

71. The specification and drawing must be amended and revised when required, to correct inaccuracies of description or unnecessary prolixity and to secure correspondence between the claim, the specification, and the drawing. But no change in the drawing may be made except by written permission of the office and after a photographic copy of the drawing as originally presented has been filed.

Inaccuracies or prolixity.

Change in drawing.

72^a. After the completion of the application the office will not return the specification for any purpose whatever. If applicants have not preserved copies of the papers which they wish to amend, the office will furnish them on the usual terms.

Specification not to be returned.

The model or drawing, but not both at the same time, may be withdrawn for correction; but a drawing can not be withdrawn unless a model or photographic copy of the drawing has been filed and accepted by the examiner as a part of the application.

Model or drawing returned for correction.

73. In every amendment the exact word or words to be stricken out or inserted in the application must be specified and the precise point indicated where the erasure or insertion is to be made. All such amendments must be on sheets of paper separate from the papers previously filed, and written on but one side of the paper. Erasures, additions, insertions, or mutilations of the papers and records must not be made by the applicant.

Amendments must be specific.

How written.

Amendments and papers requiring the signature of the applicant must also, in case

Signature to amendments.

a. For amended Rule 72, see *post*, p. 1475.

of assignment of an undivided part of the invention, be signed by the assignee. Rules 6, 107.)

Specification re-written.

74. When an amendatory clause is amended, it must be wholly rewritten, so that no interlineation or erasure shall appear in the clause, as finally amended, when the application is passed to issue. If the number or nature of the amendments shall render it otherwise difficult to consider the case, or to arrange the papers for printing or copying, the examiner or Commissioner may require the entire specification to be rewritten.

Patents showing but not claiming invention.

75. When an original or reissue application is rejected on reference to an expired or unexpired domestic patent which substantially shows or describes but does not claim the rejected invention, or on reference to a foreign patent or to a printed publication, and the applicant shall make oath of facts showing a completion of the invention in this country before the filing of the application on which the domestic patent issued, or before the date of the foreign patent, or before the date of the printed publication, and shall also make oath that he does not know and does not believe that the invention has been in public use or on sale in this country, or patented or described in a printed publication in this or any foreign country for more than two years prior to his application, and that he has never abandoned the invention, then the patent or publication cited will not bar the grant of a patent to the applicant, unless the date of

such patent or printed publication is more than two years prior to the date on which application was filed in this country.

76. When an application is rejected on reference to an expired or unexpired domestic patent which shows or describes but does not claim the invention, or on reference to a foreign patent, or to a printed publication, or to facts within the personal knowledge of an employee of the office set forth in an affidavit (when requested) of such employee (Rule 66), or when rejected on the ground of public use or sale, or upon a mode or capability of operation attributed to a reference or because the alleged invention is held to be inoperative or frivolous or injurious to public health or morals, affidavits or depositions supporting or traversing these references or objections may be received, but affidavits will not be received in other cases without special permission of the Commissioner. (See Rule 141.)

77. If an applicant neglect to prosecute his application for one year after the date when the last official notice of any action by the office was mailed to him, the application will be held to be abandoned, as set forth in Rule 171.

Whenever action upon an application is suspended upon request of an applicant, and whenever an applicant has been called upon to put his application in condition for interference, the period of one year running against such application shall be considered as beginning at the date of the last official action preceding such actions.

Application rejected on references showing but not claiming invention, etc.

Affidavits supporting and traversing such references or objections may be received.

Rev. Stat., sec. 4894.
Abandonment.

Suspension of application.

Acknowledgment of the filing of an application is an official action. Suspensions will only be granted for good and sufficient cause, and for a reasonable time specified.

Only one suspension will be granted by the primary examiner; any further suspension must be approved by the Commissioner.

Amendment and jurisdiction after notice of allowance.

78. Amendments will not be permitted after the notice of allowance of an application, and the examiner will exercise jurisdiction over such an application only by special authority from the Commissioner.

Amendment without withdrawal from issue.

Amendments may be made after the allowance of an application, and after payment of the final fee, if the specification has not been printed, on the recommendation of the primary examiner, approved by the Commissioner, without withdrawing the case from issue. (See Rule 135.)

DESIGNS.

Rev. Stat., secs. 4929 to 4933.
Design patents, to whom granted.

79. A design patent may be obtained by any person who has invented any new, original, and ornamental design for an article of manufacture, not known or used by others in this country before his invention thereof, and not patented or described in any printed publication in this or any foreign country before his invention thereof, or more than two years prior to his application, and not caused to be patented by him in a foreign country on an application filed more than four months before his application in this country, and not in public use or on sale in this country for more than two years prior to his application, unless the

same is proved to have been abandoned, upon payment of the fees required by law and other due proceedings had, the same as in cases of inventions or discoveries.

80. Patents for designs are granted for the term of three and one-half years, or for seven years, or for fourteen years, as the applicant may, in his application elect.

Rev. Stat., sec.
4931.
Terms of design
patents.

81. The proceedings in applications for patents for designs are substantially the same as in applications for other patents. Since a design patent gives to the patentee the exclusive right to make, use, and vend articles having the appearance of that disclosed, and since the appearance can be disclosed only by a picture of the article, the claim should be in the broadest form for the article as shown.

Rev. Stat., sec.
4933.
Proceedings.

82. The following order of arrangement should be observed in framing design specifications:

- (1) Preamble, stating name and residence of the applicant, title of the design, and the name of the article for which the design has been invented.
- (2) Description of the figure or figures of the drawing.
- (3) Claim.
- (4) Signature of inventor.
- (5) Signatures of two witnesses.

Arrangement of
specification.

83. When the design can be sufficiently represented by drawings a model will not be required.

Rev. Stat., sec.
4930.
Model.

84. The design must be represented by a drawing made to conform to the rules

laid down for drawings of mechanical inventions.

(For forms to be used in applications for design patents, see Appendix.)

REISSUES.

Rev. Stat., secs.
4895, 4916.
Reissue, when
granted.

85. A reissue is granted to the original patentee, his legal representatives, or the assignees of the entire interest, when the original patent is inoperative or invalid by reason of a defective or insufficient specification, or by reason of the patentee claiming as his invention or discovery more than he had a right to claim as new, provided the error has arisen through inadvertence, accident, or mistake and without any fraudulent or deceptive intention.

Reissue applications must be made and the specifications sworn to by the inventors, if they be living.

Abstract of title.
Assent of assignees.

86. The petition for a reissue must be accompanied by an order for a certified copy of the abstract of title to be placed in the file, giving the names of all assignees owning any undivided interest in the patent. In case the application be made by the inventor it must be accompanied by the written assent of such assignees.

Prerequisites.
Oath of applicant for reissue.

87. Applicants for reissue, in addition to the requirements of Rule 46, must also file with their petitions a statement on oath as follows:

- (1) That applicant verily believes the original patent to be inoperative or invalid and the reason why.

- (2) When it is claimed that such patent is so inoperative or invalid "by reason of a defective or insufficient specification" particularly specifying such defects or insufficiencies.
- (3) When it is claimed that such patent is inoperative or invalid "by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new," distinctly specifying the part or parts so alleged to have been improperly claimed as new.
- (4) Particularly specifying the errors which it is claimed constitute the inadvertence, accident, or mistake relied upon, and how they arose or occurred.
- (5) That said errors arose "without any fraudulent or deceptive intention" on the part of the applicant.

88. New matter shall not be allowed to be introduced into the reissue specification, nor in the case of a machine shall the model or drawings be amended except each by the other.

New matter.

89. The Commissioner may, in his discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for each division of such reissued letters patent. Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention

Division of reissue of application.

All divisions to
issue simultane-
ously.

claimed in such division; and the drawing may represent only such part or parts, subject to the provisions of Rule 50. Unless otherwise ordered by the Commissioner, all the divisions of a reissue will issue simultaneously; if there be any controversy as to one division, the others will be withheld from issue until the controversy is ended, unless the Commissioner shall otherwise order.

Re-examination
of reissue claims.

90. An original claim, if reproduced in the reissue specification, is subject to re-examination, and the entire application will be revised and restricted in the same manner as original applications.

Original patent.

91. The application for a reissue must be accompanied by the original patent and an offer to surrender the same, or, if the original be lost, by an affidavit to that effect, and a certified copy of the patent. If a reissue be refused, the original patent will be returned to applicant upon his request.

Matter to be
claimed only in
a reissue.

92. Matter shown and described in an unexpired patent, and which might have been lawfully claimed therein, but which was not claimed by reason of a defect or insufficiency in the specification, arising from inadvertence, accident, or mistake, and without fraud or deceptive intent, can not be subsequently claimed by the patentee in a separate patent, but only in a reissue of the original patent.

INTERFERENCES.

Rev. Stat., sec.
4000.
Interference de-
fined

93. An interference is a proceeding instituted for the purpose of determining the

question of priority of invention between two or more parties claiming substantially the same patentable invention. The fact that one of the parties has already obtained a patent will not prevent an interference, for, although the Commissioner has no power to cancel a patent, he may grant another patent for the same invention to a person who proves to be the prior inventor.

94. Interferences will be declared in the following cases, when all the parties claim substantially the same patentable invention:

(1) Between two or more original applications containing conflicting claims.

When declared.

Original applica-
tions.

(2) Between an original application and an unexpired patent containing conflicting claims, when the applicant, having been rejected on the patent, shall file an affidavit that he made the invention before the patentee's application was filed.

Original appli-
cation and unex-
pired patent.

(3) Between an original application and an application for the reissue of a patent granted during the pendency of such original application.

Original and re-
issue applications.

(4) Between an original application and a reissue application, when the original applicant shall file an affidavit showing that he made the invention before the patentee's original application was filed.

Original and re-
issue applications.

(5) Between two or more applications for the reissue of patents granted on applications pending at the same time.

Reissue applica-
tions.

Reissue applica-
tions.

(6) Between two or more applications for the reissue of patents granted on applications not pending at the same time, when the applicant for reissue of the later patent shall file an affidavit showing that he made the invention before the application was filed on which the earlier patent was granted.

Reissue applica-
tion and unexpired
patent.

(7) Between a reissue application and an unexpired patent, if the original applications were pending at the same time, and the reissue applicant shall file an affidavit showing that he made the invention before the original application of the other patentee was filed.

Reissue applica-
tion and unexpired
patent.

(8) Between an application for reissue of a later unexpired patent and an earlier unexpired patent granted before the original application of the later patent was filed, if the reissue applicant shall file an affidavit showing that he made the invention before the original application of the earlier patent was filed.

Application and
patent is sued two
years.

(9) An interference will not be declared between an original application filed subsequently to December 31, 1897, and a patent issued more than two years prior to the date of filing such application or an application for a reissue of such a patent.

95. Before the declaration of interference all preliminary questions must be settled by the primary examiner, and the issue must be clearly defined; the invention which is to form the subject of the controversy must be decided to be patentable, and the claims of the respective parties must be put in such condition that they will not require alteration after the interference shall have been finally decided, unless the testimony adduced upon the trial shall necessitate or justify such change.

Preparation for interference.

96. Whenever the claims of two or more applications differ in phraseology, but cover substantially the same patentable subject-matter, the examiner, when one of the applications is ready for allowance, will suggest to the parties such claims as are necessary to cover the common invention in substantially the same language. *The examiner will send copies of the letter suggesting claims to the applicant and to the assignees, as well as to the attorney of record in each case.* The parties to whom the claims are suggested will be required to make such claims and put the applications in condition for allowance within a specified time in order that an interference may be declared. Upon the failure of any applicant to make the claim suggested within the time specified, such failure or refusal shall be taken without further action as a disclaimer of the invention covered by the claim, and the issue of the patent to the applicant whose application is in condition for allowance will not be delayed unless the time for making the claim

Failure to prepare for interference.

and putting the application in condition for allowance be extended upon a proper showing. If a party make the claim without putting his application in condition for allowance, the declaration of the interference will not be delayed, but after judgment of priority the application of such party will be held for revision and restriction, subject to interference with other applications.

Examiner preparing interference notices, etc.

97. When an interference is found to exist and the applications are prepared therefor, the primary examiner will forward to the examiner of interferences the files and drawings; notices of interference for all the parties (as specified in Rule 103) disclosing the name and residence of each party and that of his attorney, and of any assignee, and, if any party be a patentee, the date and number of the patent; the ordinals of the conflicting claims and the title of the invention claimed; and the issue, which shall be clearly and concisely defined in so many counts or branches as may be necessary in order to include all interfering claims. Where the issue is stated in more than one count the respective claims involved in each count should be specified. The primary examiner shall also forward to the examiner of interferences for his use a statement disclosing the applications involved in interference, fully identified, the name and residence of any assignee, and the names and residences of all attorneys, both principal and associate, and arranged in the inverse chronological order of their filing as completed applications, and also dis-

closing the issue or issues and the ordinals of the conflicting claims.

Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, the examiner will notify each of said principal parties, and also the attorney, of this fact.

Conflicting parties having the same counsel notified.

98. Upon receipt of the notices of interference, the examiner of interferences will make an examination thereof in order to ascertain whether the issue between the parties has been clearly defined, and whether they are otherwise correct. If he be of the opinion that the notices are ambiguous or are defective in any material point, he will transmit his objections to the primary examiner, who will promptly notify the examiner of interferences of his decision to amend or not to amend them.

Revision of notices by examiner of interferences.

99. In case of a material disagreement between the examiner of interferences and the primary examiner, the points of difference shall be referred to the Commissioner for decision.

Reference to Commissioner.

100. The primary examiner will retain jurisdiction of the case until the declaration of interference is made.

Primary examiner retaining jurisdiction.

101. Upon the institution and declaration of the interference, as provided in Rule 102, the examiner of interferences will take jurisdiction of the same, which will then become a contested case; but the primary examiner will determine the motions mentioned in Rule 122, as therein provided.

Jurisdiction of examiner of interferences.

Primary examiner to determine certain motions.

102. When the notices of interference are in proper form, the examiner of interfer-

Rev. Stat., sec. 4904.

Institution and
declaration of in-
terference.

ences will add thereto a designation of the time within which the preliminary statements required by Rule 110 must be filed, and will, *pro forma*, institute and declare the interference by forwarding the notices to the several parties to the proceeding.

Notices to par-
ties.

103. The notices of interference will be forwarded by the examiner of interferences to all the parties, in care of their attorneys, if they have attorneys, and, if the application or patent in interference has been assigned, to the assignees. When one of the parties has received a patent, a notice will be sent to the patentee and to his attorney of record.

Publication in
Official Gazette.

When the notices sent in the interest of a patent are returned to the office undelivered, or when one of the parties resides abroad and his agent in the United States is unknown, additional notice may be given by publication in the Official Gazette for such period of time as the Commissioner may direct.

Motion for post-
ponement of time
for filing.

104. If either party require a postponement of the time for filing his preliminary statement, he will present his motion, duly served on the other parties, with his reasons therefor, supported by affidavit, and such motion should be made, if possible, prior to the day previously fixed upon. But the examiner of interferences may, in his discretion, *extend such time on ex parte request or upon his own motion*.

Certified copies
used in interfer-
ence proceedings.

105. When an application is involved in an interference in which a part only of the invention is included in the issue, the ap-

plicant may file certified copies of the part or parts of the specification, claims, and drawings which cover the interfering matter, and such copies may be used in the proceeding in place of the original application.

106. When a part only of an application is involved in an interference, the applicant may withdraw from his application the subject-matter adjudged not to interfere, and file a new application therefor, or he may file a divisional application for the subject-matter involved, if the invention can be legitimately divided: *Provided*, That no claim shall be made in either application broad enough to include matter claimed in the other.

New application for claims not in interference.

107. An applicant involved in an interference may, with the written consent of the assignee, when there has been an assignment, before the date fixed for the filing of his preliminary statement. (see Rule 110), in order to avoid the continuance of the interference, disclaim under his own signature, attested by two witnesses, the invention of the particular matter in issue, and upon such disclaimer and the cancellation of any claims involving such interfering matter judgment shall be rendered against him, and a copy of the disclaimer shall be embodied in and form part of his specification. (See Rule 182.)

Disclaimer to avoid interference.

Signature to.

108. When applications are declared to be in interference, the interfering parties will be permitted to see or obtain copies of each other's file wrappers, and so much of their contents as relates to the interference,

Inspection of claims of opposing parties.

after the preliminary statements referred to in Rule 110 have been received and approved; but information of an application will not be furnished by the office to an opposing party, except as provided in Rules 97 and 103, until after the approval of such statements.

Invention shown,
but not claimed in
application.

109. *An applicant involved in an interference may, at any time within thirty days after the preliminary statements (referred to in Rule 110) of the parties have been received and approved, on motion duly made, as provided by Rule 153, file an amendment to his application containing any claims which in his opinion should be made the basis of interference between himself and any of the other parties. Such motion must be accompanied by the proposed amendment, and when in proper form will be transmitted by the examiner of interferences to the primary examiner for his determination. On the admission of such amendment, and the adoption of the claims by the other parties within a time specified by the examiner, as in Rule 96, the interference will be redeclared, or other interferences will be declared to include the same as may be necessary. New preliminary statements will be received as to the added claims, but motions for dissolution will not be transmitted in regard thereto where the questions raised could have been disposed of in connection with the admission of the claims. Amendments to the specification will not be received during the pendency of the interference, without the consent of the Commis-*

sioner, except as provided herein, and in Rules 106 and 107.

110. Each party to the interference will be required to file a concise preliminary statement, under oath, on or before a date to be fixed by the office, showing the following facts:

Preliminary
statements.

- (1) The date of original conception of the invention set forth in the declaration of interference.
- (2) The date upon which a drawing of the invention was made.
- (3) The date upon which the invention was first disclosed to others.
- (4) The date of the reduction to practice of the invention.
- (5) A statement showing the extent of use of the invention.
- (6) The applicant shall state the date and number of any application for the same invention filed within twelve months before the filing date in the United States, in any foreign country adhering to the International Convention for the Protection of Industrial Property or having similar treaty relations with the United States.

Requirements of.

If a drawing has not been made, or if the invention has not been reduced to practice or disclosed to others or used to any extent, the statement must specifically disclose these facts.

When the invention was made abroad the statement should set forth:

- (1) That the applicant made the invention set forth in the declaration of interference.
- (2) Whether or not the invention was ever patented; if so, when and where, giving the date and number of each patent, the date of publication, and the date of sealing thereof.
- (3) Whether or not the invention was ever described in a printed publication; if so, when and where, giving the title, place, and date of such publication.
- (4) *When the invention was introduced into this country, giving the circumstances with the dates connected therewith, which are relied upon to establish the fact.*

The preliminary statements should be carefully prepared, as the parties will be strictly held in their proofs to the dates set up therein.

If a party prove any date earlier than alleged in his preliminary statement, such proof will be held to establish the date alleged and none other.

The statement must be sealed up before filing (to be opened only by the examiner of interferences; see Rule 111), and the name of the party filing it, the title of the case, and the subject of the invention indicated on the envelope. The envelope should contain nothing but this statement.

(For forms, see 36 and 37, Appendix.)

111. The preliminary statements shall not be opened to the inspection of the opposing parties until each one shall have been filed, or the time for such filing, with any extension thereof, shall have expired, and not then unless they have been examined by the proper officer and found to be satisfactory.

Opened to inspection.

Any party in default in filing his preliminary statement shall not have access to the preliminary statement or statements of his opponent or opponents until he has either filed his statement or waived his right thereto, and agreed to stand upon his record date.

In default.

112. If, on examination, a statement is found to be defective in any particular, the party shall be notified of the defect and wherein it consists, and a time assigned within which he must cure the same by an amended statement; but in no case will the original or amended statement be returned to the party after it has been filed. Unopened statements will be removed from interference files and preserved by the office, and in no case will such statements be open to the inspection of the opposing party without authority from the Commissioner. If a party shall refuse to file an amended statement he *may* be restricted to his record date in the further proceedings in the interference.

Notice to amend.

Unopened statement.

113. In case of material error arising through inadvertence or mistake, the statement may be corrected on motion (see Rule 153), *upon a satisfactory showing* that the

Motion to amend.

correction is essential to the ends of justice. The motion to correct the statement must be made, if possible, before the taking of any testimony, and as soon as practicable after the discovery of the error.

Failure to file preliminary statement.

Failure to overcome prima facie case.

114. If the junior party to an interference, or if any party thereto other than the senior party, fails to file a statement, or if his statement fails to overcome the *prima facie* case made by the respective dates of application, such party will be notified by the examiner of interferences that judgment upon the record will be rendered against him at the expiration of thirty days, unless cause is shown why such action should not be taken. Within this period any of the motions permitted by the rules may be brought. Motions brought after judgment on the record has been rendered will not be entertained unless sufficient reasons appear for the delay.

Failure to file testimony excluded setting up invention prior to application date.

115. If a party to an interference fail to file a statement, testimony will not be received subsequently from him to prove that he made the invention at a date prior to his application.

Presumption as to order of invention.

116. In original proceedings in cases of interference the several parties will be presumed to have made the invention in the chronological order in which they filed their completed applications for patents clearly illustrating and describing the invention; and the burden of proof will rest upon the party who shall seek to establish a different state of facts.

117. The preliminary statement can in no case be used as evidence in behalf of the party making it.

Statement not evidence.

118. Times will be assigned in which the junior applicant shall complete his testimony in chief, and in which the other party shall complete the testimony on his side, and a further time in which the junior applicant may take rebutting testimony; but he shall take no other testimony. If there be more than two parties to the interference, the times for taking testimony will be so arranged that each shall have an opportunity to prove his case against prior applicants and to rebut their evidence, and also to meet the evidence of junior applicants.

Time for taking testimony.

119. Whenever the time for taking the testimony of a party to an interference shall have expired, and no testimony shall have been taken by such party, any senior party may, by motion based on a *proper showing* and served on such party in default, have an order entering judgment against such defaulting party, unless the latter shall, at a day set and not less than ten days after the hearing of the motion, show good and sufficient cause why the judgment shall not be entered.

Failure to take testimony.

120. If either party desire to have the hearing continued, he will make application for such postponement by motion (see Rule 153), and will show sufficient reason therefor by affidavit.

Postponement of hearing.

121. If either party desire an extension of the time assigned to him for taking testi-

Enlargement of time for taking testimony.

mony, he will make application therefor, as provided in Rule 154 (4).

Motion to dissolve for irregularity, nonpatentability, etc.

Statement of grounds.

Motion to transmit.

122. Motions to dissolve an interference (1) upon the ground that there has been such informality in declaring the same as will preclude a proper determination of the question of priority of invention, or (2) which deny the patentability of an applicant's claim, or (3) which deny his right to make the claim, or (4) which allege that counts of the issue have different meanings in the cases of different parties *should contain a full statement of the grounds relied upon*, and should, if possible, be made not later than the thirtieth day after the statements of the parties have been received and approved. Such motions, and all motions of a similar character, should be accompanied by a motion to transmit the same to the primary examiner, and such motion to transmit should be noticed for hearing upon a day certain before the examiner of interferences. When in proper form the motion presented will be transmitted by the examiner of interferences, with the files and papers, to the proper primary examiner for his determination, who will thereupon fix a day certain when the said motion will be heard before him upon the merits, and give notice thereof to all the parties. If a stay of proceedings be desired, a motion therefor should accompany the motion for transmission.

When the motion has been decided by the primary examiner the files and papers, with

his decision, will be sent at once to the docket clerk.

Motions to shift the burden of proof should be made before, and will be determined by, the examiner of interferences. No appeal from the decision on such motions will be entertained, but the matter may be reviewed on appeal from the final decision upon the question of priority of invention.

123. All lawful motions, except those mentioned in Rule 122, will be made before and determined by the tribunal having jurisdiction at the time. The filing of motions will not operate as a stay of proceedings in any case. To effect this, motion should be made before the tribunal having jurisdiction of the interference, who will, sufficient grounds appearing therefor, order a suspension of the interference pending the determination of such motion.

Motions to effect
stay of proceed-
ings.

124.^a Where, on motion for dissolution, the primary examiner renders an adverse decision upon the merits of a party's case, as when he holds that the issue is not patentable or that a party has no right to make a claim or that the counts of the issue have different meanings in the cases of different parties, he shall at once reject such claims as may be affected and shall set a time for reconsideration; after reconsideration, if he adheres to his original conclusion, he will make the previous rejection final and fix a limit of appeal. The appeal must go to the examiners-in-chief in the first instance and will be heard *inter partes*. If the appeal is

Appeal to Com-
missioner and ex-
aminers-in-chief.

a. For Rule 124 as amended, see *post*, p. 1476.

not taken within the time fixed, it will not be entertained except by permission of the Commission.

No appeal will be permitted from a decision rendered upon motion for dissolution affirming the patentability of a claim or the applicant's right to make the same or the identity of meaning of counts in the cases of different parties.

Appeals may be taken directly to the Commissioner, except in the cases provided for in the preceding portions of this rule, from decisions on such motions as, in his judgment, should be appealable.

Determination,

125. After the interference is finally declared, it will not, except as herein otherwise provided, be determined without judgment of priority founded either upon the testimony, or upon a written concession of priority by one of the parties, signed by the inventor himself (and by the assignee, if any), or upon a written declaration of abandonment of the invention.

Concession of priority.

Statutory bar suggested.

126. The examiner of interferences or the examiners-in-chief may, either before or in their decision on the question of priority, direct the attention of the Commissioner to any matter not relating to priority which may have come to their notice, and which, in their opinion, establishes the fact that no interference exists, or that there has been irregularity in declaring the same (Rule 122), or which amounts to a statutory bar to the grant of a patent to either of the parties for the claim or claims in interference.

