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PART I

THE HISTORY OF MUNN & CO.

FROM its very inception the *Scientific American* has been closely identified with the American inventor, for as it was then the only scientific journal of the kind in this country, its offices soon became a meeting place for inventors. Even in the earliest days its editors were consulted by many of those of its readers of inventive mind who needed advice, either practical or legal, and sought instruction regarding the commercial exploitation of their creations, the obtaining of assistance in the development of their inventions, and lastly and most frequently, the safeguarding by patent protection of their contributions to the advancement of civilization. From this intimate relation sprang the necessity of creating a special department for inventors, a department to give advice on the patenting of inventions and on the patent law.

From the beginning this department proved to be the most successful patent bureau ever established. It was with a full realization of the great *service* to inventors which could be rendered thereby, that the publishers of the *Scientific American* created it, and its successors today, in unbroken line and after three-quarters of a century of conscientious, enlightened service, are carrying on the work initiated almost contemporaneously with the establishment of the *Scientific American*. While to the average layman a patent, after an invention has been made, is something obtainable by purchase like any other commodity, the initiated understand that there are patents and patents, that a patent is more than a somewhat imposing-looking document with a handsome seal attached thereto, and that unless a patent application is formulated and prosecuted to issue with every care, skill, technical and legal knowledge and experience, the applicant's creative contribution to the arts and sciences may very possibly fail to receive even a measure of the safeguard to which it is entitled. This has been and is today the keynote of the practice of Munn & Co.—securing for the inventor at any cost of time and labor that full meed of protection which his advancement in the art warrants, and at as moderate an expense to him as possible. For seventy-eight years that has been the policy of Munn & Co., and it is with a feeling of honest and withal modest pride that

they therefore lay claim to a position as a real servant of the public.

It can be said truthfully that there is no field of human endeavor, no phase of applied knowledge, which the practice of Munn & Co. has not touched. The thousands of inventors who have sought their services in the securing of patent protection, have striven to create improvement in practically every known art and science, and each has contributed his share, whatever it may have been, to the establishment of what is today the acknowledged fact, that three-quarters of the industrial wealth of the United States is based directly or indirectly on patent rights. An historical chronicle of Munn & Co. would be in a great measure a recital of the story of the American inventor, and would be a fascinating account involving many of the great figures of modern invention.

SERVICE

IN recent times there has come a clear comprehension both to the business man and to the professional man, that he sells to the one who purchases from him, be it merchandise, experience or specialized knowledge, not only that particular vendible commodity, but something more, an intangible something which for want of a better term is designated as "service." And modern methods and modern efficiency have demonstrated that the success of a commercial or professional enterprise can be measured exactly in the degree that "service" is rendered. For decades past Munn & Co. have realized this principle thoroughly, and it has been the firm's constant endeavor not only to perform for its clients the professional work called for, but in addition, to render to the fullest possible extent that "service," without which complete satisfaction cannot be attained.

"Service" means care, thoroughness and attention; it means courtesy and unremitting effort. Service stands for placing the client's best interests first under all conditions, for giving him full value *and more* for the fees he pays, for building up good will that can be created in no other manner. In this sense Munn & Co. render "service" to their clients, and in this spirit the firm has conducted its work during three-quarters of a century and more. And in carrying out this policy we have at all times tried to make our relationship to our clients as personal as possible. The members of our staff are selected not only with their professional qualifications in view, but also with close regard to the characteristics of personality. Our staff is composed of men experienced in the mechanical, electrical and chemical fields, thoroughly equipped by training and experience to prepare and prosecute all patent applications, irrespective of the complex nature of the subject matter involved or of the specialized, technical, or scientific knowledge required. Therefore, we feel that we are in

a position to advise our clients as to the best and most comprehensive method for the protection of their various forms of COMMERCIAL PROPERTY, and we are particularly equipped to serve them relative to the different forms of procedure necessary for such protection falling within the scope of the Federal Statutes. Commercial property, broadly speaking, and in the sense in which we have used the term, comprehends any intangible property upon which an action may be maintained for the enforcement of rights thereunder. We also have associates throughout the world who assist in the prosecution of Patent and Trade-Mark applications in all foreign countries.

Should an inventor not have the time to read this booklet, or if the circumstances *attending his case are such* that the following pages do not give him the special information which he desires, in such case it is only necessary for him to write to us and describe his invention. Upon receipt of this information, we will immediately and fully reply to him, explaining just what steps should be taken for the proper protection of his interests, and advising him regarding his particular invention.

SECURITY

INQUIRY is often made of us by new or prospective clients as to what security they have that their communications to Munn & Co. will be faithfully guarded and will remain confidential. Our answer to all such questions is that the client has no security other than our established integrity, based upon a most extensive practice before the Patent Office, of more than seventy-seven years. Our clients are numbered by the hundreds of thousands, and are to be found in every town and city of the United States. Such a thing as the betrayal of a client's interest never has occurred in our generations of practice, and is not likely to occur. Satisfactory information as to our reputation and standing can be ascertained from any bank or large business house in your own neighborhood.

WHAT IS A PATENT?

APATENT is a franchise. It is a contract between the patentee and the United States Government, under the terms of which the Government grants to the patentee an exclusive monopoly of the subject-matter invented, and covered by the patent, for a term of seventeen years. The consideration for this grant to the patentee is the making public of the invention by him, so that at the end of the seventeen-year period of monopoly the invention becomes public property and can be utilized by all. The underlying purpose of our patent laws is to induce inventors to make public their improvements in any "new and useful art,

machine, manufacture or composition of matter," and thereby to prevent these inventions from being kept secret by the originators, in the endeavor to profit thereby. A patent is a purely artificial, statutory creation. No inventor has any personal exclusive right in his invention, at common law. Patents are property, and the owner of a patent is both legally and equitably entitled to the same protection for that property that the owner of any other kind of property may enjoy.

The patent itself must embody a disclosure of the invention sufficiently full and complete to enable "one skilled in the art" to understand the invention thoroughly and to be able to reproduce or utilize it. "One skilled in the art" is an imaginary personality, and really means nothing more than one capable of comprehending the particular invention of the patent. The disclosure in the patent usually consists of a drawing and a specification respectively depicting and describing the invention. In certain cases, drawings are not necessary, and a verbal disclosure alone is sufficient, for example, where the invention consists of a composition of matter. The particular improvement or advance in the art, which is covered by the patent, is set forth in one or more claims appended to the specification. These claims constitute the compliance with the statutory requirement that the applicant "shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention." A patent claim is probably one of the most difficult and important expressions formulated in the English language. It must be terse and succinct, it must set forth the invention and no more in order that the patent may not be unnecessarily limited, it must be clear and complete, and it must not be vague or indefinite. Only long experience, and the skill of the patent solicitor, make possible the drafting of patent claims which will meet all of these requirements.

The patent application includes in addition to the drawing, the specification and the claims, a petition and an oath. In some cases, though rarely now, a model is also filed with the papers. The petition is a communication signed by the applicant, and addressed to the Commissioner of Patents, requesting the grant of a patent for the invention described in the application. In the name of the inventor alone, if he is alive and mentally competent, may the application be filed. The oath is a sworn statement by the applicant, to the effect that he verily believes himself to be the first inventor of the invention for which he solicits a patent. It should be remembered that a patent may actually show a great deal more than it covers, for the additional unpatentable disclosure may be necessary in order that the particular or specific improvement, in its operation or its relation to the other elements, may be clearly comprehended. The claims define the invention, notwithstanding that in order to interpret them, reference may be had to the specification, or even to the prior patent art.

"The right of property which an inventor has in his invention is excelled, in point of dignity, by no other property right whatever.

It is equalled, in point of dignity, only by the rights which authors have in their copyrighted books. The inventor is not the pampered favorite or beneficiary of the government, or of the nation. The benefits which he confers are greater than those which he receives. He does not cringe at the feet of power, nor secure from authority an unbought privilege. He walks everywhere erect, and scatters abroad the knowledge which he created. He confers upon mankind a new means of lessening toil, or of increasing comfort; and what he gives cannot be destroyed by use, nor lost by misfortune. It is henceforth an indestructible heritage of posterity. On the other hand, he receives from the government nothing which cost the government or the people a dollar or a sacrifice. He receives nothing but a contract, which provides that for a limited time he may exclusively enjoy his own. Compared with those who acquire property by devise or inheritance; compared with those who acquire by gift or marriage; compared with those who acquire by profits on sales, or by interest on money, the man who acquires property in inventions, by creating things unknown before, occupies a position of superior dignity. Even the man who creates value by manual labor, though he rises in dignity above the heir, the donee, the merchant, and the money-lender, falls in dignity below the author and the inventor. Side by side stand the inventor and the author. Their labor is the most dignified and the most honorable of all labor; and the resulting property is most perfectly theirs.”—Walker on Patents, section 152.

TERM OF PATENT

UNITED STATES patents are granted for a term of seventeen years and cannot be renewed or extended except by special act of Congress, which is almost impossible to accomplish, and which has not been done for generations. Patents remain effective unless judicially invalidated, whether the invention is commercially exploited or not. There are no additional taxes or payments required beyond the original cost of securing the patent.

PATENTABILITY OF INVENTIONS

MANY people, both men and women, are, without knowing the fact, potential inventors, and many useful and what would be profitable inventions are lost to the originators because they do not appreciate that which is of commercial value, nor realize that they may have devised patentable inventions. As a matter of fact, invention is almost universal, nearly everyone having the talent in a greater or lesser degree. It will, therefore, be of interest to the reader to consider well any improvements which he may have conceived and may regard as unimportant, in order to determine whether he is not in possession of a patentable

invention from the commercial exploitation of which he may eventually realize handsome returns.

It should be understood that we do not make Preliminary Examinations of the prior art without charge. This service, as is more fully explained on page 12, requires the time and attention of a skilled and experienced searcher, and it is necessary for us to charge a nominal fee of \$5 in simple cases, for making the investigation. If we find from a study of the descriptive data submitted to us that a special "Preliminary Examination" is desirable in order to determine whether there are patentable differences between an invention of our client and the existing art, we so inform him.

Those wishing to consult us in regard to obtaining patents are cordially invited to do so. We are always happy to see our clients in person at our offices or to advise them by letter. In all cases a careful consideration of their inventions, an honest opinion, and a prompt reply may be expected. If a client's occupation or engagements are such that it is absolutely impossible for him to call at our offices during the regular business hours, arrangements can be made by correspondence for an interview at some other time. It will be appreciated, however, that this can be done in exceptional cases only. Our office hours are from 9 A.M. to 5 P.M. every week day except Saturday, and on that day the hours are from 9 A.M. to 1 P.M.

HOW TO APPLY FOR A PATENT

IN order to apply for a patent we need such data as will enable us thoroughly to understand the invention, the form and arrangement of the parts, their mode of operation, and the special advantages of the new features. If the invention is a process or method, or a composition of matter, the information to be submitted must likewise be of such character that all the steps of the process, their order and relation, and the results accomplished are clear, and, in the case of a composition of matter, that all the ingredients, their proportions, etc., can be thoroughly comprehended. It is sufficient if the invention is substantially complete in its main features and theoretically operative; the exact form of the minor mechanical details need not be worked out. We always recommend, for safety, the prompt filing of an application pending the perfecting of the invention; another application may be filed in due course for the perfected invention. Either a model of any convenient size and material, sketches, drawings or photographs will answer, provided they illustrate the invention. Upon receipt of such data, together with instructions to proceed, we shall prepare the official drawings and specifications, formulate the proper claims, and prepare the legal forms to be signed and sworn to.

When inventors are unable to send a model or sketches we can

make arrangements to have an expert draftsman visit the inventor. The expense of this special service will be stated upon request.

COST

OUR charge for professional services for an application is determined by the amount of work involved in the preparation of the official drawings, specification and claims, and the prosecution of the application to a final determination before the Primary Examiner. Upon receipt of either a model or sketches and description of an invention we shall be glad to advise just what expense will be involved to the inventor in making the application. We aim to make the costs as moderate as possible consistent with competent and conscientious service and with every effort to secure complete protection for the patentable features of the invention.

It is our custom to make one charge which covers not only the preparation of the application but also the full cost of the prosecution of the same before the Primary Examiner. While this seems to be the best practice, as it enables the inventor to ascertain in advance just what the expense will be to him, some of our clients prefer to have us make a charge for the preparation of the application and to make additional charges from time to time for amendments and for other services rendered during the prosecution of the case. When the inventor desires us to arrange our fees in this way, we shall be pleased to accommodate him.

To our charge for professional services should be added the first Government fee of \$20, payable upon the filing of the application and the final Government fee of \$20, payable any time within six months after the application is allowed, to issue the patent.

INSTRUCTIONS FROM THE CLIENT

IN order that we may proceed with an application for a patent, we should receive the necessary information, as outlined on page 6, together with a remittance of \$40 on account. This payment is in the nature of a retaining fee and covers the first costs in a simple case. Upon the receipt of the information and the retaining fee, we can immediately prepare the necessary application papers and drawings and send the same to the inventor for examination and execution. The full name, citizenship, residence and Post-Office address of the inventor should be given in each case. The inventor only can apply for a patent under the United States patent laws.

When the papers are returned to us duly signed and ready to be filed in the Patent Office the next payment, completing our charge for professional services and the first Government fee, is due. For directions as to the sending of drawings, models, and remittance, see page 8.

MODELS AND SKETCHES

THE Patent Office does not require models to be furnished when applications are filed, but if they are needed, as in exceptional cases, they will be called for and the inventor duly notified. It is, however, often desirable to have models of a convenient size submitted to us in order that we may be in a position to make proper drawings. We find that as a general rule a model is more satisfactory to work from than sketches; but we do not advise our clients to go to any great expense in the matter, as a sketch will answer equally well, provided it enables us to understand the form, arrangement and operation of the various details of the invention.

It is advisable to include with the sketches or photographs of the different parts of the invention a sketch showing the entire apparatus as set up ready for use. A brief description should accompany the model or the sketches, referring to each part by a separate letter or number. If desired, all models will be returned as soon as the necessary drawings are complete.

Small models can be sent by Parcel Post, but should be carefully packed and the name of the inventor should appear upon the wrapper. Larger models should always be sent by express, prepaid, and no writing or money should be placed in the box. Sketches, Post Office orders or express money orders should be sent to us by mail at either Woolworth Bldg., 233 Broadway, N. Y. City, or 625 F St., Washington, D. C., 801 Tower Bldg., Chicago, Ill., Hobart Bldg., San Francisco, Calif., or Van Nuys Building, Los Angeles, Calif., depending upon which office you wish to handle your case.

RECORD OF INVENTION

IT sometimes happens that an inventor lacks the financial means necessary to file an application for a patent, or has not reduced his invention to such a state of completion that he wishes to apply for a patent. It is on that account that we have established a filing system, wherein inventions of our clients may be recorded and filed until such time as they are ready to proceed with their applications. Therefore, should an inventor desire to avail himself of our facilities in this respect, he should send us a sketch and a full description of his invention, signed, dated and witnessed. These disclosures we will carefully date and mark for identification, and file in our secret archives, where they will be held in the strictest confidence until we receive instructions from the inventor either to destroy the same, or to prepare the necessary application papers. The expediency of keeping, for record, signed and dated disclosures cannot be too strongly urged, as such data are of the greatest importance should a contest ever arise involving the date of conception of the invention. There



For many years we have had an office at 625 F Street, Washington, D. C., and in addition we have, for the convenience of our clients, opened offices at 801 Tower Building, Chicago, Ill., the Hobart Building, 582 Market Street, San Francisco, Calif., and 510 Van Nuys Building, Los Angeles, Calif.

Business directed to any one of the offices will receive the best professional attention.

is absolutely no charge for this service, and the inventor is at liberty to avail himself of this offer at any time.

WHO MAY APPLY

CITIZENS, foreigners, women, minors, executors or administrators of the estates of deceased inventors, and the guardians of insane inventors may obtain Letters Patent of the United States.

FOREIGN INVENTORS

FOREIGN inventors and citizens of the United States, who file a patent application in a foreign country, have one year from the date of the *filing* of the application abroad in which to file an application for the United States patent. Where a design is to be protected, the United States application should be filed within four months of the filing of the first foreign application.

JOINT APPLICATIONS

TWO or more persons may apply jointly for a patent, provided they are in reality the joint inventors of the subject matter thereof. If, however, one person alone is the inventor and the other merely a partner or financial associate, the patent must be applied for in the name of the inventor alone. However, the latter may secure rights to his partner in advance by executing a deed of assignment so drawn that the patent will issue in both names. A patent issued as a result of such an unconditional assignment has exactly the same force and effect as if it were granted to the parties as joint inventors.

