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The New Rule of the Patent Office.

We have already invited the attention of the Commissioner of Patents to the new regulations of the Office, which require that claims for improvements onseparate and distinct parts of a well known machine, shall only be made under separate and distinct applications for patents. This is very nearly equivalent to a regulation forbidding two claims to be made in any application for a patent, for not more than one in a thousand of the applications made are for *new* machines, but for improvements upon parts of those old and well known.

The inventor then, who, after years of patient oil, and too often of bitter privation, has finally succeeded in perfecting his invention, which embraces perhaps three or four, and often many points of novelty, all entering into the one harmonious whole; and after having expended his time and money for years, finds himself, at last, by this stern rule of the Patent Office, reduced to the necessity of abandoning all his claims but one, as it is often to him a moral impossibility to raise a sufficient amount of money to procure separate patents upon each of them.

But we do not assent to the legality of this proceeding. The present Patent Laws have been in existence nearly eighteen years, yet never until within a few weeks has any such rule been laid down by those administering them. Patents embracing various claims have been repeatedly before our courts, and it seems to us that if this be contrary to the act, as is held by the originators of this rule, some shrewd lawyer who was taxing his wits to the utmost to destroy their validity, would have discovered the discrepancy. But we have positive *legal* testimony to the contrary. Precedent is the great basis of law, and any interpretation of a statute which has been recognized as valid by our highest Courts in hundreds of cases, through a period of more than seventeen years, ought by this time to be considered as the acknowledged interpretation of the law.

But let us consider the enactment in question:—The Act approved July 4, 1836, sect. 6, provides, "That any person or persons having discovered or invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture, or composition of matter . . . . . may make application to the Commissioner . . . . and in case of any machine . . . . . shall particularly specify and point out the part, improvement, or combination, which he claims as his own invention or discovery."

Now we would be glad to know how any construction can be put upon this language which will discriminate between a new invention and an improvement upon an invention. They are both, by the language of the statute, entitled to precisely the same privileges, and any discrimination in favor of the one is a violation of the statute, and a gross injustice to the other.

We have in our mind, at the present moment an individual who has invented a brick machine, embracing, we think, six features of patentable novelty. Now this invention does not consist, strictly speaking, of improvements upon any *one* machine. The inventor has doubtless seen many machines having in view the same objects as his—he has employed his ingenuity to invent a new machine which shall be in his judgment better than any of the old; he has succeeded, and has produced not a new machine, for brick machines resembling his in many particulars, have been long used—but an *improvement* upon brick machines.

Now we ask if an improvement of this character may not be what is meant by the Act, and may not consist of separate parts forming the basis for separate claims, as well as an original *machine*. Does the section of the Act in question discriminate in any manner between them?

But the great point is, will the interests of inventors and the public be better subserved by this new regulation? It so, we are ready to yield the point, but we think not. Three parties, perhaps, should be included in the consideration—the Inventor, the Patent Office, and the public. The first party, for whose benefit and encouragement the Act in question was passed, no one, we think, can consider as benefited in any manner whatsoever. On the contrary, it is in three cases out of four the source of glaring injustice to them. It would be better for them, as a class, to raise the price of granting a patent to sixty dollars, as under the stringency of the present rules, it is almost impossible for any one to proceed without the assistance of an agent or a legal adviser, whose charges they are obliged to pay in addition to the patent fees, so that the cost of taking out patents upon several claims amounts to a sum by no means trifling to a poor inventor. Take the case referred to above. We will suppose the cost of a model to be twenty-five dollars, a like sum will be required for making out his application, and thirty dollars at the Patent Office. This would amount to eighty dollars, but if six patents are taken it amounts to no less than four hundred and eighty dollars, more than many a poor inventor can raise by any means whatever.

As to the second party in the consideration, if the Patent Office is reduced to the pitiful necessity of adopting such a measure to replenish its funds, let it be known, and we will ask Congress to take some measure for its relief. But nothing of this kind is necessary, as it is well known that the present price paid by inventors proves a source of revenue after all the expenses are paid. But the Patent Office is actually injured by this regulation, for we are positive fewer patents will be applied for than would be under the old regulations. Inventors are unable, as a general rule, to incur the additional expense of procuring several patents, and the protection afforded by a single claim, is often so slight that it is not worth the cost of obtaining.