How determined.

The Commissioner may, before judgment on

the question of priority, suspend the interference and remand the case to the primary examiner for his consideration of the matters to which attention has been directed. From the decision of the examiner appeal shall not be so remanded, the primary examiner will, after judgment, consider any matter affecting the rights of either party to a patent which may have been called to his attention, unless the same shall have been previously disposed of by the Commissioner.

127. A second interference will not be declared upon a new application for the same invention filed by either party.

Second Interference.

128. If, during the pendency of an interference, a reference be found, the interference may be suspended at the request of the primary examiner until the final determination of the pertinency and effect of the reference, and the interference shall then be dissolved or continued as the result of such determination. The consideration of such reference shall be *inter partes*.

Suspension of Interference for consideration of new references.

129. If, during the pendency of an interference, another case appear, claiming substantially the subject-matter in issue, the primary examiner shall request the suspension of the interference for the purpose of adding said case. Such suspension will be granted as a matter of course by the examiner of interferences if no testimony has been taken. If, however, any testimony has been taken, a notice for the proposed new party, disclosing the issue in interference and the names and addresses of the inter-

For addition of new parties.

ferants and of their attorneys, and notices for the interferants disclosing the name and address of the said party and his attorney, shall be prepared by the primary examiner and forwarded to the examiner of interferences, who shall mail said notices and set a time of hearing on the question of the admission of the new party. If the examiner of interferences be of the opinion that the interference should be suspended and the new party added, he shall prescribe the terms for such suspension. The decision of the examiner of interferences as to the addition of a party shall be final.

Nonpatentability
at final hearing.

130. Where the patentability of a claim to an opponent is material to the right of a party to a patent, said party may urge the nonpatentability of the claim to his opponent at final hearing before the examiner of interferences as a basis for the decision upon priority of invention, and upon appeals from such decision. A party shall not be entitled to take such step, however, unless he has duly presented and prosecuted a motion under Rule 122 for dissolution upon the ground in question, or shows good reason why such a motion was not presented and prosecuted.

Prosecution
defense by
signature.

or
as-

131. When, on motion duly made and upon satisfactory proof, it shall be shown that, by reason of the inability or refusal of the inventor to prosecute or defend an interference, or from other cause, the ends of justice require that an assignee of an undivided interest in the invention should be permit-

ted to prosecute or defend the same, *it may be so ordered.*

132. Whenever an award of priority has been rendered in an interference proceeding by any tribunal and the limit of appeal from such decision has expired, and whenever an interference has been terminated by reason of the written concession, signed by the applicant in person, of priority of invention in favor of his opponent or opponents, the primary examiner shall advise the defeated or unsuccessful party or parties to the interference that their claim or claims which were so involved in the issue stand finally rejected.

Claims of defeated parties.

APPEALS.

133. Every applicant for a patent, any of the claims of whose application have been twice rejected for the same reasons, upon grounds involving the merits of the invention, such as lack of invention, novelty, or utility, or on the ground of abandonment, public use or sale, inoperativeness of invention, aggregation of elements, incomplete combination of elements, or, when amended, for want of identity with the invention originally disclosed, or because the amendment involves a departure from the invention originally presented; and every applicant who has been required to divide his application, and every applicant for the reissue of a patent whose claims have been twice rejected for any of the reasons above enumerated, or on the ground that the original patent is not inoperative or invalid,

Rev. Stat., sec. 4909.
Appeal to examiners-in-chief.

or if so inoperative or invalid that the errors which rendered it so did not arise from inadvertence, accident, or mistake, may, upon payment of a fee of \$10, appeal from the decision of the primary examiner to the examiners-in-chief. The appeal must set forth in writing the points of the decision upon which it is taken, and must be signed by the applicant or his duly authorized attorney or agent.

Prerequisites.

134. There must have been two rejections of the claims as originally filed, or, if amended in matter of substance, of the amended claims, and all the claims must have been passed upon, and except in cases of division all preliminary and intermediate questions relating to matters not affecting the merits of the invention settled, before the case can be appealed to the examiners-in-chief.

Examiner's statement of grounds of decision.

135. Upon the filing of the appeal the same shall be submitted to the primary examiner, who, if he find it to be regular in form, and to relate to an appealable action, shall, within five days from the filing thereof, furnish the examiners-in-chief with a written statement of the grounds of his decision on all the points involved in the appeal, with copies of the rejected claims and with references applicable thereto. The examiner shall at the time of making such statement furnish a copy of the same to the appellant. If the primary examiner shall decide that the appeal is not regular in form or does not relate to an appealable action, a petition from such decision may be

taken directly to the Commissioner, as provided in Rule 145.

136. The appellant shall, before the day of hearing, file a brief of the authorities and arguments on which he will rely to maintain his appeal.

Brief, when to be filed.

137. If the appellant desire to be heard orally before the examiners-in-chief, he will so indicate when he files his appeal; a day of hearing will then be fixed, and due notice of the same given him.

Oral hearing before examiners-in-chief.

138. In contested cases the appellant shall have the right to make the opening and closing arguments, unless it shall be otherwise ordered by the tribunal having jurisdiction of the case.

Right to open and close.

139. (a) The examiners-in-chief in their decision will affirm or reverse the decision of the primary examiner only on the points on which appeal shall have been taken. (See Rule 133.) Should they discover any apparent grounds not involved in the appeal for granting or refusing letters patent in the form claimed, or any other form, they will annex to their decision a statement to that effect, with such recommendation as they shall deem proper.

Rev. Stat., secs. 482 and 4909.
Decision of examiners-in-chief.

Discovery of grounds for granting or refusing patent not involved in appeal.

(b) From an adverse judgment of the primary examiner on points embraced in the recommendation annexed to the decision, appeal may be taken on questions involving the merits to the board of examiners-in-chief and on other questions to the Commissioner as in other cases.

Appeal from primary examiner.

(c) The Commissioner may, when an appeal from the decision of the examiners-in-

Amendment referred to primary examiner.

chief is taken to him, remand the case to the primary examiner, either before or after final judgment, for consideration of any amendment or action which may be based on the recommendation annexed to the decision of the examiners-in-chief.

Amendment based on discovery of Commissioner referred to primary examiner.

(*d*) If the Commissioner, in reviewing the decision of the examiners-in-chief, discovers any apparent grounds for granting or refusing letters patent not involved in the appeal, he will, before or after final judgment, and whenever in his opinion substantial justice shall require it, give reasonable notice thereof to the parties; and if any amendment or action based thereon be proposed, he will remand the case to the primary examiner for consideration.

Appeals.

(*e*) From the decisions of the primary examiner, in cases remanded as herein provided, appeal will lie to the board of examiners-in-chief, or directly to the Commissioner, as in other cases.

Rev. Stat., sec. 4910.

Appeal from examiners-in-chief to Commissioner.

140. From the adverse decision of the board of examiners-in-chief appeal may be taken to the Commissioner in person, upon payment of the fee of \$20 required by law.

Application remanded for reconsideration on affidavits.

141. Affidavits received after the case has been appealed will not be admitted without remanding the application to the primary examiner for reconsideration, but the appellate tribunals may in their discretion refuse to remand the case and proceed with the same without consideration of the affidavits.

Rehearings.

142. Cases which have been heard and decided by the Commissioner on appeal will

not be reopened except by his order; cases which have been decided by the examiners-in-chief will not be reheard by them, when no longer pending before them, without the written authority of the Commissioner; and cases which have been decided by either the Commissioner or the examiners-in-chief will not be reopened by the primary examiner without like authority, and then only for the consideration of matters not already adjudicated upon, sufficient cause being shown. (See Rule 68.)

143. Contested cases will be regarded as pending before a tribunal until the limit of appeal, which must be fixed, has expired, or until some action has been had which waives the appeal or carries into effect the decision from which appeal might have been taken.

Jurisdiction.

Ex parte cases decided by an appellate tribunal will, after decision, be remanded at once to the primary examiner, subject to the applicant's right of appeal, for such action as will carry into effect the decision, or for such further action as the applicant is entitled to demand.

144. Cases which have been deliberately decided by one Commissioner will not be reconsidered by his successor except in accordance with the principles which govern the granting of new trials.

Reconsideration of cases decided by former Commissioner.

145. Upon receiving a petition stating concisely and clearly any proper question which has been twice acted upon by the examiner, and which does not involve the merits of the invention claimed, the rejection of a claim or a requirement for division, and

Petition to Commissioner, without fee.

also stating the facts involved and the point or points to be reviewed, an order will be made fixing a time for hearing such petition by the Commissioner, and directing the examiner to furnish a written statement of the grounds of his decision upon the matters averred in such petition within five days after being notified of the order fixing the day of hearing. The examiner shall at the time of making such statement furnish a copy thereof to the petitioner. No fee is required for such a petition.

Report of examiner.

Rev. Stat., secs. 4904, 4909, 4910, 4911.
Sec. 9, act of Feb. 9, 1893.

146. In interference cases parties have the same remedy by appeal to the examiners-in-chief, to the Commissioner, and to the court of appeals of the District of Columbia as in *ex parte* cases.

Briefs in appealed cases.

147. Appeals in interference cases must be accompanied by brief statements of the reasons therefor. Parties will be required to file six copies of printed briefs of their arguments, the appellant five days before the hearing and the appellee one day.

Rev. Stat., sec. 4911; sec. 9, act of Feb. 9, 1893.
Appeal to court.

148. From the adverse decision of the Commissioner upon the claims of an application and in interference cases an appeal may be taken to the court of appeals of the District of Columbia in the manner prescribed by the rules of that court. (See Appendix, pp. 93-95.)

Rev. Stat., sec. 4912; sec. 9, act of Feb. 9, 1893.
Notice to Commissioner of appeal to court.

149. When an appeal is taken to the court of appeals of the District of Columbia, the appellant will give notice thereof to the Commissioner, and file in the Patent Office, within forty days, exclusive of Sundays and holidays, but including Saturday half holi-

days, from the date of the decision appealed from, his reasons of appeal specifically set forth in writing.

150. *Pro forma* proceedings will not be had in the Patent Office for the purpose of securing to applicants an appeal to the court of appeals of the District of Columbia.

Pro forma pro-
ceedings in Pat-
ent Office.

(For forms of appeals and rules of the court of appeals of the District of Columbia respecting appeals, see this Appendix, pp. 1263, 1461, 1463.)

HEARINGS AND INTERVIEWS.

151^a. Hearings will be had by the Commissioner at 10 o'clock a. m., and by the board of examiners-in-chief at 1 o'clock p. m., and by the examiner of interferences at 11 o'clock a. m., on the day appointed, unless some other hour be specially designated. If either party in a contested case, or the appellant in an *ex parte* case, appears at the proper time, he will be heard. After the day of hearing, a contested case will not be taken up for oral argument except by consent of all parties. If the engagements of the tribunal having jurisdiction are such as to prevent the case from being taken up on the day of hearing, a new assignment will be made, or the case will be continued from day to day until heard. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to one hour for each party in contested cases, and to one-half hour in other cases. After a contested case has been argued,

Hour of Hear-
ing.

a. For Rule 151 as amended, see *post*, p. 1476.

nothing further relating thereto will be heard unless upon request of the tribunal having jurisdiction of the case; and all interviews for this purpose with parties in interest or their attorneys will be invariably denied.

Interviews with
examiners.

152. Interviews with examiners concerning applications and other matters pending before the office must be had in the examiners' rooms at such times, within office hours, as the respective examiners may designate; in the absence of the primary examiners, with the assistant in charge. Interviews will not be permitted at any other time or place without the written authority of the Commissioner. Interviews for the discussion of pending applications will not be had prior to the first official action thereon.

MOTIONS.

Notice.

Proof of service.

Jurisdiction.

Right to open
and close.

Equity practice
in cases to which
rules do not apply.

153. In contested cases reasonable notice of all motions, and copies of motion papers and affidavits, must be served, as provided in Rule 154 (2). Proof of such service must be made before the motion will be entertained by the office. Motions will not be heard in the absence of either party except upon default after due notice. Motions will be heard in the first instance by the officer or tribunal before whom the particular case may be pending. In original hearings on motions the moving parties shall have the right to make the opening and closing arguments. In contested cases the practice on points to which the rules shall not be appli-

cable will conform, as near as possible, to that of the United States courts in equity proceedings.

TESTIMONY IN INTERFERENCE AND OTHER CONTESTED CASES.

154. The following rules have been established for taking and transmitting testimony in interference and other contested cases:

Rev. Stat., sec.
4905.

- (1) Before the depositions of witnesses are taken by either party due notice shall be given to the opposing party, as hereinafter provided, of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and of the names and residences of the witnesses to be examined, and the opposing party shall have full opportunity, either in person or by attorney, to cross-examine the witnesses. If the opposing party shall attend the examination of witnesses not named in the notice, and shall either cross-examine such witnesses or fail to object to their examination, he shall be deemed to have waived his right to object to such examination for want of notice. Neither party shall take testimony in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from

Notice.

Waiver.

Reasonable time
for travel.

one place of examination to the other can not be had.

Service of notice.

- (2). The notice for taking testimony or for motions must be served (unless otherwise stipulated in an instrument in writing filed in the case) upon the attorney of record, if there be one, or, if there be no attorney of record, upon the adverse party. Reasonable time must be given therein for such adverse party to reach the place of examination. Service of such notice may be made in either of the following ways: (1) By delivering a copy of the notice to the adverse party or his attorney; (2) by leaving a copy at the usual place of business of the adverse party or his attorney with some one in his employment; (3) when such adverse party or his attorney has no usual place of business, by leaving a copy at his residence, with a member of his family over fourteen years of age and of discretion; (4) transmission by registered letter; (5) by express. Whenever it shall be satisfactorily shown to the Commissioner that neither of the above modes of obtaining or reserving notice is practicable, the notice may be published in the Official Gazette. Such notice shall, with sworn proof of the fact, time, and mode of service thereof, be attached to

the deposition or depositions whether the opposing party shall have cross-examined or not.

- (3) Each witness before testifying shall be duly sworn according to law by the officer before whom his deposition shall be taken. The deposition shall be carefully read over by the witness, or by the officer to him, and shall then be subscribed by the witness in the presence of the officer. The officer shall annex to the deposition his certificate showing (1) the due administration of the oath by the officer to the witness before the commencement of his testimony; (2) the name of the person by whom the testimony was written out, and the fact, if not written by the officer, it was written in his presence; (3) the presence or absence of the adverse party; (4) the place, day, and hour of commencing and taking the deposition; (5) the reading by, or to, each witness of his deposition before he signs the same; and (6) the fact that the officer was not connected by blood or marriage with either of the parties, nor interested, directly or indirectly, in the matter in controversy. The officer shall sign the certificate and affix thereto his seal of office, if he have such seal. He shall then, without delay, securely seal up all the evidence, notices,

Official
certifi-
cate.

Depositions to be
sealed up, address-
ed, and forwarded
to Commissioner.

Exhibits.

and paper exhibits, inscribe upon the envelope a certificate giving the title of the case, the name of each witness, and the date of sealing, address the package, and forward the same to the Commissioner of Patents. If the weight or bulk of an exhibit shall exclude it from the envelope, it shall be authenticated by the officer and transmitted in a separate package, marked and addressed as above provided.

* * * * *

Motion to extend
time for taking
testimony.

- (4) If a party shall be unable to take any testimony within the time limited, and desires an extension for such purpose, he must file a motion, accompanied by a statement under oath setting forth specifically the reason why such testimony has not been taken, and distinctly averring that such motion is made in good faith, and not for the purpose of delay. If either party shall be unable to procure the testimony of a witness or witnesses within the time limited, and desires an extension for such purpose, he must file a motion, accompanied by a statement under oath setting forth the cause of such inability, the name or names of such witness or witnesses, the facts expected to be proved by such witness or witnesses, the steps which have been taken to procure such testimony, and the dates on

which efforts have been made to procure it. (See Rule 153.)

- (5) When a party relies upon a caveat to establish the date of his invention, the caveat itself, or a certified copy thereof, must be filed in evidence, with due notice to the opposite party.

Rev. Stat., sec. 892.
Caveat as evidence.

- (6) Upon notice given to the opposite party before the closing of the testimony, any official record, and any special matter contained in a printed publication, if competent evidence and pertinent to the issue, may be used as evidence at the hearing.

Official records and special matter offered in evidence.

- (7) All depositions which are taken must be duly filed in the Patent Office. On refusal to file, the office at its discretion will not further hear or consider the contestant with whom the refusal lies; and the office may, at its discretion, receive and consider a copy of the withheld deposition, attested by such evidence as is procurable.

Deposition to be filed in Patent Office.

155. The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. The testimony must be written upon legal cap or foolscap paper, with a wide margin on the left-hand side of the page, and with the writing on one side only of the sheet.

Formalities.

156. The testimony will be taken in answer to interrogatories, with the questions

Formalities.

Testimony taken stenographically.

and answers committed to writing in their regular order by the officer, or, in his presence, by some person not interested in the case, either as a party thereto or as attorney. But with the written consent of the parties the testimony may be taken stenographically, and the deposition may be written out by other persons in the presence of the officer.

Officer competent to take testimony.

Where testimony is taken stenographically, a long-hand or typewritten copy shall be read to the witness, or read over by him, as soon as it can be made, and shall be signed by him as provided in paragraph 3 of Rule 154. No officer who is connected by blood or marriage with either of the parties, or interested, directly or indirectly, in the matter in controversy, either as counsel, attorney, agent, or otherwise, is competent to take depositions, unless with the written consent of all the parties.

Testimony taken may be used in one interference another.

157. *Upon motion duly made and granted (see Rule 153) testimony taken in an interference proceeding may be used in any other or subsequent interference proceeding, so far as relevant and material, subject, however, to the right of any contesting party to recall witnesses whose depositions have been taken, and to take other testimony in rebuttal of the depositions.*

Rev. Stat., sec. 4905.

Testimony taken in foreign countries.

158. *Upon motion duly made and granted (see Rule 153) testimony may be taken in foreign countries, upon complying with the following requirements:*

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- (1) The motion must designate a place for the examination of the witnesses at which an officer duly qualified to take testimony under the laws of the United States in a foreign country shall reside, and it must be accompanied by a statement under oath that the motion is made in good faith, and not for purposes of delay or of vexing or harassing any party to the case; it must also set forth the names of the witnesses, the particular facts to which it is expected each will testify, and the grounds on which is based the belief that each will so testify. Motion.
- (2) It must appear that the testimony desired is material and competent, and that it can not be taken in this country at all, or can not be taken here without hardship and injury to the moving party greatly exceeding that to which the opposite party will be exposed by the taking of such testimony abroad. Motion.
- (3) Upon the granting of such motion, a time will be set within which the moving party shall file in duplicate the interrogatories to be propounded to each witness, and serve a copy of the same upon each adverse party, who may, within a designated time, file, in duplicate, cross-interrogatories. Interrogatories.
Cross-interrogatories. Objections Objections. to any of the interrogatories or cross-interrogatories may be filed

at any time before the depositions are taken, and such objections will be considered and determined upon the hearing of the case.

Papers sent to proper officer.

- (4) As soon as the interrogatories and cross-interrogatories are decided to be in proper form, the Commissioner will cause them to be forwarded to the proper officer, with the request that, upon payment of, or satisfactory security for, his official fees, he notify the witnesses named to appear before him within a designated time and make answer thereto under oath; and that he reduce their answers to writing, and transmit the same, under his official seal and signature, to the Commissioner of Patents, with the certificate prescribed in Rule 154 (3).

Stipulations.

- (5) By stipulation of the parties the requirements of paragraph 3 as to written interrogatories and cross-interrogatories may be dispensed with, and the testimony may be taken before the proper officer upon oral interrogatories by the parties or their agents.

Weight of testimony taken in foreign countries.

- (6) Unless false swearing in the giving of such testimony before the officer taking it shall be punishable as perjury under the laws of the foreign state where it shall be taken, it will not stand on the same footing in the Patent Office as tes-

timony duly taken in the United States; but its weight in each case will be determined by the tribunal having jurisdiction of such case.

159. Evidence touching the matter at issue will not be considered on the hearing which shall not have been taken and filed in compliance with these rules. But notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to appear that, as soon as the party became aware of the ground of objection, he gave notice thereof to the office, and also to the opposite party, informing him at the same time that, unless it should be removed, he (the objector) should urge his objection at the hearing. This rule is not to be so construed as to modify established rules of evidence, which will be applied strictly in all practice before the office.

160. The law requires the clerks of the various courts of the United States to issue subpoenas to secure the attendance of witnesses whose depositions are desired as evidence in contested cases in the Patent Office.

161. After testimony is filed in the office it may be inspected by any party to the case, but it can not be withdrawn for the purpose of printing. It may be printed by some one specially designated by the office for that purpose, under proper restrictions.

Evidence on hearing.

Formal objections to evidence.

Rules of evidence.

Rev. Stat., sec. 4906. Subpoenas.

Inspection.

Printing.

Copies of testimony.

162.^a Thirty-one or more printed copies of the testimony must be furnished, five for the use of the office, one for each of the opposing parties, and twenty-five for the court of appeals of the District of Columbia, should appeal be taken. If no appeal be taken, the twenty-five copies will be returned to the party filing them. The preliminary statement required by Rule 110 must be printed as a part of the record. These copies must be filed not less than ten days before the day of hearing. They will be of the same size, both page and print, as the Rules of Practice, with the names of the witnesses at the top of the pages over their testimony, and will contain indexes with the names of all witnesses and reference to the pages where copies of papers and documents introduced as exhibits are shown.

Printing dispensed with.

When it shall appear, on motion duly made and by satisfactory proof, that a party, by reason of poverty, is unable to print his testimony, the printing may be dispensed with; but in such case typewritten copies must be furnished—one for the office and one for each adverse party. Printing of the testimony can not be dispensed with upon the stipulation of the parties.

Briefs, size and time of filing.

163. Briefs in all contested cases shall be submitted in printed form, and shall be of the same size and the same as to page and print as the printed copies of testimony. But in case satisfactory reason therefor is shown to the office, typewritten briefs may be submitted. Briefs shall be filed three days before the hearing, except

^a. For Rule 162 as amended, see *post*, p. 1477.

as provided in Rule 147. By consent of the parties they may be filed later, but in any case must be filed before the hearing. If either party fail to comply with this regulation, no extension of time will be granted for the purpose, except upon consent of the adverse parties.

ISSUE.

164. If, on examination, it shall appear that the applicant is justly entitled to a patent under the law, a notice of allowance will be sent him or his attorney, calling for the payment of the final fee within six months from the date of such notice of allowance, upon the receipt of which within the time fixed by law the patent will be prepared for issue. (See Rules 206, 207.)

Notice of allowance.

Rev. Stat., secs. 4887, 4893, 4897.

165. After notice of the allowance of an application is given, the case will not be withdrawn from issue except by approval of the Commissioner, and if withdrawn for further action on the part of the office a new notice of allowance will be given. When the final fee has been paid upon an application for letters patent, and the case has received its date and number, it will not be withdrawn or suspended from issue on account of any mistake or change of purpose of the applicant or his attorney, nor for the purpose of enabling the inventor to procure a foreign patent, nor for any other reasons except mistake on the part of the office, or because of fraud, or illegality in the application, or for interference. (See Rule 78.)

Withdrawal from issue.

New notice.

Withdrawal
from issue will not
stay abandonment.

166. Whenever the Commissioner shall direct the withdrawal of an application from issue on request of an applicant for reasons not prohibited by Rule 165, such withdrawal shall not operate to stay the period of one year running against the application, which begins to attach from the date of the notice of allowance.

DATE, DURATION, AND FORM OF PATENTS.

Rev. Stat., secs.
4885, 4935.
Date of patent

167. Every patent will bear date as of a day not later than six months from the time the application was passed and allowed and notice thereof was mailed to the applicant or his attorney, if within that period the final fee be paid to the Commissioner of Patents, or if it be paid to the Treasurer or any of the assistant treasurers or designated depositaries of the United States, and the certificate promptly forwarded to the Commissioner of Patents; and if the final fee be not paid within that period, the patent will be withheld. (See Rule 175.)

Final fee.

Patent withheld.

Not antedated.

A patent will not be antedated.

Rev. Stat., sec.
4884.

168. Every patent will contain a short title of the invention or discovery indicating its nature and object, and a grant to the patentee, his heirs and assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the invention or discovery throughout the United States and the Territories thereof. The duration of a design patent may be for the term of three and a half, seven, or fourteen years,

Title of inven-
tion.
Grant.
Term.

Term of design
patent.

as provided in Rule 80. A copy of the specifications and drawings will be annexed to the patent and form part thereof.

DELIVERY.

169. The patent will be delivered or mailed on the day of its date to the attorney of record, if there be one; if not, to the patentee; or, if the attorney so request, to the patentee or assignee of an interest therein.

Delivery of patent.

CORRECTION OF ERRORS IN LETTERS PATENT.

170. Whenever a mistake, incurred through the fault of the office, is clearly disclosed by the records or files of the office, a certificate, stating the fact and nature of such mistake, signed by the Commissioner of Patents, and sealed with the seal of the Patent Office, will, at the request of the patentee or his assignee, be indorsed without charge upon the letters patent, and recorded in the records of patents, and a printed copy thereof attached to each printed copy of the specification and drawing.

Correction of mistakes incurred through fault of the office.

Whenever a mistake, incurred through the fault of the office, constitutes a sufficient legal ground for a reissue, such reissue will be made, for the correction of such mistake only, without charge of office fees, at the request of the patentee.