It is of the **GREATEST IMPORTANCE** that the true relation of joint applicants should be thoroughly understood by the solicitor in order that he may prepare the papers so as properly to protect the interests of both parties. We wish to impress upon the reader as emphatically as possible that if a patent is issued to two or more individuals as joint inventors and one or more of these joint parties actually did not participate in the invention, the resulting patent is absolutely *invalid* and *ineffective*. If both applicants are true inventors they should both sign the papers, but if they are joint owners merely and one is the inventor, the latter alone should execute the application papers and should assign the proper interest to the other party. The question of joint invention and joint application is also of the very highest significance in connection with interference proceedings, and on more than one occasion a valid claim of priority of invention has been nullified through a mistake in filing a joint application when a single application should have been made. **REMEMBER, ALWAYS RELATE TO THE PATENT SOLICITOR IN COMPLETE DETAIL THE CIRCUMSTANCES ATTENDING AN AL-**

LEGED JOINT INVENTION IN ORDER THAT HE MAY DETERMINE THE PROPER COURSE TO PURSUE.

ASSIGNMENTS

WHEN an inventor has not the means to procure a patent, he can usually find a partner among his friends or the business men in his neighborhood, who will advance the necessary fees. In consideration of the payment of such fees it is usual to give a part interest in the patent, and an assignment covering such interest can be prepared and filed in the Patent Office, with the application papers. In that case, the patent will then issue to both parties jointly. The law allows an inventor to sell and assign his invention, either before he has applied for the patent, or after the same has been applied for, or after the patent has issued. He may sell or assign any portion, such as one-fifth or one-half interest, or the right or the rights to any town, county or state. If assigned before the patent is granted, the purchaser will enjoy his rights under the patent whenever it is issued.

When an undivided interest in a patent is assigned without any restriction or condition, the assignee, however small his interest, may proceed to manufacture and sell the patented articles, without giving any accounting, or dividing any of the profits with the other owner or owners of the patent. It is also possible for such an assignee to sell and assign a portion of his interest in a patent, with the result that the second assignee may manufacture and sell, as well as the assignee to whom the inventor transferred his interest. However, the assignment may include conditions which will obviate the above-stated possibilities. In fact, the assignment may contain clauses to the effect that neither party shall have the right to affect his interest in any way whatsoever, except with the written consent of the other party, and, furthermore, that the invention and the patent to be granted and issued thereon, are to be exploited jointly by the parties and for their mutual and joint interest, and that any profits accruing are to be divided share and share alike, or otherwise, as may be desired. It is always necessary, for the proper preparation of deeds of assignment and similar instruments, that the attorney be advised as to the exact conditions which the parties have agreed upon, and any other particulars of interests in the premises.

A deed of assignment of a patent, or a part interest in a patent, should be recorded in the Patent Office at Washington, within ninety days of its execution. Those who desire to have deeds of assignment prepared and recorded should state the full names and residences of the parties, the interest to be conveyed, the title of the invention, and, if already patented, the date of the patent; also \$5 should be remitted to cover the charge for professional service

in preparing simple deeds of assignment. This amount includes the official recording fee.

PRELIMINARY EXAMINATION

A PRELIMINARY examination is a special search made by us in the Patent Office at Washington, among existing United States patents only, covering inventions of the same kind as that of our client, to determine whether any patent has been issued which would preclude our client from securing the grant of a patent on his invention. On completing the examination, we prepare a report stating what patents have been found, which most closely resemble the invention submitted, and we forward to our client copies of these patents, together with our opinion as to the probability of procuring a patent. Our charge for making a preliminary examination is usually \$5; this includes copies of any patents which we may cite. If the report is unfavorable, the applicant will thus be saved any further expense.

The number of patents issued in the United States is so great, that for the small fee charged for our examination it is impossible to guarantee infallibility in making the search, for there are contingencies against which the most careful searcher cannot guard. It has always been our policy to be conservative in our advice to clients, and to show the inventor, before he proceeds to apply for a patent, the obstacles that he will have to contend with, rather than to urge him to proceed with a case which seems to possess little novelty.

In making preliminary examinations, we endeavor to proceed with all possible thoroughness, without making an extra charge, even when we are examining classes of inventions that involve special difficulties, such as the nature of the subjects or the large number of patents already granted; but in some cases, to make an exhaustive search of the entire art would cost far more than the actual application for patent.

All our examinations are made by persons who have had years of experience in conducting searches of this nature, and who are entirely familiar with the state of the art in question.

The fee paid for a preliminary examination is not applied toward the cost of the patent. It is desirable for the inventor, when writing to us relative to his invention, to state clearly whether or not he wishes the examination made. It should be borne in mind that these searches do not extend to foreign patents, nor to pending applications, the latter being secret and not open to public inspection.

For the purpose of a preliminary examination, our client should furnish us with a sketch and a full and complete description of his invention, together with a remittance of \$5 to cover the cost of the examination.

COMPOUNDS

NEW chemical and other compositions, such as paints, wall plasters, artificial stone, new pavements, roofing materials, fire-proofing and water-proofing substances, and the like, may be patented if new and if they involve invention. A full statement must be given of the ingredients, with the proportions of each, and the manner of mixing and otherwise preparing the composition. Medicinal compositions now are rarely held to be patentable, and frequently the best way to protect such compositions is to adopt a distinctive trade-mark and keep the ingredients secret. We shall be glad to advise regarding this.

DESIGN PATENTS

WHILE we have already stated that the underlying purposes of the patent laws are designed to offer inducements to inventors to disclose their improvements in any new and useful art, machine manufacture or composition of matter, such laws are further designed to promote the production of new, original and ornamental surface ornamentation or shape for an article of manufacture, any pleasing presentation of a utilitarian article in such manner that it is rendered more saleable or acceptable to the purchasing public; as for instance, there are numerous forms of sewing machines or typewriters on the market, the mechanical features of which have been protected by Letters Patent, but the mere design of an ornamental frame cannot be protected under the ordinary form of mechanical patent, but can be protected under the Design Patent Act as a new, original and ornamental presentation of an article of manufacture, and such ornamentation of the parts tends to increase the sale of the article, as it is more pleasing to the eye, such enhancing or beautifying elements forming proper subject-matter for design patent and rendering the complete article capable of complete protection. In other words, a design patent permits the introduction of beauty and grace into the utilitarian form of any ordinary commodity, be it a machine or an article of manufacture.

Design patents are more particularly granted for any new, original and ornamental figure, shape or pattern, for prints or fabrics of any kind to be woven, printed, cast, or otherwise placed on or worked into any article of manufacture; also for any new bust, statue, alto-relievo, or bas-relief. The object of the design patent law is to afford protection for articles of manufacture having an esthetic or artistic value. If the design is deemed to be a work of the fine arts, however, it will be necessary to secure protection by a copyright and not by a design patent. We shall be happy to give our opinion as to which form of protection is desirable or essential. The scope of the design patent law is very broad in respect to the protection which it is possible to obtain

for artistic designs for articles of manufacture. In a number of instances large business interests have been built up with a design patent or patents for a basis. This is in a great measure due to the very liberal laws now in force against the infringers of this class of patents. Where a foreign application for protection for a design has been filed, the United States application should be filed within four months of the filing abroad.

Design patents are issued for three different periods; the cost of an application on a simple design for a 3½ year patent is \$40.00; for a 7 year patent, \$45.00; and for a 14 year patent, \$60.00. These fees include our charge for professional services as well as the Government fees. It is customary to present an application for the shortest term, and after it has been favorably considered, but before the actual date of allowance, an extension can be made to either one of the longer terms upon the payment of the additional Government fee for the corresponding term, which for 7 years would be \$5.00 and for 14 years \$20.00 additional.

FILED APPLICATIONS

AS soon as the application is filed in the Patent Office, the inventor is protected against the grant, without his knowledge and an opportunity to contest the question of priority, of a patent for the same invention to another person. The official receipt issued by the Patent Office will be sent to the inventor directly after the case is filed.

When an application is filed, it receives, in its due turn, an official examination. As a result of this examination the Patent Office Examiner in charge makes such objections and cites such references to prior patents as he may think proper. These references are carefully examined by us, and after thorough consideration we use our best endeavors, by written and, if necessary, oral argument, to overcome or avoid the objections raised by the Examiner, and procure the allowance of the application. If desired, the applicant's answer to an official action may be delayed for a period of one year. On the second hearing before the Examiner, new objections and new references are often cited, and further time and labor are then required on our part; and so on perhaps for a third or fourth hearing. It will thus be seen that the work of prosecuting the case, while before the Patent Office Examiner, is frequently very arduous and involves much time and labor; but the cost of the prosecution is included in our charge for professional services already mentioned. *We spare no pains at any stage of the prosecution of an application in our effort fully to protect all the novel features of our client's invention and to safeguard his interests to the fullest possible extent.*

When the Patent Office has decided to grant a patent, we send a notice to our client stating that the application has been "allowed,"

and that the patent will be printed and issued about four weeks after the payment of the final Government fee of \$20, to which reference has already been made.

The applicant may pay this at once and have the patent issued without delay, or he may wait six months before making the payment. During this period the American inventor has an opportunity to file foreign applications before the United States patent issues, should he have failed to file the corresponding foreign applications within one year from the date of filing in the United States.

REJECTED AND DEFECTIVE CASES

WE give prompt attention to the prosecution of cases that have been filed by the applicants themselves or by other attorneys and have been rejected by the Patent Office, or which, through improper preparation or the failure to present proper legal and technical arguments, have been delayed. Our charges for services in connection with such work are moderate, and we shall be pleased to quote the same upon request.

It should be borne in mind by the inventor that no additions or material changes can be made in an application after the same has been filed in the Patent Office. Therefore, the applicant should be careful that the solicitor has complete data relating to the invention at hand, so that he may include in the original disclosure of the specification and claims all the essential details of the invention.

RENEWAL OF LAPSED CASES

WHERE an application has been officially allowed and the inventor has failed to pay the final fee within the six months permitted by law, so that his patent may issue, the application will be deemed to have lapsed. In order to revive the case, it will be necessary to renew the application. Should the inventor desire to renew his application, the first Government fee of \$20 will have to be paid over again, while our charge for services rendered in connection with the renewal of the application is nominal and does not usually exceed \$20 where no additional prosecution is involved. It should be borne in mind that a lapsed application must be renewed within two years after date of *allowance*.

APPEALS

IN the prosecution of an application before the Patent Office, it is often necessary to amend or redraft the claims a number of times, to present arguments setting forth the novel points of the invention, and to state our reasons why the case should be allowed. For such prosecution as already mentioned, we make no

extra charge, as this expense has been included in the original fee for professional services. If, however, the case is finally rejected by the Primary Examiner, and the patent refused, the applicant may appeal from the decision of the Examiner, as follows: First, to the Board of Examiners-in-Chief; secondly, to the Commissioner of Patents; thirdly, to the Court of Appeals of the District of Columbia.

First Appeal.—The Government fee, payable by the applicant on making an appeal to the Examiners-in-Chief, is \$10. Our charge for services in preparing and conducting this appeal is moderate and often in part contingent upon success.

Second Appeal.—From the decision of the Examiners-in-Chief an appeal may be taken to the Commissioner of Patents. The Government fee is \$20, and our fee is dependent upon the nature of the case and the difficulties involved.

Third Appeal.—From the decision of the Commissioner of Patents an appeal may be taken to the Court of Appeals of the District of Columbia. In this instance, too, the fees depend upon the circumstances of the case.

We exhaust, without extra charge, every argument during the prosecution of the case before the Primary Examiner, but if the claims are finally rejected, we do not urge our client to go to the expense of an appeal, unless in our judgment the chances of success are favorable.

INTERFERENCES

AN Interference is a contest or quasi-judicial proceeding instituted by the Patent Office for the purpose of determining the question of priority or originality between two or more inventors claiming substantially the same patentable invention, or between two or more parties claiming the same or conflicting Trade-Marks for the same class of merchandise.

The proceedings in an Interference are wholly apart from the ordinary proceedings to determine patentability, and, in fact, an Interference is not declared until the question of the patentability of the invention has been affirmatively decided. The procedure in Interference cases follows closely the practice of the United States Courts in Equity Proceedings. Priority is usually awarded to the one who first conceived the invention, providing he was diligent in completing the same and reducing it to practice. Actual reduction to practice consists of the construction of a full sized and operative device or apparatus. But as the filing of an allowable application is, under the law, a constructive reduction to practice, the filing of an application should not be unnecessarily delayed.

The preliminary steps required in an Interference are ordinarily not very expensive. But when a case is subsequently vigorously contested by the parties the cost is necessarily material. We attend to Interference proceedings before the Patent Office.

and when necessary take testimony in all parts of the United States.

If an application is rejected upon a patent issued within the two years preceding the date on which the rejected application was filed, and the applicant incorporates in his specification one or more claims similar to the claims contained in the issued patent, and contends that he made the invention before the filing of the application on which the issued patent was granted, an Interference will be declared. In such a case the latter applicant may prevail, but his case must be proven beyond a reasonable doubt. In such an event a patent will issue to the later applicant containing claims which may dominate those of the already issued patent. The latter patent cannot be cancelled by the Commissioner, but as the patentee has not prevailed in the Interference proceedings, he is not the true inventor of the subject matter of the claims in controversy, and his patent as to those claims is of no value or effect.

Interferences occur most frequently, however, between two or more applications pending concurrently in the Patent Office. As a general rule the patent is awarded to the applicant who proves priority of invention. This is not always the case, however, and other important factors come into play which often determine the result of the proceedings. These include for example the diligence of the inventor in supplementing the inventive act by reducing the invention to practice, that is, by producing a physical, operative embodiment of the invention, or the diligence of the inventor in filing his application for Letters Patent after he has created the invention or has reduced it to practice. If no reduction to practice has been made, the filing of the application itself is regarded as a constructive reduction which has the same effect as an actual one. In view of these and other circumstances, it is not always the one who first files his application who succeeds in the Interference proceeding, and frequently the junior party, or later applicant, has the patent awarded to him. However, the burden rests upon the junior applicant to come forward first with his proofs of conception of the invention, disclosure to others, reduction to practice, etc., and for this reason alone it is advisable to delay the filing of the application as little as possible. In addition, the priority of filing is a very important factor in deciding the Interference, regardless of any other considerations.

We take this opportunity of urging upon all our clients the great necessity of preserving original sketches and data of their inventions, and the names and dates of friends or acquaintances to whom the inventions were shown or explained. Such disclosures are valuable as evidence to show priority of invention and reduction to practice, and will be of inestimable service should Interference proceedings ever occur.

RE-ISSUE OF PATENTS

IN a case where a patent has been issued, which contains a material or invalidating error in the specification, or in the wording of the claims, or in the drawings, such error, provided it has arisen through inadvertence, accident, or mistake, may be corrected by the surrender of the original patent, with a request for a re-issue, and a suitable oath supporting the application. Such a request must be made within a reasonable time after the grant of the patent, preferably within two years, and the expense attached will depend on the nature of the case. Under recent decisions no patent will be re-issued after more than two years have elapsed unless the circumstances are exceptional.

COPIES OF PATENTS

WE can furnish a printed copy of the specification and drawings of any patent granted since July, 1861, at a cost of 15 cents to our client, provided the name and exact date, or the number of the patent is given with the order. When neither the date nor the number of the patent is known, but the patentee's name only is given, we can, if desired, make an examination to locate patents granted in that name. The charge for this service is usually from \$2 to \$3.

When neither the date, the number of the patent, nor the name of the patentee can be furnished to us, it is necessary to make a regular search in the records of the Patent Office, for which service our charge usually amounts to \$5, if the device is not complicated. When, however, complicated mechanisms are presented an increase in our charge is necessary.

Searches made from a sample, cut or sketch of an alleged patented device cannot be guaranteed. At times the official portfolios are incomplete and in some cases the searcher has no means of ascertaining in what sub-class the patent is classified by the Patent Office.

A WORD TO LAWYERS

MANY members of the Bar are not aware that we make a specialty of attending to patent cases which may arise in their offices and which necessitate the services of a solicitor familiar with the peculiarities of the practice of the Patent Office. If the attorney so desires, we will prepare the necessary application papers and official drawings, and prosecute the application, either in the name of the attorney, if registered to practice before the Patent Office, and under his direction as an associate, or in our own name. Furthermore, we are in a position to attend to the prosecution of applications that have been filed by attorneys, and which have been rejected by the Patent Office because of technical irregularities or defects.

Cases placed in our hands receive conscientious attention and are strictly confidential. Attorneys having patent or trade-mark litigation who desire assistance in connection with the conduct of these cases, are referred to p. 24, where the subject of infringement and opinions is treated.

GOING TO WASHINGTON

MANY inventors believe that if they personally present themselves before the Patent Office at Washington, they can have their cases passed upon more expeditiously, or command other important facilities. This, however, is not so, and the journey to Washington is usually a mere waste of time and money. If, however, an inventor prefers to go to Washington in person, this booklet will serve as an introduction at our office there, where he will receive every attention and courtesy.