The public is interested in the matter only as it favors or retards the advancement of the arts and sciences. If invention is encouraged as much under the new as the old regulations it is as well for them, but if not, it is otherwise, so that their interests, and those of inventors as a class, are one. Will the onward march of improvement, then, be hastened by a rule which is oppressive to the poor mechanic who has labored for years in the noble endeavor to benefit himself and the public by diminishing labor or adding to the articles of convenience and comfort in public use? Will the honor of America be increased by discouraging those who have been striving to add a new laurel to the wreath which binds the brow of American Invention?

We still believe that Commissioner Mason, in whose judgment we have the most implicit confidence, will repeal this new regulation, which we are confident will, if insisted on, be productive of more injury to inventors, and if so, to the public, than any other regulation of the Patent Office, which has been made for years. Judge Mason, we believe, is, as any man should be in his situation, friendly to the class whose interests it is his duty to subserve, and we shall be greatly disappointed if this oppressive rule be allowed to exist as his interpretation of the law.

Patent Office—Report of the Secretary of the Interior.

It is well known to most of our readers that we have always opposed the surrender of any portion of the Patent Office to any other than the legitimate purpose for which it was built.

There is no doubt that the original designers of this noble edifice contemplated its use strictly and entirely for inventors—they saw as the arts and sciences progressed that the plan could not be too broad for the reception and proper display of models, the preservation of the records, and for the offices in which its duties were to be administered. As its graceful and airy halls began to develope their convenience and symmetry of design, they tempted the cupidity of the officials to seize upon them for their own use, and soon after the creation of the Department of the Interior, the Patent Office was placed under its subordination. It was indeed humiliating to the Commissioner to be thus compelled to surrender to the dictation of a superior officer, especially after the Patent Office had so long maintained an isolated and distinct administration, and we are confident that had the Commissioner been less obsequious and more firm and independent, he could have prevented this unwarrantable interference, and preserved the Office, as it should be, above the reach of political influence or dictation.

The Commissioner of Patents, if he has the tact and talent necessary to a judicious management of the office, is more competent to give it direction, suggest, and carry out reforms than any other person. The present Secretary of the Interior evidently understands this, and places his reliance upon the ability and discrimination of Judge Mason, the present able and accomplished Commissioner, whose management of the office has thus far secured for him the confidence and respect of all who have had business with the Department. In our last number we published such portions of the Report of the Secretary of the Interior, as related to the Patent Office and its management—he recommends an increase of the examining force, and truly says that the delay before final action can be obtained after the application is presented "is a severe trial to the patience of the inventor and often a serious loss to him as well as the public." Congress has for some years entirely neglected the just demands of inventors, and we hope at least that it will not fail to authorize the Commissioner to increase the force proportionate to the actual necessities of the Patent Office.

No application should remain unexamined in the Office over three months at the furthest, this would stimulate genius to greater activity, and increase the number of applications.

The next point to which the Secretary of the Interior directs attention is the condition of the models of rejected applications, and those of designs of stoves, &c. We recommend that the stoves be sold at public auction, and the proceeds of the sale applied to the patent fund. They are not arranged in cases, are cumbersome and totally valueless to the office. The drawings and specifications are sufficient for the purposes of examination; the same remark applies to all rejected applications; the models are in the "tomb of the Patent Office," a mass of confusion. They are valuable only to their applicants, and whenever they elect to withdraw their applications the models should be returned. The law should be so amended as to allow the Commissioner to return them whenever they are demanded.

Much well-grounded complaint now exists against the practice of retaining rejected models, when they are really valuable only to the inventors whose claims have been refused. It is not uncommon to find inventors renewing their claims before the Office after they have once withdrawn them, and as matters are now conducted, they cannot do so without preparing new models; under such circumstances it would be a wise and liberal policy to allow the original models to be returned. There is certainly no reason for retaining them as the specifications and drawings would answer all the purposes of the Office.