Reissue.

Mistakes not incurred through the fault of the office, and not affording legal grounds for reissues, will not be corrected after the delivery of the letters patent to the patentee or his agent.

Not incurred through fault of the office.

Changes or corrections will not be made in letters patent after the delivery thereof to the patentee or his attorney, except as above provided.

ABANDONED, FORFEITED, REVIVED, AND RENEWED APPLICATIONS.

Rev. Stat., sec.
4894.
Abandoned appli-
cation.

171. An abandoned application is one which has not been completed and prepared for examination within one year after the filing of the petition, or which the applicant has failed to prosecute within one year after any action therein of which notice has been duly given (see Rules 31 and 77), or which the applicant has expressly abandoned by filing in the office a written declaration of abandonment, signed by himself and assignee, if any, identifying his application by title of invention, serial number, and date of filing. (See Rule 60.)

Prosecution.

Prosecution of an application to save it from abandonment must include such proper action as the condition of the case may require. The admission of an amendment not responsive to the last official action, or refusal to admit the same, and any proceedings relative thereto, shall not operate to save the application from abandonment under section 4894 of the Revised Statutes.

Rev. Stat., sec.
4894.
Revival of ap-
plication.

172. Before an application abandoned by failure to complete or prosecute can be revived as a pending application it must be shown to the satisfaction of the Commissioner that the delay in the prosecution of the same was unavoidable.

173. When a new application is filed in place of an abandoned or rejected application, a new petition, specification, oath, drawing, and fee will be required; but the old model, if suitable, may be used.

New application.

174. A forfeited application is one upon which a patent has been withheld for failure to pay the final fee within the prescribed time. (See Rule 167.)

Forfeited or withheld application.

175. When the patent has been withheld by reason of nonpayment of the final fee, any person, whether inventor or assignee, who has an interest in the invention for which such patent was ordered to issue may file a renewal of the application for the same invention; but such second application must be made within two years after the allowance if the original application. Upon the hearing of such new application abandonment will be considered as a question of fact.

Rev. Stat., sec. 4897.
New application after non-payment of final fee.

176. In such renewal the oath, petition, specification, drawing, and model of the original application may be used for the second application; but a new fee will be required. The second application will not be regarded for all purposes as a continuation of the original one, but must bear date from the time of renewal and be subject to examination like the original application.

Renewal.
Old application papers may be used.

177. Forfeited and abandoned applications will not be cited as references.

Not cited as references.

178. Notice of the filing of subsequent applications will not be given to applicants while their cases remain forfeited.

No notice of subsequent applications.

Copies.

179. Copies of the files of forfeited and abandoned applications may be furnished when ordered by the Commissioner. The requests for such copies must be presented in the form of a petition properly verified as to all matters not appearing of record in the Patent Office. (See Form 35.)

EXTENSIONS.

Rev. Stat., sec.
4924.

180. Patents can not be extended except by act of Congress.

DISCLAIMERS.

Rev. Stat., secs.
4917, 4922.
Grounds, form,
and effect.

181. Whenever, through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, a patentee has claimed as his invention or discovery more than he had a right to claim as new, his patent shall be valid for all that part which is truly and justly his own, provided the same is a material or substantial part of the thing patented; and any such patentee, his heirs or assigns, whether of the whole or any sectional interest therein, may, on payment of the fee required by law (ten dollars), make disclaimer of such parts of the thing patented as he or they shall not choose to claim or to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent. Such disclaimer shall be in writing, attested by one or more witnesses, and recorded in the Patent Office; and it shall thereafter be considered as part of the original specification to the extent of the interest possessed by

the claimant and by those claiming under him after the record thereof. But no such disclaimer shall affect any action pending at the time of filing the same, except as to the question of unreasonable neglect or delay in filing it.

182. Such disclaimer must be distinguished from those which are embodied in original or reissue applications, as first filed or subsequently amended, referring to matter shown or described, but to which the claimant does not choose to claim title, and also from those made to avoid the continuance of an interference. Such disclaimers must be signed by the applicant in person and must be duly witnessed, and require no fee. (See Rule 107. For forms of disclaimers, see Appendix, Forms 28 and 29.)

Different kinds
of disclaimers.

CAVEATS.

183.

184.

Obsolete; law relating to caveats repealed by act of July 1, 1910.

185.

186.

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190.

Obsolete; law relating to caveats repealed
by act of July 1, 1910.

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194.

ASSIGNMENTS.

195. Every patent or any interest therein shall be assignable in law by an instrument in writing; and the patentee or his assigns or legal representatives may, in like manner, grant and convey an exclusive right under the patent to the whole or any specified part of the United States.

Rev. Stat., sec. 4808.
Assignability of patents.

196. Interest in patents may be vested in assignees, in grantees of exclusive sectional rights, in mortgages, and in licenses.

In whom may be vested.

(1) An assignee is a transferee of the whole interest of the original patent or of an undivided part of such whole interest, extending to every portion of the United States. The assignment must be written or printed and duly signed.

Assignees.

(2) A grantee acquires by the grant the exclusive right, under the patent, to make, use, and vend, and to grant to others the right to make-use, and vend, the thing patented within and throughout some specified part of the United States, excluding the patentee therefrom. The grant must be written or printed and be duly signed.

Grantees.

(3) A mortgage must be written or printed and be duly signed.

Mortgages.

(4) A licensee takes an interest less than or different from either of the others. A license may be oral, written, or printed, and if written or printed, must be duly signed.

Licenses.

Rev. Stat., sec.
4898.
Recording.

197. An assignment, grant, or conveyance of a patent will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice unless recorded in the Patent Office within three months from the date thereof.

Act March 3,
1897.
Acknowledgment.

If any such assignment, grant, or conveyance of any patent shall be acknowledged before any notary public of the several States or Territories or the District of Columbia, or any commissioner of the United States circuit court, or before any secretary of legation or consular officer authorized to administer oaths or perform notarial acts under section seventeen hundred and fifty of the Revised Statutes, the certificate of such acknowledgment, under the hand and official seal of such notary or other officer, shall be *prima facie* evidence of the execution of such assignment, or conveyance.

Prima facie evi-
dence.

Recording.

198. No instrument will be recorded which is not in the English language and which does not, in the judgment of the Commissioner, amount to an assignment, grant, mortgage, lien, incumbrance, or license, or which does not affect the title of the patent or invention to which it relates. Such instrument should identify the patent by date and number; or, if the invention be unpatented, the name of the inventor, the serial number, and date of the application should be stated.

Conditional as-
signment.

199. Assignments which are made conditional on the performance of certain stipulations, as the payment of money if recorded in the office, are regarded as abso-

lute assignments until canceled with the written consent of both parties or by the decree of a competent court. The office has no means for determining whether such conditions have been fulfilled.

200. In every case where it is desired that the patent shall issue to an assignee, the assignment must be recorded in the Patent Office at a date not later than the day on which the final fee is paid. (See Rule 26.) The date of the record is the date of the receipt of the assignment at the office.

Issue to assignee.

Date of record.

201. The receipt of assignments is generally acknowledged by the office. They are recorded in regular order as promptly as possible, and then transmitted to the persons entitled to them. (For form of assignment, see Forms 38-43, pp. 1443, 1451.)

Receipt, recording, and return of assignments.

OFFICE FEES.

202. Nearly all the fees payable to the Patent Office are positively required by law to be paid in advance—that is, upon making application for any action by the office for which a fee is payable. For the sake of uniformity and convenience, the remaining fees will be required to be paid in the same manner.

Rev. Stat., sec. 4803.

Payable in advance.

203^a. The following is the schedule of fees and of prices of publications of the Patent Office:

Schedule.

On filing each original application for a patent, except in design cases	\$15 00
On issuing each original patent, except in design cases.....	20 00
In design:	
For three years and six months.....	10 00
For seven years.....	15 00
For fourteen years.....	30 00

a. For Rule 203 as amended, see *post*, p. 1478.

On every application or the reissue of a patent.....	30 00
On filing each disclaimer.....	10 00
On an appeal for the first time from the Primary Examiner to the Examiners-in-Chief	10 00
On every appeal from the Examiners-in-Chief to the Commis- sioner	20 00
For certified copies of patents if in print:	
For specification and drawing, per copy.....	05
For the certificate	25
For the grant	50
For certifying to a duplicate of a model.....	50
For manuscript copies of records, for every one hundred words or fraction thereof	10
If certified, for the certificate, additional.....	25
For twenty-coupon orders, each coupon good for one copy of a printed specification and drawing, and receivable in payment for prints, Official Gazette, and Roster of Attorneys.....	1 00
For one hundred coupons in stub-book.....	5 00
For uncertified copies of the specifications and accompanying drawings of patents, if in print, each.....	0 05
For the drawings, if in print.....	05
For copies of drawings not in print, the reasonable cost of mak- ing them.	
For photo prints of drawings, for each sheet of drawings:	
Size 10 by 15 inches, per copy.....	25
Size 8 by 12½ inches, per copy.....	15
For recording every assignment, agreement, power of attorney, or other paper, of three hundred words or under.....	1 00
Of over three hundred and under one thousand words.....	2 00
Of over one thousand words	3 00
For abstracts of title to patents or inventions:	
For the certificate of search.....	1 00
For each brief from the digest of assignments.....	20
For searching titles or records, one hour or less.....	50
Each additional hour or fraction thereof.....	50
For assistance to attorneys in the examination of publications in the Scientific Library, one hour or less.....	1 00
Each additional hour or fraction thereof.....	1 00
For copies of matter in any foreign language, for every one hundred words or a fraction thereof.....	10
For translation, for every one hundred words or fraction thereof	50
The Official Gazette:	
Annual subscriptions	5 00
For postage upon foreign subscriptions, except those from Canada and Mexico, \$5 or more as required. Moneys received from foreign subscribers in excess of	

the subscription price of \$5 will be deposited to the credit of the subscriber and applied to postage upon the subscription as incurred.

Single numbers	10
Decision leaflets	05
Trade-mark supplements	05
For bound volumes of The Official Gazette:	
Semiannual volumes, from January 1, 1872, to June 30, 1883, full sheep binding, per volume.....	4 00
In half sheep binding, per volume.....	3 50
Quarterly volumes, from July 1, 1883, to December 31, 1902, full sheep binding, per volume.....	1 75
Bimonthly volumes, from January 1, 1903, full sheep binding, per volume	2 50
For the annual index—from January, 1872—full law binding, per volume	2 00
In paper covers, per volume	1 00
For the general index—a list of inventions patented from 1790 to 1873—three volumes, full law binding, per set.....	10 00
For the index from 1790 to 1836—one volume, full law binding..	5 00
For the monthly volumes, containing the specifications and photolithographed copies of the drawings of all patents issued during the month, certified, bound in full sheep, per volume..	5 00
In half sheep, per volume	3 00
For the index to patents relating to electricity, granted by the United States prior to June 30, 1882, one volume, 250 pages, bound	5 00
In paper covers	3 00
Annual appendixes for each fiscal year subsequent to June 30, 1882, paper covers	\$ 1 50
For Commissioner's Decisions:	
For 1869-70-71, one volume, full law binding.....	2 00
For 1872-73-74, one volume, full law binding.....	2 00
For 1875-76, one volume, with decisions of United States courts in patent cases, full law binding.....	2 00
In paper covers	1 00
Subsequent annual volumes with decisions of United States courts, full law binding, per volume.....	2 00
In paper covers	1 00
Roster of Attorneys	20

204. An order for a copy of an assignment must give the liber and page of the record, as well as the name of the inventor; ^{Orders for copies.}

otherwise an extra charge will be made for the time consumed in making any search for such assignment.

Copies and tracings made by office only.

205. Persons will not be allowed to make copies or tracings from the files or records of the office. Such copies will be furnished, when ordered, at the rates already specified.

Rev. Stat., sec. 4935.
Mode of payment.

206. All payments of money required for office fees must be made in specie, Treasury notes, national-bank notes, certificates of deposit, postoffice money orders, or certified checks. Money orders and checks should be made payable to the "Commissioner of Patents." Payment may also be made to the Treasurer, or to any of the assistant treasurers of the United States, or to any of the depositaries, national banks, or receivers of public money, designated by the Secretary of the Treasury for that purpose, who shall give the depositor a receipt or certificate of deposit therefor. This receipt or certificate of deposit must be filed in the Patent Office within ten days after the money is paid. Money sent by mail to the Patent Office will be at the risk of the sender. Letters containing money should be registered. In no case should money be sent with models.

Weekly issue and final fees.

207. The weekly issue closes on Thursday, and the patents of that issue bear date as of the *fourth* Tuesday thereafter. If the final fee in any application is not paid on or before Thursday, the patent will not go to issue until the following week.

REPAYMENT OF MONEY.

208. Money paid by actual mistake, such as a payment in excess, or when not required by law, or by neglect or misinformation on the part of the office, will be refunded; but a mere change of purpose after the payment of money, as when a party desires to withdraw his application for a patent or for the registration of a trade-mark, or to withdraw an appeal, will not entitle a party to demand such a return.

Rev. Stat., sec.
4036.
Money paid by
mistake refunded.

PUBLICATIONS.

209. The Official Gazette, a weekly publication which has been issued since 1872, takes the place of the old Patent Office Report. It contains the claims of all patents issued, including reissues, with portions of the drawings selected to illustrate the inventions claimed. It also contains decisions rendered by the courts in patent cases and by the Commissioner of Patents, and other special matters of interest to inventors.

Rev. Stat., sec.
489.
Official Gazette.
Contents.

The Gazette is furnished to subscribers at the rate of \$5 per annum. When sent abroad an additional charge is made for the payment of postage. (*See Rule 203.*) Representatives and Senators are each entitled to a copy, and each is entitled to designate eight public libraries to which the Gazette will be sent without charge. Single copies are furnished for ten cents each.

Subscription.
Public libraries.

Single copies.

An index is published annually, which is sent to all subscribers and designated libraries without additional cost.

Annual index.

Rev. Stat., sec. 490. Monthly volumes. Authentication. Depositories.

Printed volumes are issued monthly, containing the entire specifications and drawings of all patents issued during the previous month. These are authenticated by the seal of the office, and may be used as evidence throughout the United States. One copy is deposited in the Library of Congress and in each State and Territorial library, and one copy in the custody of the clerk of each United States district court, for general reference.

LIBRARY REGULATIONS.

Rev. Stat., sec. 486. Removal of books.

210. Officers of the bureau and members of the examining corps only are allowed to enter the alcoves or take books from the scientific library.

Registration and return.

Books taken from this library must be entered in a register kept for the purpose, and returned on the call of the librarian. They must not be taken from the building except by permission of the Commissioner.

Loss or injury.

Any book lost or defaced must be replaced by a new copy.

Use by the public.

Patentees and others doing business with the office can examine the books only in the library hall.

Translations.

Translations will be made only for official use.

Copies and tracings.

Copies or tracings from works in the library will be furnished by the office at the usual rates.

AMENDMENTS OF THE RULES.

211. All amendments of the foregoing rules will be published in the Official Gazette.

QUESTIONS NOT SPECIFICALLY PROVIDED FOR.

212. All cases not specifically defined and provided for in these rules will be decided in accordance with the merits of each case under the authority of the Commissioner, and such decision will be communicated to the interested parties in writing.

213. Questions arising in applications filed prior to January 1, 1898, where these rules do not apply, shall be governed by the rules of June 18, 1897.

(Signed)

E. B. MOORE,
Commissioner of Patents.

DEPARTMENT OF THE INTERIOR.

Approved, to take effect July 17, 1907.

GEORGE W. WOODRUFF,
Acting Secretary.

APPENDIX OF FORMS,

(Patent Office.)

PETITIONS.

1. BY A SOLE INVENTOR.

To the Commissioner of Patents:

Your petitioner,, a citizen of the United States and a resident of, in the county of and State of (or subject, etc.), whose post-office address is, prays that letters patent may be granted to him for the improvement in, set forth in the annexed specification.

Signed at, in the county of and State of, this day of, 19...

.....

2. BY JOINT INVENTORS.

To the Commissioner of Patents:

Your petitioners, and, citizens of the United States and residents, respectively, of, in the county of and State of, and of, in the county of and State of (or subjects, etc.), whose post-office addresses are, respectively, and, pray that letters patent may be granted to them, as joint inventors, for the improvement in, set forth in the annexed specification.

Signed at, in the county of and State of, this day of, 19...

.....

.....

3. BY AN INVENTOR, FOR HIMSELF AND ASSIGNEE.

To the Commissioner of Patents:

Your petitioner,, a citizen of the United States and a resident of, in the county of and State of (or subject, etc.), whose post-office address is, prays that letters patent may be granted to himself and, a citizen of the United States and a resident of, in the county of and State of whose post-office address is, as his assignee, for the improvement in, set forth in the annexed specification.

Signed at, in the county of and State of, this day of, 19...

4. PETITION WITH POWER OF ATTORNEY.

To the Commissioner of Patents:

Your petitioner,, a citizen of the United States and a resident of, in the county of and State of (or subject, etc.), whose post-office address is, prays that letters patent may be granted to him for improvement in, set forth in the annexed specification; and he hereby appoints, of, State of, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at, in the county of and State of, this day of, 19...

5. BY AN ADMINISTRATOR.

To the Commissioner of Patents:

Your petitioner,, a citizen of the United States and a resident of, in the county of

and State of (or subject, etc.), whose post-office address is, administrator of the estate of, late a citizen of, deceased (as by reference to the duly certified copy of letters of administration, hereto annexed, will more fully appear), prays that letters patent may be granted to him for the invention of the said (improvement in), set forth in the annexed specification.

Signed at, in the county of and State of, this day of, 19...

.....
Administrator, etc.

6. BY AN EXECUTOR.

To the Commissioner of Patents:

Your petitioner,, a citizen of the United States and a resident of, in the county of and State of (or subject, etc.), whose post-office address is, executor of the last will and testament of, late a citizen of, deceased (as by reference to the duly certified copy of letters testamentary, hereto annexed, will more fully appear), prays that letters patent may be granted to him for the invention of the said (improvement in), set forth in the annexed specification.

Signed at, in the county of and State of, this day of, 19...

.....
Executor, etc.

7. BY A GUARDIAN OF AN INSANE PERSON.

To the Commissioner of Patents:

Your petitioner,, a citizen of the United States and a resident of, in the county of and State of (or subject, etc.), whose post-office

address is, and who has been appointed guardian (or conservator or representative) of (as by reference to the duly certified copy of the order of court, hereto annexed, will more fully appear), prays that letters patent may be granted to him for the invention of the said (improvement in), set forth in the annexed specification.

Signed at, in the county of and State of, this day of, 19 ..

.,
Guardian, etc.

8. FOR A REISSUE (BY THE INVENTOR).

To the Commissioner of Patents:

Your petitioner,, a citizen of the United States and a resident of, in the county of and State of (or subject, etc.), whose post-office address is, prays that he may be allowed to surrender the letters patent for an improvement in, granted to him, 19 .., whereof he is now sole owner (or whereof, on whose behalf and with whose assent this application is made, is now sole owner, by assignment), and that letters patent may be reissued to him (or the said) for the same invention upon the annexed amended specification. With this petition is filed an abstract of title, duly certified, as required in such cases.

Signed at, in the county of and State of, this day of, 19...

.

[Assent of assignee to reissue.]

The undersigned, assignee of the entire (or of an undivided) interest in the above-mentioned letters patent, hereby assents to the accompanying application.

.

9. FOR A REISSUE (BY THE ASSIGNEE).

[To be used only when the inventor is dead.]

To the Commissioner of Patents:

Your petitioner,, a citizen of the United States and a resident of, in the county of and State of (or subject, etc.), whose post-office address is, prays that he may be allowed to surrender the letters patent for an improvement in, No., granted, 19.., to, now deceased, whereof he is now owner, by assignment of the entire interest, and that the letters patent may be reissued to him for the same invention, upon the annexed amended specification. With this petition is filed an abstract of title (or an order for making and filing the same, etc.),

Signed at, in the county of and State of, this day of, 19...

.....

10. FOR LETTERS PATENT FOR A DESIGN.

To the Commissioner of Patents:

Your petitioner,, a citizen of the United States and a resident of, in the county of and State of (or subject, etc.), whose post-office address is, prays that letters patent may be granted to him for the term of three and one-half years (or seven years or fourteen years) for the new and original design for, set forth in the annexed specification.