CANADIAN PATENTS

THE patent laws of Canada are modeled after those of the United States, every inducement being offered to the American inventor to procure patents in that country.

The cost of applying for a Canadian patent is \$50, provided the case is a simple one. This includes the first government fee of \$15 and our office charge of \$35 for professional services. On the allowance of the application a second government fee of \$20 is due to issue the Canadian patent. The patent is granted for eighteen years.

Under the new Law in Canada, it is very important that the patent application be filed as soon as possible and, in any case, within one year of the date of the filing of the first patent application in the United States or other country.

It is no longer necessary to manufacture in Canada under the patent in order to keep the patent in force, but, if the patentee does not commence the Canadian manufacture within three years of the date of the patent, he may be required to grant licenses for reasonable royalties permitting others to manufacture in Canada. The importation of the patented article into Canada is permitted under the new Law, but the Canadian market should not be supplied wholly or mainly by importation after the third year of the patent term.

FOREIGN PATENTS

IT is not necessary to delay the filing of foreign applications until the United States case is allowed, but unless there are compelling reasons to the contrary the applicants should await favorable consideration of the United States application. All foreign applications may be filed at one time, if expedient.

If the inventor is not prepared to proceed immediately with foreign patent applications, care should be taken to delay the issue of the United States patent and to prevent the invention from becoming publicly known until the question of the protection of the invention abroad has been finally decided. In Canada a patent application should be filed within one year of the filing of the patent application in the United States.

Should the inventor permit the United States patent to be issued before he has applied for foreign patents he loses the opportunity of obtaining patents in many countries; for very often a foreign patent is invalid if the invention has been previously patented elsewhere, and the inventor is thus deprived of the benefits that he might easily have secured. There are sometimes exceptions to the above general rule, namely: the provisions of the International Convention which permit an inventor to file patent applications in many foreign countries during the year following the filing of the United States patent application even should the United States patent have been issued. For more detailed information in regard to this question we refer the reader to our "Hand Book on Foreign Patents." A new and illustrated edition will be sent free on request.

The prestige and fame of the ingenuity of the American inventor is recognized throughout Europe and other foreign regions to such an extent that good American inventions are in demand, and if proper steps are taken, an inventor may reap substantial benefits upon the commercial exploitation of his invention abroad.

PUERTO RICO AND THE PHILIPPINES

AN invention may be protected in Puerto Rico and the Philippines by the extension of the United States patent to these possessions. Information in regard to the proper method of procedure and cost will be furnished on application.

TRADE-MARKS

THE average business man has only the vaguest notion of the value of a trade-mark. He does not realize that it is very often the connecting link between the producer and the ultimate consumer; that it is a symbol of good will, a tangible asset with a determinable money value; that it must be chosen and applied not in a haphazard way, but with a due regard of its psychological effect upon the public. It is the handle by which the purchasing public is taught the merchant's wares. Nor does he realize the importance of complying with the statutory requirements which secure to him rights and benefits in a trade-mark comparable with the property right that an inventor acquires by taking out a patent.

The mere fact of registration in the Patent Office is *prima facie*

evidence of ownership. Triple damages may be recovered from an infringer if circumstances are such as to satisfy the Court that penalties in addition to the losses actually proved should be imposed. Any litigation involving the right to the use of a registered trade-mark is brought within the scope of the Federal Court, which is of decided advantage to the one whose mark is infringed.

Furthermore, it is possible to prohibit the importation of goods bearing spurious registered trade-marks into the United States by depositing copies of the registration with the Secretary of the Treasury and the collectors of suitable ports of entry.

Our fee for service for preparing, filing and prosecuting an application for registration of a trade-mark before the Examiner of Trade-Marks usually amounts to \$35, to which must be added the Government fee of \$10, making the usual cost \$45. This fee, of course, merely covers the application for registration of a simple word or title, but if the trade-mark involves a special design or a pictorial representation, an additional charge is made to cover the extra work in making the official drawing. This additional charge rarely exceeds \$5.

The customary fee for filing a trade-mark with the Secretary of the Treasury to prevent importation of goods under an infringing mark amounts to \$30, which includes the cost of preparing the petition, filing of copies, etc.

It is often advisable before an application for registration of a trade-mark is filed, to make a search of the records of the Patent Office to ascertain whether such trade-mark is available for registration for the particular line of goods upon which it is used. The fee for this service usually amounts to \$5.

Owners of trade-marks are cordially invited to submit to us their trade-marks, trade names and the like for our advice as to whether the mark is a proper subject matter for registration, and this advice will be cheerfully given without charge.

We would also advise anyone interested in trade-marks to peruse carefully the discussion of that subject appearing in the latter part of this booklet.

PRINTS AND LABELS

PPRINTS and labels possessing artistic merit come under the Copyright Law, but are registrable in the Patent Office. The purpose of a print is to protect artistic advertising matter which is not intended to be affixed to the goods. In the case of a label the latter should be artistic and should be affixed to the goods. The cost of an application, either for a print or a label, usually amounts to \$20, which includes the Government fee. The print or the label should refer to the merchandise in connection with the sale of which it is used, and ten copies are required to be filed with each application. An application for the protection

of either a print or a label should be filed within a reasonable time after publication, and each copy should bear the following notice: "Copyright," with the year when first published and the name of the proprietor.

COPYRIGHTS

A COPYRIGHT may be obtained by anyone who is the author, inventor, designer or proprietor of a book, periodical, lecture, sermon, address, dramatic composition, dramatico-musical composition, map, work of art, including models or designs for works of art, a reproduction of a work of art, a drawing or plastic work of a scientific or technical character, a photograph, a print or a pictorial illustration, or the like.

Works which are to be printed in copies for sale must be published with the notice of copyright thereon before the filing of the application for registration, and two copies of the work must be filed with the application. When the work is not to be sold, one copy must be filed with the application. Should the work be subsequently printed in copies for sale two of such copies must be filed.

Authors and proprietors who desire to protect their works under the copyright should communicate with us as soon as possible, and the following information should be furnished.

We should be advised of the citizenship of the author of the work and the names and addresses of the parties who set the type for the printing of the work and those who attended to the printing. We should also be given the name and address of the parties who attend to the binding of the work if it is bound. When the two copies, necessary to be filed with the application, are sent to us, we should be informed of the date when the printing of the book was completed, and also the first date of the publication of the book.

Our charge for services in connection with the securing of copyright registration is \$10, which amount should be remitted when two copies of the work are forwarded to us.

Copyrights are granted for an original term of twenty-eight years, and may be renewed for a term of twenty-eight additional years if the renewal application is filed within one year prior to the expiration of the existing term.

Copyright registration may be assigned, it being necessary that the deed of assignment be recorded in the Library of Congress at Washington, D. C., to give constructive notice to third parties.

Citizens of foreign countries may obtain copyright registrations here, provided reciprocity exists or corresponding privileges are allowed to Americans in such foreign countries, and that the said reciprocal conditions have been made known by proclamation of the President of the United States.

The following notice of copyright must be printed on the title-page or under the title on every copy of the copyrighted work:

“Copyright, 19—, by ——.”

This exact form should be used, as any variation may invalidate the copyright.

Works of art, photographs and prints may bear notice consisting of capital letter C within a circle and the proprietor's initials, but the full name of proprietor must be placed on the margin, back or base of the picture or other article.

INFRINGEMENT OF PATENTS AND TRADE-MARKS

UNFAIR BUSINESS COMPETITION

INFRINGEMENT consists in the unlawful use, sale or manufacture of a patented article, without the consent of the patentee or owner, or the use by a competitor, of a trade-mark or trade name, so similar to one already in use, that confusion is apt to arise to the injury and damage of the one who first adopted and used the trade-mark.

It has been held that it is not an infringement to make a patented article simply for *private experimental* purposes, with a view to test the efficiency of the patent, or to improve upon the same, or for other purposes of private investigation.

The statement is often made: "Before I apply for a patent, I wish to know whether my invention infringes any other existing patent." To answer this question would entail an expense which is usually far more than the actual cost of obtaining the patent. The Patent Office, in passing on an application, does not consider this question, and it is far better to apply at once for a patent and postpone the question of *infringement*, which, of course, may never arise, until the patent is granted. By applying for a patent, you may obtain the benefit of an official examination as to the *patentability* of the invention, which perhaps may be all that you require.

All good improvements are worth patenting, irrespective of the fact that their use may be found to infringe a prior patent, and many inventors have made large sums of money in selling their improvements to the owners of the original patents with which their patented improvements can be used. Infringements occur much less frequently than most people suppose, and in general unless you have some special reason to believe that an infringement exists, the best way is not to be troubled about it until someone calls the matter to your attention. It may even be that the owner of the infringing device has an invention far more valuable than the patent with which it conflicts. A good example is that of Howe, the inventor of the sewing machine, who derived a revenue which came from the owners of two infringing patents

paying him a small royalty on each machine, while the net profits of the infringing companies were many times that received by Howe.

The general rule of law is, that the first original patentee is entitled to a broad interpretation of his patent claims. The scope of any patent is, therefore, governed by the inventions of prior date. To determine whether the use of a patent is an infringement of another generally requires a most careful examination of all analogous prior patents, and an opinion based upon such research requires for its preparation much time and labor. The expense of these examinations, together with a written opinion, varies anywhere from \$50 to \$500 or more, according to the amount of time and labor involved in preparing the same.

Munn & Co. practice exclusively before the Patent Office and its appellate tribunals and therefore all litigation arising in the office of Munn & Co., such as suits for infringement of patents, trade-marks and copyrights, unfair business competition, the preparation of licenses and contracts, the formation of corporations, as well as validity and infringement investigations and opinions, is conducted by the law firm of Munn, Anderson & Munn, Woolworth Building, 233 Broadway, New York, which specializes in this branch of the profession and one of whose members constitutes the firm of Munn & Co.

INTRODUCING AN INVENTION

IF you have selected important people in your canvass, people who know something of manufacturing the particular kind of invention that you have patented, you will not have gone far before you will have interested someone who may help you. Probably some two or three men may be brought together to start the manufacture of your device. You furnish the patent and they furnish the money. You should be ready to make favorable terms with such people. You may have a patent that is worth a great deal. You are entirely justified in giving away to the right man one-half of that patent, or of its value. It is good business on your part to do this, provided you select the right man as the beneficiary. This course should lead to the manufacture of the article. The right man being interested in the patent may bring it and you into touch with just the right people to make the biggest thing possible out of your invention.

Your invention may be of such a nature that its sale may not be practicable in this way. It may be merely an attachment to a complicated machine and not a complete article in itself. It may be, for instance, an attachment to a typewriter. This attachment by itself may not lend itself to independent manufacture. It may be of use only to the big manufacturers of typewriters. The managers of the local typewriter agencies should be able to appraise its value to a certain extent. The general agents of your state are bigger men and their opinions would be of still greater

value. If they are sufficiently interested, they may bring the matter to the attention of the factory, or they may give you letters to their central manufacturing plant that will get you a hearing.

HOW TO GET IN TOUCH WITH MANUFACTURERS

If your invention is complete, or if your patent is not for a thing which is complete in itself, you should get in touch with the manufacturers who make the things of which it is a part. If you know of no agents or manufacturers for those articles, write to the list department of the *Scientific American*, and obtain one or two addresses, or if a list of manufacturers is desired the same can be furnished for a small fee of from one to three dollars. Assuming that you have received sufficient encouragement and have your invention sufficiently developed to demonstrate it, you may find it worth your while to make a trip to the factories and personally interview the one who is the authority on this particular matter.

If your invention is worth while and you present it to the people who are interested, and if there are no trade reasons why it should not be adopted, you are sure of a sale, and you ought to have no difficulty in making it.

But when you make your sale be sure to consult a competent patent attorney. There are several different kinds of assignments, license agreements and similar contracts. Each has its merits and demerits. The particular form of instrument that will meet your case and safeguard your interests should be determined upon only after consultation with your attorney.

PART II

WILL IT PAY TO APPLY FOR A PATENT?

EVERY inventor has asked himself the question. Whether the answer is "Yes" or "No" depends entirely on the invention. If the invention supplies a real need, if it is distinctly better than a similar profitable device with which the world has long been familiar; if, above all, it is marketable, there is every reason to suppose that a patent will pay. Obviously a better market may be predicted for a patented cotton picker than for a daisy picker.

First of all, then, the inventor must ascertain if there is a demand for the thing he intends to develop. He should view his idea from the standpoint of a possible purchaser and manufacturer and judge from that angle whether or not it would pay to take out a patent. He should consider the probable price that the purchaser will be willing to pay for such an article. He should determine whether or not the article can be manufactured with sufficient cheapness, so that its sales may be sufficiently profitable. There may be articles on the market that will compete, and this competition must be met. For all these reasons, the inventor should think of the marketing problem before he gives much time to a prospective invention.

BEWARE OF THE PATENT BROKER!

After his patent has been granted, the inventor will receive circulars from numerous sources, embodying proposals to market his patent. He wonders how his name and address have been discovered. As soon as a patent is granted, that fact is recorded in the Official Gazette of the United States Patent Office. The title of the invention, the name and address of the inventor, a small drawing of the invention, and a few of the claims appearing in his patent are published. Hence the hundreds of inventors whose names and addresses appear in the Official Gazette from week to week are made the object of an attack from a horde of hungry seekers for money, among whom are ex-clerks, patent brokers, and patent attorneys of varying degrees of intelligence and hon-

esty. The patentee is deluged with circulars and letters from these men. Some write to inform him confidentially that his patent is good for nothing, but that on the receipt of a certain fee it will be set right and made absolutely sound and valid. Others cheerfully inform him that they have read his patent with pleasure, and consider his invention most valuable. But, it is added, the invention must be properly introduced. An estimate of the value of the invention for various states is given. The state of Iowa, the inventor is told, is worth perhaps \$50,000; Ohio, \$45,000; Pennsylvania, \$65,000; and so it goes. According to these circulars, it is simply necessary to print the circulars and to do a little advertising, for all of which the inventor is asked to generally offer to pay from \$10 to \$50 in cash in advance.

Then, too, there is the \$6.30 trick, which consists in extracting \$4.80 from the inventor for pretended advertising, and \$1.50 on some other pretext. The division of the money into two items, the promoter thinks, makes it easier to hoodwink the inventor. The whole amount is small, but the victims are numerous and the trick, often repeated, yields much money.

Sometimes a broker will write to say that he has received an actual offer of \$10,000 for the Canadian patent rights, provided that the patent is taken out at once. Need we say that he also adds how willingly he will attend to the Canadian patent on receipt of the necessary money?

Such patent brokers rarely effect a *bona fide* sale. They depend upon the advance fees obtained for their livelihood.

Patent insurance is a more modern method of relieving inventors of their money. Companies with imposing names represent themselves to be corporations for insuring inventors against infringement. If the inventor will but pay them \$8 or so within thirty days of the issuance of his patent, the company undertakes to insure him for one year against any infringement. In addition it will give legal advice, so the fable runs, for which any other attorney would charge from \$250 to \$10,000—all to extract \$8 from a believing inventor.

Against such adroit schemes the inventor must constantly be on his guard. To sell patents requires earnest and honest work. No one in this world gives anything for nothing. A patent cannot be sold simply by sitting in an office and sending out false and misleading circulars.

Munn & Co. never undertake the sale or promotion of patents, our work being confined entirely to our professional practice before the United States Patent Office and the patent offices of foreign countries as solicitors of patents. Neither do we endeavor to induce inventors to become clients through the medium of misleading advertisements, such as "inventions wanted," or by preparing lists of inventions for which prizes and the like have been offered from time to time. We are always pleased to give our clients any information which we may have as to existing *bona*

fide offers made by manufacturers or others for inventions necessary to the advancement of their business interests.

There is no easy road to wealth; and this truism applies to selling patents as well as to everything else. To introduce an invention requires effort and constant attention to business. Usually the patentee himself is the best selling agent; for he is familiar with the merits of his invention. If, on the other hand, he is unable to attend to this matter himself, he may try advertising on his own account. As a last resort he may enlist the services of a reputable agent, who can travel and who can explain and demonstrate the invention.

ASK THOSE WHO OUGHT TO KNOW WHAT THEY THINK OF YOUR
INVENTION

Whoever the inventor may be and wherever he may live, there is, near him, someone who is an authority upon the very sort of thing he has invented. If it is a railway appliance, there are men in the repair shops of the nearest railway division who will be excellent judges of its merits. If the invention is to be used in the building trades, the men who are putting up the business blocks of your home town may be asked about it. The local hardware man should be a fair judge of the usefulness of any ordinary tool. It is not likely that you will invent anything with reference to factory machinery, unless you live in the atmosphere of a factory town. In that case you have at your very door the authority to whom to show your models. There are always practical people near you to whom you may turn for advice. But you should remember that only the advice of successful and practical people is worth while. Go to the man at the top if you can. If he is interested something may be accomplished. The enthusiasm of the unimportant or unknowing man avails nothing.

