invention, he cannot himself manufacture, use, or sell the said infringing invention. In this consists the equity of the law. The parties can accommodate by mutual license or reciprocal assignment.

Infringement relates to what is claimed in the claims of the prior patent, and it may as well here as elsewhere be noted, that it is the thing *claimed* in the claim following the specification that is the invention covered by the patent.

If the subsequent inventor, in point of date of filing his application, alleges that he is the true and first inventor of the thing claimed, the case is one of interference to be decided by the Patent Office, if either party is simply an applicant, without a patent; whereas if he cannot sustain his claim to prior invention, the case is one of infringement, to be decided by the courts.

The courts have jurisdiction also of interfering patents.

An improvement on a patented thing may be patentable, and yet none the less a direct infringement of the claims of that patent.

IV. PATENTS. DISCLAIMERS. REISSUES.

The word "patent" has come to have a narrow meaning, and is largely used to designate inventions or discoveries in the arts and sciences for which the government has issued its letters-patent. The grant is made after examination as to novelty and utility; is in the name of the United States of America, signed by the Secretary of the Interior, countersigned by the Commissioner of Patents, and sealed with the seal of the Patent Office. The term is for seventeen years, but is limited by the term of that prior foreign patent for the same thing and to the same party, having the shortest term to run.

A patent is valid on its face, and is evidence of the facts of invention, inventorship, novelty and utility. If its novelty be impaired in part, it is valid for the rest; thus, if one of several claims be found invalid, the patent is good for the remainder, and the invalid claim can be removed by disclaimer.

Disclaimer: Whenever it be discovered that the claims are too broad, they can be corrected by disclaimer. If, however, it be shown that the patent was granted upon a false oath, and the patentee is not the real inventor, the whole grant is invalid, and cannot be corrected; it is a fraud, not by the government, but perpetrated upon it.

Reissue: If the patent be inoperative by reason of an insufficient or inaccurate, or incomplete specification (or claim), it can be corrected by reissue, provided no opposing rights have vested in view thereof.

To entitle a patentee to a reissue, he must show specifically wherein his patent is inoperative, or defective, and that such inoperativeness or defect occurred

by inadvertence, accident, or mistake, and without fraudulent intent. The courts presume that the errors will be seen upon first glance at the patent, and insist that the application for reissue shall be immediate.

A reissue does not extend the life of a patent. Congress alone can do this.

Patents should express in the grant all foreign patents taken out for the same thing, and the oath in the application must state what if any foreign patents have been obtained, and if none have been obtained that fact must be stated.

After an application for a patent has been allowed, six months are given in which to pay the final fee, and this time should be utilized in getting ready the foreign applications. The patent will issue on the third Tuesday after the Thursday on or before which the final fee is paid. Patents are issued and date on Tuesday of each week.

After a final fee is paid the issue of the patent cannot be stopped by the applicant, except by abandonment of the application. At any time prior to the Tuesday on which the patent is to date, and before the signing and sealing of the same, the patent may be withheld by the Patent Office for rejection or interference.

In case of the death of the inventor, the patent or reissue may be applied for, and will be granted to the executor or administrator.

V. DESIGNS.

To entitle one to a patent for a design, it must appear to be new and useful. Designs embrace new configurations or shapes where the object aimed at is artis-

tic rather than mechanical. The function or operation is a silent, indeed an excluded factor in designs, and ornament or beauty is the essential rather than convenience or adaptation. Carpet patterns, spoon and fork shapes, jewelry configurations, mouldings, stove castings, glassware, and the like, afford fruitful fields for design patents. A new mechanical construction, if it have new effect or function, is not subject for a design patent, no matter how beautiful it may be, for it is mechanics that is involved in its production, not art. Artistic effect is thus the basis and foundation of the statutory protection for designs.

The one entitled to receive a valid design patent must conform to the requirements as to inventorship mentioned under Part II.

