THE PROPOSED CHANGES IN THE PATENT LAW.

We subjoin a full copy of the proposed changes in the Patent laws which are now before Congress for its legislation. Some of our readers will doubtless recognize in this bill the lineaments of an old familiar friend, for, with the exceptions of Sections 10 and 11, it is almost, word for word, the same as that brought before Congress in 1858, and at that time published in the SCIENTIFIC AMERICAN. See Vol. XIII. (old series), page 222.

To the leading features of the bill of 1858 we gave our assent, though it contained some objectionable provisions. We then refrained from entering upon any minute criticism of its merits, because the objections were of a minor character; and because the bill, as a whole, was good, while the chances for its passage were at best very slim. Since that time, however, patent property has risen in value; the number of new inventions patented has greatly increased; and the public, and public men, have manifested a greater interest in patent matters than was ever before observable. We are therefore constrained to believe that there is a real disposition in the present Congress to make such reforms in the laws as may seem to be positively necessary.

The Patent laws now in force are about as complete and perfect, in their practical operation, as any that were ever devised for a similar purpose. Within only fifteen years the receipts of the Patent Office have risen from $40,000 to $240,000, and the number of patents annually granted has increased from 500 to 4,500. What better evidence could there be of the practical excellence of the current system than facts like these? When, year by year, we witness the wonderful strides in improvements which our people are making, under the auspices of these same Patent laws, why should we ask for any changes? Why not "let well enough alone"? These are questions that will at once suggest themselves to the mind of every patriotic legislator. We have no idea that the present Congress will pass any bill without the most thorough examination of its provisions, and a most rigid pruning of its excrescences.

The bill now presented is designed, for the most part, to facilitate the Patent Office in the execution of the present laws, by providing the necessary means for properly conducting the greatly increased business which these laws have brought to its doors. We should be satisfied if the scope of the bill were wholly confined to this object. But certain other amendments have been added which will do good if adopted, and still others which it would be wise to reject.

We annex the bill, and, section by section, we have interposed brief suggestions under each, so that, as they pass in review, our readers may have a correct understanding of the changes proposed and their probable effects.

NOTE.—The words enclosed between brackets denote the original phraseology of the bill, and the words printed in *italics* indicate the clauses substituted as amendments.

A BILL

IN ADDITION TO "AN ACT TO PROMOTE THE PROGRESS OF THE USEFUL ARTS."

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Commissioner of Patents may establish rules for taking affidavits and depositions required in cases pending in the Patent Office, and such affidavits and depositions may be taken before any justice of the peace, or other officer authorized by law to take depositions to be used in the courts of the United States, or in the State courts of any State where such officer shall reside; and in any contested case pending in the Patent Office it shall be lawful for the clerk of any court of the United States for any district or territory, and he is hereby required, upon the application of any party to such contested case, or the agent or attorney of such party, to issue subpoenas for any witnesses residing or being within the said district or territory, commanding such witnesses to appear and testify before any justice of the peace, or other officer as aforesaid, residing within the said district or territory, at any time and place in the subpoena to be stated; and if any witness, after being duly served with such subpoena, shall refuse or neglect to appear, or, after appearing, shall refuse to testify (not being privileged from giving testimony), such refusal or neglect being proved to the satisfaction of any judge of the court whose clerk shall have issued such subpoena, said judge may thereupon proceed to enforce obedience to the process, or to punish the disobedience in like manner as any court of the United States may do in case of disobedience to process of subpoena and testificandum issued by such court; and witnesses in such cases shall be allowed the same compensation as is allowed to witnesses attending the courts of the United States: *Provided*, That no witnesses shall be required to attend at any place more than forty miles from the place where the subpoena shall be served upon him to give a deposition under this law: *Provided, also*, That no witness shall be deemed guilty of contempt for refusing to disclose any secret invention made or owned by him: *And provided, further*, That no witness shall be deemed guilty of contempt for disobeying any subpoena directed to him by virtue of this act, unless his fees for going to, returning from, and one day's attendance at the place of examination shall be paie or tendered to him at the time of the service of the subpoena.

The propriety of compelling the attendance of witnesses in patent cases was so fully discussed and endorsed in our last number that no further remark is now necessary.

Sec. 2. *And be it further enacted*, That, for the purpose of securing greater uniformity of action in the grant and refusal of Letters Patent, there shall be appointed, in the same manner as now provided by law for the appointment of examiners, a board of three examiners-in-chief, at an annual salary of three thousand dollars each, to be composed of persons of competent legal knowledge and scientific ability, whose duty it shall be, on the written petition of the applicant for that purpose being filed, to revise and determine upon the validity of decisions made by examiners when adverse to the grant of Letters Patent; and also to revise and determine in like manner upon the validity of the decisions of examiners in interference cases, and to perform such other duties as may be assigned to them by the Commissioner; that from the decisions of this board appeals may be taken to the Commissioner of Patents in person upon payment of the fee hereinafter prescribed; that the said examiners-in-chief shall be governed in their action by the rules to be prescribed by the Commissioner of Patents. No appeal shall hereafter be allowed from the decision of the Commissioner of Patents, except in cases pending prior to the passage of this act.