We are the advocates of prompt legal action, and we hope the reform in the law as suggested respecting appeals will be acted upon at once. The present is a rickety system of annoyances to all concerned, let us have something decent as a substitute. Concerning the occupation of the Patent Office Building, the Secretary's recommendations are admirable and will find a hearty response from the inventors; they do not wish to pursue the dog-in-the-manger policy, because at present there is plenty of room in the Patent Office Building for the transaction of its legitimate duties, and also to afford *temporary* accommodations for other Bureaus, but the time is rapidly approaching when the entire building must be demanded for the use of inventors; this suggests the urgent necessity which exists for a new structure to be used by these Bureaus when they can no longer find room in the Patent Office without hindering its legitimate operations.

We hope the Secretary's recommodations will receive prompt action from Congress, they are well worthy of it.

Recording of Assignments—Property of Patents.

As we have had a number of inquiries respecting the recording of patent assignments, the following information will be interesting to many of our readers.

The Act of Congress, 1836, Sec. 11, provides "that every patent shall be assignable at law, either as to the whole interest or any undivided part thereof by any instrument in writing, which assignment, and also every grant and conveyance of the exclusive right under any patent, to make and use the thing patented, within and throughout any specified part of the United States, shall be recorded in the Patent Office within three months after the execution thereof."

A correspondent writing to us says:—"I assigned to J. B. two years ago, the exclusive right under my patent of a certain portion of the United States; he neglected to have the assignment recorded, and now he desires me to grant him a new assignment, but I feel that I cannot do so, because I have not the power, having made the assignment to him already; what is to be done in such a case?

The interest in a patent which is made assignable by our patent statute, is undoubtedly assignable at common law; Curtis is clear upon this point. He says: "the statute renders it necessary to record the assignment in the Patent Office within three months of the execution thereof to affect intermediate *bona fide* purchasers without notice. But it has been held that in other respects it is merely directory, and that any subsequent recording will be sufficient to pass the title to the assignee."

In the case of Pitts, vs. Whitman, in "Story's Reports," an objection was made to the deed of assignment belonging to the plaintiff (Pitts) because it was dated 17th April, 1838, and not recorded until the 19th of April, 1841, three years afterwards. Judge Story held the statute specifying *three months* for assignment to be merely directory. Speaking in his own logical manner, he says: "if a patentee assigned his whole right to the assignee for a full consideration, and the assignment is not recorded within three months, and the assignees should make and use the machine afterwards, could the patentee maintain a suit against the assignee for the breach of the patent, as if he had never parted with his right? This would seem to be most inequitable and unjust, and yet if the assignment became a nullity, and utterly void by the non-recording within three months, it would seem to follow as a legitimate consequence that such a suit would be maintainable. In furtherance then of right and justice, and the apparent policy of the act, and in the absence of all language, importing that the assignment, if unrecorded shall be deemed void, I construe the provision as to recording to be merely directory for the protection of *bona fide* purchasers without notice. The assignment is like the common case of a property deed, required by law to be registered, on which the plaintiff founds his title, where it is sufficient, if it be registered before the trial, even after the suit is brought."

This is very plain; an assignment of a patent, or part of it, then, is good and valid although not recorded; but an assignee must have his assignment recorded in the Patent Office, before he can maintain a suit in law or equity upon the patent, either as a sole or joint plaintiff against another party.

Patent property is assignable like any other species of property, and in cases of bankruptcy, a patent already obtained passes to assignees. It has also been held that a contract may be made to convey a future invention, as well as a past one, and that a bill in equity will lie to compel a specific performance. In relation to inventions, past and future, contracts are just as binding between two or more parties as any other contracts—bargains. In purchasing patent property and dealing in it, parties cannot go wrong, if they proceed upon the same principle as in purchasing and dealing in other property. The law is as clear and the practice as specific in adjudicating upon patent, as any kind of property whatever.

The Swedish Government has decided on a vast system of railways, the execution of which will be confided to an English company.