VI. TRADE-MARKS. LABELS OR PRINTS. COPYRIGHTS.

Under the law only such trade-marks can be registered as are used in commerce with foreign nations or the Indian tribes. State laws are usually sufficient to protect citizens of the same state from unlawful use of each other's trade-marks, but registration in the Patent Office is useful as a sort of public record notice of the facts of adoption and ownership. Trade marks can be registered irrespective of the length of time they have been in use. On the other hand, labels and prints must be registered before they are used at all, otherwise the registration, upon proof of prior use, is irremediably invalid. This difference is statutory, and grows out of the fact that the law relating to the registration of labels and prints is cut out of the copyright laws. Trade-marks and labels and prints are registrable in the Patent Office.

A trade-mark is a purely arbitrary affair, a growth of the mind, not gathered from the books or any quality of the article upon which it is used. A word newly-coined by the user may be a lawful trade-mark; so also may be an artistic representation or device, a facsimile signature, a monogram; but a lawful trade-mark must be an original production to which the owner's right is apparent, and which could in not common reason be just as truly appropriated by natural right by another.

A label or print, (for the rule is that there is practically no difference between them) is any of the common means employed to designate the character, contents, nature, name, or ownership of the various articles of trade or commerce. It is usually a bit of paper containing the name of the article, its qualities or properties, place, and source of production. The word "label" itself carries on its face its own explanation. A label must not be of such arbitrary character as to amount to a trade-mark, although a registered trade-mark may be placed upon a label.

Copyrights are secured in the office of the Librarian of Congress, and the provisions of the statute extend to books, pamphlets, maps, engravings, and works of art. Application therefor must be made before actual publication, and subsequently two copies of the best edition or issue are required to be deposited to perfect the registration.

VII. CAVEATS.

A caveat is an instrument of the law which enables a United States, but not a foreign inventor to file in the Patent Office a drawing and description of an incomplete or unfinished invention, which shall entitle

him to notice of the filing of any application for patent for the same invention within one year after the date of the filing of his caveat. As already said on page 9, if such application is filed, the caveator is given three months in which to file an application for patent for his invention for the purpose of contesting the question of prior right to the invention as between himself and the person filing the application which called forth the caveator's application.

A caveat is not in and of itself evidence of an incomplete or immature invention; that point is a subject of proof and not of presumption.

A caveat may be renewed year by year, but the Patent Office has held that its effective date is not that of the first filing, but that of the last renewal.

A caveat affords no legal protection for an invention excepting as a notice to the government of the possession of such an invention. It cannot be sued upon; and the invention may be manufactured with impunity.

In order to protect an invention it is far better to patent so much of it as is complete, and then take out other patents for the improvements that may be necessary, rather than to wait till the invention is perfected in all of its details. But circumstances, such as the necessity of secrecy, may indicate the advisability of a caveat at some times.

VIII. GENERAL OBSERVATIONS.

As already stated on page 14 there is no inherent natural right to the exclusive manufacture, use and sale of an invention; but the right is created and secured by statute, and can be acquired only upon compliance with the statute. While an application for a patent is pending the invention can be made

and sold, and marked "Patent applied for," but this affords absolutely no protection against infringers. After the patent is granted, then the patentee is in possession of means for asserting and defending his exclusive right to the manufacture, sale and use of his invention, but even then he must mark his goods "Patented" and give the date of his patent, plainly exhibited on the goods, or where this is not practicable, he must give the same information on packages containing the goods. In other words, he must put his goods on the market with the information as to the fact and date of patenting expressed on them. This should be done also of designs. As to trade-marks, labels or prints, and copyrights, the fact and date of their registration must be plainly exhibited upon them. As to trade marks, the statute does not specifically prescribe any form of notice of registration.

As to labels, the notice, according to a recent decision, must be in either of the following forms :

- (1) "Entered according to act of Congress in the year _____ by _____ in the Patent Office at Washington," or
- (2) "Copyright, 18—, by _____"

A patent or registration is on its face evidence of ownership and validity, but both facts may be controverted in court. The government does not guarantee any right, but simply issues its letters-patent or certificate as a *prima-facie* good and valid deed for the right therein stated. The grantee sets up a claim, and the grantor finds the claim just according to law and issues its letters-patent or certificate therefor, and there the duty and responsibility of the government end.

Purchasers of patents, thus it will be seen, should investigate the validity of their patents before embarking in manufacturing. Indeed, patents ought

never be bought without a rigid scrutiny as to their validity.

