

Legal Notes.

THE GRANT AND VALIDITY OF BRITISH PATENTS FOR INVENTIONS.*—Very few persons, whose inventive rights are protected under the patent laws of the different countries, realize the many provisions which are necessary to afford them protection in each case, and the special training which it is necessary for the solicitor or lawyer in charge of their interests to have, in order that the actions of the public and the courts may be anticipated, the full protection of the invention be secured, and the patent be sustained during the many possible contests and the litigation which may arise during its term. For a lawyer to familiarize himself with the patent laws of any country requires long and careful study; and when he has not brought to his task a special training in the arts or an aptitude for this branch of learning, he will find a further difficulty in applying his knowledge to the facts in particular cases as they may arise. Mr. Roberts has the several qualifications which are necessary for the writer of a review of the patent law of Great Britain, and in the book before us he has shown himself fully able to cope with a task, the results of which are now offered to the public.

The work has been treated in a novel way, for there are only one hundred and seventy-eight pages of text in the book, while the principal portion of the work is devoted to abstracts from cases which have been selected by the author. The space given to the text being so limited, it is little more than a very brief digest of the cases which form the body of the book and give to it its value. While a law book should in every case use the language of the decisions in which the law is construed, it aids very much to a review of the law to have together all the matter relating to a certain subject. To be sure, when a question of importance is to be considered, all the cases in which the same facts appear should be reviewed, but that will be impossible in a single volume, the purpose of which is to furnish the general information which is necessary to the avoidance of the many pitfalls which the uninitiated finds in his path. Mr. Roberts states that this book was written from the point of view of inventors. It is therefore to be regretted that he did not make it more of a constructive work, instead of confining himself in most of the pages to abstracts of cases, which it is impossible to arrange in any order, because most of the decisions discuss two or more questions. While many inventors will probably refer to the book and use it to advantage, the work will also be found on the shelves of many lawyers' libraries, and patent solicitors, especially those in foreign countries engaged in British patent practice, cannot very well afford to overlook the assistance which is now offered.

In preparing specifications to accompany British applications, the same care is necessary to describe and disclose the invention correctly as is required in the preparation of specifications which are to be filed in the United States Patent Office; but, because of several differences in the British patent laws and practice, many things must be examined which the applicant for a United States patent need not consider with the same care. Under the old law, the British Patent Office does not examine as to the novelty of the invention, though when the amended law goes into effect, an examination will be made of British specifications which were deposited in the matter of applications filed within fifty years next before the filing of the application which is being considered by the officials. It will be seen that under the old law, the British Patent Office offers the applicant no assistance in the limitation of his claims to that to which he is entitled in view of the state of the art, and that even under the practice which will go into effect some time in the future, very little assistance will be rendered to the applicant by the examiners in the Patent Office. It is therefore necessary for the applicant to inform himself at his peril what his invention is, and to limit his claims to what is new, for under the British practice a patent is invalid in which there is one claim to which the patentee is not entitled. This severe rule of law, with the other provisions as to the novelty of an invention, which make it necessary for the applicant to file his patent application before the invention has been publicly used in Great Britain, or has been published in that country, makes it often extremely difficult to confine the claims to the features of the invention which it will be impossible for opponents to attack on the ground of a previous use or publication. Very many British patentees have been unable to obtain recognition of their rights in the courts on this ground alone, though, in the decisions to which Mr. Roberts refers, quite as many patentees have failed in their efforts to protect

* The Grant and Validity of British Patents for Inventions. By James Roberts. London: John Murray. New York: E. P. Dutton & Co.

their inventions, because when the complete specification was being prepared, there was great uncertainty in the mind of the solicitor as to what the inventor desired to protect.

Another line of decisions considers the question of disconformity. Except when a British patent application is filed under the International Convention, it is possible for the applicant to leave with his application a provisional specification in which the invention is generally and fairly described without disclosing the mode of carrying it into practice. When a provisional specification is filed with a patent application, the applicant has nine months in which to file a complete specification in which the nature of the invention is particularly described and ascertained, and the manner in which it is to be performed is stated. Disconformity is the inclusion in the complete specification and claims of that which was not mentioned or that which is not a fair development of that which was mentioned in the provisional specification. When the complete specification is held to "disconform" to the provisional specification, the patent is invalid.

There is much substance in the book, and by a careful review of the selected cases with the notes, which the author from time to time has added, a good working knowledge of the British patent practice can be obtained. In the back of the book will be found the Patent Acts, with the authorized forms and official circulars of information. The volume also contains a very good index, in which the questions considered in the different decisions are arranged in their proper order.

THE CONSTRUCTION OF CLAIMS.—A patent was issued to Joseph Boyer on April 16, 1895, for a pneumatic tool, the various features of which are expressed in a large number of claims. Suit was brought by the patentee against the Keller Tool Company for infringement of this patent. The bill was dismissed by the Circuit Court and an appeal taken to the Circuit Court of Appeals (127 Fed. Rep., 130).

The only complaint with which the Appellate Court had to deal was the treatment of those claims covering the means for controlling the supply pressure. Claim 47, as expressive of this group, was held by the Circuit Court to call for a pressure supply duct which extended to the grasping portion of the handle, combined with a throttle valve to control the supply. None of these appeared in the tool manufactured by the defendant, for which reason the charge of infringement was dismissed.

In reversing the decision of the lower court, the Circuit Court of Appeals took occasion to enumerate the rules which should be observed in the construction of claims. In this Boyer patent the mechanical elements combined were old; but the combination itself showed patentable invention, especially in view of the utility of the tool and its superiority over those of the prior art.