Criticism, condemnation, ridicule of your invention may not justify its abandonment. Many of the greatest inventions have been ridiculed in the beginning. Make the critics show you why your invention is not good. If you are an intelligent man and they cannot show you why you have invented nothing of merit, keep up your confidence and your efforts. This criticism will breed new ideas and improvements.

If your idea is any good, it will emerge from this fire of criticism all the better. Defects will be pointed out, and these you must remove. Then, too, the invention may have attracted backers. The successful men who know most of the sort of industry in which your invention is to be used, are the very kind of men who are likely to finance its manufacture. They understand its usefulness and its possible market. They are successful people who have influence with financiers and therefore are likely to raise money with which an enterprise that promises great profits may be put on its feet.

PART III

ABSTRACTS OF DECISIONS AND PATENT LAW POINTS OF INTEREST

WHERE one inventor has completed his invention before another, and the latter applies for a patent promptly and before the first inventor applies or puts it to practical use, the second inventor is entitled to the patent, and the first one is deemed to have abandoned his rights. *Pattee v. Russell*, 3 O. G., 181; *Ex parte Carre*, 5 O. G., 30; *Johnson v. Root*, 1 *Fisher*, 351.

As between two rival inventors, the test of priority is the diligence of the one first to conceive it. If he has been diligent in completing it, he is entitled to receive the patent. If he has been negligent, the patent is awarded to his opponent. (See pages 16 and 17 of this book, on "Interferences.")

The construction and use in public of a working machine, whether the inventor has or has not abandoned it, excludes the grant of a patent to a subsequent inventor. An abandonment in such case inures to the benefit of the public and not to the benefit of a subsequent inventor. *Young v. Van Duser*, 16 O. G., 95.

A mere aggregation of old devices is not patentable when each of the elements is individually unchanged in *function and effect*. They are patentable when they are really a true combination, that is, "by the action of the elements upon each other, or by their joint action on their common object, they perform additional functions and accomplish additional effects." *Robinson on Patents*, Sec. 154.

A change of shape enabling an instrument to perform new functions is invention. *Wilson v. Coon*, 18 *Blatch*, 532; *Collar Co. v. White*, 7 O. G., 690, 877.

A patent which is simply for a method of transacting business or keeping accounts is not valid. *U. S. Credit System Co. v. American Indemnity Co.*, 63 O. G., 318.

The law requires that manufacturers of patented articles give notice to the public that the goods are patented by marking thereon the date of the patent or giving equivalent notice. When this law is not complied with, only nominal damages can be recov-

ered, unless the infringer has actual knowledge of the patent. *Wilson v. Singer Mfg. Co.*, 4 Bann. & A., 637; *McCourt v. Brodie*, 5 Fisher, 384.

To prevent fraudulent impositions on the public, it is forbidden that unpatented articles be stamped "Patented," and where this is done with intention to deceive, a penalty of one hundred dollars and costs for each article so stamped is provided. Any person may bring action against such offenders. *Walker v. Hawxhurst*, 5 Blatch, 494; *Tompkins v. Butterfield*, 25 Fed. Rep., 556.

A patentee is bound by the limitations imposed on his patent, whether they are voluntary or enforced by the Patent Office, and if he accepts claims not covering his entire invention he abandons the remainder. *Toepfer v. Goetz*, 41 O. G., 933.

Claims should be construed, if possible, to sustain the patentee's right to all he has invented. *Ransom v. Mayor of N. Y.* (1856), Fisher, 252.

The assignor of a patented invention is estopped from denying the validity of his own patent or his own title to the interest transferred. He cannot become the owner of an older patent and hold it against his assignee. *Robinson on Patents*, Sec. 787, and notes.

Each co-owner of a patent may use his right without the concurrence of the others and license at will. *Washburn & Moen Co. v. Chicago Wire Fence Co.* (1884), 109 Ill., 71.

A court of equity may direct the sale of an inventor's interest in his patent to satisfy a judgment against him, and will require the patentee to assign as provided in Rev. Stat., Sec. 4898, and if he refuses, will appoint a trustee to make the assignment. See *Murray v. Ager*, 20 O. G., 1311.

A patent right cannot be seized and sold on execution. *Carver v. Peck*, 131 Mass., 291.

A receiver cannot, under his general powers, convey the legal title to a patent (*Adams v. Howard*, 23 Blatch, 27), but a court may compel an insolvent to assign his patents to a trustee or receiver. *Pacific Bank v. Robinson*, 20 O. G., 1314; *Murray v. Ager*, 20 O. G., 1311.

Any assignment which does not convey to the assignee the entire and unqualified monopoly which the patentee holds in the territory specified, or an undivided interest in the entire monopoly, or makes provision for installment payments, the amounts of which depend on the number of the patented articles made or sold in the future, is a mere license. *Sanford v. Messer*, 2 O. G., 470; *Gaylor v. Wilder*, 51 U. S., 477; *Waterman v. Mackenzie*, 138 U. S., 252; *Hiner v. Oldrich Co.*, 255 Fed. 785.

A license is not transferable unless its terms so state. *Racine Seeder Co. v. Joliet W. C. R. Co.*, 27 Fed. Rep., 367; *Olmer v. Rumford Chem. Co.*, 109 U. S., 75.

A shop right is a mere license and not transferable. *Searles v. Bouton*, 21 O. G., 1784.

A patent license is governed and defined by State law, as dis-

tinguished from statutory patent law, and is subject to the incidents which attach to all agreements. Robinson on Patents, Sec. 806.

A breach of a covenant in a license does not work a forfeiture of the license unless it is so expressly agreed. Consolidated Middlings Purifier Co. *v.* Wolf, 37 O. G., 567.

A lawful sale of a patented article by a patentee or grantee, within his own territory, carries with it the right to use such article throughout the whole United States. Adams *v.* Burke, 5 O. G., 118; Hobbie *v.* Smith, 27 Fed. Rep., 656.

The purchase of a machine carries with it the right to repair the machine, and replace worn parts until the essential original parts of the machine have disappeared. Robinson on Patents, Sec. 827.

Employers are not entitled to the inventions or patents of an employe, unless there is a special agreement to that effect; but where an employe has invented a machine, and puts the invention into practical use in the employer's business, or permits the employer to build or use the machine, a license to continue such use may be implied. See Hapgood *v.* Hewitt, 21 O. G., 1786; Jencks *v.* Langdon Mills, 27 Fed. Rep. 622; Barry *v.* Crane Bros. Mfg. Co., 22 Fed. Rep., 396; Pressed Steel Car Co. *v.* Hansen, 137 Fed. Rep., 403.

An employer who has employed a skilled workman, for a stated compensation, to devote his time and services to devising and making improvements in articles manufactured by the employer, is not entitled to a conveyance of patent obtained by the employe while so employed, unless there is an express agreement to that effect. Dalzell et al. *v.* Dueber Watch Case Mfg. Co., 63 O. G., 1381; Schroeder *v.* Wageley & Stoeke, 1180 G., 268.

A contract between an employer and employe, wherein the employe obtains service with the employer on condition that any improvement he may make on the machines of the employer shall be for the *exclusive use* of his employer, held valid. U. S. Court of Appeals, Rulse *v.* Bonsack Machine Co., 70 O. G., 1498.

"It is a well-established principle of the patent law that where an inventor employs another to embody his conception in practical form he is entitled to any improvement therein due to the mechanical skill of the employe; but if the latter goes farther than mechanical skill enables him to do and makes an actual invention he is entitled to the benefit thereof. An invention does not lie in the idea that a certain result would be desirable, but in the conception of the means for accomplishing that result, and one who claims the benefit of the work of another must show that he communicated to the one who did the work an idea of specific means for accomplishing the desired end."—Underwood's Card Digest. See also Sparkman *v.* Higgins, 1 Blatchf. 206; Yoder *v.* Mills 3400 G., 1048; 25 Fed. Rep. 821, Huebel *v.* Bernard, 90 O. G., 751; 15 app., D. C., 510; Agawan *v.* Jordan, 7 Wall, 583; Neth & Templin *v.* Ohmer & Ohmer *v.* Ohmer, 135 O. G., 662.

An employer is not entitled to any knowledge of the independent

inventions of his employe. *Mallett v. Crosby*, C. D., 1870; p. 70; *American Stoker Co. v. Underfeed Stoker Co.*, of America, 182 Fed. Rep., 742; *Johnson Furnace & Engineering Co. v. Western Furnace Co.*, 178 Fed. Rep., 819.

A purchaser at sheriff's sale of a patented machine belonging to and sold as the property of the owner of the patent has the right to use such machine. *Wilder v. Kent*, 15 Fed. Rep., 217.

"Since the right to issue patents is specially delegated to the Federal Government by Sec. 8 of Article I of the Constitution, it follows that no State may grant a patent. But * * * the Supreme Court is generally disposed to leave to the State legislatures and courts the enactment and enforcement of regulations affecting the exercise of the patent monopoly in the protection of business and morals, so long as such action does not interfere with vested rights and the exercise of legitimate activity." ("The Fixed Law of Patents," Macomber.)

No State can disturb or modify either the privileges granted by Letters Patent nor their enjoyment by the persons on whom they are bestowed. *Robinson on Patents*, Sec. 46.

A State may require the taking out of a license for the sale of manufactured articles, and the fact that the article is produced under a patent will not defeat this power. It is only the right to the invention or discovery—the incorporeal right—which the State cannot interfere with. *Weber v. Virginia*, 20 O. G., 369.

Cooley, J., held that "Any State legislation which undertakes to limit or restrict in any manner the privileges which the Letters Patent confer is an invasion of the sphere of national authority, and therefore void." *People v. Russell*, 25 O. G., 504.

A State cannot discriminate against patented articles by imposing upon their sale conditions and restrictions not placed on the sale of other similar articles. *Palmer v. State*, 39 Ohio, 236.

A State has power to prescribe the terms of a note given for a patent; also to require the vendor of patent rights to file with the county clerk copies of the Letters Patent. See *Hankey v. Downey* (1888), 116 Ind., 118; *Herdic v. Roessler* (1888), 109 N. Y., 127.

That a State cannot tax drummers from other States selling patented or other goods by sample. See *Robbins v. the Taxing Dist. of Shelby County, Tenn.*; *Gorson v. Maryland* (U. S. Supreme Court, 1887).

A previous mechanical patent is of itself no bar to the grant of a patent to the patentee therein for a design shown in such patent. "Whichever kind of patent is first obtained by the inventor, it will not be a bar to the grant to him of a patent of the other kind." *Ex parte Palmer*, 21 O. G., 1111.

The circulation of threatening letters or circulars alleging infringement will be enjoined when the language of the letters or circulars is "false, malicious, offensive, or opprobrious, or they are used for the wilful purpose of inflicting an injury." *Kelly v. Ypsilanti Dress-Stay Mfg. Co.*, 54 O. G., 659.

At the death of a patentee, the title vests in the executor or

administrator. *Shaw Relief Valve Co. v. City of New Bedford*, 19 Fed. Rep., 753.

Action for damages for infringement of a patent by the Federal Government may be brought in the Court of Claims (Chapter 423, Vol. 36, Part I. U. S. Statutes-at-Large).

The United States has undoubted authority to exert the power of eminent domain for the appropriation of a license to use those inventions which are of vital public interest necessary to the existence of the government, the appropriation thus made being sanctioned by the means of compensation for which the statute provides. (Decree 32 App. D. C., 1 reversed.) *Crozier v. Fried. Krupp Actiengesellschaft*, 178 O. G., 1154; 224 U. S., 290.

Officers and enlisted men may obtain patents, but they and their assignees are barred from suing the Government in the Court of Claims, and are dependent on whatever relief may be obtained by action against individual officers or agents of the Government. See *Belknap v. Schild*, 161 U. S., 10; *Krupp v. Crozier*, 32 App. Cas., 1 D. C.

United States Letters Patent grant the exclusive right to make, to sell, and to use an invention, and no unauthorized person may make a patented invention even for his or her own use. See *Infringement*, pages 24 and 25.

THE SCIENTIFIC AMERICAN

ON the threshold of eighty years of publishing, the *Scientific American* looks back on a four-score years' record of pioneer service in the varied fields of science and industry—and looks forward to years of continued support to progress in these fields. All this time, the *Scientific American* has been the rendezvous for the man with an idea and the man seeking an idea for commercial exploitation. Manufacturer, inventor and lawyer meet on common ground in *Scientific American*.

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TRADE MARKS

TRADE MARKS

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CHAPTER I

The Trade-Mark as a Business Asset

IF you should find in your Santa Claus stocking next Christmas a gift for the exclusive right to use "Royal" as a name for baking powder, you would be very rich, as the mark is one of the most valuable in existence, though it is rivaled by other well-known marks such as "Kodak," "Uneda," "Ivory" (as applied to soap), "Coca-Cola," and "Gillette" used in connection with safety razors and a half dozen others. To displace these marks in the public mind would require competition of unheard-of magnitude.

The trade-marks used by the National Biscuit Company, all of which touch the highest standard of distinctiveness, must be the largest asset of the company, and the name "Kodak"—where would the business of the Eastman Kodak Company go to if it handed the name "Kodak" over to some other concern and yet made the same goods under the name of Smith's Hand Cameras?

The aggregate total value of well-known American trade-marks must be enormous. But any estimate of the value of a trade-mark, apart from the business to which it applies, is necessarily a mere guess, for a trade-mark is a species of commercial property that cannot be sold by itself. It is inseparably attached to the business from which it emanates, and cannot be transferred without a transfer of the business. There are cases where a concern's trade-mark has become so valuable, through long years of popularity and profit-making, that it entirely overshadows all other assets of the business—in short, the business could not exist without it.

A trade-mark is a symbol of Good-Will—using the words "Good-Will" in the same sense that the bookkeeper uses them. It stands for built-up reputation; it is the link that connects the

The image shows the classic Coca-Cola script logo in a dark, bold font. Below the main text, there is a small, faint trademark symbol consisting of a horizontal line with a small crown-like shape above it.

A VERY VALUABLE MARK

ultimate consumer with the manufacturer. It preserves the identity of merchandise, and, in carrying out this function, it is a device of inestimable value to the commercial world.

Sometimes a complex chain of events is best explained by a simple illustration. With this idea in mind, let us put ourselves



THIS DRESSED-UP DUCKLING IS THE TRADE-MARK OF MERRIMACK DUCKLING FLEECE.

in the place of a woman who wants a cake of Ivory Soap. She lives in a desert town in Arizona. She cannot go half across the continent to Cincinnati to buy a five-cent cake of soap from Procter & Gamble. In fact, it is a safe bet that she never heard of Procter & Gamble, but she knows that she wants Ivory Soap. So she sends her little girl down to the "general" store, and this lisping messenger asks for "Ivory" Soap—not just plain "soap"—and brings the familiar package with the name on it back to her mother. If the storekeeper sends some other kind of soap the owner of the nickel knows instantly that she did not get what she wanted.

By means of the trade-mark "Ivory" the manufacturers in Cincinnati deal with this buyer in Arizona as surely and as expeditiously as if she lived across the street from their factory. Trace this transaction backward, and you will find its trail running unerringly through the retailer, the wholesaler, and the jobber to the manufacturer—and at every stage of its journey the product kept its personality. It left Cincinnati as Ivory Soap, and as Ivory Soap it was put into the consumer's hands.

Selling by trade-mark is one of the miracles of modern merchandising. Its development to a state of high efficiency has taken place during the last hundred years.

Competition is the basis of the modern industrial system. Plainly defined, a competitive system means a system under which every trader, large and small, must be prepared to justify his existence at any time.

In the early centuries of English industrial life, competition in the modern sense was unknown, as Townsend Warner points out in his "Landmarks of Industrial History." For centuries after the Norman conquest of England, all manufactured articles were produced by craftsmen—each master craftsman working in his tiny shop with two or three apprentices.

All craftsmen belonged to guilds, whose status and authority were recognized by the law of the time. These guilds fixed the prices of commodities—a price "fair to the seller and fair to the buyer." A craftsman could not push his trade beyond his own immediate locality, because in that event he would come in

conflict with his brother craftsmen. He made shoes, or harness, or wove rough woolen coats, and sold them to his neighbors at a price that was fair to him and fair to them, and in somnolent old age was gathered to his fathers, without having heard the word "competition" or its equivalent in burly Saxon-French.

With the decay of centuries, the guilds slowly passed away, and upon their ruins arose the modern factory system.

In the new adjustment of things, here and there a craftsman with more energy and a longer financial head than his fellows, began to extend his trade, and employ more journeymen and apprentices.

In 1550 John Winchcombe, "Jack of Newbury," a woolen weaver, had a hundred looms at work in his own house, and Winchcombe woolens were known as far as Antwerp. At the same time, London craftsmen were selling their goods all over England—or, at least, in the larger towns, and there was a growing trade with Flanders.