With respect to the Convention for the Protection of Industrial Property, I hardly like to risk my reputation on a statement. Apparently the inventors of the United States receive no benefit from it. I have already marked out the course safest to pursue, namely, wait until the United States application is allowed, and then arrange to file the foreign patents so that they will date the same as the United States patent. This, almost always, can be done. In connection with this Convention the Commissioner of Patents published in the Official Gazette of October 18, 1887, (Vol. 41, pages 355-356) a paper which he states was "Prepared as a general reply to inquiries to the Patent Office" on that subject. The following is the essential portion of this paper of the Commissioner:

"No intelligent consideration of the convention is possible except on the basis of the European patent systems to which it is adapted. The substance of the convention is in Article 4. This article proposes that patents shall bear a common date in the several contracting states, so that neither of them may be vitiated by the prior grant of another. Proceeding on the supposition that the date of depositing the application is the date from which protection runs, which is substantially true of European patents generally, it allows an applicant in any state a period of six months from the date of filing his application, within which he may file it in any other state, and declares that during that period he shall have priority, and that his rights shall not be invalidated by any publication or public use by other parties occurring during the interval. The result of this arrangement is that all applications thus made under the terms of the convention are treated as if filed at the same time in all the states, and the patents granted upon them bear the same date. None is anterior and none can vitiate another. The period of six months is extended to seven months for countries beyond the seas. This provision is quite outside of the United

States system, since in it priority in making an application is of comparatively little moment and does not determine the grant or its date. In applying it to our system there appears to be no benefit to an alien applicant, except that of an earlier date of filing in case an interference arises. It cannot possibly lead to the grant of a patent of simultaneous date with that granted at home, because the date of the grant is not governed by that of filing the application; and it leaves the patent, when granted, subject to the restrictions as to its term imposed by section 4887 Revised Statutes. American inventors desiring protection in the other contracting states must deposit their applications within seven months from the date of filing them at home, if they are to avail themselves of the benefit of the treaty. But since foreign patents bear the date of the applications on which they are granted, the inventor takes the risk of thereby having his home patent abridged in its term by the existence of a prior patent abroad.

“Other practical difficulties arise in attempting to adapt the terms of the convention to the conditions of the American patent system. The secrecy maintained in the United States Patent Office regarding an invention described in a pending application is unveiled by reason of the disclosure abroad, creating conditions which may greatly embarrass the inventor and delay the grant of his patent. An American patent granted to an alien who has previously taken out his patent abroad is in most cases greatly restricted by reason of the rigid examination into novelty which the application undergoes in this country. Often it is for a mere fraction of the alleged invention covered by the foreign patent, and serious questions may arise as to the identity of the two.

“The patent systems of Europe and the United States differ so widely both in principle and practice that any treaty arrangement for harmonizing them is apparently impracticable. The present convention, looked at from either side, appears to offer no advantage either to aliens wishing to protect their inventions in this country or to citizens of the United States seeking the same protection abroad. As between the states of Europe, with their closely-assimilated patent systems, it may be of value; but it fails entirely when applied to ours.

“Regarding trade-marks, there is no such wide divergence between our system and those of European states as to make a treaty concerning them incompatible. Nevertheless there is

doubt as to the feasibility of carrying out some of the provisions of the present convention relating to them. The provision of Article 6, that every trade-mark regularly deposited (registered) in one of the contracting states shall be admitted to deposit, and so protected, in all the others, seems to have the effect to make the laws of this country subordinate to those of every other contracting state, and to bind the Commissioner of Patents to govern his conduct by the practice of other countries and the adjudications of other tribunals than those of the United States. The provision of Articles 9 and 10, for seizure of goods bearing illicit trade-marks, though consonant with the laws of many countries of Europe, is at variance with American trade-mark law, and can only become operative by virtue of federal legislation.

“In order to carry out the provisions of the convention the action of Congress will be necessary in several particulars, and some changes will be required in the rules and practice of the Office.”

The following countries adhere to this Convention, viz:—The United States of America, Belgium, Brazil, France, Guatemala, Italy, the Netherlands, Portugal, Salvador, Servia, Spain and Switzerland.

HINTS TO INVENTORS.

Some years ago I published and circulated freely a circular embodying substantially the following points, and I have reason to believe it will not be amiss to reproduce it here.