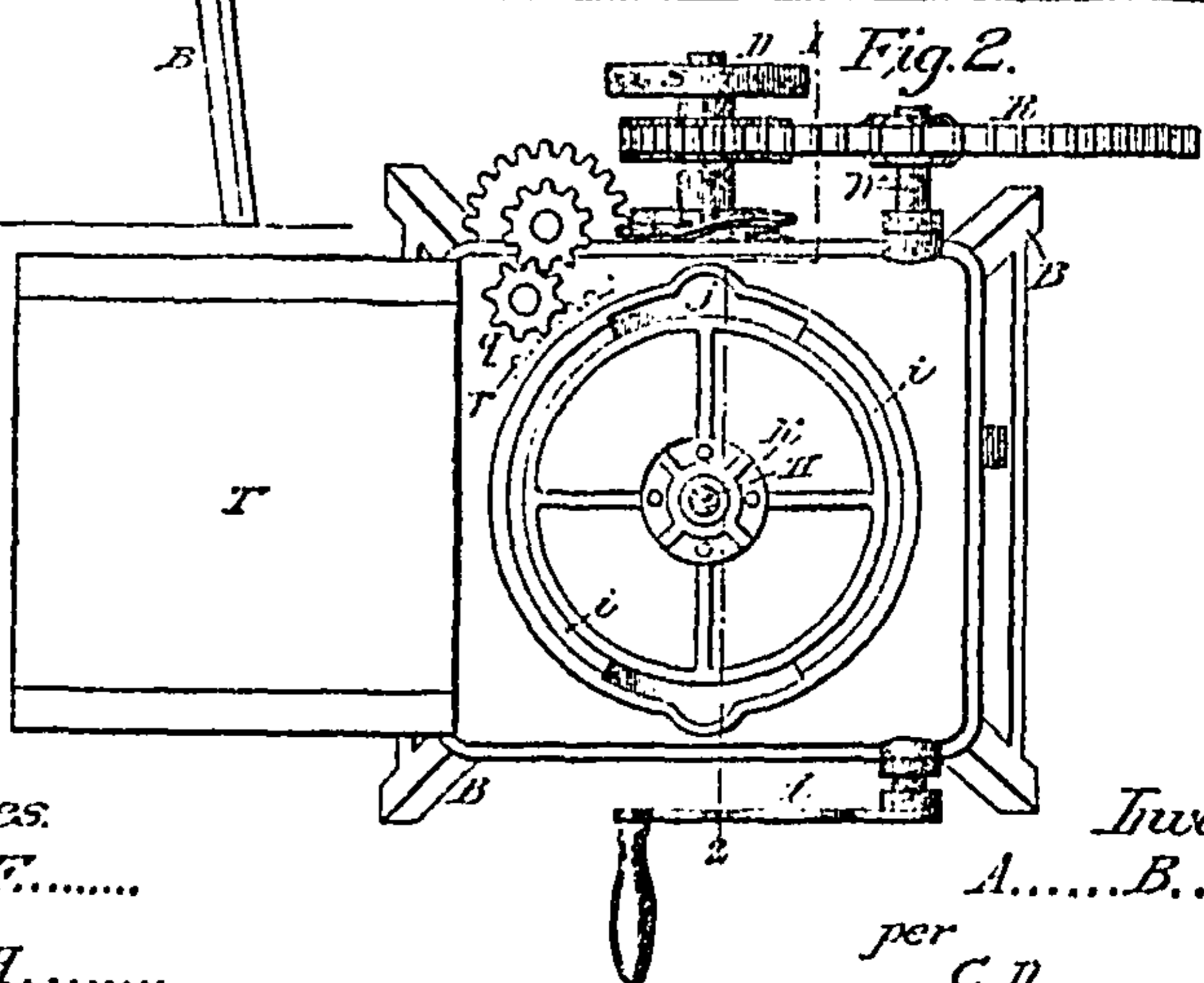
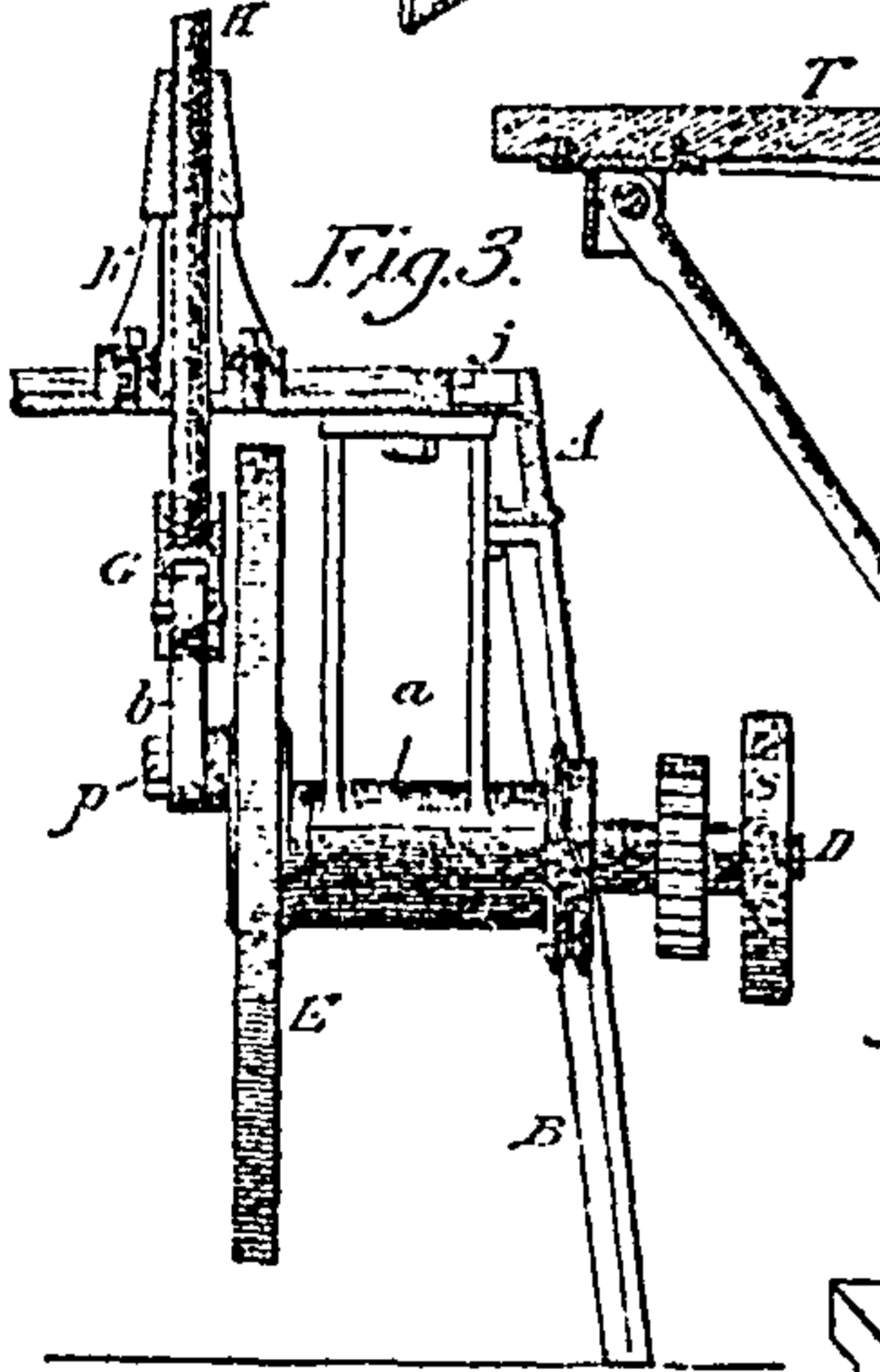
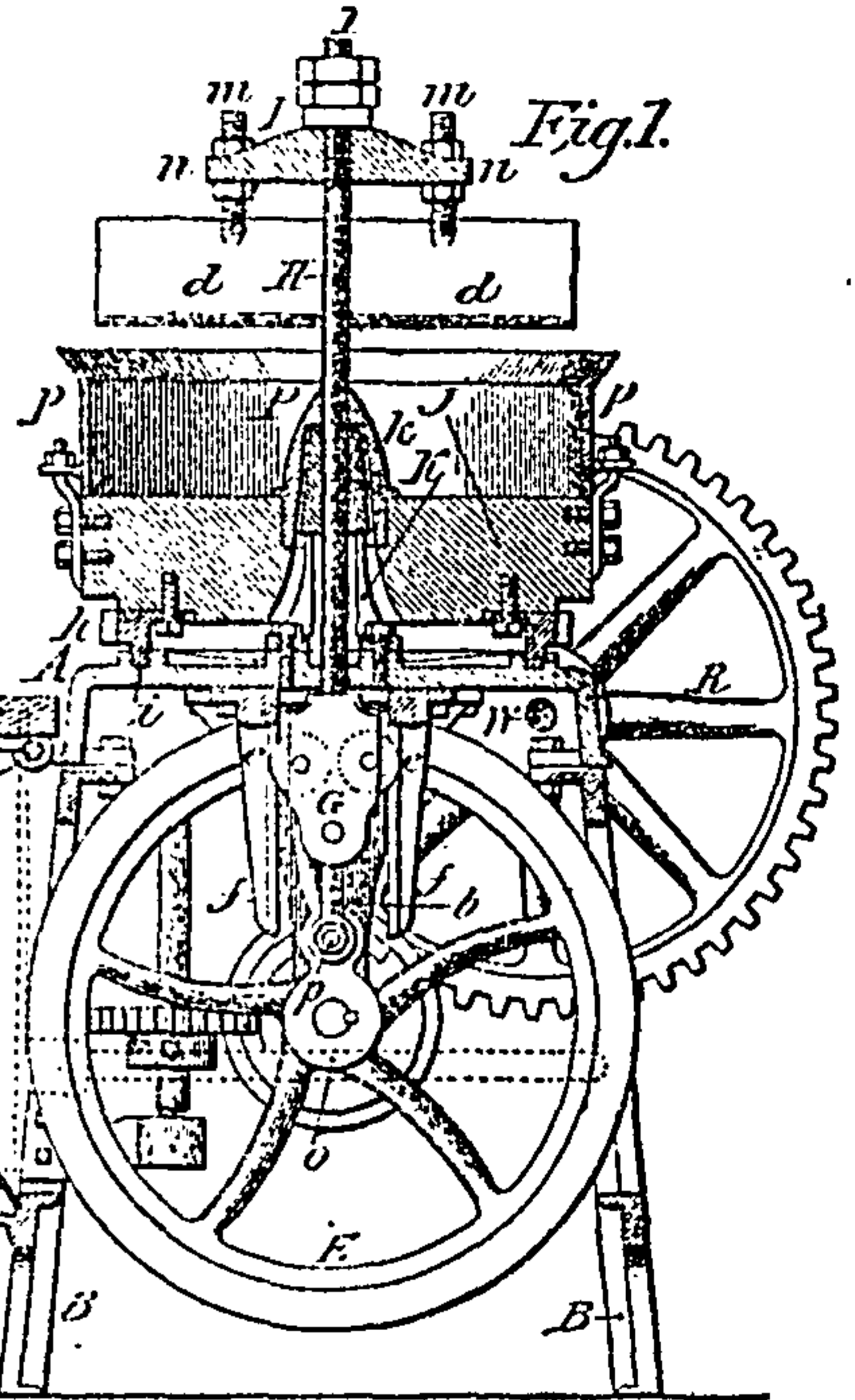
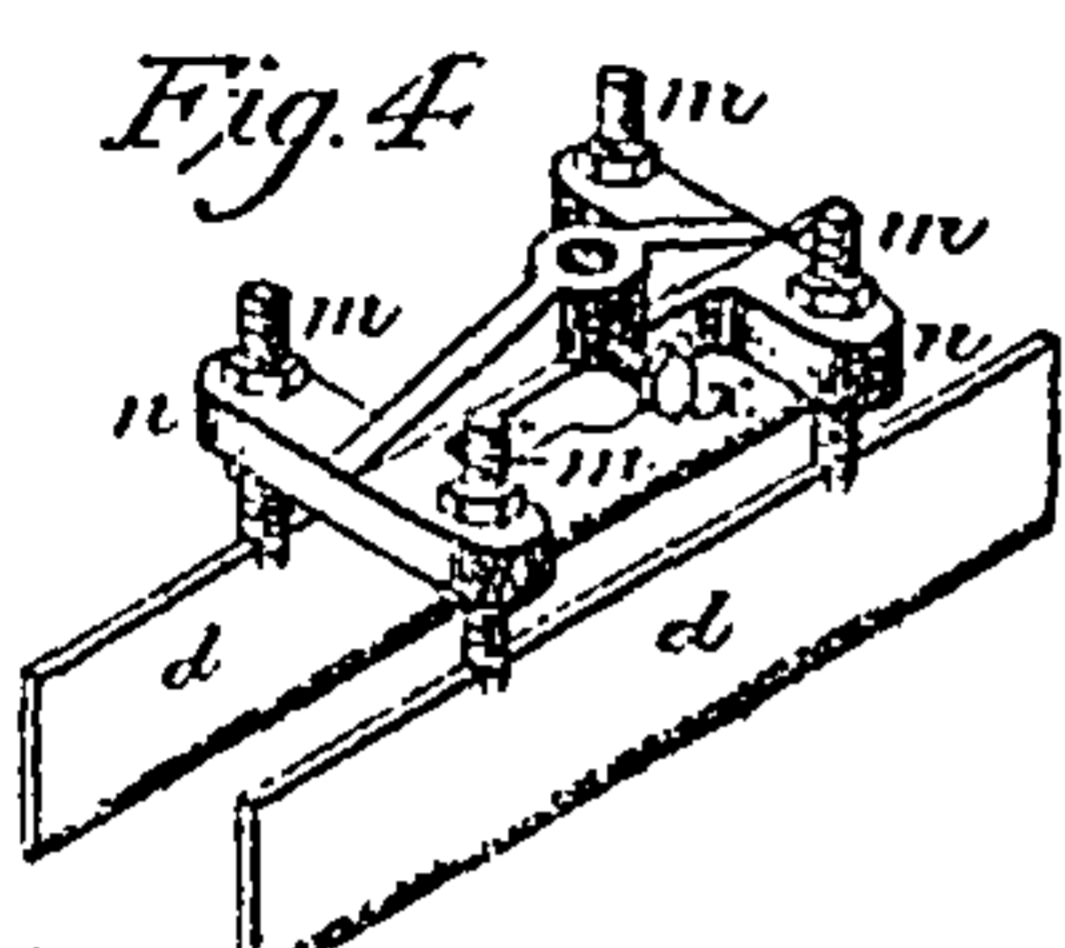
Signed at, in the county of and State of, this day of, 19...

.....

11. FOR A CAVEAT.

This form is obsolete; law relating to caveats repealed by act of July 1, 1910.

THE SIZE OF THE SHEET MUST BE EXACTLY 10 x 15 INCHES. SEE RULE 52.(2).



THIS SPACE MUST BE THIRTEEN INCHES

Witnesses.
 E.....F.....
 G.....H.....

Inventor.
 A.....B.....
 per C.D.....
 Attorney.

THIS SPACE MUST BE EIGHT INCHES

12. FOR THE RENEWAL OF A FORFEITED APPLICATION.

To the Commissioner of Patents:

Your petitioner,, a citizen of the United States and a resident of, in the county of and State of (or subject, etc.), whose post-office address is, represents that on, 19.., he filed an application for letters patent for an improvement in, serial number, which application was allowed, 19 .., but that he failed to make payment of the final fee within the time allowed by law. He now makes renewed application for letters patent for said invention, and prays that the original specification, oath, drawings, and model may be used as a part of this application.

Signed at, in the county of and State of, this day of, 19...

.....

SPECIFICATIONS.

13. FOR AN ART OR PROCESS.

To all whom it may concern:

Be it known that I,, a citizen of the United States, residing at, in the county of and State of (or subject, etc.), have invented new and useful improvements in processes of extracting gold from its ores, of which the following is a specification:

This invention relates to the process of extracting gold from its ores by means of a solution of cyanide of an alkali or alkaline earth, and has for its object to render the process more expeditious and considerably cheaper.

In extracting gold from its ores by means of a solution of cyanide of potassium, sodium, barium, etc., the simultaneous oxidation of the gold is necessary, and this has hitherto been effected by the action of the air upon

the gold which is rendered oxidizable thereby by the action of the cyanide solution.

Instead of depending solely upon the agency of the air for the oxidizing action I employ, to assist the oxidation of the gold, ferricyanide of potassium or another ferricyanogen salt of an alkali or of an earth alkali in an alkaline solution. By this means the oxidation, being rendered very much more energetic, is effected with a considerably smaller quantity of the solvent. Thus, by the addition of ferricyanide of potassium or other ferricyanides to the cyanide of potassium solution, as much as eighty per cent of potassium cyanide may be saved.

It may be remarked that the ferricyanide of potassium alone will not dissolve the gold and does not therefore come under the category of a solvent hitherto employed in processes of extraction. It does not therefore render unnecessary the employment of the simple cyanide as a solvent, but only reduces the amount required owing to the capacity of the ferricyanide to assist the air to rapidly oxidize the gold in the presence of the simple salt. Consequently the cyanogen of the latter is not used to form the gold cyanide compound.

I claim:

The process of extracting gold from its ores consisting in subjecting the ores to the dissolving action of cyanide of potassium in the presence of ferricyanide of potassium, substantially as herein described.

.....

Witnesses:

.....

.....

14. FOR A MACHINE.

To all whom it may concern:

Be it known that I,, a citizen of the United States, residing at, in the county of

and State of (or subject, etc.), have invented a new and useful meat-chopping machine, of which the following is a specification:

My invention relates to improvements in meat-chopping machines in which vertically reciprocating knives operate in conjunction with a rotating chopping block; and the objects of my improvement are, first, to provide a continuously lubricated bearing for the block; second, to afford facilities for the proper adjustment of the knives independently of each other in respect to the face of the block; and, third, to reduce the friction of the reciprocating rod which carries the knives.

I attain these objects by the mechanism illustrated in the accompanying drawing, in which—

Figure 1 is a vertical section of the entire machine; Fig. 2, a top view of the machine as it appears after the removal of the chopping block and knives; Fig. 3, a vertical section of a part of the machine on the line 1 2, Fig. 2; and Fig. 4, a detailed view in perspective of the reciprocating crosshead and its knives.

Similar letters refer to similar parts throughout the several views.

The table or plate A, its legs or standards B B, and the hanger *a*, secured to the underside of the table, constitute the framework of the machine. In the hanger *a* turns the shaft D, carrying a fly-wheel E, to the hub of which is attached a crank *o*, and a crank-pin *p*, connected by a link *b*, to a pin passing through a crosshead G, and to the latter is secured a rod H, having at its upper end a crosshead I, carrying the adjustable chopping knives *d d*, referred to hereinafter.

The crosshead G, reciprocated by the shaft D, is provided with anti-friction rollers *e e*, adapted to guides *f f*, secured to the underside of the table A, so that the reciprocation of this crosshead may be accompanied with as little friction as possible.

To the underside of a wooden chopping block J is secured an annular rib *h*, adapted to and bearing in an annular groove *i* in the table A. (See Figs. 1 and 2.) This annular groove or channel is not of the same depth throughout, but communicates at one or more points (two in the present instance) with pockets or receptacles *j j* wider than the groove and containing supplies of oil, in contact with which the rib *h* rotates so that the continuous lubrication of the groove and rib is assured. The rod H passes through and is guided by a central stand K, secured to the table A, and projecting through a central opening in the chopping block without being in contact therewith, the upper portion of the said stand being contained within a cover *k*, which is secured to the block, and which prevents particles of meat from escaping through the central opening of the same.

The cross-head I, previously referred to, and shown in perspective in Fig. 4, is vertically adjustable on the rod H, and can be retained after adjustment by a set-screw *x*, the upper end of the rod being threaded for the reception of nuts, which resist the shocks imparted to the cross-head when the knives are brought into violent contact with the meat or the chopping-block.

The knives *d d* are adjustable independently of each other and of the said cross-head, so that the coincidence of the cutting-edge of each knife with the face of the chopping-block may always be assured.

I prefer to carry out this feature of my invention in the manner shown in Fig. 4, where it will be seen that two screw-rods *m m* rise vertically from the back of each knife and pass through lugs *n n* on the cross-head, each rod being furnished with two nuts, one above and the other below the lug through which it passes. The most accurate adjustment of the knives can be effected by the manipulation of these nuts.

A circular casing *p* is secured to the chopping-block, so as to form on the same a trough *P* for keeping the meat within proper bounds; and on the edge of the annular rib *h*, secured to the bottom of the block, are teeth *r*, for receiving those of a pinion *q*, which may be driven by the shaft *D* through the medium of any suitable system of gearing, that shown in the drawing forming no part of my present invention.

This shaft *D* may be driven by a belt passing round the pulleys *s*, or it may be driven by hand from a shaft *W*, furnished at one end with a handle *t*, and at the other with a cog-wheel *R*, gearing into a pinion on the said shaft *D*.

A platform *T* may be hinged, as at *w*, to one edge of the table *A*, to support a vessel in which the chopped meat can be deposited. The means by which it may be supported are shown in full lines, and the most convenient method of disposing of it when not in use is shown in dotted lines, in Fig. 1.

I am aware that prior to my invention meat-chopping machines have been made with vertically-reciprocating knives operating in conjunction with rotating chopping-blocks. I therefore do not claim such a combination broadly; but

I claim:

1. The combination, in a meat-chopping machine, of a rotary chopping-block having an annular rib, with a table having an annular recess and a pocket communicating with the said recess, all substantially as set forth.

2. In a meat-chopping machine, the combination of a rotary chopping-block with a reciprocating cross-head carrying knives, each of which is vertically adjustable on the said cross-head independently of the other, substantially as described.

3. The knife *d*, having two screw-rods, *m m*, attached to its back, substantially as shown, for the purpose specified.

4. The combination, in a meat-chopping machine, of the reciprocating rod, carrying the knives, the cross-head secured to the said rod, and having anti-friction rollers, with guides, adapted to the said rollers, all substantially as set forth.

.....

Witnesses:

.....

.....

*

15. FOR A COMPOSITION OF MATTER.

To all whom it may concern:

Be it known that I,, a citizen of the United States, residing at, in the county of and State of (or subject, etc.), have invented a new and useful composition of matter to be used for, the removal of hair and grease from hides preparatory to tanning, of which the following is a specification:

My composition consists of the following ingredients, combined in the proportions stated, viz.:

- Water substantially pure500 gallons
- Unslaked lime350 pounds
- Soda-ash (sodium carbonate)100 pounds
- Saltpeter (nitrate of an alkali metal) 20 pounds
- Sulphur (preferably flowers of sulphur) 10 pounds

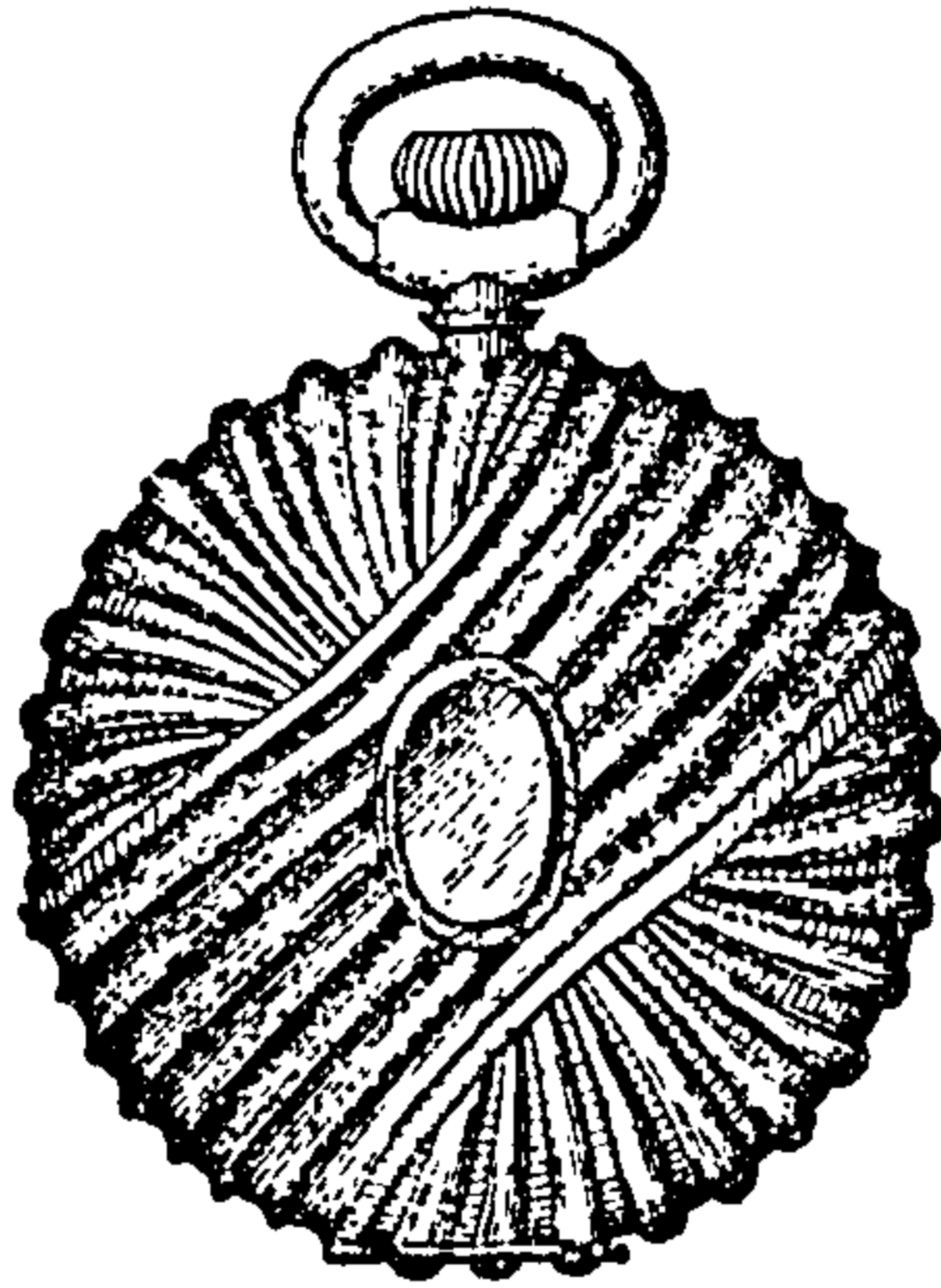
These ingredients are to be thoroughly mingled by agitation.

In using the above-named composition the hides should first be freed from all salt and impurities by soaking green hides one day and dry hides eight days. The hides so cleaned are then placed in the said solution, and allowed to remain in it forty-eight hours. They should then be removed from the solution and unhaired in the usual way.

By the use of the above composition the hair is speed-

The size of the sheet must be exactly 10x15 inches. See rule 52(2).

6



This space must be thirteen inches

Witnesses:
W..... G.....

R..... L.....

Inventor:
T..... B.....

per

G..... C.....

Attorney.

This space must be eight inches.

ily and thoroughly loosened, and the hides, while retaining all of that portion of the substance which can be converted into leather, are at the same time entirely cleaned from grease and other substances which would prevent them from being tanned quickly.

I am aware that a composition consisting of soda-ash, water, lime, and sulphur has been used for the same purpose, and that a patent therefor was granted to C. D., July 10, 18.., No. I am also aware that saltpeter has been used in depilatory processes; but I am not aware that all the ingredients of my composition have been used together.

I claim:

1. The herein-described composition of matter, consisting of water, unslaked lime, soda-ash, saltpeter, and sulphur, substantially as described and for the purpose specified.

2. The herein-described composition of matter for depilating and preparing hides for tanning, consisting of pure water five hundred gallons, unslaked lime three hundred and fifty pounds, soda-ash one hundred pounds, saltpeter twenty pounds, and flowers of sulphur ten pounds, substantially as described.

.....

Witnesses:

.....

16. FOR A DESIGN.

To all whom it may concern:

Be it known that I,, a citizen of the United States, residing at, in the county of, and State of (or subject, etc.), have invented a new, original, and ornamental Design for Watch-Cases,

of which the following is a specification, reference being had to the accompanying drawing, forming part thereof.

The figure is a plan view of a watch case, showing my new design.

I claim:

The ornamental design for a watch case, as shown.

.....

Witnesses:

.....

.....

(That a written description is unnecessary to the validity of a design patent, see *Dobson v. Dornan*, 118 U. S. 10, 30 L. Ed. 63; *Ashley v. Samuel C. Tatum Co.*, 186 Fed. Rep. 339, reversing 181 Fed. Rep. 840; written description having been condemned by the Patent Office and by the Court of Appeals of the District of Columbia as useless, confusing and misleading. *Ex parte Mygatt*, 117 Off. Gaz. 598; *Ex parte Freeman*, 23 App. D. C. 226, 109 Off. Gaz. 1339. The Patent Office rules from 1836 to 1904 both permitted and provided for a description of the design, and for most of the time from 1836 to 1897 the Patent Office recommended a claim including a description of the design. In reversing the Patent Office in the *Mygatt* case, the Court of Appeals of the District of Columbia approved the earlier practice, and sustained an applicant who insisted on a claim setting out the salient features of his design, and a description in accordance with the claim. In re *Mygatt*, 26 App. D. C. 366, 121 Off. Gaz. 1676. The propriety, and the necessity in some instances, of having a written description, may be regarded as being settled. *James E. Tompkins Co. v. New York Woven Wire Mattress Co.*, 159 Fed. Rep. 133, 86 C. C. A. 323; *Ashley v. Samuel C. Tatum Co.*, 186 Fed. Rep. 339, — C C. A. —.)

17. FOR A CAVEAT.

This form is obsolete; law relating to caveats repealed by act of July 1, 1910.

OATHS.

18. OATH TO ACCOMPANY AN APPLICATION FOR UNITED STATES PATENT.

..... } ss:
..... }

¹, the above-named petitioner.., being sworn (or affirmed), depose.. and say.. that citizen.. of² and resident.. of³, that

..... verily believe to be the original, first, and ⁴ inventor.. of the improvement in ⁵ described and claimed in the annexed specification; that do.. not know and do.. not believe that the same was ever known or used before invention or discovery thereof, or patented or described in any printed publication in any country before invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by or legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by.....or.....representatives or assigns in any country foreign to the United States, except as follows: ⁶

Inventor's full name: ⁷ {
 {

Sworn to and subscribed before me this day of, 19...