These manufacturers, as the circle of their trade expanded, began to see the desirability of marking their products in some way to identify them, so that purchasers at a distance would be able to distinguish them from similar articles produced by others.

Any device for identifying a commercial product is a trade-mark, in the broad significance of the term.

Some of the early trade-marks were rude initials and cryptic designs of interlaced crosses and circles. Others consisted of dragons and winged snakes, and various real and unreal animals.

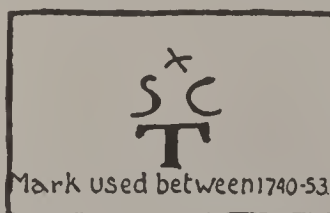
The craftsmen of the fifteenth and sixteenth centuries were the first users of trade-marks in England.

The flickering torch of the antiquarian throws a dim light on some sort of trade-mark usage current among the Greeks and Romans, and even among more ancient trading peoples, but these researches hold but little of interest to us. Our present purpose is to consider the function of the trade-mark in modern business, and with that thought in mind, it may be taken as an established fact that trade-marks, in the modern sense, have a continuous history of perhaps five hundred years.

In the early part of the seventeenth century the gold-beaters of Nuremberg were using trade-marks, and they had systematized their use to such an extent that an official register of gold-beaters' marks was kept and penalties for the misuse or counterfeiting of trade-marks had been established a law. This register has been preserved. Its yellowed pages are decorated with curious devices of serpents and dragons, doves and crosses. Without exception, the marks of the Nuremberg gold-beaters were picture marks.



A WORLD-FAMOUS TRADE-MARK. THIS IS A COINED WORD, DEvised ABOUT THIRTY-FIVE YEARS AGO BY DR. CAMERON, A PHYSICIAN.





DERBY PORCELAIN TRADE-MARKS
ORIGINATING AROUND THE MIDDLE
OF THE EIGHTEENTH CENTURY.

In the early part of the eighteenth century the use of trade-marks was general, in certain lines of trade, throughout Europe. But the lack of specific legislation for the registration of trade-marks at that time—a lack that persisted until the nineteenth century—leads one to the conclusion that these eighteenth century traders did not attach great importance to the subject. They evidently considered the trade-mark a mere minor accessory of business.

The early decades of the nineteenth century witnessed the rise of three great forces which were destined to accomplish, in a short time, the most profound changes in manufacturing and selling methods. These forces were:

- 1st. The application of steam power to manufacturing in a large and economical way.
- 2nd. The development of cheap and quick transportation.
- 3rd. The invention of means for the rapid dissemination of intelligence.

Factories, employing thousands of hands—great industrial monuments to Cheap Power—had inevitably to find distant markets for their products. No longer could the manufacturer sit at home and await the buyer. His product was too large, and its burden was too heavy to carry on a haphazard sales plan. Consequently, the selling departments of all enterprises grew tremendously in importance. Customers were sought across the breadth of a continent. Many a manufacturer's sales area grew, in the span of a generation, from a few hundred square miles to a region that included every degree of climate from the Arctic to the Torrid.

To accomplish this result efficient selling methods, and economical and fast transportation, were required.

As a natural consequence of these conditions trade-marks grew in importance. Manufacturers without trade-marks found

“WISHBONE”

Registered Trade Mark

TRADE-MARK FOR COAT HANGERS
SHAPED SOMEWHAT LIKE A WISH-BONE.

that they had no hold on their trade. The consuming public did not know them or their products by name, and they were at the mercy of the jobber, the wholesaler and the retailer. They were supported by a chain of circumstances, of which every link was weak.

On the other hand, manufacturers whose trade-marks were firmly fixed in the public mind by reputation began to see that

they were, to a large degree, independent of the merchandising chain. The ultimate consumer knew their trade-marked products, and asked for them by name.

Thus, by a process of natural evolution, the trade-mark developed in importance from a workman's tool mark to a symbol of Good-Will—a business asset in a tangible form.

It is an axiom of legal philosophy that when a thing becomes valuable or desirable, legislation concerning its regulation and protection springs into being. Consequently one looks for, and finds, the beginning of specific legislation on the subject of trade-marks around the end of the first quarter of the nineteenth century.

Before the first trade-mark legislation, cases of infringement fell under the common law, and were decided in courts of equity.

H. D. Nims, a well-informed writer on trade-marks, says in his "Law of Trade-Marks and Unfair Trade":

"It is rarely that one life sees the genesis and maturity of law, yet it has almost seen them of trade-mark law. In the eighteenth century there were a few scattered decisions which turned almost wholly on the question of fraud. With the rise and growth of machine-made merchandise in the earlier part of the last century, the matter of private marks of merchants to distinguish wares, going out into the public markets of the world assumed importance and cases multiplied. Trade-mark law is one of the results of machinery. It is safe to say that the great mass of trade-mark and unfair-trade law is the development of the last forty years."

A structure, of which the foundation has been so recently laid, must necessarily be still unsettled. The rulings of both the Patent Office and the courts are, in many cases, contrary to precedent. In some instances, courts in different parts of the country have handed down contradictory decisions bearing on the same question. But, despite these drawbacks, a body of trade-mark law is being slowly formed, and it is only a question of time before our feet will be on firm ground.

Trade-mark cases should be entrusted to attorneys who have specialized in this branch of the law. The legal status of this subject is changing so swiftly that an ordinary lawyer, absorbed in general practice, cannot keep track of it.

A trade-mark has been defined as follows:

"A trade-mark may be tersely defined to be any sign, mark, symbol, word or words which indicate the origin or ownership of an article as distinguished from its quality, and which others have not the equal right to employ for the same purpose. In its strictest sense, it is applicable only to a vendible article of merchandise to which it is affixed."

(*Ball v. Broadway Bazaar, Court of Appeals, N. Y., 87 N. E. 674.*)

We give this definition because it expresses in the fewest possible number of words the function and limitations of trade-



(*Trademark Reg. U. S. Pat. Off.*)

THIS TRADE-MARK OF A
DUSTLESS MOP IS AN EX-
CELLENT EXAMPLE OF LETTERS
USED AS A MARK.

marks. Also, because there is in the minds of many business men, a confused notion of the difference between a trade-mark and a trade-name. By referring to the definition it will be noted that a trade-mark is "applicable *only to a vendible article of merchandise* to which it is affixed."

On the other hand, a trade-name applies to a business as a whole, although this business may be engaged in the sale of not one vendible article only, but a thousand. For instance, "Wanamaker's" is a trade-name and "Kodak" is a trade-mark.

A trade-mark has no value except that created by the quality, sale, popularity and profit in the article to which it is affixed. No matter how distinctive, or attractive a mark may be, it is worth but little if it is used in connection with an inferior article or with an article sold without profit.



A VERY SUGGESTIVE
AND SUCCESSFUL
TRADE-MARK.

But a distinctive and suggestive trade-mark is of immense help in advertising and selling. Consider, for example, the trade-mark of Old Dutch Cleanser. It is full of *human interest, motion, life, and suggestion*. It brings up in the mind the mental picture of dirt fleeing from an energetic Dutch scouring woman. That this mark has been a powerful aid to sales is obvious. Suppose Old Dutch Cleanser had been called Climax Cleaning Powder. Can you imagine anybody acquiring more than the most languid interest in anything with a name so dull? It reminds one of hard and sordid toil.

CHAPTER II

The Federal Trade-Mark Law

THE function of a trade-mark is to denote origin. As we pointed out in the preceding chapter, the necessity for using trade-marks arose as soon as the expanding wave of trade carried a craftsman's goods to customers outside of his own community. The ancient trade-mark was a simple device invented for the purpose of enabling a maker of any commodity to hold his out-of-town customers, so to speak, by enabling them quickly and surely to identify his goods.

Throughout its history the trade-mark has remained true to its ancient antecedents, and its purpose to-day, as it was in the fifteenth century, is specifically to indicate the origin of an article of merchandise.

In this aspect of unchanging purpose, the trade-mark is somewhat an anomaly in commercial history. During the last four hundred years, methods of manufacture, distribution and sale have been revolutionized from top to bottom: banks, which began as mere money-changing offices, have become establishments for keeping and loaning funds; the retailer, who used to sit in a hole in the wall with a handful of goods, all of the same kind, has developed into a merchant selling ten thousand different articles; the craftsman, who once served a long apprenticeship, during which he learned to make every part of a shoe or a carriage, has become a specialized laborer, employed by the day to produce the extreme subdivision of a finished article.

It is strange that, in all this evolution of commercial methods, the trade-mark did not undergo a change in function. It might have become, by a gradual transformation, a merchant's mark, applied indiscriminately to all goods of every description sold by him. Or, it might have evolved into a stamp of merit or high quality, regulated by statute and licensed only to manufacturers who could prove their right to use it.

But none of these changes has taken place, and the trade-mark of the twentieth century has for the beginning and end of its function the purpose of indicating to buyers the association of merchandise with a particular manufacturer or dealer.

The present Federal Trade-Mark law went into effect on April 1, 1905.

The reader should understand clearly that the right to own a trade-mark is not a creation of the statute, for the use of trade-marks, and the recognized right of manufacturers to be protected in their use, far antedate any specific trade-mark legislation.

The intent of the statute is to systematize and codify trade-mark practice. It provides a definite procedure for the registration of trade-marks; lays down rules for validity in marks; puts trade-mark litigation, when registered trade-marks are the subject matter of the litigation, within the jurisdiction of the Federal Courts; and makes every trade-mark registered under the law a part of the public records of the nation. But a trade-mark may be legally sound even if not registered, just as a person may own real estate without recording the title.

The Act of 1905



THE POMPEIAN WINDOW SCREEN TRADE-MARK.

The ownership of trade-marks, like any other property right, is recognized by the common law. The Supreme Court of the United States has said: "The right to adopt and use a symbol or device to distinguish the goods or property made or sold by the person whose mark it is, to the exclusion of use by all other persons, has been long recognized by the common law and the chancery courts of England and of this country. It is a property right for the violation of which damages may be recovered in an action at law, and the continued violation of it will be enjoined by a court of equity with compensation for past infringements."

Trade-marks, under the Act of 1905, are registered in the United States Patent Office.

In case of litigation resulting over the right to use any trade-mark, evidence of the registration of the mark by one of the litigants puts the burden of proof upon the other. In other words, the user of the unregistered trade-mark must prove priority of use and ownership. This is often a very difficult thing to do, especially in the case of trade-marks that have been used a long time, for such proof must necessarily rest upon the production of old labels, packages of the goods with the trade-mark affixed, and the testimony of witnesses.

The owner of a registered trade-mark does not need any evidence other than the public records of the Patent Office to establish the date of his first use of the mark.

When a trade-mark is not registered in the Patent Office, litigation concerning it does not come under the jurisdiction of the Federal courts, unless the opposing parties are citizens of different states.

On the other hand, all cases pertaining to registered trade-marks used in interstate or foreign commerce fall within the field of Federal jurisdiction, irrespective of the amount in dispute or the place of residence of the parties. This is an advantage, owing to the fact that an injunction secured in one Federal Court will be enforced in all such courts in any state.

The fee charged by the Patent Office, under the law, for registering a trade-mark is ten dollars. This does not include the attorney's fee, which must be paid by the applicant.

A certificate of registration remains in force for twenty years, and it may be renewed, upon expiration, for like periods of twenty years, upon payment of a renewal fee of ten dollars.

An individual or corporation has a right to register a trade-mark under the United States law if the trade-mark for which registration is sought belongs to the applicant and is used by him:

- 1st. In commerce among the several states:
- 2nd. Or, in commerce with foreign nations:
- 3rd. Or, in commerce with the Indian tribes:

provided the owner of the trade-mark resides within the territory of the United States (which includes all territory under United States control), or has a business establishment situated in United States territory, or resides in any foreign country which affords, by treaty, similar privileges to citizens of the United States.

Divested of legal verbiage, the main provisions of the Act, so far as the features governing registration are concerned, may be stated as follows:

A trade-mark A design or wording identical with a registered or known is **not regis-** trade-mark owned and in use by another, and appropriated **trable if it is:** to merchandise of the same descriptive qualities, or which so nearly resembles a registered or known trade-mark owned and used by another, and appropriated to merchandise of the same descriptive qualities, as to deceive purchasers, or to be likely to cause confusion in the mind of the public.

The insignia of the American National Red Cross Society.

The flag or coat of arms of any foreign nation.

Any design or picture which has been adopted by a fraternal society as its emblem.

A portrait of a living individual unless the application for registration is accompanied by the written consent of the individual whose portrait is used.

Scandalous or immoral matter of any description.

The flag, or coat of arms, of the United States, or of any state, or of any municipality, or any of the insignia thereof.

Any geographical name or term.

A misrepresentation of the quality, composition, character, origin, or nature of the commodity with which it is used.

Any mark which consists merely in the name of an individual firm, corporation, or association, unless said name is written, printed, impressed or woven in some particular or distinctive manner, or is used in connection with a portrait of the individual.



A CELEBRATED UNDERWEAR TRADE-MARK, COMPOSED OF THE WORDS "POROUS" AND "KNIT." THIS MARK SEEMS ALMOST DESCRIPTIVE, BUT IT DOES NOT "DESCRIBE THE GOODS." IT DESCRIBES THE KNITTING PROCESS ONLY.

Any arrangement of words or devices descriptive of the goods with which they are used, or of the character or quality of such goods. In other words, a trade-mark must not be an advertisement in the ordinary sense of the word.

A trade-mark is registrable if it is: Unlike any other trade-mark, already in use, and applied to the same class of goods. It must not resemble the trade-mark of a competitor, or of a potential competitor, to such an extent that the buying public is likely to be deceived or confused by the resemblance.

The business name of a person or firm when written, printed, impressed or woven in some distinctive manner, or in association with a portrait, or in an autographic form.

Any trade-mark which has been in continuous and exclusive use by the applicant since February 21, 1895.

An arbitrary symbol, or word, or words, or a combination of a device and wording, not obviously descriptive of the commodity to which it is to be applied.

Used in lawful trade.

Of such a character that it may be affixed, printed upon, woven, sewed, branded or otherwise impressed upon the product with which it is used, or upon the package or container of the product.

The right to register trade-marks is limited to individuals and corporations.

Association trade-marks Under the United States law an association cannot possess a trade-mark, as *exclusive ownership* and *specific origin* are essential attributes of validity.

The letters "A-A. L.," meaning Anti-Adulteration League, were refused registration as a trade-mark for flour on the ground that the mark did not represent origin, but membership in an association. The applicant was a voluntary association of flour manufacturers. It was held that an association cannot be the "owner" of a trade-mark within the meaning of the statute.

Some states have enacted laws prohibiting the unauthorized use of the labels of trade-unions and similar associations. These laws are not trade-mark statutes. They are based on the broader principle of unfair business competition.

It is the general opinion, we believe, of trade-mark authorities that the lack of provision in our law for association trade-marks is a defect that should be remedied as soon as possible. It is a noteworthy fact that most of the other great nations recognize association marks.

An interesting example of an association trade-mark is that of the Irish Industrial Development Association (reproduced on this page). This association has a membership of about five hundred Irish manufacturers. Its use indicates that the merchandise to which it is affixed is of Irish manufacture; in other words, it is indicative of geographical origin. The Irish trade-mark



THE IRISH NATIONAL TRADE-MARK.

has been registered in Great Britain under the British Trade-Mark Act of 1905.

An American by the name of D. B. Barrett attempted to register this mark in the United States Patent Office under his own name. This fact came to the attention of the Irish Industrial Development Association, and some correspondence relating to the matter passed between Mr. John Redmond, the leader of the Irish National party in Parliament, and President Taft. As the law now stands this Irish trade-mark cannot obtain in the United States the protection that registration might give.

Within the last few years several American communities have adopted trade-marks, or labels. The Omaha trade-mark is reproduced here as an example of this class of marks.

There is a genuine need for an amendment to the law that would give this class of marks the right of registration.

A provision of the Act of 1905 legalized all trade-marks that had been in exclusive use by the applicant for ten years prior to the passage of the act, and this provision applies even to trade-marks of ten years' standing that, because of their character, could not be registered under the act. The wording of the act dealing with this subject is as follows:

"Nothing herein shall prevent the registration of any mark used by the applicant or his predecessors, or by those from whom title to the trade-mark is derived, in commerce with foreign nations or among the several states, or with the Indian tribes, which was in actual and exclusive use as a trade-mark of the applicant or his predecessors from whom he derived title for ten years next preceding the passage of this act."

A manufacturer cannot register a trade-mark and file it away with the intention of using it at some future time. A condition of validity is that the mark must not only belong to the applicant, but must be "used by him in lawful trade." An intention to use a mark is not sufficient. The use in interstate trade must antedate the application for registration. The letter of the law is complied with if a single package of the goods with the trade-mark affixed is sold in good faith in interstate or foreign commerce, although the shipment of a sample is not sufficient.