1. In inventing anything, be it a machine, compound, process, or other thing, *be particular* in preserving some evidence by means of sketches, models, or written descriptions, with the dates carefully marked, and, if possible, attested, of the first thoughts or conception, and experiments in the matter. You may require such evidence in case of interference in the Patent Office, or trials in court.

2. Preserve all your experiments in their original shape if possible. These are the best facts in developing the history of your invention in case of litigation.

3. When your invention has arrived at that state of perfection that it requires only the knowledge of one skilled in the art to which it appertains to put it into marketable shape, then apply for a patent.

4. Do not attempt to prepare your own papers for the application for a patent.

On this head I will simply quote Rule 17 of the Rules of Practice in the United States Patent Office:—

“17. Any person of intelligence and good moral character may appear as the agent or the attorney in fact of an applicant, upon filing a proper power of attorney. As the value of patents depends largely upon the careful preparation of the specifications and claims, the assistance of competent counsel will, in most cases, be of advantage to the applicant; but the value of their services will be proportionate to their skill and honesty, and too much care cannot be exercised in their selection. The office cannot assume responsibility for the acts of attorneys, nor can it assist applicants in making selections. It will, however, be unsafe to trust those who pretend to the possession of any facilities except capacity and diligence for procuring patents in a shorter time or with broader claims than others.”

The rule might have added, that, in view of the strictness and technical character of the practice in the Patent Office, and the current tendency of the courts to construe patents narrowly so as to limit them to just what is shown and described if there be in the patents any hint in that direction, it is now even more than ever necessary to exercise great care in selecting skillful and honest attorneys.

5. After the application is allowed, pay the final government fee (\$20) *at once*, and thereby save possible delays (as by interference, etc.) in the issuing of the let-

ters-patent; but if it is intended to take out foreign patents, this payment should be delayed, as a prior patent or publication elsewhere is a bar to the grant in some countries.

6. Never buy a patent, nor any interest therein, without first obtaining a knowledge of its validity, and whether or not the title is clear. Pursue the same course in purchasing patents as you would with respect to real estate or other property.

7. In employing a patent solicitor it is well to remember that one doing business in Washington has many facilities not possessed by those in other cities, not the least of which is the fact of his daily presence in the Patent Office, by reason of which, and his personal contact and interviews with Examiners and other officials, he is enabled to avoid most of the delay incident to correspondence.

SUMMARY AND ADVERTISEMENT.

Patents are granted for 17 years to the first and original inventor or discoverer of any new and useful art, machine, manufacture, or composition of matter, or improvement therein. In case of the death of the inventor, the application may be made by or the patent granted to the executor or administrator. *Government fees*, \$15, payable on making the application, and \$20 within six months after the allowance of the application. *Agency fee*, generally \$25, in advance. Models are no longer required to be filed with applications for patents, but they are sometimes called for by the Examiners in the examination of the case.

Designs: Patents are granted for 3½, 7, and 14 years for new and original designs or configurations in metal, wood, stone, cloth, and other manufactures, and for

busts, statuary, etc. *Government fees*, for 3½ years, \$10; for 7 years, \$15; for 14 years, \$30. *Agency fee*, \$10 to \$20, in advance.

Reissues, to cure defects in existing patents, can be obtained on payment of a *Government fee* of \$30. *Agency fee*, usually \$30, in advance.

Disclaimers: Whenever a patent is found to be too broad, or to cover more than the patentee is legally entitled to as the first inventor, he, his heirs or assigns of any interest, may enter a disclaimer of that portion to which the patentee is not entitled, whereby the defect in the patent is cured without the necessity of reissuing. *Government fee*, \$10. *Agency fee* \$15.

Caveats for experimental or incomplete inventions can be filed in the secret archives of the Patent Office, remaining in force one year, on payment of a *Government fee* of \$10. They entitle the person filling them to a notice of any application covering a similar invention made in the Patent Office within the year. Caveats may be renewed yearly by paying the *Government fee* of \$10. For preparing caveats the usual *agency fee* is \$15.