So onerous have the duties of the Commissioner become, under the pressure of the increased business, that of late he has been compelled to call to his assistance three of the most experienced Examiners in the department, and they constitute what is now known at the Patent Office as the "Board of Appeals." The Board hears and reads all the cases that were formerly heard personally by the Commissioner, thus relieving him from a service that has become physically impossible for him to discharge. The Board reports to the Commissioner, who confirms or rejects its decisions. The above section, so far as it gives public recognition and permanence to this Board, and increases the salaries of its members, is judicious, and its adoption is much needed. But we see no propriety in burdening the Board with the additional labor of deciding interferences, when it is *barely able to keep pace with the business of rejected cases*. A second Board, confining its duties solely to the decision of interferences, might perhaps be profitably employed.

Nor do we see the propriety of exacting a fee of $20 for an appeal to the Commissioner in person. The applicant enjoys that advantage now, in substance, and, assisted by the Board, the Commissioner has so far experienced no difficulty whatever in disposing of all the appeal cases.

We are likewise unable to see any good reason for depriving the applicant of the right which he now enjoys, of taking an appeal to the judges of the District Court, in Washington City. These judges are appointed for life. They are not subject to the whims of political partizanship, nor are they governed or influenced by the fluctuating opinions upon patent law which float in the atmosphere of the Patent Office. But removed from the excitements, cares and interruptions of the department, in the quietude of their own homes, the judges examine and carefully decide the cases that are sent to them, on appeal, by the Commissioner. Interests of momentous importance to the inventor reach a final solution in their hands. Many errors committed by the Patent Office have been brought to light and corrected by this method of appeal. Justice, which Commissioners have erroneously refused, has been promptly obtained at the District Court. This system of appeal works well and gives general satisfaction. Why deprive the inventor of so efficient and inexpensive a safeguard of his rights?

It is alleged that the Commissioner and other officials are put to much inconvenience by being compelled to send the models and papers in appeal cases out of the Office to the judges' chambers. But we think that much of the inconvenience complained of has been occasioned by the Patent Office itself in making stupid and unjust decisions. If the Commissioner and his subordinates would pay closer attention to the mandates of the judges, there would be more uniformity in decisions and less trouble occasioned to all the parties concerned. Courts of Appeal are commonly maintained for the express purpose of giving uniformity to the decisions of the lower courts. But the above section is based upon the absurd expectation of obtaining uniformity by abolishing the right of appeal, and *allowing each Commissioner to be the final arbiter of his own decisions*. Past experience shows that this is the very way to induce non-uniformity. Multitudes of instances might be cited where Commissioners have decided one way on one day and just the contrary at another time—where the decisions of the incumbent of to-day have been disregarded by his successor on the morrow. So long as the Commissionership is used as a political bait or as a reward for partizan zeal, subject to constant change of persons, and held by the same individual for only a few months at a time, how can uniformity of decisions be, by any possibility, maintained, except through the medium of a final appeal to some authority other than that of the Commissioner, like that which the law now gives?

Sec. 3. *And be it further enacted*, That no appeal shall be allowed to the examiners-in-chief from the decisions of the primary examiners, except in interference cases, until after the application shall have been twice rejected; and the second examination of the application by the primary examiner shall not be had until the applicant, in view of the references given on the first rejection, shall have renewed the oath of invention, as provided for in the seventh section of the act entitled "An act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose," approved July fourth, eighteen hundred and thirty-six.

This section re-enacts what is already in vogue. Under the present rules of the Patent Office, the case must have been twice rejected, and the oath renewed, before an appeal can be taken.

Sec. 4. *And be it further enacted*, That the salary of the Commissioner of Patents shall [from and after the commencement of the present fiscal year] be [five thousand dollars] *four thousand five hundred dollars* per annum, and the salary of the chief clerk of the Patent Office shall be [the same as that of principal examiner] *two thousand five hundred dollars per annum.*

The present salary of the Commissioner is $3,000 per annum. For these days of expensive living, the proposed increase is little enough.

Sec. 5. *And be it further enacted*, That the Commissioner of Patents is authorized to restore to the respective applicants, or when not removed by them, to otherwise dispose of such of the models belonging to rejected applications as he shall not think necessary to be preserved. The same authority is also given in relation to all models accompanying applications for designs. He is further authorized to dispense in future with models of designs when the design can be sufficiently represented by a drawing.

There are nearly as many rejected models stored at the Patent Office as patented. The building has been quadrupled in size within ten years; but the number of models received has been in a far greater ratio than the increased space provided. The rejected models are of no use to any one but the owners, who, in most cases, want them returned. The removal of these models has become a positive necessity. By all means, adopt this section.

Sec. 6. *And be it further enacted*, That the tenth section of the act approved the third of March, eighteen hundred and thirty-seven, authorizing the appointment of agents for the transportation of models and specimens to the Patent Office, is hereby repealed.

The Commissioner of Patents is hereby authorized to employ a clerk of the third class to frank such letters and documents as he is by law permitted to frank, and to perform such other duties as the Commissioner may assign him.

The Commissioner is further authorized, from time to time, to appoint, in the manner already provided for by law, such an additional number of principal examiners, first assistant-examiners, and second assistant-examiners, as may be required to transact the current business of the Office with dispatch, provided the [annual expenses of the Patent Office shall not exceed the annual receipts] *whole number of additional examiners shall not exceed four of each class.*

We say amen to all of this. Let the Patent Office be well provided with help, so that all applicants shall have their cases promptly disposed of. With this additional aid, the Examiners will be better able to attend to the interferences than the present Board.