**Classification
of Merchandise**

Those who intend to adopt trade-marks should keep in mind that the use of a trade-mark is limited strictly to one class of merchandise, which must be the class for which it has been registered.



THE OMAHA TRADE-MARK, WHICH WAS CHOSEN FROM 764 DESIGNS SUBMITTED. THE DESIGNER RECEIVED A PRIZE OF \$500. THIS MARK WILL BE REPRODUCED ON ALL STATIONERY OF OMAHA MANUFACTURERS AND WILL BE AFFIXED TO ALL OMAHA-MADE GOODS.

The
**Coward
Shoe**

"REG. U. S. PAT. OFF."
A TRADE-MARK REGISTERED UNDER THE TEN YEARS' CLAUSE.

For purposes of classification the Patent Office has separated all merchandise into forty-nine general classes, as follows:

- | | |
|--|---|
| 1. Raw or partly prepared materials. | 25. Locks and safes. |
| 2. Receptacles. | 26. Measuring and scientific appliances. |
| 3. Baggage, horse equipments, portfolios, and pocketbooks. | 27. Horological instruments. |
| 4. Abrasive, detergent, and polishing materials. | 28. Jewelry and precious-metal ware. |
| 5. Adhesives. | 29. Brooms, brushes, and dusters. |
| 6. Chemicals, medicines and pharmaceutical preparations. | 30. Crockery, earthenware, and porcelain. |
| 7. Cordage. | 31. Filters and refrigerators. |
| 8. Smokers' articles, not including tobacco products. | 32. Furniture and upholstery. |
| 9. Explosives, firearms, equipments, and projectiles. | 33. Glassware. |
| 10. Fertilizers. | 34. Heating, lighting, and ventilating apparatus, not including electrical apparatus. |
| 11. Inks and inking materials. | 35. Belting, hose, machinery packing, and non-metallic tires. |
| 12. Construction materials. | 36. Musical instruments and supplies. |
| 13. Hardware and plumbing and steam-fitting supplies. | 37. Paper and stationery. |
| 14. Metals and metal castings and forgings. | 38. Prints and publications. |
| 15. Oils and greases. | 39. Clothing. |
| 16. Paints and painters' materials. | 40. Fancy goods, furnishings, and notions. |
| 17. Tobacco products. | 41. Canes, parasols, and umbrellas. |
| 19. Vehicles, not including engines. | 42. Knitted, netted, and textile fabrics. |
| 20. Linoleum and oiled cloth. | 43. Thread and yarn. |
| 21. Electrical apparatus, machines, and supplies. | 44. Dental, medical, and surgical appliances. |
| 22. Games, toys, and sporting goods. | 45. Beverages, non-alcoholic. |
| 23. Cutlery, machinery, and tools, and parts thereof. | 46. Foods and ingredients of foods. |
| 24. Laundry appliances and machines. | 47. Wines. |
| | 48. Malt extracts and liquors. |
| | 49. Distilled alcoholic liquors. |
| | 50. Merchandise not otherwise classified. |

(Note: Class 18 was abolished Feb. 24, 1909.)

An applicant for registration must specify not only the general class of merchandise in connection with which he intends to use his trade-mark, but must state also specifically the articles in that class upon which he has used the trade-mark he seeks to register.

For instance, a manufacturer who might apply for the registration of "Pendennis," as a trade-mark for smoking tobacco—to select a word at random—would find that it would not be satisfactory to the Patent Office to state in his application that the mark was being used in connection with Class 17—"Tobacco products." He would be required to state that his mark was being used on "smoking tobacco." After registration had been granted the Patent Office would not register another "Pendennis" trade-mark in that class of merchandise, to be used on cigars, for instance, for another applicant. Nor would the first registrant be obliged to apply for a new registration if he should desire to extend the use of his trade-mark to cigars, or chewing tobacco, or any



THE TRADE-MARK OF THE GENERAL ELECTRIC COMPANY. AN EXCELLENT USE OF INITIALS AS A TRADE-MARK.

other tobacco product. The law would protect him in the use of the mark for all articles of that class, but the rules of the Patent Office require applicants to give full particulars not only as to class of merchandise, but the specific articles on which the mark has been used.

A result of the principle of trade-mark practice which limits the use of a mark to one class of merchandise is to be seen in the same name being used as a registered mark for unrelated articles.

The name "Pompeian," for instance, is used as a trade-mark for a face cream and also for wire netting for window screens; "Republic" is used for automobile tires as well as several other articles in different classes; "Packard" for pianos and automobiles; and there is an "Ideal" hair-brush and an "Ideal" fountain pen.

The law directs that the owner of a registered trade-mark affix, print or impress upon such trade-mark wherever it is used, or in close enough proximity to it to be easily seen, the words, "Registered in U. S. Patent Office," or the shorter abbreviated form, viz., "Reg. U. S. Pat. Off." The trade-mark of Baker's Cocoa—the Baker chocolate girl—reproduced on this page, shows how this should be done.

If this notification is not used in connection with the trade-mark, the owner of the mark, in infringement proceedings against an unauthorized user, cannot collect damages unless he can prove that he gave the other party formal notice, and that the unauthorized use of the mark was continued after notice.

A trade-mark is not merely an advertising symbol. It is an essential of trade-mark validity that the mark be affixed to the goods. A device, or word, or phrase, or picture that is used only in circulars, advertisements, or on signs or letter-heads is not a trade-mark and cannot be protected under the trade-mark laws. (It should be stated here that the unauthorized use of one other than the owner of such a device or wording may sometimes be prosecuted under the common law—the law of unfair business competition.)

A trade-mark may be printed, pasted, written, stamped, stenciled, branded, sewed, or woven upon the article with which it is used. In cases where it is not practicable to affix the mark upon the merchandise itself it must be affixed to the container.



Reg. U. S. Patent Office

A CELEBRATED
TRADE
MARK.

Rules of the Patent Office

We have not the space here to go into a detailed description of the procedure of the Patent Office in considering trade-mark applications. This procedure, especially in cases where there is some doubt as to the validity of the mark, is highly complicated,

and can be followed successfully only by a solicitor experienced in trade-mark practice.

The rules of the Patent Office require applications for registration of trade-marks to be made in a certain conventional form. A drawing of the mark, of a certain specified size, must be submitted with the application. Proofs of the mark, as actually used, must also be forwarded as exhibits in the case.

If, on preliminary examination, the mark appears to be entitled to registration, a reproduction of it is printed at least once in the Official Gazette of the Patent Office. This publication must be at least thirty days prior to the date of registration.

The purpose of the publication of the mark in the Official

Gazette is to allow opposition from any one who thinks its registration would conflict with his rights. Opposing an application is technically called an "opposition." An opposition serves to delay registration until the examiner in charge of interferences considers the evidence submitted.

Under certain conditions, rejected applications may, on appeal, be taken up to the Commissioner of Patents.

Many defective applications fail because of a lack of competent advice in devising the proposed trade-marks, as well as because of inexperience in prosecuting the applications.



THE CELEBRATED TRADE-MARK
OF THE VICTOR TALKING MACHINE.

On March 19, 1920, Congress approved an amendment to the present Trade Mark Law entitled an "An act to give effect to certain provisions of the convention for the protection of trade-marks and commercial names, made and signed in the City of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes," which provides, among other things, for the registration of geographical terms, descriptive words and phrases, and personal names, when they have been in bona fide use as trade-marks for a period of one year or more, providing other similar marks have not already been registered for use upon goods of the same descriptive properties. This act was provided not only to make it possible to register trade-marks formerly not registrable in the United States, but to make it possible to obtain registration in this country upon which to base foreign registrations. By taking advantage of this act many manufacturers have been able to obtain foreign registrations of marks which previously could not be registered because the manufacturers had been unable to obtain registration of the marks in the United States.

CHAPTER III

Analysis of the Requirements for Registration

IN the preceding chapter we traced an outline of the main provisions of the Act of 1905—the Trade-Mark Law. We intend to take up in this chapter each clause of the law applying to registration, and show how it works in actual practice.

Great care should be taken by an applicant for registration of a trade-mark, or his attorney, to avoid conflict

A trade-mark will not be registered if it is identical in design or wording with a known trade-mark already in use by another and applied to goods of the same descriptive qualities, or if it resembles a known trade-mark so closely as to cause confusion

with a trade-mark that is already registered or already in use (even if not registered), provided that it is applied to the same class of merchandise as that of the applicant. Lack of caution in this respect has caused interminable annoyance and litigation, with consequent financial loss.

In considering the question of conflicting marks, the Patent Office and the Federal courts hold that the test of similarity is whether the marks are sufficiently alike in appearance or wording, or sound, *to mislead the average individual.*

The word "Autola" as a trade-mark for cigars was held not registrable owing to a prior registration of the word "Auto-do" for the same class of merchandise. In this instance, registration was refused on the basis of resemblance in sound as well

as in appearance.

"Lady Lee" having been registered as a trade-mark for shoes, "Lady Like" was refused registration in the same class.

"Certosa" as a mark for a brand of flour sufficiently resembled "Ceresota"—already registered—to cause its rejection.

"Powellton" failed registration as a trade-mark for coal, on the ground that another company's coal already bore the registered mark "Powell's Run."

"Sodafoam" was considered close enough in resemblance to "Sea Foam" (already registered in the same class) to cause its rejection.

"Uno" having been registered as a trade-mark for a medicine, an application for the registration of "Ino" in the same class was refused.

Registration is refused a trade-mark when it consists of words describing a symbolic or pictorial device which has already been registered; or *vice versa*, when the wording has been registered first, registration for the symbol is refused. For

SNUGTEX

ONE OF THE INNUMERABLE WORDS ENDING IN "TEX." TRADE-MARK USED ON BELTS

instance, the Patent Office has held that a trade-mark consisting of a conventional representation of a bouquet of flowers is identical in meaning with another mark consisting of the word "Bouquet," applied to the same class of merchandise. In either case, the goods would be called "Bouquet Brand."

Agreement among owners of conflicting marks is not recognized by the Patent Office. An interesting example of this occurred in the attempt to register the word "Nayassett."



THE TRADE-MARK OF CRYSTAL DOMINO SUGAR. NOTE THAT THE REGISTRATION OF A PICTORIAL REPRESENTATION OF A DOMINO, OR MASK, INCLUDES THE EXCLUSIVE USE OF THE WORD "DOMINO."

The word "Nassac" had already been registered for the same class of goods and the registration of "Nayassett" was refused on the ground of similarity. Soon afterward, the owner of the "Nayassett" mark made a new application, accompanied by the formal consent of the owners of the "Nassac" mark. The Commissioner of Patents held that the law did not provide for agreement between owners of conflicting marks, and the registration of

"Nayassett" was refused accordingly.

About two years ago a manufacturer in a Middle Western city became interested in a new metal polish and decided to put it on the market. After long consultation with advertising men and salesmen, a name was selected. This name was suggestive and short, with a snap to it, that made it stand out in the memory. Many thousands of labels were ordered and packages of the article were given to the traveling salesmen of the concern to be used in getting orders from retailers. Booklets and literature had been written and mailed, and the business was beginning to take shape, when, to the surprise of the manufacturer and his associates, his application for trade-mark registration was rejected by the Patent Office for the reason that the mark had already been registered. Then followed a hasty trip to a trade-mark attorney and a search of the Patent Office records was made. Investigation of the register showed that the same name had been registered by an Eastern concern for a metal polish some years ago. About this time a letter arrived from the attorney of the Eastern firm, with a statement to the effect that the owner of the trade-mark considered this unauthorized use of the mark an infringement and intended to take legal action in the matter. A month or two was spent in trying to make some arrangement with the Eastern concern, with the final result that the trade-mark had to be dropped, and something new devised.

In this case a full year was lost, and a considerable amount of money was wasted, by reason of the failure of this manufacturer to have a search made of the Patent Office records. He made the mistake of considering the matter of trade-mark registration a small detail, and trying to attend to it himself. A competent solicitor would have saved his fee a thousand times over in this case.

This prohibition is not covered by the trade-mark law, but is one of the provisions of the Act of Congress incorporating the American National Red Cross (approved Jan. 5, 1905). The act of incorporation states that it shall not be lawful for any person or corporation to use in trade, or for purpose of advertisement, "the sign of the Red Cross" or "any insignia colored in imitation thereof," *unless such person or corporation was entitled to the use of such insignia at the time of the passage of the act.*

A trade-mark consisting of the insignia of the American National Red Cross is not registrable

This exception, which was intended to safeguard the interests of those who had long used the Red Cross sign as a trade-mark, covers the Red Cross mark of the well known druggists' specialty house of Johnson & Johnson, the Red Cross labels used on a brand of shoes made by Krohn, Fechheimer & Company of Cincinnati, the Red Cross mattress manufactured by a Boston concern, and a few other users of this device.

**TEXACO
MOTOR OIL**

ANOTHER EXAMPLE OF A TRADE-MARK ENDING IN "O." THIS IS A COINED WORD, MADE FROM "TEXAS" AND "COMPANY."

The law, as it stands, is rigidly enforced in regard to all new trade-marks containing Red Cross devices.

An unusual argument was made the basis of an application for registration of a label for a cough syrup, on which the emblem of the Red Cross was printed, accompanied by the words "Red Cross." When registration was refused, the applicant sought to amend the label by striking out the Red Cross emblem, while leaving the words intact. He argued that the Red Cross incorporation act prohibited only the use of the "sign of the Red Cross" and not the words. The application was rejected on the ground that it was an attempt to evade the spirit of the law.

A trade-mark is essentially an exclusive possession. When it ceases to be exclusive, it ceases to be a trade-mark, in the true sense. It is apparent, therefore, that an ordinary word, descriptive of the goods with which it is used, cannot be set aside as the exclusive property of any manufacturer, to the detriment of others producing merchandise of the same character. The wording of the law on this point is clear, and the Patent Office is strict in its interpretation. But despite this condition, many applications, destined to be rejected, are made every year for the registration of descriptive marks. We give here a few examples of trade-marks, refused registration on the ground of being descriptive.

Trade-marks that are descriptive of the goods with which they are used, or of the quality or character of the goods, are not registrable

The word "Kantleek" was refused registration as a trade-mark for a hot-water bag. The Patent Office examiner held that the word was composed of "Can't" (misspelled "Kant") and "Leak" (misspelled "Lcek"), and that it was intended to convey the idea that this particular bottle could not leak. The

attorney for the applicant presented an argument to the effect that the word was composed of two German words, "Kant" and "Leek," that had meanings quite different from the English words with the same sound. This contention was too subtle for the Patent Office to grasp, and registration was refused.

RUBEROID
(Trade Mark Reg. U. S. Pat. Office)

ALTHOUGH THIS MARK HAS BEEN REGISTERED IT HAS BEEN DECLARED A DESCRIPTIVE WORD BY A FEDERAL COURT, AND THEREFORE NOT PROTECTABLE.

The word "Naphtha," used as a name for a soap with naphtha as an ingredient, was held to be descriptive, and therefore not

registrable as a trade-mark, to the exclusion of the goods of other manufacturers, although the owner had advertised it extensively.

"Mello" as a mark for chewing-gum was considered descriptive, being simply a misspelling of the word "mellow."

Many applicants for trade-mark registration seem to think that the mere misspelling of a descriptive word, or some fanciful device in lettering, will remove the word from the descriptive class. This is a belief that has no basis in fact, for no matter how a word is spelled or lettered, it is descriptive if it conveys information of a descriptive character.

For instance, the word "Bestok" was rejected as a misspelling of "Best Stock"; "Unxld" as a misspelling of "Unexcelled"; "Kid Nee Kure" as a misspelling of "Kidney Cure"; and "Pittsburgh Pump," printed with hyphens between the letters—P-I-T-T-S-B-U-R-G-H P-U-M-P—was refused registration as being both descriptive and geographical.

The courts have held that the word "Elastic," used to designate drawers having an elastic seam, is descriptive, but the same word is used in a fanciful sense and is valid as a trade-mark when applied to sectional bookcases.

"*Youngfelo*"
Reg U. S. Pat Off
Clothes

A CLOTHING TRADE-MARK. THE MISPELLING OF THE PHRASE "YOUNG FELLOW" DOES NOT INCREASE ITS VALUE AS A TRADE-MARK. ITS ELIGIBILITY FOR REGISTRATION WOULD BE THE SAME IF IT WERE CORRECTLY SPELLED AND PRINTED IN ORDINARY TYPE.

A manufacturer of hooks and eyes applied for registration of the phrase "Rust? Never!" as a trade-mark. Registration was refused, as the mark was held to be descriptive, indicating that the hooks and eyes would never rust.