Trade-marks are registrable for 30 years on payment of a *Government fee* of \$25. *Agency fee*, \$10 to \$20. Twelve copies of the trade-mark are to be furnished by the applicant; or he may make a drawing of the trade-mark and the Patent Office will furnish photo-lithographic copies; but this latter is only possible when the drawing is made solely in black.

The act of March 3, 1881, limits the registration of trade-marks to those used in commerce with the Indian tribes and foreign nations. Trade-marks registered under the act of July 8, 1870 (which act has been declared by the U. S. Supreme Court to be unconstitu-

tional and registrations thereunder worthless), can be re-registered under the act of March 3, 1881, without additional Government fee. *Agency fee*, \$10.

Labels or prints for use on various commodities, can be registered in the Patent Office on payment of the *Government fee* of \$6 and furnishing seven copies for use in the Patent Office and my office. The registration is in force for 28 years. *Agency fee*, \$5.

For registering copyrights, I charge \$5 in full.

Preliminary Examinations: Before applying for a patent, I advise that an examination be made to ascertain if the invention is probably new and patentable. For this purpose send me a sketch, or better, a model and description of the invention, and \$5, and I will make such examination and report at once, with all necessary information as to the state of the art, giving my opinion as to the patentability of the invention. This examination, however, is not guaranteed to be exhaustive of the state of the art to which the invention relates, for the following reasons: 1. The fee charged is not sufficient to cover the time necessary to make it such. 2. The accessible records in the Patent Office from which it is made, namely, the classified drawings in the Draftsman's Division of the Patent Office, are not always reliable as complete exhibits of the classes of invention, because drawings are constantly being removed therefrom for use throughout the Patent Office. 3. The said records are not complete to date. 4. Publications and foreign patents are not included, they being recognized by the profession as subjects for separate examination. Obviously, therefore, this examination can only give a *probable* result, but it is generally reliable.

This examination is made with the utmost care, and

with a sincere purpose and earnest effort to obtain all the information necessary to enable one to determine whether or not the invention is patentable, subject, nevertheless, to the herein named qualifications.

The question of infringement is not investigated in such preliminary examinations, and only considered incidentally, if at all, it not necessarily being involved in the question of patentability, and is at all times a subject for separate search. Caveats and pending applications being kept in the secret archives of the Patent Office, for that reason cannot be examined.

If the inventor decide after such report to make an application for a patent, he will send the first Government fee (\$15) and I will prepare the case.

I prepare all the papers of applications and forward them to the applicant for inspection and execution.

I give *personal* attention to all matters intrusted to me, and guarantee prompt and faithful service.

Validity, assignment, and other searches carefully made, at reasonable rates for time and labor. Assignments, licenses, agreements, etc., prepared. Interferences conducted. Foreign patents procured.

I beg leave to call attention to the following, viz: I ask but one fee of an applicant for a patent, and this covers the preparation of the papers and drawings of the case and its prosecution if rejected; and this fee will be agreed upon before starting the case. No extra or additional fee is demanded ordinarily, should the case require amending.

For conducting appeals and interferences, extra fees will be charged, as may be agreed upon.

The appeal fees fixed by law, and charged by the Patent Office, are \$10 to the Board of Examiners-in-chief, and \$20 to the Commissioner of Patents in per-

son. These fees apply alike to applications and in interference cases. The agency fees vary, and are fixed by mutual agreement between the client and his attorney before the appeal is taken.

Interference cases end with the Commissioner, but applications for patent, when refused by the Commissioner, are appealable to the Supreme Court of the District of Columbia. Failing to get the patent by any of these means, recourse may be had by bill in equity. Costs vary with the size of the record, etc.

The costs of an interference vary with the nature of the case, and the kind and quantity of opposition. The record (testimony, etc.) and briefs must be printed. Each party to an interference, and to all appeals, bears his own costs, and has no recovery from his opponent.

FOREIGN PATENTS.

Foreign patents possess a two-fold value: 1st. If applied for before the grant of the United States patent as hereinbefore explained, they prevent some one either here or abroad from pirating the invention and securing the foreign patents in his own name or right, as he can do in most foreign patent-granting countries; and 2d. It frequently occurs that patentees are able to sell their patents at good figures. Even should the sale amount to simply a fair profit on the cost of taking out the patent, the patentee is just that much clear money in pocket.