[SEAL.]

.....
 [Signature of justice or notary.]

⁸
 [Official character.]

19. OATH TO ACCOMPANY AN APPLICATION FOR UNITED STATES PATENT FOR DESIGN.

..... } ss:
 }

¹....., the above-named petitioner.., being sworn (or affirmed), depose.. and say.. that citizen.. of ² and resident.. of ³, that verily believe to be the original, first, and ⁴ inventor of the design for ⁵ de-

scribed and claimed in the annexed specification; that
 do.. not know and do.. not believe that the same
 was ever known or used before invention thereof,
 or patented or described in any printed publication in
 any country before invention thereof, or more
 than two years prior to this application, or in public use
 or on sale in the United States for more than two years
 prior to this application; that said design has not been
 patented in any country foreign to the United States on
 an application filed by or legal representa-
 tives or assigns more than four months prior to this ap-
 plication; and that no application for patent on said
 design has been filed by or representatives
 or assigns in any country foreign to the United States,
 except as follows:⁶

.....

Inventor's full name:⁷ {
 }

Sworn to and subscribed before me this day
 of, 19...

[SEAL.]

8
 [Signature of justice or notary.]

.....
 [Official character.]

¹ If the inventor be dead, the oath will be made by the administrator; if insane, by the guardian, conservator, or legal representative. In either case the affiant will declare his belief that the party named as inventor was the original and first inventor.

² If the applicant be an alien, state of what foreign country he is a citizen or subject.

³ Give residence address in full; as "a resident of, in the county of and State of, " or "of No. street, in the city of, county of and State (Kingdom, Republic, or Empire) of"

⁴ "Sole" or "joint."

⁵ Insert title of invention.

⁶ Name each country in which an application has been filed, and in each case give date of filing the same. If no application has been filed, erase the words "except as follows."

⁷ All oaths must bear the signature of the affiant.

* * * * "When the person before whom the oath or affirmation is made is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal."

A certificate of the official character of a magistrate, stating date of appointment and term of office, may be filed in the Patent Office, which will obviate the necessity of separate certificates in individual cases.

When the oath is taken abroad before a notary public, judge, or magistrate, his authority should in each instance be proved by a certificate of a diplomatic or consular officer of the United States.

20. BY AN APPLICANT FOR A REISSUE (INVENTOR).

[When the original patent is claimed to be inoperative or invalid "by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new," this form can be modified accordingly.]

..... } ss:
 }

....., the above-named petitioner, being duly sworn (or affirmed), deposes and says that he does verily believe himself to be the original and first inventor of the improvement set forth and claimed in the foregoing specification and for which improvement he solicits a patent; that deponent does not know and does not believe that said improvement was ever before known or used;¹ that deponent is a citizen of the United States of America, and resides at, in the county of, and State of;¹ that deponent verily believes that the letters patent referred to in the foregoing petition and specification and herewith surrendered are inoperative (or invalid), for the reason that the specification thereof is defective (or insufficient), and that such defect (or insufficiency) consists particularly in²; and deponent further says that the errors which render such patent so inoperative (or invalid) arose from inadvertence (or accident, or mistake), and without any fraudulent or deceptive intention on the part of depo-

² Hop.—91

ment;³ that the following is a true specification of the errors which it is claimed constitute such inadvertence (or accident, or mistake), relied upon:²; that such errors so particularly specified arose (or occurred) as follows:²

Inventor's full name: {
.....

Subscribed and sworn to before me this day of , 19...

[SEAL.]

.....
[Signature of justice or notary.]

.....
[Official character.]

21. BY AN APPLICANT FOR A REISSUE (ASSIGNEE).

[To be used only when the inventor is dead.]

..... } ss:
.....

....., the above-named petitioner, being duly sworn (or affirmed), deposes and says that he verily believes that the aforesaid letters patent granted to are (here follows Form 20, the necessary changes being made); that the entire title to said letters patent is vested in him; and that he verily believes the said to be the first and original inventor of the invention set forth and claimed in the foregoing amended specification; and that the said is now deceased.

Sworn to and subscribed before me this day of , 19...

[SEAL.]

.....
[Signature of justice or notary.]

.....
[Official character.]

¹ Rule 46.

² Rule 87.

³ Rule 87 (5).

22. SUPPLEMENTAL OATH TO ACCOMPANY A CLAIM FOR MATTER DISCLOSED BUT NOT CLAIMED IN AN ORIGINAL APPLICATION.

..... }
 } ss:

....., whose application for letters patent for an improvement in, serial No., was filed in the United States Patent Office on or about the day of, 19.., being duly sworn (or affirmed), deposes and says that the subject-matter of the foregoing amendment was part of his invention, was invented before he filed his original application, above identified, for such invention, was not known or used before his invention, was not patented or described in a printed publication in any country more than two years before his application, was not patented in a foreign country on an application filed more than twelve months before his application, was not in public use or on sale in this country for more than two years before the date of his application, and has not been abandoned.

.....
 Sworn to and subscribed before me this day of, 19...

[SEAL.]

.....
 [Signature of justice or notary.]

.....
 [Official character.]

23. OATH AS TO THE LOSS OF LETTERS PATENT.

..... }
 } ss:

....., being duly sworn (or affirmed), depose.. and say.. that the letters patent No., granted to him, and bearing date on the day of, 19..,

have been either lost or destroyed; that he has made diligent search for the said letters patent in all places where the same would probably be found, if existing, and that he has not been able to find them.

Subscribed and sworn to before me this day of
, 19...

[SEAL.]

.....
 [Signature of justice or notary.]

.....
 [Official character.]

24. OATH OF ADMINISTRATOR AS TO THE LOSS OF LETTERS
 PATENT.

..... } ss:

....., being duly sworn, depose.. and say.. that he is administrator of the estate of, deceased, late of, in said county; that the letters patent No....., granted to said, and bearing date of the day of, 19.., have been lost or destroyed, as he verily believes; that he has made diligent search for the said letters patent in all places where the same would probably be found, if existing, and especially among the papers of the decedent, and that he has not been able to find said letters patent.

.....
Administrator, etc.

Subscribed and sworn to before me this day of
, 19...

[SEAL.]

.....
 [Signature of justice or notary.]

.....
 [Official character.]

25. POWER OF ATTORNEY AFTER APPLICATION FILED.

[If the power of attorney be given at any time other than that of making application for letters patent, it will be in substantially the following form:]

To the Commissioner of Patents:

The undersigned having, on or about the day of, 19.., made application for letters patent for an improvement in (serial number), hereby appoints,¹ of, in the county of and State of, his attorney, with full power of substitution and revocation, to prosecute said application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at, in the county of, State of, this day of, 19...

.....

26. REVOCATION OF POWER OF ATTORNEY.

To the Commissioner of Patents:

The undersigned having, on or about the day of, 19.., appointed, of, in the county of and State of, his attorney to prosecute an application for letters patent, which application was filed on or about the day of, 19.., for an improvement in (serial number), hereby revokes the power of attorney then given.

Signed at, in the county of, and State of, this day of, 19...

.....

¹ If the power of attorney be to a firm, the name of each member of the firm must be given in full.

27. AMENDMENT.²

To the Commissioner of Patents:

In the matter of my application for letters patent for an improvement in, filed, 19.. (serial number), I hereby amend my specification as follows:

By striking out all between the and lines, inclusive, of page;

By inserting the words “.,” after the word “.,” in the line of the claim; and

By striking out the claim and substituting therefor the following:

.....

Signed at, in the county of, and State of

.....,

By

His Attorney in Fact.

DISCLAIMERS.

28. DISCLAIMER AFTER PATENT.

To the Commissioner of Patents:

Your petitioner,, a citizen of the United States, residing at, in the county of and State of (or subject, etc.), represents that in the matter of a certain improvement in, for which letters patent of the United States No. were granted to, on the day of, 19.., he is (here state the exact interest of the disclaimant; if assignee, set out liber and page where assignment is recorded),

² In the preparation of all amendments a separate paragraph should be devoted to each distinct erasure or insertion, in order to aid the Office in making the entry of the amendment into the case to which it pertains.

and that he has reason to believe that through inadvertence (accident or mistake) the specification and claim of said letters patent are too broad, including that of which said patentee was not the first inventor. Your petitioner, therefore, hereby enters this disclaimer to that part of the claim in said specification which is in the following words, to wit:

.....
Signed at, in the county of, and State of, this day of, 19..

Witnesses:

.....
.....

29. DISCLAIMER DURING INTERFERENCE.

Interference.

..... }
vs. } Before the examiner of interferences.
..... }

Subject-matter:

To the Commissioner of Patents:

SIR: In the matter of the interference above noted, under the provisions of and for the purpose set forth in Rule 107, I disclaim (set forth the matter as given in declaration of interference), as I am not the first inventor thereof, and I herewith transmit an amendment to my application filed, 19.., serial number .., for the purpose of having the above disclaimer embodied as part of my specification.

Signed at, in the county of, and State of, this day of, 19...

Witnesses:

.....
.....

APPEALS AND PETITIONS.

30. FROM A PRINCIPAL EXAMINER TO THE EXAMINERS-IN-CHIEF.

To the Commissioner of Patents:

SIR: I hereby appeal to the examiners-in-chief from the decision of the principal examiner in the matter of my application for letters patent for an improvement in, filed, 19.., serial number, which on the day of, 19.., was rejected the second time. The following are the points of the decision on which the appeal is taken: (Here follows a statement of the points on which the appeal is taken.)

Signed at, in the county of, and State of, this day of, 19. . .

.

31. FROM THE EXAMINER IN CHARGE OF INTERFERENCES TO THE EXAMINERS-IN-CHIEF.

To the Commissioner of Patents:

SIR: I hereby appeal to the examiners-in-chief from the decision of the examiner of interferences in the matter of the interference between my applications for letters patent for improvement in and the letters patent of, in which priority of invention was awarded to said The following are assigned as reasons of appeal: (Here should follow an explicit statement of alleged errors in the decision of the examiner of interferences.)

Signed at, in the county of, and State of, this day of, 19. . .

.

32. FROM THE EXAMINERS-IN-CHIEF TO THE COMMISSIONER
IN EX PARTE CASES.

To the Commissioner of Patents:

SIR: I hereby appeal to the Commissioner in person from the decision of the examiners-in-chief in the matter of my application for letters patent for an improvement in, filed, 19.., serial number The following are assigned as reasons of appeal: (Here follow the reason as in Form 30.)

Signed at, in the county of, and State of, this day of, 19..

.

33. FROM THE EXAMINERS-IN-CHIEF TO THE COMMISSIONER
IN INTERFERENCE CASES.

To the Commissioner of Patents:

SIR: I hereby appeal to you in person from the decision of the examiners-in-chief, made, 19.., in the interference between my application for letters patent for improvement in and the letters patent of, in which priority of invention was awarded to said The following are assigned as reasons of appeal: (Here should follow an explicit statement of the alleged errors in the decision of the examiners-in-chief.)

Signed at, in the county of and State of, this day of, 19..

.

34. PETITION FROM A PRINCIPAL EXAMINER TO THE COMMISSIONER.

Application of
 Serial number
 Subject of invention

To the Commissioner of Patents:

Your petitioner avers—

First. That he is the applicant above named.

Second. That said application was filed on the day of, 19...

Third. That when so filed said application contained claims.

Fourth. That your petitioner was informed by office letter of the, 19.., (1) that his claim was rendered vague and indefinite by the employment of the words “.....,” which words should be erased; (2) that his claim was met by certain references which were given; and (3) that the claim was mere surplusage and should be eliminated.

Fifth. That on the day of your petitioner filed an amendment so eliminating his claim, and accompanied such amendment with a communication in which he declined to amend such claim, and asked for another action thereon.

Sixth. That your petitioner was then informed by office letter of the day of that the former requirement relating to claim would be adhered to, and that no action would be had on the merits of either claim until said amendment so required had been made.

Wherefore your petitioner requests that the examiner in charge of such application be advised that such amendment so required by him to said claim be not in-

sisted upon, and directed to proceed to examine both said remaining claims upon their merits.

A hearing of this petition is desired on the day of, 19...

.....,
Applicant.

.....,
Attorney for Applicant.

35. PETITION FOR COPIES OF REJECTED AND ABANDONED APPLICATIONS.

To the Commissioner of Patents:

The petition of, a resident of, in the county of and State of, respectfully shows:

First. That on the day of, 19..., patent No. issued to one

Second. That your petitioner is informed and believes that on the day of, 19..., said patentee filed in the United States Patent Office an application for patent for improvement in

Third. That your petitioner verily believes that said application has not been prosecuted during the past two years and upward; and he also verily believes that the last action had therein was on or about the day of, 19...

Fourth. That said application has therefore become and now stands abandoned.

Fifth. That on the day of, 19..., said patentee began suit, in the circuit court of the United States for the district of against your petitioner, which suit is based upon said patent, and the same is now pending and undetermined.

Sixth. Your petitioner is informed and believes that to enable him to prepare and conduct his defense in such suit it is material and necessary that he be allowed access to and copies of the files of such abandoned case.

Seventh. Your petitioner therefore requests that he or, in his behalf and as his attorney, be permitted to inspect and be furnished copies of all or any portion of such case.

.,
Petitioner.

By,
His Attorney.

. }
. } *ss:*

On this day of, 19.., before me, a notary public in and for said county and State, personally appeared, the above-named attorney, who, being by me duly sworn, deposes and says that he has read the foregoing petition and knows its contents, and that the same is true, except as to the matters therein stated on information, or belief, and as to those matters he believes it to be true.

.,
Notary Public.

NOTE.—A copy of this petition must be served upon the applicant named in the abandoned application or upon his attorney of record.

36. PRELIMINARY STATEMENT OF DOMESTIC INVENTOR.

. }
vs. } Interference in the United States
. } Patent Office.
. } Preliminary statement of
., of, in the county of, and State of, being duly sworn (or affirmed), doth depose and say that he is a party to the interference declared by the Commissioner of Patents,, 19.., between's application for letters patent, filed, 19.., serial number, and the patent to, granted, 19.., numbered, for a; that he conceived the invention set forth in the

declaration of interference ¹ on or about the day of 19..; that on or about the day of, 19.., he first made drawings of the invention (if he has not made a drawing, then he should say that no drawing of the invention in issue has been made); that on or about the day of, 19.., he first explained the invention to others; that he first embodied his invention in a full-size machine, which was completed about the day of, 19.., and that on the day of, 19.., the said machine was first successfully operated, in the town of, county of, and State of, and that he has since continued to use the same, and that he has manufactured others for use and sale to the following extent, viz (if he has not embodied the invention in a full-size machine, he should so state, and if he has embodied it, but has not used it, he should so state).

.....,
[Signature of inventor.]

Subscribed and sworn to before me this day of, 19...

.....,
[Signature of justice or notary.]

.....
[Official character.]

37. PRELIMINARY STATEMENT OF FOREIGN INVENTOR.

..... } Interference in United States Pat-
vs. } ent Office.
..... } Preliminary statement of
....., of London, in the county of Middle-
sex, England, being duly sworn, doth depose and say that

¹ If the party has doubts as to whether the matter of his application is properly involved in the issue as declared, then in lieu of the terms "the invention set forth in the declaration of interference" he may say "the invention contained in the claims of my application (or patent) declared to be involved in this interference," and should specify such claims by number.

he is a party to the interference declared by the Commissioner of Patents,, 19.., between his application for patent, filed, 19.., serial number, and the patent of, granted, 19.., No., for an improvement in; that he made the invention set forth in the declaration of interference,¹ being at that time in England; that patents for such invention were applied for and obtained as follows:

Application filed in Great Britain,, 19.., patent dated, 19.., No.; published the day of, 19.., and sealed the day of, 19..; application filed in France, 19.., patent dated, 19.., No.; published the day of, 19.., and sealed the day of 19.. (If a patent has not been obtained in any country it should be so stated.)

That such invention was fully described in a magazine published at, on the day of, 19.., by, entitled (see page of such magazine), and in the following newspapers:, of, 19..;, published at, on, 19.. (If the invention was never described in a printed publication it should be so stated.)

The knowledge of such invention was introduced into the United States under the following circumstances: On, 19.., the said wrote a letter to, residing at, State of, describing such invention and soliciting his services in procuring a patent therefor in the United States. This letter, he is informed and believes, was received by the said on

¹ If the party has doubts as to whether the matter of his application is properly involved in the issue as declared, then in lieu of the terms "the invention set forth in the declaration of interference," he may say "the invention contained in the claims of my application (or patent) declared to be involved in this interference," and should specify such claims by number.

....., 19... Also on, 19.., he wrote a letter to the firm of, of, State of, describing such invention and requesting their assistance in manufacturing and putting it on the market, which letter, he is informed, and believes, was received by them on, 19... Such invention was manufactured by such firm and described in their trade circulars, as he is informed and verily believes, on or about the day of, 19. . . (If the invention has not been introduced into the United States otherwise than by the application papers, it should be so stated, and the date at which such papers were received in the United States alleged.)

.....,

[Signature of inventor.]

Subscribed and sworn to before me this day of, 19...

.....,

[Signature of justice or notary.]

.....

[Official character.]

ASSIGNMENTS.

38. OF AN ENTIRE INTEREST IN AN INVENTION BEFORE THE ISSUE OF LETTERS PATENT.

Whereas I,, of, county of, and State of, have invented a certain new and useful improvement in, for which I am about to make application for letters patent of the United States; and whereas, of, county of, and State of, is desirous of acquiring an interest in said invention and in the letters patent to be obtained therefor:

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of dollars to me in hand paid, the receipt of which is hereby

acknowledged, I, the said, have sold, assigned, and transferred, and by these presents do sell, assign and transfer unto the said the full and exclusive right to the said invention, as fully set forth and described in the specification prepared and executed by me on the day of, 19.., preparatory to obtaining letters patent of the United States therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said as the assignee of my entire right, title, and interest in and to the same, for the sole use and behoof of the said and his legal representatives.

In testimony whereof I have hereunto set my hand and affixed my seal this day of, 19. . .

. [SEAL.]

In presence of—

.

.

(If assignment, grant, or conveyance be acknowledged as provided for by Rule 197, the certificate will be *prima facie* evidence of the execution of such assignment, grant, or conveyance.)

39. OF THE ENTIRE INTEREST IN LETTERS PATENT.

Whereas I,, of, county of, State of, did obtain letters patent of the United States for an improvement in, which letters patent are numbered, and bear date the day of, in the year 19..; and whereas I am now the sole owner of said patent and of all rights under the same; and whereas, of, county of, and State of, is desirous of acquiring the entire interest in the same:

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of dollars to me in hand paid, the receipt of which is here-

by acknowledged, I, the said, have sold, assigned, and transferred and by these presents do sell, assign and transfer unto the said the whole right, title, and interest in and to the said improvement in and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal at, in the county of, and State of, this day of, 19...
 [SEAL.]

In presence of—

.

(See note under Form 37.)

40. OF AN UNDIVIDED INTEREST IN LETTERS PATENT.

Whereas, I, of, county of, State of, did obtain letters patent of the United States for an improvement in, which letters patent are numbered, and bear date the day of, in the year; and whereas, of, county of, State of, is desirous of acquiring an interest in the same:

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said, the undivided one-half part of the whole right, title, and interest in and to

the said invention and in and to the letters patent therefor aforesaid; the said undivided one-half part to be held and enjoyed by the said, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal at, in the county of, and State of, this day of, 19...

. [SEAL.]

In presence of—

.
.

(See note under Form 37.)

41. TERRITORIAL INTEREST AFTER GRANT OF PATENT.

Whereas I,, of, county of, State of, did obtain letters patent of the United States for improvement in, which letters patent are numbered and bear date the day of in the year 19..; and whereas I am now the sole owner of said patent and of all rights under the same in the below-recited territory; and whereas, of, county of, State of, is desirous of acquiring an interest in the same:

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said all the right, title, and interest in and to the said invention, as secured to me by said letters patent, for, to, and in the State of

....., and for, to, or in no other place or places; the same to be held and enjoyed by the said within and throughout the above-specified territory, but not elsewhere, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal at, in the county of, and State of, this day of, 19...

..... [SEAL.]

In presence of—

.....

(See note under Form 37.)

42. LICENSE—SHOP-RIGHT.

In consideration of the sum of dollars, to be paid by the firm of, of, in the county of, State of, I do hereby license and empower the said to manufacture in said (or other place agreed upon) the improvement in for which letters patent of the United States No. were granted to me the day of in the year 19.., and to sell the machines so manufactured throughout the United States to the full end of the term for which said letters patent are granted.

Signed at, in the county of and State of, this day of, 19...

.....

In presence of—

.....

43. LICENSE—NOT EXCLUSIVE—WITH ROYALTY.

This agreement, made this day of, 19.., between, of, in the county of and State of, party of the first part, and, of, in the county of and State of, party of the second part, witnesseth, that whereas letters patent of the United States No., for improvement in, were granted to the party of the first part on the day of, 19..; and whereas the party of the second part is desirous of manufacturing containing said patented improvements: Now, therefore, the parties have agreed as follows:

I. The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the conditions hereinafter named, at their factory in, and in no other place or places, to the end of the term for which said letters patent were granted, containing the patented improvements, and to sell the same within the United States.

II. The party of the second part agrees to make full and true returns to the party of the first part, under oath, upon the first days of and in each year, of all containing the patented improvements manufactured by them.

III. The party of the second part agrees to pay to the party of the first part dollars as a license fee upon every manufactured by said party of the second party containing the patented improvements; provided, that if the said fee be paid upon the days provided herein for semiannual returns, or within days thereafter, a discount of per cent shall be made from said fee for prompt payment.

IV. Upon a failure of the party of the second part to make returns or to make payment of license fees, as herein provided for days after the days herein

CHART FOR DRAFTSMEN

SECTION OF WOOD OR METAL



SECTION OF GLASS



SECTION OF CEMENT



SECTION OF INSULATION



ELEVATION OF INSULATION



LIQUID



SECTION ¹/₂ ELEVATION OF SANDSTONE



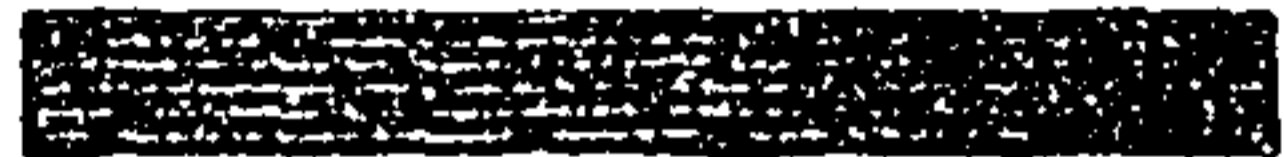
SECTION OF EARTH



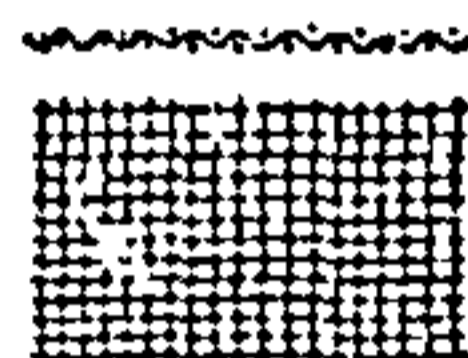
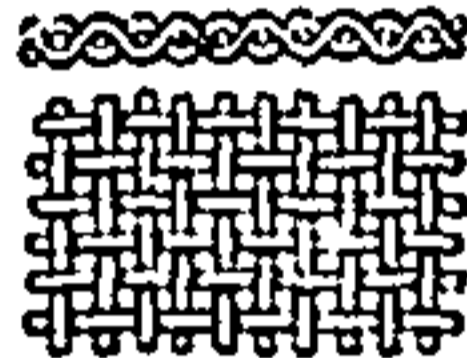
SECTION OF CARBON



ELEVATION OF CARBON



COARSE ¹/₂ FINE FABRIC



RED



BLUE



GREEN



YELLOW



BLACK



PURPLE



ORANGE

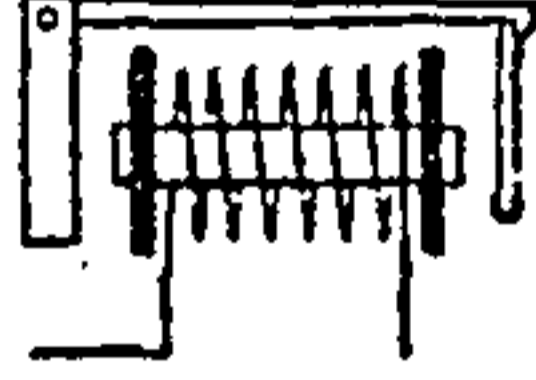


ELECTRICAL SYMBOLS

ANNUNCIATORS



DROP ANNUNCIATOR



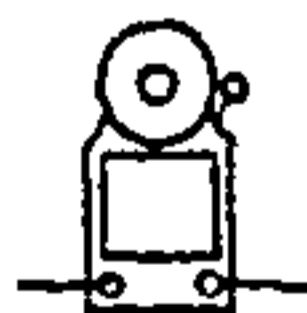
BATTERY



STORAGE CELL



BELL



POLARIZED BELL



BUZZER CONDENSER



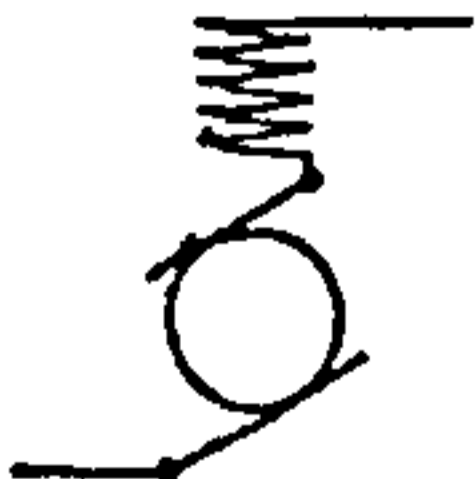
A.C. GENERATOR (SINGLE PHASE)