Arbitrary numbers are obviously registrable as trade-marks, but the applicant must be prepared to establish his contention that the numbers are really arbitrary and meaningless. In certain trades numbers are used to designate grades of a product common to the trade, and, in that case, the grade numbers are descriptive by common usage. A plow manufacturer applied for registration of the symbols "A No. 1," "No. 1" and "A X No. 1," as trade-marks for plows. It was shown, upon

examination, that these symbols are used by many plow makers to designate grades, and they were, therefore, ordinary descriptive trade terms. Registration was refused.

The prohibition against trade-marks descriptive of the character or quality of the product applies with equal force to trade-marks descriptive of the container or package. A flour manufacturer put up his product in barrels of a distinctive character—white and dark staves alternating. He applied for registration of a mark consisting of a pictorial representation of the striped barrel. This mark was considered descriptive, and registration was refused.

A Philadelphia candy manufacturer applied for registration of the word "Fussy," as used in the phrase "A fussy package for fastidious folk." The Patent Office held that the word "fussy," as used in the phrase, was merely a descriptive term—an adjective qualifying "package"—and registration was accordingly refused.

The word "Spearmint," being a descriptive word, was refused registration as a trade-mark for Wrigley's Spearmint chewing gum, but the representation of a spear was considered registrable.

Various applicants have sought registration for trade-marks that, while they are meaningless to English-speaking people, are really descriptive terms taken from foreign languages. Such words are not registrable, for the Patent Office makes no distinction between languages.

The phrase "Lait de Violettes," meaning in French "Milk of Violets," was rejected as a mark for perfumery.

"Elegancia," the Spanish equivalent of the English word "Elegant," was refused registration as a trade-mark for cigars.

A descriptive word in a language as little known as Esperanto is nevertheless unregistrable. "Saniga" means "Sanitary" in Esperanto, and it has been accordingly refused registration on the ground of being a descriptive term.

In considering the question of descriptive marks, the difference between *description* and *suggestion* should not be overlooked. Suggestiveness is a highly desirable quality in a trade-mark, and many excellent and legally valid marks are suggestive.

The name "Hydegrade," a registered trade-mark, applied to a well-known fabric, is suggestive of high quality, but it is not descriptive. It is a coined word, composed of the elements "Hyde" (name of owner) and "Grade."

Another example of an excellent suggestive mark is "Rubdry" applied to towels.

"Cravenette"
REG. U. S. PAT. OFF.

IT IS NOT GENERALLY KNOWN THAT THIS IS AN ARBITRARY WORD, REGISTERED AS A TRADE-MARK.

"STEERO"
(Reg. U. S. Pat. Off.)

A WELL-KNOWN TRADE-MARK. ANOTHER EXAMPLE OF THE LARGE NUMBERS OF MARKS CONSISTING OF WORDS ENDING IN "O"

Pictorial marks-are often highly suggestive without being descriptive. The Baker Chocolate girl, depicted in the act of serving a cup of cocoa, suggests *daintiness, taste, beverage, quickness in serving, and refreshment.*

The word "Ideal," used in connection with a fountain pen, is considered fanciful, and not descriptive. It would seem that a very fine distinction is made here, as this word is an ordinary descriptive word, commonly used to express a state of perfection, as in the expression "An ideal day." It may be said, on the other hand, that nothing ever reaches an ideal condition, and, in that sense, the mark may be considered fanciful.

Geographical names, like descriptive terms, are the common property of all who use the language. No one manufacturer can appropriate such a term for his own exclusive use as a trade-mark unless he uses it in an arbitrary or fanciful sense. The only exceptions to this principle are to be found in the case of manufacturers who have adopted geographical terms as their trade-marks and have used them so long, without opposition or protest, that they have acquired a common law right to their exclusive use.

Among the geographical marks rejected by the Patent Office are the following:

"Yale," applied to hosiery; "Cloverdale," for canned fruits and vegetables; "Red River Special" as a mark for agricultural implements; and "Aurora," on shoes—the name "Aurora" being applied to localities in at least twenty states of the Union.



A GOOD EXAMPLE OF THE USE OF A SUGGESTIVE SYMBOL AS A TRADE-MARK, USED IN CONNECTION WITH BAY STATE BRICK AND CEMENT COATING.

It would seem in the light of common-sense, that in the last-named case (that of "Aurora") the ruling of the Patent Office is on a very narrow basis indeed. The word "Aurora" has no geographical significance to the average person. It calls up a mental image of the dawn. If this case, and some others like it, are considered valid precedents, every applicant for trade-mark registration must be prepared to submit his application to the stern criticism of the Post Office Directory, with its catalogue of fifty thousand or more names. (It is interesting to observe that, in a later case, the Patent Office allowed the registration of "Aurora" as a trade-mark for oils, lard, syrup and honey. *Aspegren & Co., ex parte*, 100 *Official Gazette*, 684.)

"Tabasco" was refused registration as a mark for a sauce on the ground that it is a geographical term, Tabasco being the name of a state in Mexico.

"French" was rejected as a trade-mark for paint. On the other hand, "Celtic" has been registered as a trade-mark for tea

The word "Celtic" has reference to a race, of which the Irish are only one branch. It is not applied to any particular country or section of the globe.

The map of the United States has been refused registration as a trade-mark for sugar.

"American Lady" was refused registration on the ground that the word "American" is geographical.

When a geographical term, applied to merchandise, is used in a fanciful or arbitrary sense—that is, when it conveys no deception in regard to the origin of the merchandise—it may be registered as a valid trade-mark.

"Dublin" is a valid trade-mark for soap, although the soap is made in America. In the case concerning this mark it was shown that it is the practice of soap manufacturers to call their products "Limerick," "Scotch," "Irish," etc., and that the buying public is aware of the fanciful use of these names and is not deceived thereby.

"Vienna," applied to bread, is considered valid. No one expects bread made in Vienna to be sold in America, consequently no one is deceived by this fanciful use of the word.

"Gibraltar" is registered as a trade-mark for belting. It is true that Gibraltar is a geographical name, but its suggestiveness in regard to belting conveys the mental picture of strength, rather than the idea of origin.

The student of trade-mark conditions, having learned how rigorously the Patent Office interprets the section of the law applying to the registration of geographical terms, will perhaps be puzzled by the number of trade-marks of this class which seem to be valid and well-established.

The explanation of that is that many geographical names, which could not have been protected *ab origine* as trade-marks, have acquired a secondary meaning by long and exclusive use by a particular manufacturer. Such marks fall within the protection of the common law.

Some of these common law marks are registered under the ten years' clause.

Among well-known geographical trade-marks may be mentioned "Bristol" applied to fishing-rods; "Kalamazoo" applied to stoves; "Manhattan," the name of a brand of shirts; and "Elgin," "Waltham," and "Illinois," the names of watches.

The U. S. Sanitary Manufacturing Co. was refused registration for a trade-mark consisting of the letters "U.S." with a background of a shield similar to that of the conventional United States shield.



THE TRADE-MARK OF THE NEW ENGLAND CONFECTIONERY COMPANY. THIS IS A COINED WORD, MADE UP FROM THE FIRST LETTERS OF EACH WORD IN THE CONCERN'S NAME.



A GEOGRAPHICAL NAME REGISTERED UNDER THE TEN-YEARS' CLAUSE.

A trade-mark must not consist of the flag or coat of arms or other insignia of the United States, or of any state, or municipality, or any simulation thereof

A trade-mark which consists merely of the name of an individual, firm or corporation can be registered only on certain conditions

The coat of arms of the United States is not registrable as a trade-mark even under the ten years' clause. It has been held that its use in that connection is opposed to public policy. (*American Glue Company, ex parte*, 120 *Official Gazette*, 324.)

The registration of the coat of arms of the state of Maryland was refused registration, application having been made under the ten years' clause.

In another case, registration of a simulation of the shield of the United States, with alternate red and white stripes, was refused registration.

It would seem at first consideration that if the object of using a trade-mark is to indicate the origin of a commodity, the most effective mark would be simply the maker's name—"James Brown" for goods made by James Brown, and "William Jones" for goods made by William Jones.

This logic would be indisputable if there were a different family name for every individual. But names are limited in number—there are eleven pages of Smiths in the New York City Directory—and every man has a natural and inalienable right to use his own name. It is obvious that a family name lacks the exclusiveness that is an essential quality of a legitimate trade-mark.

But a personal name may be written, or printed, or stamped in such a way that the peculiarities of writing, or printing, or design, may dominate the name and be the most conspicuous feature of the combination.

NESNAH

THIS TRADE-MARK OF A JELLY POWDER IS A COINED WORD, MADE BY SPELLING THE PROPRIETOR'S NAME "HANSEN" BACKWARDS

the name of an individual, firm, corporation, or association, not written, impressed or woven in some particular or distinctive manner, or in association with a portrait of the individual." In this clause the framers of the Act have endeavored to put a logical restriction on the injudicious use of personal names as



trade-marks and the endless litigation that has always resulted from this practice.

WITHIN THE MEANING OF THE STATUTE THIS WAY OF PRESENTING THE NAME "GILLETTE" IS CONSIDERED DISTINCTIVE. NOTE THAT THE DEVICE DOMINATES THE NAME, AND PUTS IT INTO A POSITION OF RELATIVELY SECONDARY IMPORTANCE.

The names of historical personages (not living) may be registered as trade-marks, but the name of a living person cannot be used without his consent.

The phrase "Gibson Girl" as a mark for shoes was refused registration, as the word "Gibson" obviously referred to Charles Dana Gibson, a living artist.

In case of the registration of names of individuals, firms or corporations the restriction of the law that the name must be shown in some "particular or distinctive manner" has been interpreted to mean a presentation of the name in such a form that the peculiarities of lettering, or writing, or of an accompanying device are so pronounced that they dominate the name and throw it into a position of secondary importance. The meaning of this clause is best shown by means of examples of proper names, registered and used as trade-marks. A number of trade-marks of this character may be found in this book.

Many portraits of living persons are used as trade-marks—notable among them being the face of W. L. Douglas,

A portrait of a living individual is not registrable as a trade-mark unless the application is accompanied by the written consent of the person whose portrait is used

shoe manufacturer; and the portrait of Thomas A. Edison, used in connection with his facsimile signature, as a trade-mark for Edison phonographs.

Among historical characters the picture and signature of Robert Burns, the poet, are combined in a trade-mark for cigars; the face of Benjamin Franklin is used as a trade-mark for the Saturday Evening Post, and will be found printed on the editorial page of each issue; Bismarck is a name for collars; Napoleon is used in connection with a brand of flour; and "Bob" Ingersoll is the trade-mark of a cigar.

It is a definite principle of the common law that fraud vitiates any transaction that it touches. A trade-mark that is deceptive and misleading cannot be protected, no matter if its registration should be accomplished.

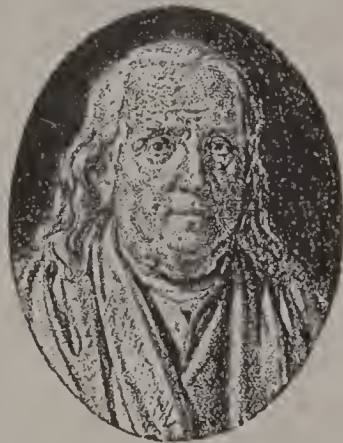
"Knights of Labor" was refused registration as a trade-mark for whiskey, as the evident intent of the mark was to mislead purchasers into a belief that the whiskey was produced by the Knights of Labor, a labor organization.

A trade-mark is not registrable if it conveys in any way a misrepresentation of the article

A similar case is exhibited in the attempt to register the name "Masonic" as a mark for cigars. Registration was refused.

The name "Malt Myrrh" was refused registration as a trade-mark for malt liquors when it was shown that the liquors did not contain myrrh.

The name "Old Country Soap," used in connection with soap in such a way as to lead purchasers to believe that the soap was manufactured in Europe, was held by the court in the case of *Wrisley v. Iowa Soap Company* to be deceptive, and protection against infringement was refused.



REG. U. S. PAT. OFF.

THIS PORTRAIT OF BENJAMIN FRANKLIN IS THE TRADE-MARK OF THE SATURDAY EVENING POST.

A false representation on a trade-mark to the effect that the article is patented when it is not, is sufficient to vitiate the trade-mark.



AN AUTOMOBILE
TRADE-MARK.

A trade-mark registration does not protect when it is used on an article different in character, or composition, or origin, from that for which it was registered. This principle is very important. A manufacturer cannot do as he pleases with his trade-mark without regard to the rights of the public. If the article for which it was registered is changed essentially in composition, or in purpose, the trade mark ceases to be of value. Trade-marks under the United States law are always *specific and associated with a certain definite article*, and not with the proprietor's general business.

In Great Britain and Canada there are *general trade-marks*, which a manufacturer may use on any article he makes, no matter to what diverse classes these articles belong.

A trade-mark which is technically a valid mark, will be refused registration if, in the opinion of the Patent Office, its registration would be opposed to public policy. A few examples will show what we mean. The phrase "Ask the Revenue Officer" was rejected as a mark for whiskey. The Patent Office held that this mark, appearing on bottles or barrels, would lead the public to believe that the contents had the indorsement of officers of the government.

For a similar reason the word "Government" was refused registration as a mark for loose-leaf binders.

The name of a living Ex-President cannot be registered without his written consent (as in the case of any other living person), and the name of an Ex-President, not living, cannot be registered at all. The use of the name of an Ex-President as a trade-mark is not considered consonant with the high dignity of the Presidential office.

Several applications have been made within the last few years for registration of the names or portraits of Ex-Presidents.

The signature and portrait of Thomas Jefferson, combined in a trade-mark for cigars, was refused registration.

The words "Roosevelt Rose" were rejected on application for registration, the rejection being partly because "Rose" had been registered on a previous application, and partly because Roosevelt is a living person.

Other Restrictions A trade-mark cannot be a color, because the number of colors is limited, and it would be manifestly unfair to give the exclusive use of a color to any individual.

The use of the flag or coat of arms of any foreign power is prohibited as a trade-mark. This restriction holds even when the foreign power agrees to the use of its insignia. The

Russian government consented to the use of its coat of arms as a trade-mark in the case of an applicant before the United States Patent Office, but registration was refused. The law is mandatory, and is not affected by agreement.

Any design or picture which has been adopted by a fraternal society as its emblem is not registrable as a trade-mark.

For obvious reasons, scandalous or immoral matter is refused registration.

A trade-mark cannot be a shape, or a package, or a container.

A trade-mark cannot be the article of merchandise itself, for the "mark" must necessarily be different from the thing marked.

JELL-O

THERE ARE SO MANY
TRADE-MARKS ENDING IN
"O"—SUCH AS CRISCO, OMO,
ONOTO, QUIXO, PEBECO—
THAT MARKS OF THIS TYPE
NO LONGER POSSESS DIS-
TINCTIVENESS

CHAPTER IV

The Elements of a Good Trade-Mark

THE reader who has perused the preceding pages devoted to a discussion of what a trade-mark cannot be, begins to wonder, perhaps, what part of the language is left unrestricted.

It is true that the number of restrictions imposed by the law and the courts is considerable, but the language is virtually inexhaustible, with its infinite possible combinations of letters and words. And to these possibilities of construction must be added the limitless varieties of designs and symbols which are registrable and valid under the law.

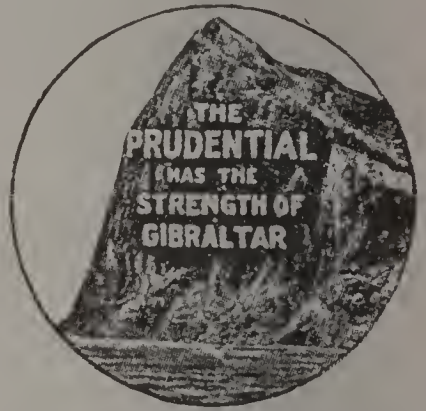
A trade-mark may be:

A *coined word*, like Calox, Coca-Cola, Omo, Jap-a-lac, Crisco, Pebeco, Celluloid, Plexo (a trade-mark for suspenders; also for a toilet preparation), Sapolio, Cravenette, Jell-O, Kodak, Uneeda, Pro-phy-lac-tic, Crex and Quixo.

A *symbol*, like the Baker chocolate girl; the Prudential Insurance Company's trade-mark, which consists of a picture of the Rock of Gibraltar; the Merrimack duckling; the spear of Spearmint chewing gum; the Puritan painter, used on Bay State brick and cement coating; the Ford automobile mark, consisting of a winged pyramid; or the representation of a mask or domino, used on packages of Crystal Domino sugar; or the painter boy of the National Lead Company.

A *combination of a word, or words, and a symbol*, like Thomas A. Edison's portrait and signature, used in connection with phonographs; a picture of a black cat and the words "Black Cat," used as a hosiery trade-mark; the trade-mark of the Vacuum Oil Company, consisting of a picture of a gargoyle in connection with the word "Gargoyle"; or a representation of a swan accompanied by the word "Swan," used on fountain pens.