In all foreign countries excepting Germany, Norway, Sweden, and Denmark, no examination is made such as here, but the patent is granted as applied for. As a rule—to which there are several exceptions—the patent takes its date from the day of application, though the

actual issue of the patent is delayed as long as nine months and more.

Again, in all foreign countries excepting Canada, the life of the patent is subject to annual taxes; and also in many countries to a provision requiring a "working" of the invention in the country. This "working" is surrounded by many legal technicalities in the various countries, but as a rule, if the manufacture of the article be begun in the country, that fact, and the payment of certain fees will satisfy usually the law.

All foreign countries, except France, permit the importation of the patented articles; and under the provisions of the Convention for the Protection of Industrial Property, the countries adhering thereto may import freely from one another.

Foreign patents in or on their grant express the terms and conditions on which the letters-patent are granted, and thus the grantee of a foreign patent, by the instrument itself, is fully advised as to what are the duties devolving upon him in order to keep alive the patent. Such patents notably state the amount of taxes to be paid and when payable. If these taxes are transmitted through my agency, I add a fee to each payment, varying from \$5 to \$10 in different countries.

It would serve no useful purpose to give all the details concerning foreign patents, and hence I deem it necessary only to give a tabulated statement which explains itself. The costs mentioned include both agency and government fees, and the first taxes.

Following is the table:—

EUROPE.

<i>Country.</i>	<i>Maximum term of Patent.</i>	<i>Minimum Cost.</i>
England	14 years, Provisional and completing same	\$60.00
	Complete application at start	60.00
Austria	15 years, Patent—1 year	60.00
Hungary	3 years	85.00
	5 years	110.00
	10 years	235.00
	15 years	456.00
Belgium	20 years, Application for Patent	40.00
	Application for Certificate of Addition	40.00
Denmark	10 years, Application for Patent	70.00
Finland	15 years, Application for Patent	200.00 to 450.00
France	15 years, Application for Patent	65.00
	Application for Certificate of Addition	55.00
Germany	15 years, Application for Patent	60.00
	Application for Certificate of Addition	60.00
Greece	15 years, Only granted by special legislation	300.00 to 2,600.00
Italy	15 years, Application for Patent—1 year	55.00
	Application for Patent for full 15 years	120.00
	Certificate of Addition	60.00
Luxemburg	15 years, Application for Patent	50.00
	Application for Certificate of Addition	50.00
Norway	15 years, Application for Patent	60.00
	Application for Certificate of Addition	60.00
Portugal	15 years, Application for Patent—1 yr.	125.00
	Application for Patent for full 15 years	250.00
	Application for Certificate of Addition—1 year	100.00
Russia	10 years, Patent of Invention—3 yrs.	150.00
	5 yrs.	175.00
	10 yrs.	350.00
	Patent of Importation 1 yr.	150.00
	3 yrs.	200.00
	6 yrs.	260.00
Spain	20 years, Application for Patent	70.00
	Application for Certificate of Addition	70.00
Spain and Colonies	20 years, Application for Patent	80.00
Sweden	15 years, " "	90.00
	Application for Certificate of Addition	90.00
Turkey	15 years, Application for Patent	175.00
	Application for Certificate of Addition	140.00

BRITISH COLONIES.

<i>Country.</i>	<i>Maximum term of Patent.</i>	<i>Minimum Cost.</i>
British India.....	14 years, Application for Patent	\$150 00
British Guiana....	14 years, " "	350.00
British Honduras..	14 years, " "	225.00
Canada	15 years, " "	50.00
Cape Colony	14 years, " "	140.00
Ceylon	14 years, Application for Patent where English Patent has been obtained	175.00
Ceylon	14 years, Application for Patent where no English Patent has been obtained	230.00
Hong Kong	14 years, Application for Patent	200.00
Jamaica	14 years, " "	250.00
Leeward Islands..	14 years, " "	310.00
Mauritius.....	14 years, " "	210.00
Natal	14 years, " "	150.00
New Foundland ..	14 years, " "	200.00
New South Wales..	14 years, " "	125.00
New Zealand.....	14 years, " "	125.00
New Zealand.....	14 years, Application for Letters of Registration	150.00
Queensland.	14 years, Application for Patent	125.00
South Australia ..	14 years, " "	150.00
St. Helena	14 years, " "	175.00
Straits Settlements	14 years, " "	165.00
Tasmania	14 years, " "	150.00
Trinidad	14 years, " "	185.00
Victoria	14 years, " "	130.00
Western Australia	14 years, " "	225.00

SOUTH AMERICA.