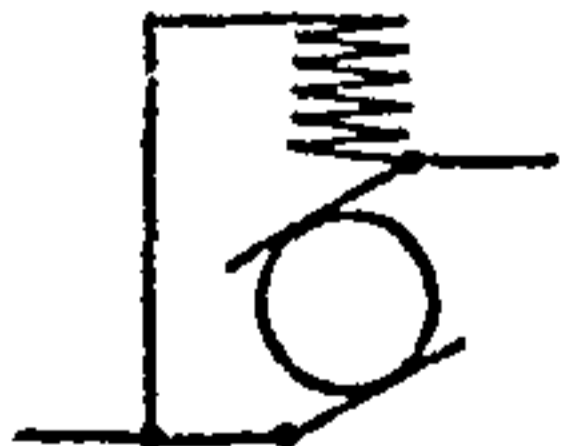
D.C. GENERATOR



D.C. GENERATOR (SERIES WOUND)



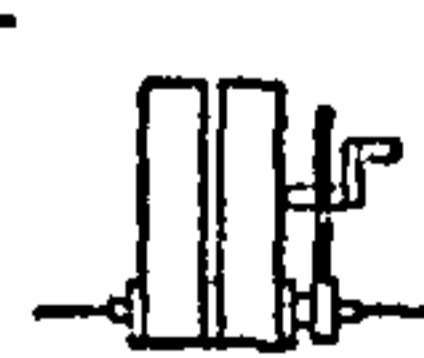
D.C. GENERATOR (SHUNT WOUND)



D.C. GENERATOR (COMPOUND WOUND)



MAGNETO GENERATOR



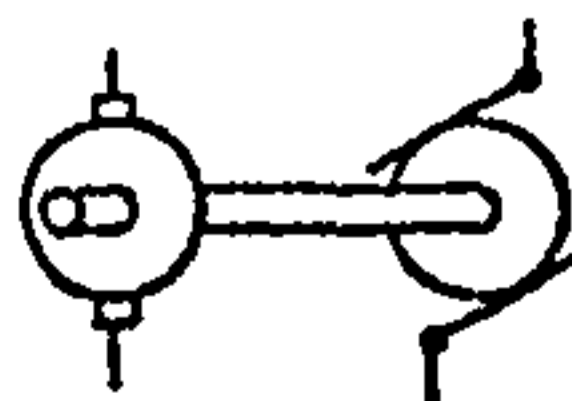
THERMO-ELECTRIC GENERATOR



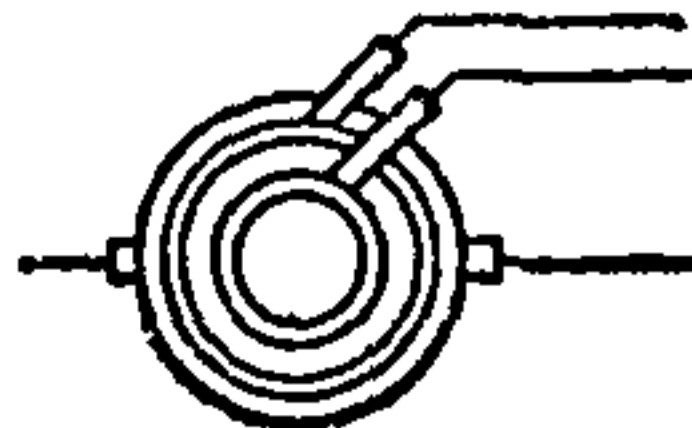
CONSTANTLY DRIVEN MAGNETO



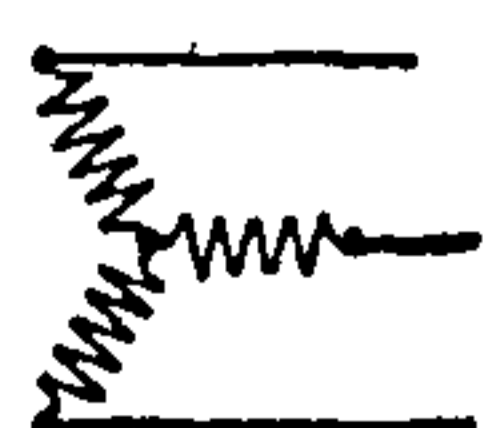
MOTOR GENERATOR



ROTARY TRANSFORMER



TRI PHASE GENERATOR (STAR CON'G)

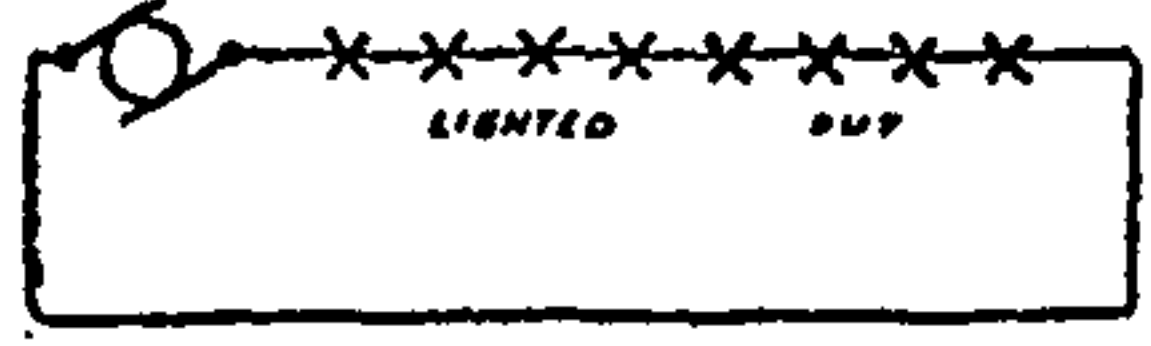


ELECTRICAL SYMBOLS

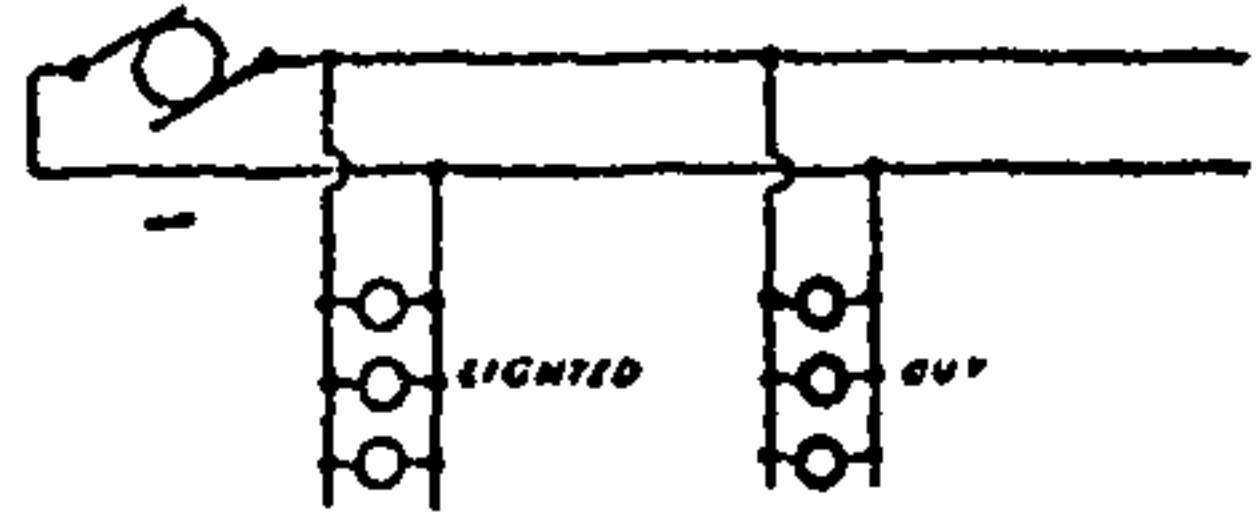
THREE PHASE GENERATOR (TRIANGULAR CONNECTION)



LAMP CIRCUIT (ARC)



LAMP CIRCUIT (INCANDESCENT)



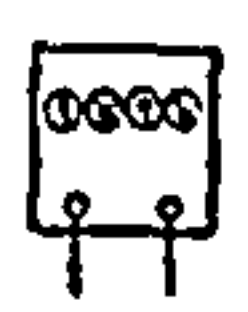
ARC LAMP



INCANDESCENT LAMP



METER



AMMETER



GALVANOMETER



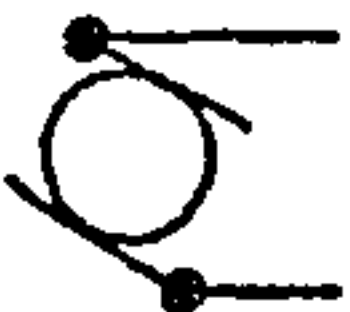
VOLTMETER



WATTMETER



MOTOR



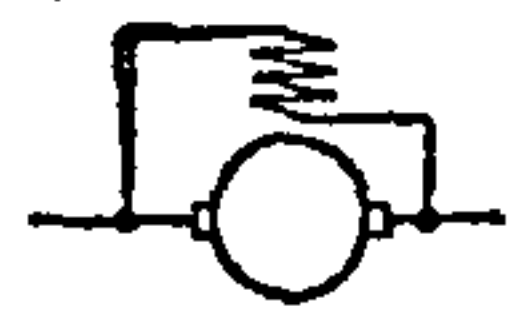
D.C. MOTOR



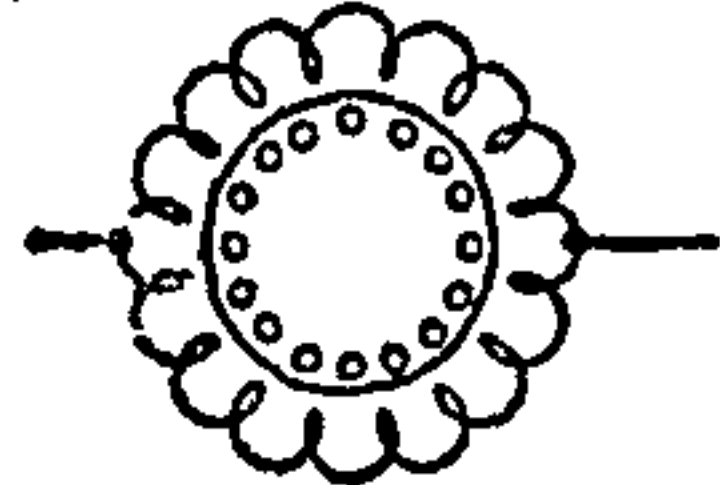
D.C. MOTOR (SERIES WOUND)



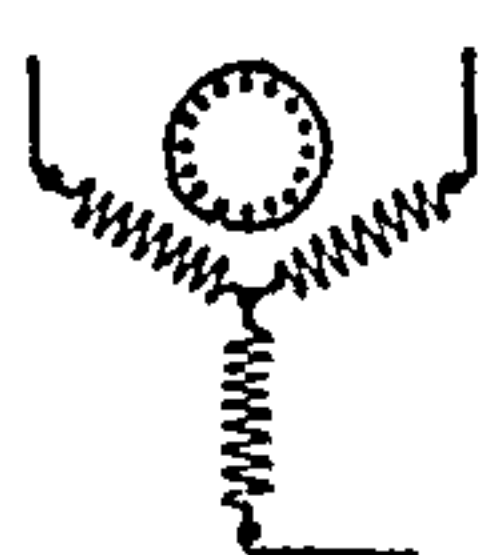
A.C. MOTOR (SHUNT WOUND)



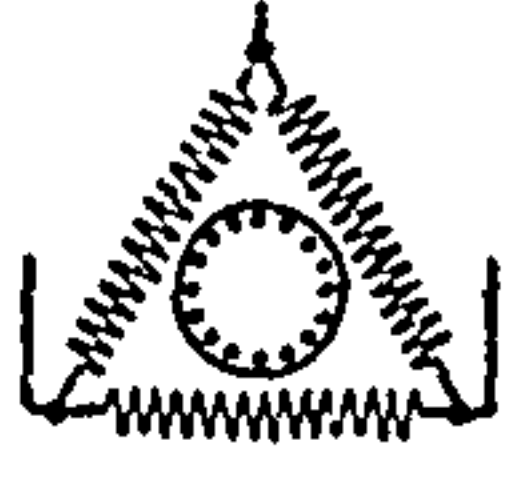
INDUCTION MOTOR (SQUIRREL CAGE ARMATURE)



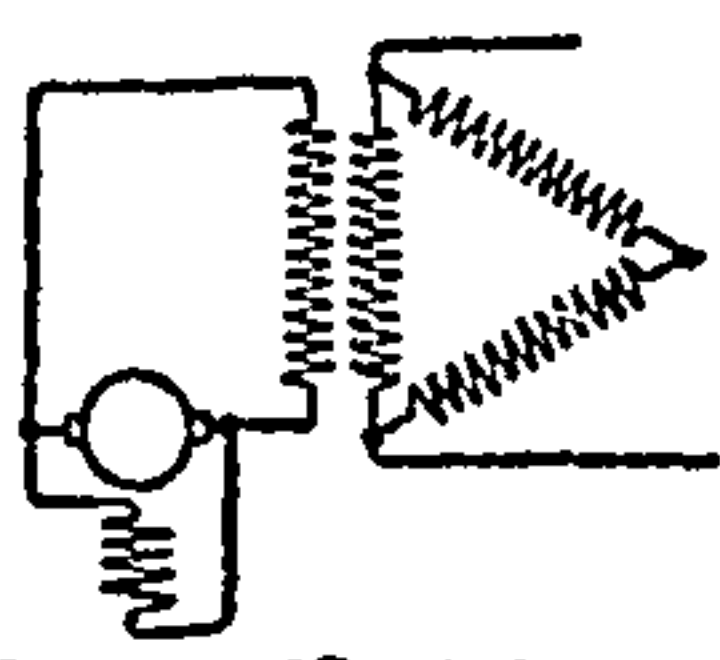
INDUCTION MOTOR (Y WINDING)



INDUCTION MOTOR (DELTA WINDING)



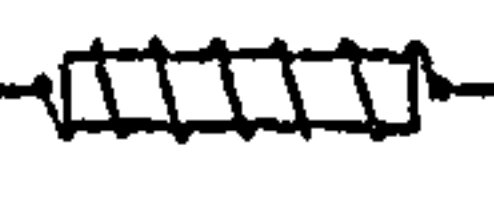
MOTOR OR GENERATOR (THREE PHASE SYNCHRONOUS, WITH EXCITER)



RESISTANCE



INDUCTIVE RESISTANCE



VARIABLE RESISTANCE



INDUCTIVE RESISTANCE (ADJUSTABLE CORE)



INDUCTIVE RESISTANCE (ADJUSTABLE COIL)



NON INDUCTIVE RESISTANCE



RHEOSTAT



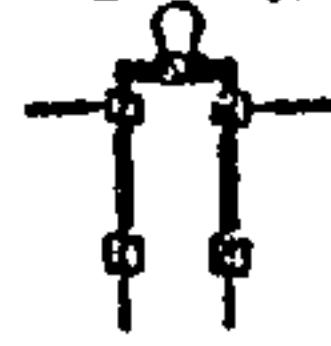
SOLENOID



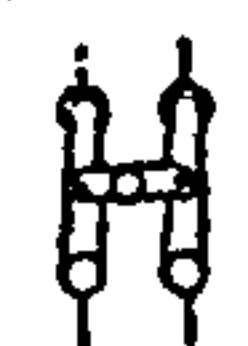
SWITCH



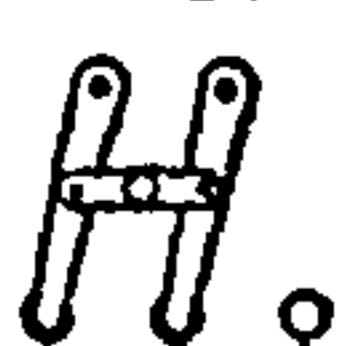
KNIFE SWITCH



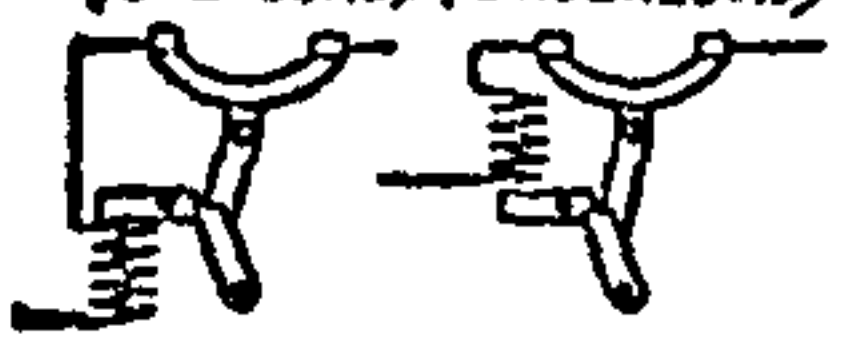
DOUBLE POLE SWITCH



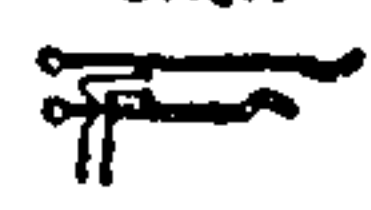
POLE CHANGER



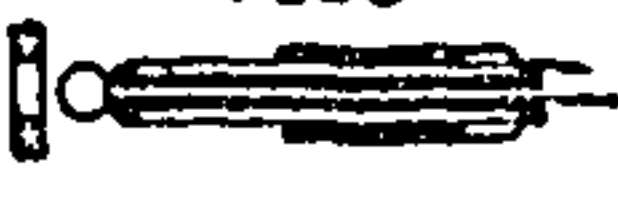
CIRCUIT BREAKERS (OVERLOAD) (UNDERLOAD)



SPRING JACK



SWITCH PLUG



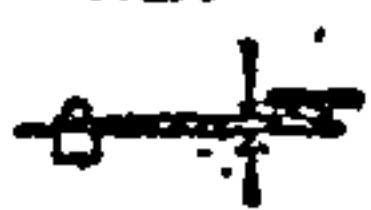
FUSE



LIGHTNING ARRESTER



TELEGRAPH KEY



RELAY OR SOUNDER



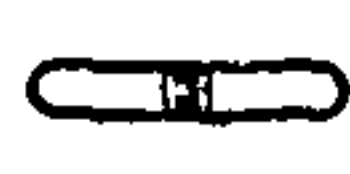
RELAY



DIFFERENTIAL RELAY



COHERER



POLARIZED RELAY



GROUND



TELEPHONE HOOK



TRANSMITTERS



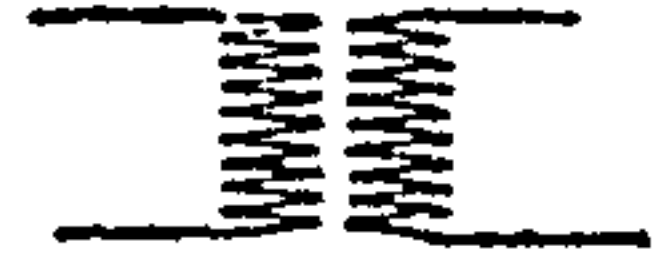
RECEIVERS



LISTENING OR RINGING KEYS



TRANSFORMER



CROSSING WIRES



JOINED WIRES



**ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz 1234567890**

named, the party of the first part may terminate this license by serving a written notice upon the party of the second part; but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

In witness whereof the parties above named have hereunto set their hands the day and year first above written at, in the county of and State of

In the presence of—
.
.

DEPOSITIONS.

44. NOTICE OF TAKING TESTIMONY.

.,,, 19. . .

In the matter of the interference between the application of for a machine and the patent No., granted, 19. . ., to, now pending before the Commissioner of Patents.

SIR: You are hereby notified that on Wednesday,, 19. . ., at the office of, esq., No. street,,, at o'clock in the forenoon, I shall proceed to take the testimony of, and, all of, as witnesses in my behalf.

The examination will continue from day to day until completed. You are invited to attend and cross-examine.

.
By,
His Attorney.

Signed at, in the county of, and State of, this day of, 19. . .

Witnesses:
.
.

Proof of service.

..... } ss:
..... }

Personally appeared before me, a (or other officer), the above-named, who, being duly sworn, deposes and says that he served the above notice upon, the attorney of the said, at o'clock of the day of, 19.., by leaving a copy at his office in, in the county of and State of, in charge of

Sworn to and subscribed before me at, in the county of and State of, this day of, 19...

[SEAL.]

.....
[Signature of justice or notary.]

.....
[Official character.]

(Service may be acknowledged by the party upon whom it is made as follows:

Service of the above notice acknowledged this of, 19...

.....,
By, *his Attorney.*)

45. FORM OF DEPOSITION.

Before the Commissioner of Patents, in the matter of the interference between the application of for a and Letters Patent No., granted....., 19.., to

Depositions of witnesses examined on behalf of, pursuant to the annexed notice, at the office of, No. street,, on, 19... Present,, esq., on behalf of, and, esq., on behalf of

....., being duly sworn (or affirmed), doth depose and say, in answer to interrogatories proposed to him by, esq., counsel for as follows, to wit:

Question 1. What is your name, age, occupation, and residence?

Answer 1. My name is; I am years of age; I am a manufacturer of and reside at, in the State of

Question 2, etc.

And in answer to cross-interrogatories proposed to him by, esq., counsel for, he saith:

Cross-question 1. How long have you known?

Answer 1.

.....

46. CERTIFICATE OF OFFICER.

[To follow deposition.]

..... } ss:
..... }

I,, a notary public within and for the county of and State of (or other officer, as the case may be), do hereby certify that the foregoing deposition of was taken on behalf of in pursuance of the notice hereto annexed, before me, at, in the city of, in said county, on the day (or days) of, 19..; that said witness was by me duly sworn before the commencement of his testimony; that the testimony of said witness was written out by myself (or by in my presence); that the opposing party,, was present (or absent or represented by counsel) during the taking of said testimony; that said testimony was taken at and was commenced at o'clock on the of, 19.., was continued pursuant to adjournment on the, (etc.) and was concluded on the of said month; that the deposition was read by, or to, each witness, before the witness signed the same;

that I am not connected by blood or marriage with either of said parties, nor interested directly or indirectly in the matter in controversy.

In testimony whereof I have hereunto set my hand and affixed my seal of office at, in said county, this day of, 19...

[SEAL.]

.....
[Signature of justice or notary.]

.....
[Official character.]

(The magistrate will then append to the deposition the notice under which it was taken, and will seal up the testimony and direct it to the Commissioner of Patents, placing upon the envelope a certificate in substance as follows:)

I hereby certify that the within deposition of (if the package contains more than one deposition give all the names), relating to the matter of interference between and, was taken, sealed up, and addressed to the Commissioner of Patents by me this day of, 19...

.....
[Signature of justice or notary.]

.....
[Official character.]

47. NOTICE OF MOTIONS FOR DISSOLUTION OF INTERFERENCE,
AND TRANSMISSION OF SAID MOTION TO THE PRIMARY
EXAMINER.

(From Johnson v. Mueser, 29 App. D. C. 61.)

In the United States Patent Office.

In Interference No. 24,078.

Albert L. Johnson,

v.

William Meuser.

Corrugated Bars.

To William Meuser, the above named applicant, and William R. Baird and Shipley Brashears, his attorneys:

You are hereby notified that on Monday, November 7, 1904, at ten o'clock in the forenoon, or as soon thereafter as counsel can obtain a hearing, said Johnson will present his motion to the Examiner of Interferences for the dissolution of the above entitled interference, and move said Examiner of Interferences to transmit such motion to dissolve to the Primary Examiner and to stay proceeding in said interference pending the determination thereof.

You will please take notice and govern yourselves accordingly.

A. L. JOHNSON,
By CARR & CARR and
E. S. CLARKSON,
His attorneys.

We hereby acknowledge receipt of the above notice together with a copy of said motions to dissolve, to transmit, and to stay proceedings.

WM. MUESER,
By SHIPLEY BRASHEARS.

Washington, D. C., November 5, 1904.

48. MOTION TO TRANSMIT THE MOTION TO DISSOLVE TO THE
PRIMARY EXAMINER.

(From Johnson v. Mueser, 29 App. D. C. 61.)

(Omitting caption).

Now comes Albert L. Johnson, a party to the above entitled interference and presents his motion for the dissolution of the above entitled interference, and thereupon he moves the Examiner of Interferences to transmit said motion to dissolve to the Primary Examiner for determination.

And said Johnson further moves that all proceedings in said interference be stayed pending the determination of his motion to dissolve said interference.

A. L. JOHNSON,
By CARR & CARR and
E. S. CLARKSON,
His attorneys.

Washington, D. C., November, 1904.

49. MOTION TO DISSOLVE AN INTERFERENCE.

(From Johnson v. Mueser, 29 App. D. C. 61.)

(Omitting caption).

Now this day comes Albert L. Johnson, a party to the above entitled interference and moves that the same be dissolved upon the ground that there has been such irregularity in declaring the same as will preclude a proper determination of the question of priority, and upon the further ground that the claims in issue are not patentable.