A *portrait*, like Mennen's Talcum Powder mark, which is a picture of Gerhard Mennen; or the portrait of Robert Burns, used on cigars.



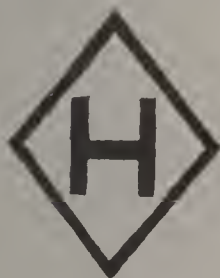
THE ROCK OF GIBRALTAR HAS LONG BEEN THE TRADE-MARK OF THE PRUDENTIAL INSURANCE COMPANY. IT APPEARS ON PRUDENTIAL POLICIES, AND IS USED IN CONVENTIONAL TRADE-MARK FORM.



A TRADE-MARK OF THE VACUUM OIL COMPANY.

A word, or words, used in a fanciful (non-descriptive) sense, like "Cat's Paw," a trade-mark for rubber heels; "Bachelor's Friend," a suggestive trade-mark for hosiery; the word "Ribbon," a mark for a tooth-paste; "Republic," used on automobile tires; "Velvet," a trade-mark for smoking tobacco; "Onyx," the trade-mark of a well-known brand of hosiery; "Ivory," which stands for a famous brand of soap; "Diamond," a name for tires; "Arrow," used on collars; "Blue-Jay," a trade-mark for a corn-plaster; "Big Ben," used on alarm clocks; "Lifebuoy," the name of a soap; or "Occident," the name of a flour.

A historical or mythological character, like Juno, King William, Stonewall Jackson, Cupid, Venus (there is a lead pencil carrying this trade-mark), Samson (applied suggestively to a brand of rope), or Apollo (the name of a piano-player).



THE TRADE-MARK USED ON HEISEY GLASSWARE.

Initials or arbitrary numbers, like the "G.E." trade-mark of the General Electric Company; the number "4711," applied to perfumery and toilet articles; "61," a floor varnish; "E-Z," the suggestive trade-mark of jar used in preserving fruits; "O.K.," the name of a clip to hold papers together; "B.V.D.," the trade-mark of a well-known line of underwear; or the big "H"

enclosed in a diamond-shaped design, used as a trade-mark on Heisey's glassware.

The business name of person, firm or corporation when written, printed, impressed or woven in a distinctive manner, or in association with a portrait, or in an autographic form. An example of this type of trade-mark is the word "Cross," reproduced here.

CROSS

The name "Gillette," used on safety razors, is enclosed in a diamond and crossed by an arrow. A well-known trade-mark of this character is the name "Stewart Hartshorn," found on most shade-rollers.

Marks that may be technically defective are registrable under the ten years' clause if they have been in exclusive use by the applicant for ten years preceding 1905. The word "Faultless,"

Sunshine

A VERY EFFECTIVE TRADE-MARK, USED WITH BISCUITS SOLD IN PACKAGES.

registered by E. Rosenfeld & Company, of Baltimore, as a trade-mark for garments, belongs to this class. "Faultless" is, of course, descriptive, but it is nevertheless registrable under the ten years' clause. Another mark of the same kind consists of the word "Coward"—a trade-mark for shoes.

Coward is the proprietor, and under the Act of 1905 his name has no eligibility as a trade-mark unless it is written or printed in a distinctive manner. But his name has been used as a trade-mark since 1868, and, consequently, falls within the provisions of the ten years' clause.

It is easy enough to devise a trade-mark that will comply with the letter and the spirit of the law. But a trade-mark should be something more than merely registrable and protectable. Think of the immense advertising and selling effort that must be brought to bear to overcome the inertia of a meaningless or unsuitable trade-mark.

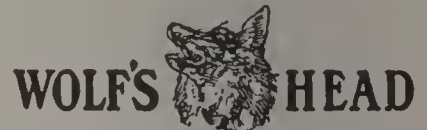
The Nine Tests of a Desirable Trade-Mark A proposed trade-mark should not be adopted until every one of the following questions can be answered affirmatively in regard to it:

1. Is it easy to speak?
2. Is it easy to remember?
3. Is it easy to spell?
4. Is it simple in design?
5. Is it attractive in sound and appearance?
6. Is it suggestive of the good qualities of the merchandise?
7. Is it different from other trade-marks of the same class?
8. Can it be affixed to the goods with which it is to be used?
9. Is it registrable and protectable?

Few trade-marks in commercial use can stand these tests, because most marks have been designed without any clear perspective of the part they were to play in business.

As a matter of interest and instruction, let us take several well-known trade-marks, at random, and put them through the list of test questions.

Opening a current magazine, the first trade-mark we see is "Postum," the name of a substitute for coffee. Postum is easy to say and remember and spell. It is simple, but not particularly attractive in sound. It has no suggestiveness, except the artificial suggestiveness of familiarity. It is distinctive, registrable, and is virtually infringement-proof. If the figure 100 should be set down as denoting a perfect trade-mark, then Postum should be graded at about 80. It wholly lacks suggestiveness, and it is not attractive though not displeasing.



A TRADE-MARK FOR LUBRICATING OIL.

The next mark that attracts our attention in this magazine is "Siwelco," a coined word, applied to a flushing device used in connection with bathroom toilets. Siwelco is not easy to pronounce, it is not euphonious, it is not easy to remember or to spell. It is the reverse of attractive in sound, and it carries no suggestiveness. It is registrable and protectable.

The next trade-mark is "O.K.," applied to paper fasteners. This mark possesses every good feature. It is suggestive in the

sense that "O.K." means, in ordinary speech, "all right, satisfactory, good." These fasteners are used in offices. The symbol "O.K." has a distinct meaning in commercial language. We are of the opinion that "O.K." used as a trade-mark for office supplies should be graded 100.

"Cat's Paw," a trade-mark for rubber heels, is the next. It is an example of a word that is suggestive in the wrong way. "Cat's Paw" suggests the soft, quiet tread of a cat—and of rubber heels. At first glance it would seem that "Cat's Paw" is an ideal name. But those who sell rubber heels say that the noiseless tread (or "sneaky walk," as one shoemaker stated it) is the greatest of all drawbacks to the sale of rubber heels. In short, the name is suggestive, but suggests a defect.

The next trade-mark that comes to hand is the Ford automobile mark, reproduced on this page.



THE FORD AUTOMOBILE
TRADE-MARK—A PYRAMID
WITH WINGS.

It should be noted at the start that the mark as it stands, with the phrase "The Universal Car" as a part of it, is not registrable, as it contains a descriptive phrase. The rest of the design is registrable, and, after registration, the descriptive phrase might be

imposed upon it without destroying its validity.

In considering this mark the reader should bear in mind that an automobile trade-mark must be of such character that it can be worked out in metal and attached to the front of the radiator. The Ford device is suited to this form of affixation.

This trade-mark shows a pyramid with wings. Its symbolism is the pyramid for *strength and solidity*, and the wings for *speed*. *Speed and solidity*—two desirable qualities in an automobile. The symbolism is not apparent until explained, and the mark is rather meaningless to the ordinary observer, but, considering the restrictions that surrounded its creation, we are of the opinion that it is a very good trade-mark.

Next we come to "Ralloc," which is the trade-mark of a collar-retainer. The word is obviously the word "Collar" spelled backward. It is not euphonious, or attractive, or distinctive in any way. This mark is



A REGISTERED TRADE-MARK WHICH IS SO SUGGESTIVE THAT IT APPROACHES WITHIN A HAIR'S BREADTH OF BEING DESCRIPTIVE.

an example of a large class of trade-marks which bears upon them the evidences of only one purpose—and that is, to produce something which will not be rejected by the Patent Office.

"Crex" is an excellent trade-mark.

It is an adaptation of the word "Carex," which is the botanical name of a sedge-like grass which may be woven into a fabric. Dropping the "a," we have "Crex." This name sticks in the memory; it is easy to spell, easy to say, and is quite distinctive. It lacks inherent suggestiveness, but it is the kind of word that may be readily popularized by advertising.

There is a toilet preparation widely advertised and sold under the name "Sempre Giovine," meaning "always young." This trade-mark must be a tremendous drawback to the success of the article with which it is associated. It cannot be pronounced properly except by those who have taken lessons; and it is difficult to remember. To an English-speaking person it conveys no suggestion. Foreign words should be avoided in devising trade-marks. People do not like to ask for things by names which they cannot pronounce.

The trade-mark affixed to the linens sold by McCutcheon, of New York, a store famous for the quality of its fabrics, consists of the picture of an old-fashioned spinning-wheel, without wording. This is a very good trade-mark. It brings up a mental picture of the slowly-wrought hand-woven linens of our grandmothers' time, fabrics that looked good and wore well.

There are trade-marks so admirably adapted to their purpose that they seem to be the work of genius. "Unecda," applied to crackers in a sealed package, is such a trade-mark. "Rainbow;" a trade-mark for dyes, is another happy inspiration. This name makes one think of the fine colors and delicate tones of a rainbow. It stimulates the idea that these dyes emulate a rainbow in beauty. "Skidoo"—a trade-mark used in connection with a small gasoline engine for launches—is another trade-mark that touches the top notch of merit. It suggests agility and lightness, and the ability to get in motion and scurry away.

Special Notice

An enormous waste of mental effort expended by manufacturers and their representatives in devising unsatisfactory trade-marks might be avoided by consultation with us—either personally or by mail—before any work is done in the way of devising a mark.

There are more than 40,000 registered marks in existence, and approximately 100,000 unregistered trade-marks that have been used long enough to be capable of protection under the common law. One can see that the chances are large of a new trade-mark user deciding upon a mark that is already in use. Many marks are sent to us to be registered on which it is evident that much thought has been expended, but which are so nearly like other marks already in existence that their registration and protection are impossible.

A search of the Patent Office files, for which we charge only \$5.00, generally saves many times its cost in mental work and vexation.



TRADE-MARK OWNED BY
THE KALAMAZOO SUSPENDER
COMPANY IT IS A COINED
WORD, THE ELEMENTS OF
WHICH ARE TAKEN FROM THE
NAME "KALAMAZOO."

CHAPTER V

The Trade-Mark Work of Munn & Company

THE firm Munn & Co. began practice as patent attorneys before the Civil War, and for seventy-five years it has been engaged in this work.

During our two generations of service the law of trade-marks and unfair trade has grown from a thin trickle of judicial decision to a wide stream of statutes and precedents. We have kept track of the formation of this large body of law, and have assisted in some measure, in shaping it.

Sixty-five years ago there were probably not more than a thousand trade-marks in existence in the United States. To-day, the registered trade-marks alone number above one hundred and forty-eight thousand.



THE CORTICELLI SILK TRADE-MARK. THE CAT'S HEAD IS PRINTED ON A LABEL PASTED ON THE END OF EVERY SPOOL.

Knowledge is only accumulated by experience, and we believe that we are justified by the facts in saying that we have had a larger and longer experience in Patent Office work than any other firm of patent solicitors.

We are entitled to practice before the Patent Office in cases concerning trade-marks as well as those relating to patents. Our work in this connection includes preliminary searches of the Patent Office files; registration of marks; and the conducting of opposition, interference and cancellation proceedings.

Our fees for trade-mark service are:

For registration of a trade-mark (if there is no opposition), \$45.00. To this fee should be added the government fee of \$10.00 for registration, making the total cost of registering a trade-mark, \$35.00.

If the mark includes a special design, an additional fee of \$5.00, to cover the expense of preparing the drawing, is charged.

For preparation of a design, or devising a trade-mark, where the idea is our own, we charge a fee based on the time and labor involved.

For search of the Patent Office files, our charge is \$5.00. This search should always be made before an application for registration is filed.

After an application has been filed for registration, an examination is made by the Patent Office, for the purpose of ascertaining whether or not the application is anticipated. If the Trade-

Mark Examiner in the Patent Office refuses to register a trade-mark, an appeal may be taken to the Commissioner of Patents. If he reaffirms the Examiner's decision, another appeal may be taken to the Court of Appeals of the District of Columbia.

For conducting appeals our fee is based on the circumstances of the case.

It may happen that you have applied for registration of a trade-mark essentially similar to that of another registrant or applicant. In such a case the Commissioner of Patents is authorized to institute what are called "Interference Proceedings," for the purpose of ascertaining who is the rightful owner. If you are dissatisfied with the decision of the Examiner of Interferences, by whom the inquiry is conducted, you may appeal to the Commissioner in person; and from his decision you may appeal further to the Court of Appeals of the District of Columbia.

SCIENTIFIC AMERICAN

THE TITLES OF PERIODICALS SHOULD BE PROTECTED BY TRADE-MARK REGISTRATION.

A registered trade-mark can be assigned only in connection with the good-will of a business in which the mark is used. The assignment must be recorded in the United States Patent Office within three months of its date, otherwise it is void as against any subsequent innocent purchaser for a valuable consideration. The Commissioner of Patents is required to keep a record of such assignments. The usual fee for preparing and recording an assignment is \$5.00.

Information Needed Before an Application for Registration Can Be Prepared.

Delays in registering trade-marks are often caused by the failure of trade-mark owners to supply us readily with all the information necessary to formulate an application for registration in proper form. If you are contemplating the registration of a mark, note carefully the following data which must be supplied.

1. Name of the owner of the trade-mark.
2. If the owner is a corporation, the State in which it has been incorporated; if a firm, the names of the members thereof.
3. Residence of the owner.
4. Place of business of the owner.
5. Nationality of the owner.
6. Whether the mark is used in interstate or foreign commerce, or commerce with the Indian tribes.
7. Class of merchandise on which the mark is to be used, and the particular description of the goods comprised in that class. Thus, the applicant must not state merely that a mark is to be used with "Shirts," but should be more specific, and state whether the shirts are outer or under garments, and of what material they are made.
8. A statement of the manner in which the trade-mark is applied to the goods. If by means of labels, six copies of the label should be furnished; if otherwise, six specimens of the mark as usually affixed.
9. As nearly as possible the earliest date on which the mark was used.

10. Whether or not the mark is registered in any foreign country; and, if so, the date of registration or of the application for registration.
11. If the applicant be not a resident of the United States, the name and address of some person residing in the United States upon whom process may be served or notice of proceedings affecting ownership. (If desired, we can appear on the Patent Office records as the representative of a foreign registrant upon whom papers may be served.)

Many American manufacturers and exporters do not realize the importance of registering their trade-marks in the foreign countries to which their goods are sent. **Registration in Foreign Countries** Knowing only the trade-mark laws of the United States, where the title is derived from first use and is confirmed by registration, they often wait until it is too late before attempting to comply with the registration laws in other countries.

A fundamental difference between the trade-mark laws of the United States and those of Germany, Austria, Hungary, Argentine Republic, Bolivia, Brazil, Chili, China, Paraguay, Peru, Venezuela, Uruguay, Costa Rica, Guatemala, Denmark, Finland, Norway, Sweden, Spain, Japan and Cuba, is that in the foreign countries named the first to register a trade-mark acquires the property therein, to the exclusion of the rightful owner.

In many other countries the registration is, after a short period, also conclusive proof of ownership. American exporters will, therefore, see the importance of registering their marks in the foreign countries to which they send their goods.

We are prepared to register American marks in any country that has made provision for the registration of foreign-owned marks. Upon application, we will send a list of fees for registration in each country.

Our organization is complete in every particular. We have a highly trained staff of trade-mark specialists which we place at the service of our clients. **Our Facilities** Our office in Washington, located near the Patent Office, gives us unsurpassed facilities for rapid and accurate work. We are always in close touch with new trade-mark developments through being on the ground, and being engaged in daily practice before the Patent Office.

Under the present law those applications for the registration of trade-marks which have been passed and allowed are published in the Official Gazette, and, **Opposition Proceedings** within thirty days after the date of publication, any person who believes he would be damaged by the registration of a mark may oppose its registration by filing notice of opposition thereto. The opposer need not be the owner of a registered trade-mark, but, if registration is sought by another for a trade-mark so closely resembling one in use by the opposer on goods of the same descriptive properties as to be liable to cause confusion or mistake in the minds of the public or to deceive purchasers, the registration of such mark to the applicant would justify the opposer's belief that he would be damaged thereby.

Notices of opposition to be effective must be filed within thirty days after the date of publication of the mark sought to be registered in the Official Gazette.

Munn & Co. practice exclusively before the Patent Office, and therefore all litigation arising in the office of
Legal Causes Munn & Co., such as suits for infringement of patents, trade-marks and copyrights, unfair business competition, the preparation of assignments, licenses and contracts, the formation of corporations, as well as validity and infringement opinions, are conducted by the law firm of Munn, Anderson & Munn, Woolworth Building, 233 Broadway, New York.

MUNN & COMPANY

Patent Attorneys

WOOLWORTH BUILDING
 233 BROADWAY,
 NEW YORK, N. Y.

625 F STREET
 WASHINGTON, D. C.

TOWER BUILDING
 CHICAGO, ILL.

HOBART BUILDING
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VAN NUYS BUILDING
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