Argentine Repub.	15 yrs., Application for Patent—5 yrs.	225.00
	" " 10 yrs.	350.00
	" " 15 yrs.	470.00
Brazil.....	15 yrs.	175.00
Chili	10 yrs.	300.00
Ecuador	15 yrs.	275.00
Peru	10 yrs.	350.00
U. S. of Colombia.	20 yrs.	210.00
	" " 5 yrs.	210.00
	" " 10 yrs.	275.00
	" " 15 yrs.	350.00
Uruguay	15 yrs.	425.00
Venezuela	15 yrs.	600.00
	" " 5 yrs.	600.00
	" " 10 yrs.	1,100.00
	" " 15 yrs.	1,600.00

MISCELLANEOUS.

Hawaii	10 yrs., Application for Patent.....	175.00
Mexico	10 yrs. " "	300.00
Orange Free State.	15 yrs., Application for Patent (with minimum tax).....	\$800.00 to 3,800.00

FOREIGN TRADE-MARKS AND DESIGNS.

The registration of trade marks and designs is confined to those governments which extend like privileges to the others. Conventions or treaties for effecting such registrations exist between the United States and the following governments, namely: Austria-Hungary, Belgium, Brazil, France, German Empire, Great Britain, Italy, Russia, Servia, Spain, Switzerland, and the Netherlands, in addition to those adhering to the Convention for the Protection of Industrial Property mentioned on page 26, not included in the above list.

The costs of registration vary largely in the different countries. From \$25 to \$50 would be minimum fees.

WILLIAM H. FINCKEL,

Solicitor of United States and Foreign Patents,

NO. 637 F STREET, N. W.,

Washington, D. C.

P. O. Box 368.

[PRACTICING SINCE 1869.]