In support of this motion, said Johnson alleges that the claims are obscure and vague in the definition of the supposed patentable features, 1st, because the meaning of the words "a large number" is necessarily indefinite and relative only; 2d, because the expression "substantially continuous but actually much interrupted" is paradoxical and contradictory to such an extent as to render the meaning of the claims indefinite and obscure; and, 3d, because the claims rely for the definition of the patentable feature upon a recital of a function that is not necessarily accomplished by the construction otherwise described, whereas the claim should specifically describe the structure that performs the function.

The claims in issue lack patentable novelty, 1st, because they call for nothing more than the roughening of

a plain bar; and, 2d, because they are anticipated by the following patents:

British patent to Chorarne, No. 586 of 1894;
Patent to Thacher, No. 691,416, June 21, 1902;
Patent to Ransome, No. 516,111, March 16, 1894;
Patent to Johnson, No. 633,285, September 19, 1899;
Patent to Watson, No. 710,308, September 30, 1902;
Patent to Ransome, No. 647,904, April 17, 1900;
Patent to Pelton, No. 652,219, June 19, 1900;
Patent to Marsden, No. 654,905, July 31, 1900;
Patent to De Man, No. 625,544, May 23, 1899;
Patent to Venezia, No. 633,252, September 19, 1899;
Patent to Bell, No. 685,318, October 29, 1901.

A. L. JOHNSON,

By CARR & CARR and

E. S. CLARKSON,

His attorneys.

Washington, D. C., November 7, 1904.

(Endorsed:) Docket Clerk, U. S. Patent Office November 5, 1904.

APPEALS
FROM THE
COMMISSIONER OF PATENTS TO THE COURT
OF APPEALS OF THE DISTRICT OF
COLUMBIA.

(Official.)

INSTRUCTIONS TO APPELLANTS.

The act of Congress creating the court of appeals of the District of Columbia, approved February 9, 1893, gives to that court jurisdiction of appeals from final decisions of the Commissioner of Patents both in *ex parte* cases and in interference cases.

Where an appeal of either class is to be prosecuted to the court of appeals of the District of Columbia, the first step is to file with the Commissioner of Patents a notice of appeal, together with an assignment of reasons of appeal. This step must be taken within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, from the date of the decision of the Commissioner of Patents sought to be reviewed.

The next step in the prosecution of such an appeal is to file with the clerk of the court of appeals of the District of Columbia a certified transcript of the record and proceedings in the Patent Office relating to the case in question, together with a petition for appeal, addressed to the court of appeals of the District of Columbia, make a deposit of \$15, and have the appearance of a member of the bar of that court entered for the appellant.

The notice of appeal and reasons of appeal required to be served upon the Commissioner of Patents may be signed by the appellant or by his attorney of record in the Patent Office, but the petition for an appeal that is filed in the court of appeals of the District of Columbia must be signed by a member of the bar of the court of appeals of the District of Columbia, who should enter a regular appearance in the case in the clerk's office.

After the petition for the appeal, the certified transcript, and the docket fee of \$15 have been lodged in the office of the clerk of the court of appeals of the District of Columbia, the clerk will send to the solicitor of record an estimate of the cost of printing the petition, transcript, etc.

When the amount called for is deposited, the clerk will cause the printing to be done under his supervision, and when the printing is completed the case will be put on the calendar for hearing at the next term at which patent appeals are heard.

In interference cases the clerk is authorized to receive printed copies of the evidence, such as have been used in the Patent Office, thus saving to the appellant the cost of reprinting such evidence. When such printed copies are supplied, twenty-five copies must be furnished.

As above stated, the notice of appeal and the reasons of appeal are required to be filed with the Commissioner of Patents within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, of the date of the decision appealed from, but the petition for appeal and the certified transcript which are to be filed in the court of appeals of the District of Columbia are required to be filed in that court within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, from the time of the giving of the notice of appeal; that is to say, if the decision complained of was rendered, for instance, on the 1st day of

July, 1906, the party aggrieved might file his notice of appeal, with the reasons of appeal, at any time within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, thereafter; but if he filed his notice of appeal and reasons therefor on the 10th day of July, 1906, he would be required to file his petition for appeal and the certified transcript in the court of appeals of the District of Columbia within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, of the 10th day of July, 1906.

For convenience of appellants and to secure uniformity in practice the following forms are suggested as guides in the prosecution of patent appeals:

FORMS.

1. FORM OF NOTICE OF APPEAL TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA IN AN EX PARTE CASE, WITH REASONS OF APPEAL AND REQUEST FOR TRANSCRIPT.

IN THE UNITED STATES PATENT OFFICE.

In re Application of

 Serial No
 Filed
 Improvements in

To the Commissioner of Patents:

SIR: You are hereby notified of my appeal to the court of appeals of the District of Columbia from your decision, rendered on or about the day of, 19..,

rejecting my above-entitled application and refusing me a patent for the invention set forth therein.

The following are assigned as reasons of appeal:

[Here insert in separate counts the specific errors complained of.]

.....,
By,
His Attorney.

2. FORM OF PETITION FOR AN APPEAL TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA IN AN EX PARTE CASE.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

In re Application of
.....
Serial No.
Filed
Improvements in

To the Court of Appeals of the District of Columbia:
Your petitioner,, of, in the county of, and State of, respectfully represents:

That he is the original and first inventor of certain new and useful improvements in

That on the day of, 19.., in the manner prescribed by law, he presented his application to the Patent Office, praying that a patent be issued to him for the said invention.

That such proceedings were had in said Office upon said application; that on the day of, 19.., it was rejected by the Commissioner of Patents and a patent for said invention was refused him.

That on the day of, 19.., your petitioner, pursuant to sections 4912 and 4913, Rev. Stat.,

United States, gave notice to the Commissioner of Patents of his appeal to this honorable court from his refusal to issue a patent to him for said invention upon said application as aforesaid, and filed with him, in writing, the following reasons of appeal:

[Here recite the reasons of appeal assigned in the notice to the Commissioner.]

That the Commissioner of Patents has furnished him a certified transcript of the record and proceedings relating to said application for patent, which transcript is filed herewith and is to be deemed and taken as a part hereof.

Wherefore your petitioner prays that his said appeal may be heard upon and for the reasons assigned therefor to the Commissioner as aforesaid, and that said appeal may be determined and the decision of the Commissioner be revised and reversed, that justice may be done in the premises.

.....,
By
His Attorney.

[To be signed here by a member of the bar of the court of appeals of D. C.]

.....,
Solicitor and of Counsel.

3. FORM OF NOTICE OF APPEAL TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA IN AN INTERFERENCE CASE, WITH REASONS OF APPEAL AND REQUEST FOR TRANSCRIPT.

IN THE UNITED STATES PATENT OFFICE.

BEFORE THE COMMISSIONER OF PATENTS.

..... }
..... } Interference No. Subject
vs. } matter: Improvements in

And now comes, by, his attorney, and give notice to the Commissioner of Patents of his appeal to the court of appeals of the District of Columbia from the decision of the said Commissioner, rendered on or about the day of, 19.., awarding priority of invention to in the above-entitled case, and assigns as his reasons of appeal the following:

[Here set out in separate counts the specific errors in the Commissioner's decision complained of.]

.
By,
His Attorney.

4. FORM OF PETITION FOR AN APPEAL TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA IN AN INTERFERENCE CASE.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

In re Interference No.

. }
Appellant, }
vs. }
. }

To the Court of Appeals of the District of Columbia:

Your petitioner,, of, in the county of and State of, respectfully represents:

That he is the original and first inventor of certain new and useful improvements in

That on the day of, 19.., in the manner prescribed by law, he presented his application to the Patent Office, praying that a patent be issued to him for the said invention.

That thereafter, to-wit, on the day of, 19.., an interference proceeding was instituted and declared between his said application and a pending application of one, serial No., filed, for a similar invention.

That the subject-matter of said interference as set forth in the official declaration was as follows:

[Here state the issues of the interference.]

That thereafter, to-wit, on the day of, 19.., the case having been submitted upon the preliminary statements and evidence presented by the parties thereto, the Examiner of Interferences rendered a decision awarding priority of invention to

That, pursuant to the statutes and the rules of practice in the Patent Office in such case made and provided, appealed from the said adverse decision of the Examiner of Interferences to the Board of Examiners-in-Chief, and the case having been argued and submitted to said board, a decision was rendered by said board on the day of, 19.., affirming (or reversing) the decision of the Examiner of Interferences.

That thereafter, pursuant to said statutes and rules, appealed from the said adverse decision of the Board of Examiners-in-Chief to the Commissioner of Patents, and the same coming on to be heard and having been argued and submitted, a decision was, on the day of, 19.., rendered by the Commissioner adverse to your petitioner, affirming (or reversing) the decision of the Board of Examiners-in-Chief and awarding priority of invention to the said

That on the day of, 19.., your petitioner, pursuant to sections 4912 and 4913, Rev. Stat., United States, gave notice to the Commissioner of Patents of his appeal to this honorable court from his de-

cision awarding priority of invention to said, as aforesaid, and filed with him, in writing, the following reasons of appeal:

[Here insert reasons of appeal assigned in notice to Commissioner.]

That the Commissioner of Patents has furnished your petitioner a certified transcript of the record and proceedings relating to said interference case, which transcript is filed herewith and is to be deemed and taken as a part hereof.

Wherefore your petitioner prays that his said appeal may be heard upon and for the reasons assigned therefor to the Commissioner, as aforesaid, and that said appeal may be determined and the decision of the Commissioner be revised and reversed that justice may be done in the premises.

.....,
 By,
His Attorney.

[To be signed here by a member of the bar of the court of appeals of D. C.]

.....,
Solicitor and of Counsel.

5. FORM OF WRIT OF ERROR FROM UNITED STATES SUPREME COURT TO COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

(From Johnson v. Mueser, 29 App. D. C. 61.)

United States of America, ss:

The President of the United States, to the Honorable, the Judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Court of Appeals before you, or some of you, between Albert

L. Johnson, appellant, and William Mueser, appellee, a manifest error hath happened, to the great damage of the said appellant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of April, in the year of our Lord one thousand nine hundred and seven.

(Seal of the Supreme Court of the United States.)

JAMES H. MCKENNEY,

Clerk of the Supreme Court of the United States.

Allowed, but not operate as a supersedeas.

WILLIAM R. DAY,

Associate Justice of the Supreme Court
of the United States.

6. APPEAL BOND FROM COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA TO THE UNITED STATES
SUPREME COURT.

(From Johnson v. Mueser, 29 App. D. C. 61.)

Know all men by these presents, That we, Expanded Metal and Corrugated Bar Company as principal and Federal Union Surety Company as surety are held and firmly bound unto William Mueser in the full and just

sum of five hundred dollars to be paid to the said William Mueser, his heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of April in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at the term A. D. 1907, of the Court of Appeals of the District of Columbia, in the suit depending in said Court between Albert L. Johnson, appellant plaintiff and William Mueser, appellee defendant judgment was rendered against the said Albert L. Johnson and the said Albert L. Johnson has obtained a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said William Mueser citing and admonishing him to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the date of said Citation.

Now the Condition of the Above Obligation is Such, That if the said Albert L. Johnson shall prosecute said writ to effect, and answer all costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

EXPANDED METAL & CORRUGATED BAR CO.

(Seal.)

(Seal of Expanded Metal and Corrugated Bar Co.)

D. E. Garrison, Pres't.

(Seal.)

FEDERAL UNION SURETY COMPANY,

By R. H. McNeill,

(Seal.)

Resident Vice-President.

Attest: E. R. S. Croggon,

Resident Assistant-Secretary.

(Seal of Federal Union Surety Company.)

Approved, April 11, 1907.

WILLIAM R. DAY,

Associate Justice, U. S. Supreme Court.

(Endorsed:) No. 392, Patent Appeal Docket. Court of Appeals of the District of Columbia. Albert L. Johnson, Appellant vs. William Mueser. Bond on Writ of Error. Court of Appeals, District of Columbia. Filed April 19, 1907, Henry W. Hodges, Clerk.

7. CITATION; ON APPEAL FROM COURT OF APPEALS OF THE DISTRICT OF COLUMBIA TO THE UNITED STATES SUPREME COURT.

(From Johnson v. Mueser, 29 App. D. C. 61.)

United States of America, ss:

To William Mueser, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Albert L. Johnson is plaintiff in error, and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William R. Day, Associate Justice of the Supreme Court of the United States this 6th day of April, in the year of our Lord one thousand nine hundred and seven.

WILLIAM R. DAY,

Associate Justice, Supreme Court of the United States.

Service accepted this — day of April, A. D. 1907.

WILLIAM R. BAIRD,

Attorney for William Mueser.

(Endorsed:) Court of Appeals, District of Columbia. Filed April 19, 1907. Henry W. Hodges, Clerk.

8. ASSIGNMENT OF ERRORS, IN UNITED STATES SUPREME COURT ON WRIT OF ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

(From Johnson v. Mueser, 29 App. D. C. 61.)

(Omitting caption).

The plaintiff-appellant in this cause, in connection with the petition for writ of error, makes the following assignment of errors which he avers occurred upon the trial of this cause, to-wit:

I. That the Court of Appeals of the District of Columbia erred in refusing to consider the question of the patentability of the issues in interference.

II. That said Court erred in refusing to consider the question of interference in fact between the applications of the respective parties.

III. That said Court erred in refusing to consider the right of the party Mueser to make claims corresponding to the issues in interference.

IV. That said Court erred in adjudicating in this case the question of priority of invention, and in positively refusing to adjudicate or to inquire into the question of the patentability of the issues or the question of interference in fact between the applications of the respective parties, or the question of the right of the party Mueser to make claims corresponding to the issues in interference.

V. That said Court erred in deciding the question of priority of invention in favor of William Mueser, whereas if said Court had jurisdiction to decide the question of priority of invention at all it should have decided in favor of Albert L. Johnson.

VI. That said Court erred in assuming and exercising jurisdiction of this case with respect to the question of priority of invention, whereas it had no such jurisdiction for the following reasons: (a) because the interfer-

ence issues constituting the matter in controversy do not set forth a patentable invention; (b) because there is no interference in fact between the applications of the respective parties; and (c) because the party Mueser has no right to make claims for the subject-matter of said interference issues.

VII. That the Court erred in not overruling and reversing the decision of the Commissioner of Patents.

Wherefore the said Albert L. Johnson, plaintiff-appellant, prays that this assignment of errors be filed in said Court, that a writ of error to remove the case to the Supreme Court of the United States be granted and that the judgment of said Court of Appeals of the District of Columbia may be reversed.

MELVILLE CHURCH,

Attorney for Plaintiff-Appellant.

(Endorsed:) Patent Appeal Docket No. 392. Albert L. Johnson, Appellant vs. William Mueser. Assignment of Errors. Court of Appeals, District of Columbia. Filed April 19, 1907. Henry W. Hodges, Clerk.

9. PRAECIPE FOR PREPARATION OF TRANSCRIPT ON WRIT OF ERROR FROM COURT OF APPEALS OF THE DISTRICT OF COLUMBIA TO THE SUPREME COURT OF THE UNITED STATES.

(From Johnson v. Mueser, 29 App. D. C. 61.)

(Omitting caption)

The Clerk in preparing the transcript of record on the Writ of Error to the Supreme Court of the United States in the above entitled cause will include the following papers, and those only, namely:

1. The printed record and addition thereto.
2. The argument of the cause.
3. The opinion.

-
4. The judgment.
 5. The writ of error and allowance thereof.
 6. The bond on writ of error.
 7. The citation.
 8. The assignment of errors filed April 19, 1907.

MELVILLE CHURCH,

Counsel for Appellant.

SUPPLEMENT TO PATENT OFFICE RULES.

Acting under the provisions of section 483 of the Revised Statutes and with the approval of the Secretary of the Interior, Rules 17, 22, 47, 72, 124, 151, 162, and 203 of the Rules of Practice in the United States Patent Office have been amended by substituting therefor the following:

17. An applicant or an assignee of the entire interest may prosecute his own case, but he is advised, unless familiar with such matters, to employ a competent *patent* attorney, as the value of patents depends largely upon the skillful preparation of the specification and claims. The office can not aid in the selection of an attorney.

A register of attorneys will be kept in this office, on which will be entered the names of all persons entitled to represent applicants before the Patent Office in the presentation and prosecution of applications for patent. The names of persons in the following classes will, upon their written request, be entered upon this register:

(a) Any attorney at law who is in good standing in any court of record in the United States or any of the States or Territories thereof and shall furnish a certificate of the clerk of such United States, State, or Territorial court, duly authenticated under the seal of the court, that he is an attorney in good standing.

(b) Any person not an attorney at law *who is a citizen or resident of the United States and* who shall file proof to the satisfaction of the Commissioner that such person is of good moral character and of good repute and possessed of the necessary *legal and technical* qualifications to enable him to render applicants for patents valuable service and is otherwise competent to advise

and assist them in the presentation and prosecution of their applications before the Patent Office.

(c) *Any foreign patent attorney not a resident of the United States, who is a citizen or subject of a country granting the same reciprocal rights to citizens of the United States, who shall file proof to the satisfaction of the Commissioner that he is registered and in good standing before the Patent Office of the country of which he is a citizen or subject, and is possessed of the qualifications stated in paragraph (b).*

No foreign patent attorney will be recognized in any application filed after June 30, 1908, unless entitled to registration under the provisions of this rule.

(d) Any firm will be registered which shall show that the individual members composing such firm are each and all registered under the provisions of the preceding sections.

The Commissioner may require proof of qualifications other than those specified in paragraph (a) and reserves the right to decline to recognize any attorney, agent, or other person applying for registration under this rule.

Any person or firm not registered and not entitled to be recognized under this rule as an attorney or agent to represent applicants generally may, upon a showing of circumstances which render it necessary or justifiable, be recognized by the Commissioner to prosecute as attorney or agent certain specified application or applications, but this limited recognition shall not extend further than the application or applications named.

No person not registered *or entitled to recognition* as above provided will be permitted to prosecute applications before the Patent Office.

22. (a) Applicants and attorneys will be required to conduct their business with the office with decorum and courtesy. Papers presented in violation of this require-

ment will be returned. But all such papers will first be submitted to the Commissioner, and only returned by his direct order.

(b) Complaints against Examiners and other officers must be made in separate communications, and will be promptly investigated.

(c) For gross misconduct the Commissioner may refuse to recognize any person as a patent agent, either generally or in any particular case; but the reasons for such refusal will be duly recorded and be subject to the approval of the Secretary of the Interior.

(d) *The Secretary of the Interior may, after notice and opportunity for a hearing, suspend or exclude from further practice before the Patent Office any person, firm, corporation, or association shown to be incompetent, disreputable, or who refuses to comply with the rules and regulations thereof, or who shall, with intent to defraud, in any manner deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement, or by guaranteeing therein the successful prosecution of any application for patent or the procurement of any patent, or which word, circular, letter, or advertisement shall contain therein any false promise or misleading representation. (Sec. 5, Act approved July 4, 1884.)*

47.¹ If the application be made by an executor or administrator of a deceased person, or the guardian, conservator, or representative of an insane person, the form of the oath will be correspondingly changed.

The oath or affirmation may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a for-

¹ The amendment to Rule 47 requiring that a ribbon or tape be passed one or more times through all the sheets of all applications, etc., will take effect December 1, 1908.

foreign country, before any minister, charge d'affaires, consul, or commercial agent holding commission under the Government of the United States, or before any notary public, judge, or magistrate having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, the oath being attested in all cases in this and other countries, by the proper official seal of the officer before whom the oath or affirmation is made, except that no acknowledgment may be taken by any attorney appearing in the case. When the person before whom the oath or affirmation is made is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal.

When the oath is taken before an officer in *any country including the United States*, all the application papers must be attached together and a ribbon *or tape* passed one or more times through all the sheets of the application, and the ends of said ribbon *or tape* brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed with the official seal of the officer before whom the oath was taken, or, if he is not provided with a seal, then each sheet must be initialed by him.

72. After the completion of the application the office will not return the specification for any purpose whatever. If applicants have not preserved copies of the papers which they wish to amend, the office will furnish them on the usual terms.

The drawing may be withdrawn only for such corrections as can not be made by the office; but a drawing cannot be withdrawn unless a photographic copy has been filed and accepted by the Examiner as a part of the application. Permissible changes in the construction

shown in any drawing may be made only within the office and after an approved photographic copy has been filed. Substitute drawings will not be admitted in any case unless required by the office.

124. Where, on motion for dissolution, the Primary Examiner renders an adverse decision upon the merits of a party's case, as when he holds that the issue is not patentable or that a party has no right to make a claim, or that the counts of the issue have different meanings in the cases of different parties, *he shall fix a limit of appeal not less than twenty days from the date of his decision. Appeal lies to the Examiners-in-Chief in the first instance and will be heard inter partes.* If the appeal is not taken within the time fixed, it will not be entertained except by permission of the Commissioner.

No appeal will be permitted from a decision rendered upon motion for dissolution affirming the patentability of a claim or the applicant's right to make the same or the identity of meaning of counts in the cases of different parties.

Appeals may be taken directly to the Commissioner, except in the cases provided for in the preceding portions of this rule, from decisions on such motions as, in his judgment, should be appealable.

151. Hearings will be had by the Commissioner at 10 o'clock a. m., and by the Board of Examiners-in-Chief at 1 o'clock p. m., and by the Examiner of Interferences upon interlocutory matters at 10 o'clock a. m., and upon final hearings at 11 o'clock a. m., on the day appointed unless some other hour be specifically designated. If either party in a contested case, or the appellant in an *ex parte* case, appears at the proper time, he will be heard. After the day of hearing, a contested case will not be taken up for oral argument except by consent of all parties. If the engagements of the tribunal having jurisdiction are such as to prevent the case from be-

ing taken up on the day of hearing, a new assignment will be made, or the case will be continued from day to day until heard. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to one hour for each party in contested cases, and to one-half hour in other cases. After a contested case has been argued, nothing further relating thereto will be heard unless upon request of the tribunal having jurisdiction of the case; and all interviews for this purpose with parties in interest or their attorneys will be invariably denied.

162. Thirty-one or more printed copies of the testimony must be furnished—5 for the use of the office, 1 for each of the opposing parties, and 25 for the court of appeals of the District of Columbia, should appeal be taken. If no appeal be taken, the 25 copies will be returned to the party filing them. The preliminary statement required by Rule 110 must be printed as a part of the record. *These copies of the record of the junior party's testimony must be filed not less than forty days before the day of final hearing, and in the case of the senior party, not less than twenty days.* They will be of the same size, both page and print, as the Rules of Practice, with the names of the witnesses at the top of the pages over their testimony, and will contain indexes with the names of all witnesses and reference to the pages where copies of papers and documents introduced as exhibits are shown.

When it shall appear, on motion duly made and by satisfactory proof, that a party, by reason of poverty, is unable to print his testimony, the printing may be dispensed with; but in such case typewritten copies must be furnished—one for the office and one for each adverse party. Printing of the testimony can not be dispensed with upon the stipulation of the parties.

203. The following is the schedule of fees and of prices of publications of the Patent Office:

On filing each original application for a patent, except in design cases	\$15.00
On issuing each original patent, except in design cases.....	20.00
In design cases:	
For three years and six months	10.00
For seven years	15.00
For fourteen years	30.00
On every application for the reissue of a patent.....	30.00
On filing each disclaimer	10.00
On an appeal for the first time from the Primary Examiner to the Examiners-in-Chief	10.00
On every appeal from the Examiners-in-Chief to the Commissioner	20.00
For certified copies of patents if in print:	
For specification and drawing, per copy .....	.05
For the certificate .....	.25
For the grant .....	.50
For certifying to a duplicate of a model .....	.50
For manuscript copies of records, for every one hundred words or fraction thereof .....	.10
If certified, for the certificate, additional .....	.25
For twenty-coupon orders, each coupon good for one copy of a printed specification and drawing, and receivable in payment for prints, Official Gazette, and Roster of Attorneys	1.00
For one hundred coupons in stub book	5.00
For uncertified copies of the specifications and accompanying drawings of patents, if in print, each .....	.05
For the drawings, if in print .....	.05
For copies of drawings not in print, the reasonable cost of making them.	
For photo prints of drawings, for each sheet of drawings:	
Size 10 by 15 inches, per copy .....	.25
Size 8 by 12½ inches, per copy .....	.15
For recording every assignment, agreement, power of attorney, or other paper, of three hundred words or under	1.00
Of over three hundred and under one thousand words.....	2.00
For each additional thousand words or fraction thereof.....	1.00
For abstracts of title to patents or inventions:	
For the search, one hour or less, and certificate	1.00
Each additional hour or fraction thereof .....	.50
For each brief from the digest of assignments, of two hundred words or less .....	.20
Each additional hundred words or fraction thereof .....	.10

For searching titles or records, one hour or less50
Each additional hour or fraction thereof50
For assistance to attorneys in the examination of publications in the Scientific Library, one hour or less	1.00
Each additional hour or fraction thereof	1.00
For copies of matter in any foreign language, for every one hun- dred words or a fraction thereof10
For translation, for every one hundred words or fraction thereof	.50
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Bimonthly volumes, from March 1, 1906, to January 1, 1909, tan duck binding	2.50
Monthly volumes, from January 1, 1909, tan duck binding, per volume	2.50
Monthly volumes, unbound, with title page, digest, and index, per volume50
For the annual index, from January, 1872, to January 1, 1906, full law binding, per volume	2.00
In paper covers, per volume	1.00
For the annual index from January 1, 1906, buckram binding..	2.00
In paper covers, per volume	1.00
For the general index—a list of inventions patented from 1790 to 1873—three volumes, full law binding, per set	10.00
For the index from 1790 to 1836—one volume, full law binding..	5.00

For the Library edition, monthly volumes to <i>January 1, 1906</i> , containing the specifications and photolithographed copies of the drawings of all patents issued during the month, certified, bound in full sheep, per volume	5.00
In half sheep to <i>January 1, 1906</i> , per volume	3.00
<i>For the Library edition, monthly volumes from January 1, 1906, tan duck binding</i>	5.00
For the index to patents relating to electricity, granted by the United States prior to June 30, 1882, one volume, 250 pages, bound	5.00
In paper covers	3.00
Annual appendixes for each fiscal year subsequent to June 30, 1882, paper covers	1.50
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For 1869-70-71, one volume, full law binding	2.00
For 1872-73-74, one volume, full law binding	2.00
For 1875-76, one volume, with decisions of United States courts in patent cases, full law binding	2.00
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<i>Annual volumes with decisions of United States courts, for 1877 to 1906, full law binding, per volume</i>	2.00
In paper covers	1.00
<i>Subsequent annual volumes, buckram binding</i>	2.00
In paper covers	1.00
Roster of Attorneys .....	.20

EDWARD B. MCORE, *Commissioner.*

NOVEMBER 19, 1908.