Much was made in this case of the effect of the proceedings in the Patent Office as disclosed by the file wrapper. The court accepted for the purposes of the case all that could be legitimately claimed for the argument of counsel addressed to the examiner which is there found. The court thought that the claims of a patent are not narrowed by statements made on an argument before the Patent Office to obtain a reconsideration after the application has been rejected, where no changes are made in the claims.

In many specifications a certain part of a mechanical combination is said to consist preferably of the shape approximating that shown in the drawings, but the inventor expressly declares, with regard to his invention generally, that by describing in detail any particular arrangement he does not intend to limit himself beyond the terms of his several claims or the requirements of the prior art. Under these circumstances, the court held that a claim is realized and infringed by any construction of the general character called for which fulfills its terms, notwithstanding the words "substantially as described" at the end.

A TRADE-MARK INFRINGEMENT SUIT.—The case of Ohio Baking Company vs. National Biscuit Company (127 Fed. Rep. 117) brings out a typical trade-mark situation and a typical decision. Complainant's "In-er Seal" trade-mark, as known to the public, was printed in white letters on a vivid red background of a peculiar shade, and applied to the ends of cracker and biscuit cartons, in which complainant's goods were packed for sale. Shortly thereafter defendant conceived a trade-mark with the words "Factory Seal" printed on the same-colored labels, which it applied to the ends of similar packages of its biscuits. At the time defendant adopted this trade-mark it knew complainant's crackers were the only ones sold with the red seal on the end of the cartons, and that its trade-marks were liable to deceive careless purchasers. The court held that defendant's trade-mark, when so printed and used, was an infringement on complainant's trade-mark, and should be enjoined.

Brief Notes Concerning Patents.

Rev. Ernest d'Aquila, pastor of the Italian Roman Catholic church of Our Lady of Mount Carmel, Newark, N. J., has been granted a patent on a safety gas burner, which is intended to prevent the asphyxiation of persons who blow out the light either by design or accident.

Dr. Hans Goldschmidt, the German chemist, who has been visiting this country, took occasion during his stay to inspect the furnace invented by Marcus Ruthenberg, of Philadelphia, by which the highest grade of steel is made directly from the ore. This furnace has been erected at the Cowles Aluminium Works, at Lockport, N. Y. A practical demonstration of the furnace was given for the distinguished visitor.

Dr. Von Adelung, the health officer of the city of Oakland, Cal., has invented a new faucet which is being experimented with by the board of education of that city. By the use of this device, the doctor claims it will be impossible to transmit disease germs from one scholar to another. The faucet is much like others, except that it is inverted and does away with the use of the drinking cup.

Ethan R. Cheney recently died at Brookline. He was an inventor of note. For twenty years he was master mechanic at the Norway Iron Works, in Boston, and while there invented and patented many valuable pieces of machinery. Four years ago he invented a lathe for the purpose of turning the large granite columns required for the cathedral of St. John the Divine in this city. The columns were 60 feet long and 6 feet in diameter in one piece. The lathe weighed 140 tons and was the largest ever built for turning granite.

An elaborate electrical device, which combines the moving picture machine with the phonograph, so that the words and music of a theatrical or other performance can be heard while the movements of the players are reproduced before the eyes, has been invented and is being exploited. The machine is the invention of T. F. Solon, an ex-member of the Wisconsin legislature, and ex-Gov. George W. Peck, of the same State, is an active member of the company which is engaged in introducing the apparatus. One of the novel features of the machine is the mode by which a cylinder which has become exhausted is automatically changed for a fresh one.

Anyone who has ever witnessed the operation of fighting a fire must have been impressed with the awful force of the water as it issues from the nozzle of the hose. The services of three and four firemen are often required to hold and direct the stream, and it is a frequent occurrence, at that, for the nozzle to break away from their grasp, and under the influence of the mighty force of water being driven through its interior, be hurled right and left, like a mighty serpent on a rampage, seriously injuring anyone who might be unfortunate enough to get within its reach. The only way which the rearing and tearing monster can again be secured is by stopping the pump, and much time is frequently lost before this can be done. A new nozzle which can be handled as easily as a child is just now being brought to the attention of the fire departments of the country. Its remarkable behavior under the highest pressures is attracting the wonder of the men who thought the old nozzle, which has been in use so long with all its faults, was about as near perfect as it was possible to make it. A trial of the device was made recently in New York, when one of the nozzles was connected with three streams, each 2½ inches in diameter, with a pressure at the pumps of 160 pounds. The machine was bolted to a plank, and the latter was nailed down with seven tenpenny nails, and this was entirely sufficient to hold the nozzle under all circumstances. One man could easily direct the stream to any desired point, and after it had been placed as desired, the nozzle remained unsupported without the least variance under the pressure of the water. The upper part of the device consists of a nozzle much the same as is in use at present except that it is finished at the base with a ball joint. The ball end is supported by a stand, which divides at the top to receive and support the end of the nozzle proper, and the stream being divided enters the tube of the nozzle from both sides, which comprises the essential feature of the device. One would naturally conclude that the efficiency of the stream would be impaired by its passage through the two channels, but at the lower pressures there was no change whatever as compared with the ordinary nozzle, while at the higher pressures the difference was very slight. There are several types of the apparatus, and the one tried in New York was the one designed for the heaviest work. Those which are made for handling a single stream of ordinary dimensions are supplied with a stand, which is meant to be merely placed on the ground without any fastenings whatever. When it has been thus located, it needs no further attention, except when it is desired to make a change in the direction of the stream occasionally.