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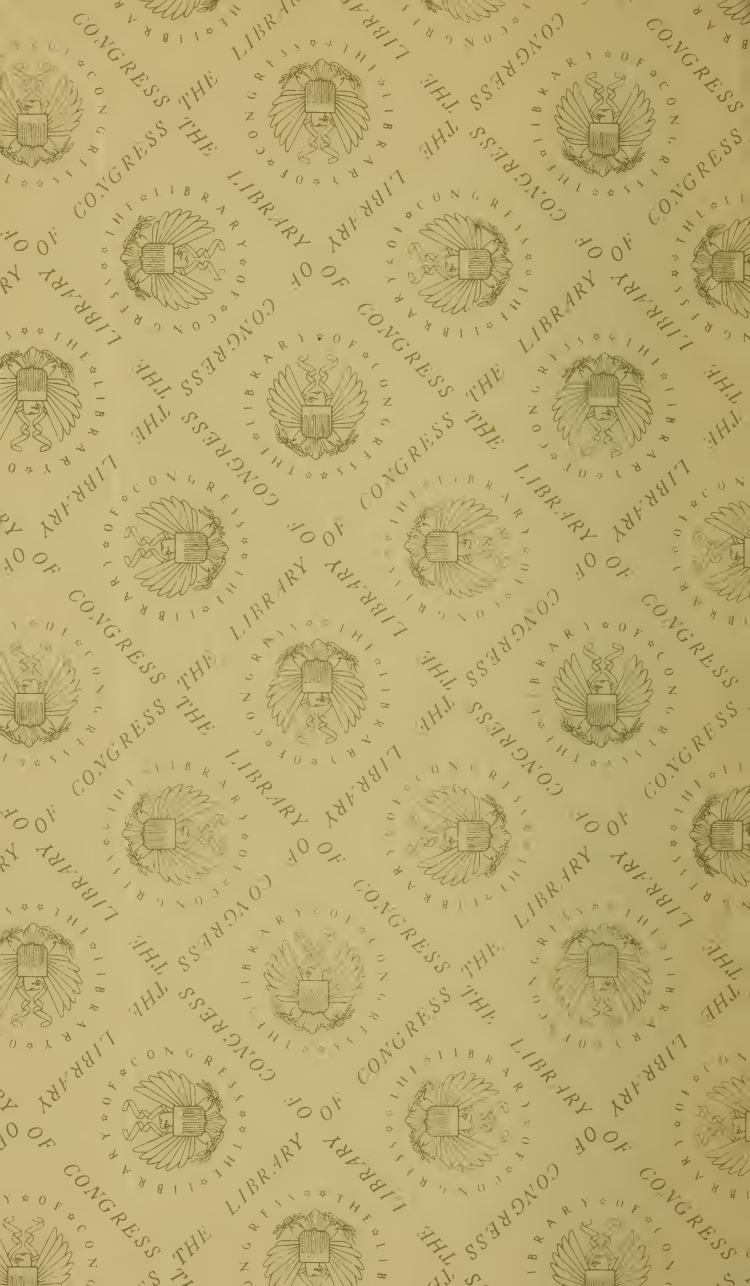
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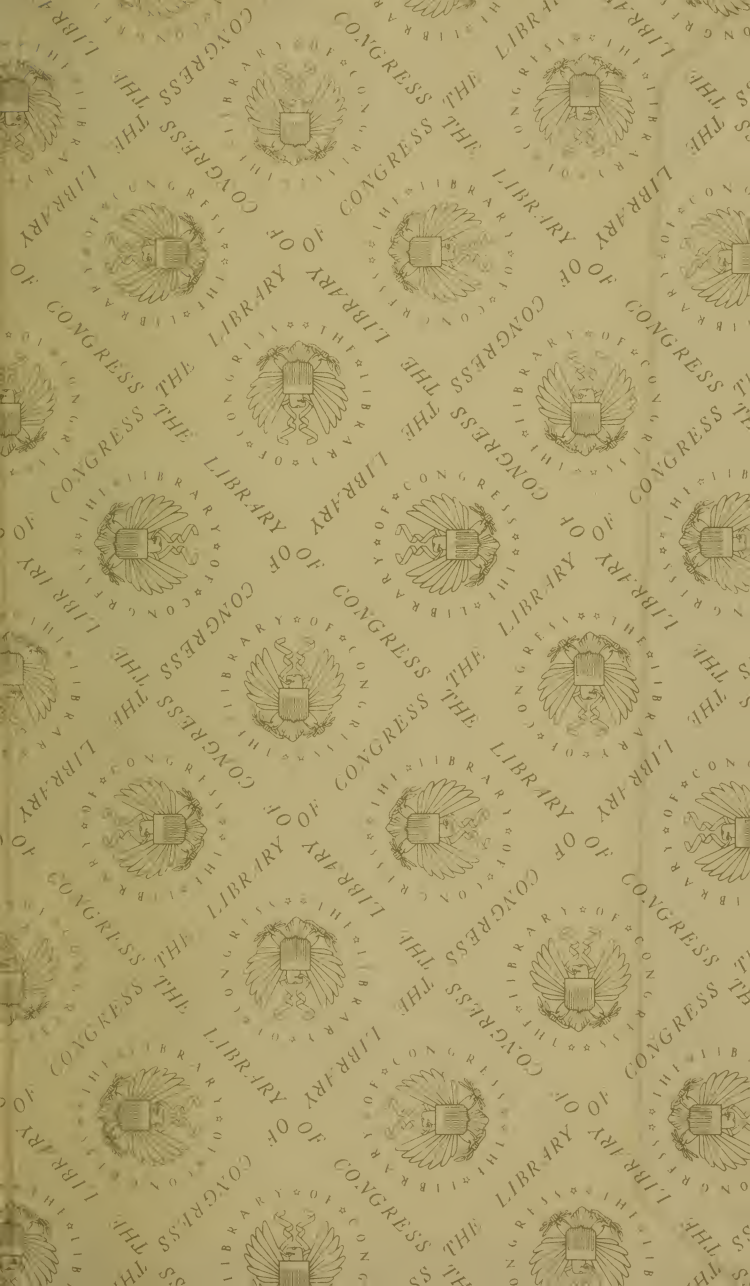
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