FORMS—ACTIONS AT LAW

DECLARATION.

(From Cramer vs. Singer Mfg. Co., 59 Fed. Rep. 74.)

In the United States Circuit Court, in and for the Northern District of California, Ninth Circuit.

Of the February term of said Court of the year eighteen hundred and ninety-three.

HERMAN CRAMER, Plaintiff,

vs.

THE SINGER MANUFACTURING COMPANY
(a corporation) and WILLIS B. FRY,
Defendants.

The said Herman Cramer, as plaintiff, complains of The Singer Manufacturing Company and Willis B. Fry, as defendants, and for cause of action alleges:

I.

That the defendant, The Singer Manufacturing Company is and at all times herein mentioned was a corporation organized and existing under the laws of the State of New Jersey, and is and at all times herein mentioned engaged in the business of manufacturing sewing machines, and selling the same throughout the United States. That as a part of its said business it maintains and conducts and at all times herein mentioned has maintained and conducted a branch establishment for selling and trading in sewing machines at the City and County of San Francisco, State of California, and in the Northern District thereof, and in connection with its said business it has and has had at all said times a Managing Agent in said State and District of California, as plaintiff is informed and so believes the truth to be.

II.

That the defendant, Willis B. Fry, is the Managing Agent of said defendant, The Singer Manufacturing Company, in said State and District of California, and is a citizen and resident of said State of California, and the Northern District thereof.

III.

That heretofore, and prior to the 25th day of May, A. D. 1882, the plaintiff above named was the original, first and sole inventor of certain new and useful Improvements in Sewing Machines, entitled "Improvements in Treadle for Sewing Machines," which were and are fully shown and described in the letters patent hereinafter referred to. That the same was a new and useful invention, and was not known or used by others in this country, nor patented nor described in any printed publication in this or any foreign country prior to the application of said plaintiff for a patent therefor, nor had it been in public use or on sale for two years, nor abandoned, nor was it proved to have been abandoned.

IV.

That the said plaintiff, being as aforesaid the original and first inventor thereof, did, on the said 25th day of May, 1882, file his application in the United States Patent Office for a patent therefor, and thereafter, to-wit: On the 30th day of January, A. D. 1883, letters patent for said invention were issued by the patent office of the United States, and delivered to the said plaintiff, granting unto him, the said plaintiff, his heirs and assigns, for the term of seventeen (17) years from said last named day, the full and exclusive right and liberty to make, use and vend the said invention throughout the United States and the Territories thereof.

That the said letters patent were issued in due form of law under the seal of the Patent Office of the United States, and were signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents of the United States, and were numbered 271,426, and bore date the 30th day of January, A. D. 1883, and were on said last named day issued and delivered to the said plaintiff, which said letters patent, or a duly authenticated copy thereof, is ready in court to be produced.

That prior to the issuance of said letters patent, all proceedings were duly had and taken that were required by law to be had or taken prior to the issuance of letters patents for new and useful inventions.

That by virtue of the premises the plaintiff is now, and during all the times hereinafter mentioned was the sole and exclusive owner of the invention set forth and claimed in and by said letters patent, and of all the rights and privileges granted and secured thereby.

Yet, notwithstanding the premises, the defendant herein, having full knowledge thereof, and in violation of the exclusive rights and privileges secured to plaintiff by said letters patent, and utterly disregarding the same, and contriving to injure and damage plaintiff and his said rights since the date of plaintiff's said letters patent, and prior to the commencement of this action, without the license or consent of plaintiff, or any license or authority whatever, in the State of California and Northern District thereof, have wrongfully made, used and sold sewing machines containing and embracing the invention described, claimed and patented in and by the letters patent aforesaid.

That the sewing machines made, used and sold by the said defendants were and are, and each of them is and was an infringement upon said letters patent No. 271,426, and were made and used according to the specification thereof, all contrary to the law and the Statutes of the United States, in that behalf made and provided.

Whereby, and by reason of the premises and the infringement aforesaid, the plaintiff has been greatly injured and damaged and deprived of large royalties, gains and advantages which he otherwise would have derived, and has sustained actual damages thereby in a large sum, to-wit: One million (\$1,000,000.00) dollars.

Wherefore, and by force of the Statutes of the United States a right of action has accrued to plaintiff to recover the said actual damages, and such additional sum, not exceeding in the aggregate three times the amount of said actual damages, as the court may see fit to adjudge and order, besides costs of suit.

Yet the defendants, though often requested, have never paid the same, nor any part thereof, but have refused and still refuses so to do, and therefore plaintiff brings this suit.

JOHN L. BOONE and
CHARLES F. HANLON,
Attorneys for Plaintiff.

DECLARATION.

(From Cassidy vs. Hunt Bros. Fruit Packing Co., 64 Fed. Rep. 585, 12 C. C. A. 316.)

TRESPASS ON THE CASE.

In the Circuit Court of the United States for the Northern District of California.

Of the February term of the year one thousand eight hundred and ninety-one.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF CALIFORNIA. } ss:

John W. Cassidy of the city of Petaluma, county of Sonoma, in the State of California, and a citizen of the said State of California, plaintiff in this action, by Langhorne & Miller his attorneys, complains of the Hunt

Brothers Fruit Packing Company, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business at the city of Santa Rosa, county of Sonoma, in the said State of California, and the Northern District thereof, of a plea of trespass on the case.

For that heretofore, to-wit: on and prior to the 8th day of March A. D. 1875, plaintiff was the original and first inventor of a certain new and useful invention, to-wit: an improvement in Drying Apparatus.

That said invention related to an improved device for dessicating fruit and other substances by means of artificial heat and consisted among other things of a novel means of moving the trays on which the fruit is held within the drying chamber from the time it is admitted until it is removed therefrom as will more fully appear from the letters patent therefor hereinafter set out to which reference is hereby made for a fuller description.

And for that the said invention was new and useful, and was not known or used by others prior to the invention thereof by the said plaintiff, and at the time of his application for letters patent therefor, as hereinafter mentioned, had not been in public use or on sale in the United States for two years, nor abandoned, nor proved to have been abandoned.

And for that the said plaintiff, being as aforesaid the inventor thereof, did on the 8th day of March, A. D. 1875 make application to the Government of the United States for the issuance to him of letters patent for said invention, and thereafter, to-wit: on the 25th day of January, A. D. 1876 after proceedings duly and regularly had and taken in the matter of said application, letters patent of the United States were granted, issued and delivered to said plaintiff for said invention, granting and securing to him, his heirs and assigns for the full term of seventeen years from said last-named day the

sole and exclusive right to make, use and vend said invention throughout the United States and Territories thereof.

And for said letters patent were issued in due form of law under the seal of the Patent Office of the United States and were signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents of the United States, and bear date the day and year last aforesaid, and were numbered No. 172,608, all of which will more fully appear by said letters patent, which are ready in court to be produced by plaintiff or a duly certified copy thereof, and of which he hereby makes profert.

And for that prior to the issuance of said letters patent all proceedings were had and taken which were required by law to be had and taken previous to the issuance of letters patent for new and useful inventions.

And for that ever since the issuance of said letters patent plaintiff has been and now is the sole and exclusive owner and holder of said letters patent, and the invention therein claimed, for, to, in and throughout the United States of America and Territories thereof.

And for that since the issuance of said letters patent in the exercise of the rights and liberties thereby granted, the plaintiff has made, used and sold the improvement so patented and had and maintained until the infringement hereinafter complained of, possession of said invention under and by virtue of said letters patent and has never acquiesced in any invasion or infringement of his said rights.

Yet notwithstanding the premises the defendant, having full knowledge thereof, and in violation of the exclusive rights and privileges secured by said letters patent, and utterly disregarding the same and contriving and intending to injure and damage the plaintiff, since

the issuance of said letters patent and prior to the commencement of this action, without the license or consent of plaintiff, but contrary thereto in the State of California and the Northern District thereof, has wrongfully and unlawfully made, used and sold large numbers of machines containing and embracing the inventions described and claimed in and by the said letters patent.

That said machines so made, used and sold by defendant are infringements upon said letters patent No. 172,608 and were made according to the specification thereof: All contrary to law and the form, force and effect of the Statutes of the United States in that behalf made and provided.

Whereby and by reason of the premises and the infringement aforesaid the plaintiff has been greatly injured and damaged and deprived of large royalties, gains and profits which he would have derived from practicing said invention and has sustained actual damages thereby in a large sum, to-wit: Five thousand dollars (\$5000).

Wherefore, by force of the Statutes of the United States a right of action has accrued to plaintiff to recover the said actual damages and such additional amount not exceeding in the aggregate three times the amount of such actual damages as the court may see fit to adjudge and order, besides costs of suit.

Yet the defendant though often requested has never paid the same nor any part thereof, but has refused and still does refuse so to do, and therefore plaintiff brings this suit.

LANGHORNE & MILLER,
Attorneys for Plaintiff.

DECLARATION.

(From Brill vs. Singer Mfg. Co., 154 U. S. 517, 38 L. Ed. 1077.)

In the United States Circuit Court, Ninth Circuit, in and for the Northern District of California.

A. BRILL, Plaintiff,

vs.

THE SINGER MANUFACTURING COMPANY
(a corporation), Defendant.

} Complaint.

A. Brill the above-named plaintiff complaining of the said defendant and for cause of action alleges:

I.

That the plaintiff is a citizen and a resident of the State of California, residing in the city and county of San Francisco.

II.

That the said defendant is a foreign corporation, duly incorporated and organized as such, under the laws of the State of New Jersey before the year 1872. That such corporation was organized for the purpose of carrying on, and ever since has been and is now engaged in the business of manufacturing, using and selling sewing machines, in all the States and Territories of the United States. That said defendant as such corporation, has a general and permanent office in the city and county of San Francisco, in the State of California, where its principal business in said State of California is carried on, and where its principal place of business is located. That it has a general agent and manager of its business duly appointed thereto by defendant, residing in said

city, county and State, who is now and has been ever since its said corporation, in charge of defendant's said business, conducting and carrying on the said business of said defendant, in said State of California, and in said city and county.

III.

That the statutes and laws of the State of California, provide and require that the defendant, and all foreign corporations doing business in this State, shall designate in writing some person residing in the county in which the principal place of business of such corporation is located, upon whom process in any suit commenced in the State of California against such corporation may be served, and shall file such designation in the office of the Secretary of State of the State of California, and that it shall be lawful to serve upon such person any process issued in such action. And it is also likewise further provided that where such designation shall not be made as aforesaid, it shall be lawful to serve such process on any person who shall be found within the said State of California, acting as the agent of such corporation or doing business for them.

IV.

That the defendant has failed and neglected to file with the Secretary of State, of the State of California, such designation of a general agent and manager to reside in said State of California, and of a person upon whom service of process might be made in any action brought against it in said State of California, as required by the laws of said State as aforesaid. That Willis B. Fry is the general agent and manager of the defendant, and resides in the city and county of San Francisco, and as such general agent and manager, duly ap-

pointed by said defendant as aforesaid, is carrying on and conducting a large and extensive business for defendant in said State, in the manufacture, use and sale of sewing machines.

V.

That heretofore, to-wit: Before the 2d day of July, 1872, the plaintiff, A. Brill, was the original and first inventor of a certain new and useful invention, viz: Improvement in Treadles for Sewing Machines.

VI.

That the same was not known or used by others before the invention thereof by the plaintiff, and at the time of the plaintiff's application for a patent thereof had not been in public use for two years, nor abandoned, nor was it proved to have been abandoned.

VII.

That being the inventor thereof as aforesaid upon due application therefor, letters patent of the United States, numbered 128,460 were on the 2d day of July, 1872, duly issued to the said plaintiff, A. Brill, granting and securing to him, his executors, administrators and assigns, for the full term of seventeen years from the date thereof, the full and exclusive right and liberty of making, using and vending to others to be used, the said inventions and improvements throughout the United States and Territories thereof.

VIII.

That said letters patent were issued in due form of law, under the seal of the Patent Office of the United States, and were signed by the Secretary of the Interior,

and countersigned by the Commissioner of Patents of the United States, and dated the day and year last aforesaid, a description whereof and of said inventions more fully appear in said letters patent, which said letters patent are ready in court to be produced by the plaintiff, or a duly certified copy thereof.

IX.

That prior to the issuing of said letters patent, all proceedings were had and taken which were required by law to be had or taken previous to the issuance of letters patent granting special privileges, rights and liberties for new and useful inventions.

X.

That since the issuance of said letters patent to him as aforesaid, the plaintiff has been in the constant exercise of the rights and privileges thereby granted and confirmed to him, and has granted privileges to use said inventions under said letters patent, to various parties in that part of the United States lying east of the Rocky Mountains, but in no other place or places.

XI.

That the defendant well knowing the premises, and contriving to injure the plaintiff, has since the 2d day of July, 1872, unlawfully and wrongfully, and without the consent or allowance, and against the will of plaintiff, made and sold a large number, to-wit: Fifteen millions of treadles for sewing machines, containing the inventions and improvements described and claimed in said letters patent.

XII.

That as plaintiff is informed and believes two millions of such treadles so made and sold by defendant as aforesaid, were sold by defendant between the date of said patent and the 2d day of July, 1889, within the State of California and within the jurisdiction of this Honorable Court, and in violation and infringement of the exclusive privileges, rights and liberties secured to the plaintiff by said letters patent and contrary to the law and form of the statutes in such cases made and provided.

XIII.

And plaintiff further avers, that on account of said acts of the said defendant herein set forth, the plaintiff has been greatly injured and damaged, and deprived of great profits which he might and otherwise would have derived from the said inventions and letters patent, and that he has sustained actual damages therefrom and thereby in the sum of one hundred thousand (\$100,000) dollars, and that by force of the statutes aforesaid, an action has accrued to him, the plaintiff herein to recover the said actual damages as the court may see fit to order and adjudge.

Wherefore, plaintiff prays judgment against the said defendant for the sum of one hundred thousand (\$100,000) dollars, actual damages, together with such further sum not exceeding in the aggregate three times the amount of such actual damages as the court may adjudge, and for costs of suit.

SCRIVNER & SCHELL and

C. W. M. SMITH,

Attorneys for Plaintiff.

ANSWER.

(From Cramer vs. Singer Mfg. Co., 59 Fed. Rep. 74; 192 U. S. 265, 48 L. Ed. 347.)

(Title of Court and Cause.)

Comes now the defendant above named and denies generally and specifically each and every allegation contained in plaintiff's amended declaration on file herein, and says that he is not guilty of the grievances therein charged against him, nor of either nor of any of them, nor of any part thereof, and of this the defendant puts himself upon the country.

Further answering defendant denies that the plaintiff is, or ever was, the original and first and sole or any inventor of the alleged improvements or any thereof in treadles for sewing machines, mentioned in said amended declaration and described in the letters patent mentioned in said amended declaration. Defendant denies that the said alleged improvements were, at the time of the alleged invention thereof, or are now, new and useful or new or useful. Defendant further denies that the said alleged improvements in treadles for sewing machines or any thereof now are, or ever were, an invention within the meaning of the patent law. On the contrary, defendant avers that the first conception or origination of said so-called improvement or improvements involved no exercise whatever of the inventive faculty, and that the first conception or origination thereof required nothing more than the usual knowledge of an ordinarily skilled mechanic.

Further answering defendant denies that the said alleged invention or improvements or any thereof was not or were not known or used by others in this country be-

fore the alleged invention thereof by the plaintiff, and denies that at the time of plaintiff's application for a patent therefor, the said alleged invention or improvement or improvements had not been in public use for more than two years. Defendant denies that said invention or improvement had not been abandoned by the plaintiff prior to his application for a patent therefor. On the contrary, defendant avers that said plaintiff was not the first or original or any inventor or discoverer of the alleged invention or improvement, or inventions or improvements, set forth in, or intended to be claimed in said letters patent; but that the said alleged inventions or improvements were and each of them was substantially shown and described in the following described letters patent, prior to the alleged invention and discovery thereof by the said plaintiff, to-wit:

(Here follows list of patents and patentees.)

Further answering defendant avers that he will prove upon the trial of this suit that the alleged inventions and improvements described and claimed, or intended to be described and claimed, in plaintiff's said letters patent, were and each of them was, long prior to the alleged invention thereof by said plaintiff, known to and used by the following named persons during the years from 1862 to 1882, at the following named places, to-wit:

(Here follows list of places and parties who used same.)

Further answering, as to the allegations contained in paragraph three of plaintiff's said amended declaration, defendant avers that he has no information concerning the facts alleged in said paragraph, and therefore denies that on the 25th day of May, 1882, or at any other time, or at all, the *defendant* filed his application in the United States Patent Office for a patent for said alleged invention or improvement, and denies that on the 30th day of January, 1883, or at any other time, or at all, letters

patent for said or any invention were issued and delivered or issued or delivered to said plaintiff, and denies that said or any letters patent granted to the said plaintiff, his heirs and assigns, or any of them, for the term of seventeen years, or at all, any exclusive or other right or liberty to make, or to use, or to vend the said alleged invention or improvement throughout the United States and Territories thereof. •Defendant further denies that said letters patent were issued in due form of law, and denies that prior to the issuance of said letters patent, all proceedings were duly had and taken that were required by law to be had or taken prior to the issuance of letters patent for new and useful inventions.

Further answering defendant denies that the plaintiff is now or ever was the sole and exclusive, or sole or exclusive, owner of the so-called invention set forth and claimed in and by said letters patent mentioned in said amended declaration, and denies that any right or privilege whatever was granted and secured, or granted or secured, by the said letters patent.

Further answering defendant denies that defendant, either in violation of plaintiff's alleged rights, or disregarding the same, or contriving to injure or to damage plaintiff and his said rights, or otherwise or at all, either in the State of California and Northern District thereof, or anywhere else, has wrongfully or otherwise made or used or sold sewing machines or any sewing machine containing and embracing the said alleged invention or improvement described and claimed in any by plaintiff's said letters patent. Defendant further denies that any sewing machines which defendant has made or used or sold were or are, and denies that any of them ever was, or is, an infringement of said letters patent No. 271,426, and denies that they were, or that any of them was, made

or used according to the specifications of said letters patent, or contrary to the law and statutes of the United States.

Further answering defendant avers that during more than twelve years last past, The Singer Manufacturing Company, which is a corporation created and existing under and by virtue of the laws of the State of New Jersey, and which has its principal place of business in the said State of New Jersey, has been carrying on the business of manufacturing and using and selling sewing machines of a particular kind, which have been known in the markets of the world as Singer Sewing Machines. That the said corporation, The Singer Manufacturing Company, has been doing a very large business during all of said years, and has manufactured and sold during said time a large proportion of all the sewing machines that have been manufactured in the whole world.

That during more than twelve years last past, the said corporation, The Singer Manufacturing Company, has had and maintained a place of business in the city of San Francisco, in the said Northern District of California, where it has carried on a local business in selling the said Singer Sewing Machines, and which machines it sent from its factory in New Jersey to said city of San Francisco for that purpose. Defendant further avers that in carrying on its said business of selling said sewing machines, the said corporation, The Singer Manufacturing Company, has employed this defendant to act as its employee in making sales of said sewing machines, and in attending to said local business in said city of San Francisco and this defendant has acted as the employee of said corporation, The Singer Manufacturing Company, in repairing, and using so far as it was necessary to use them for testing their condition, and in selling the said sewing machines, and has done whatever was necessary in and about the carrying on of said local

business in the city of San Francisco, as the employee of said corporation, The Singer Manufacturing Company, and in no other way or manner whatever. That he has neither made nor used nor repaired nor sold any sewing machines or sewing machine treadles in his own right, nor in his own name, but that all the making, repairing, using and selling of sewing machines or sewing machine treadles that has been done by this defendant, and which is claimed to constitute any infringement of said letters patent, has been the making or repairing or using or selling done and performed by the said corporation, The Singer Manufacturing Company, by and through this defendant as its employee, and in no other way. That this defendant has not, at any time, been the owner of any sewing machines or treadles, and has not, at any time, either made, or used, or repaired, or sold any sewing machines, or sewing machine treadles, or sewing machine apparatus, or sewing machine attachments of any nature or kind, otherwise than as employee as aforesaid, or otherwise than as such acts were the acts of said corporation, The Singer Manufacturing Company.

Further answering defendant avers that if the plaintiff herein has any cause of action arising out of the sale of said or any sewing machine treadles by defendant, the said cause of action exists against said corporation, The Singer Manufacturing Company, and not against defendant, and that the defendant is not a necessary nor proper party to this action.

Defendant further avers that this court has no jurisdiction whatever over the said corporation, The Singer Manufacturing Company, and that this action has been brought against defendant because the plaintiff could not maintain an action in said district against the said corporation, and has been brought for the purpose of vexing and annoying the said corporation, and not because plaintiff has any cause of action whatever against this defendant.

Further answering defendant avers that the sewing machine treadles which the said corporation, The Singer Manufacturing Company, has sold through this defendant, as employee of said corporation, as aforesaid, and on account of the sale of which this action has been commenced against defendant, were constructed under and according to specifications and claims of certain letters patent of the United States, No. 306,469, bearing date October 14, 1884, and issued to Philip Diehl, as assignor to said corporation, The Singer Manufacturing Company; and defendant further avers that ever since the issuance of said last mentioned letters patent, the said corporation, The Singer Manufacturing Company, and this defendant as their employee as aforesaid, have had the right to make and sell sewing machines and sewing machine treadles constructed according to the specifications and claims of said last mentioned letters patent.

Defendant further avers that the state of the art relating to the manufacture of sewing machines and sewing machine treadles, at the time of plaintiff's alleged invention and improvement in said treadles, as disclosed by the various letters patent hereinbefore cited, and by the testimony of the parties whose names are hereinbefore especially noticed and set forth, was such that plaintiff's said alleged invention or improvement, if any existed, was extremely narrow and trivial in its nature, and that the claims of his patent were not and are not, and none of them has been or is, infringed by the manufacture or sale of treadles constructed according to the description contained in said letters patent issued as aforesaid to said Philip Diehl, assignor to said corporation.

Defendant further avers that when said plaintiff made his original application to the United States Patent Office for his said patent, he represented to said Patent Office in the specification which accompanied his said ap-

plication, that his invention consisted of a treadle, having a bar with V-shaped ends and resting in sockets constructed in the brace of the machine, and further represented to said Patent Office that said V-shaped treadle bar in the brace of the machine constituted the improvement or invention which he claimed. Defendant further avers that the specific elements and details of construction in combination, which are shown and described in the claims of plaintiff's said patent as they now appear therein, were not included in any claim or claims which accompanied plaintiff's said original application for said patent. Defendant further avers that plaintiff's said original application was rejected by said Patent Office, and that said Patent Office at the time of the rejection of said original application, notified said plaintiff that his alleged invention was exhibited in United States Letters Patent No. 256,563, granted on April 18, 1882, to G. W. Gregory.

Defendant further avers that upon the rejection of plaintiff's said original application as aforesaid, the plaintiff filed in said Patent Office a new and first amended specification, and in his new and first amended specification represented to said Patent Office and claimed that his invention consisted of the brace of a machine, having sockets or bearings for a treadle bar, with mufflers at the end of the treadle bar, in combination with the treadle bar itself. Defendant further avers that the specific elements and details of construction in combination, which are described and claimed in the claims of plaintiff's said patent, as they now appear therein, were not included in plaintiff's said first amended specification, nor in any claim or claims which accompanied plaintiff's said first amended specification. Defendant further avers that plaintiff's said application, when accompanied by said first amended specification, was again rejected by said Patent Office, and that said

Patent Office at the time of said last mentioned rejection, notified said plaintiff that his alleged invention, as described in his said first amended specification, was met by United States Letters Patent No. 243,529, granted on June 28, 1880, to John E. Donovan.

Defendant further avers that upon the said last mentioned rejection of his said application, the plaintiff filed in said Patent Office a new and second amended specification, and in his said second amended specification represented to said Patent Office and claimed that his invention consisted in the specific elements and details of construction in combination, as the same now appear and are described and claimed in the claims of plaintiff's said patent.

Defendant further avers that it was only by this limiting his claims to the precise combination of specifically mentioned elements and details of construction of which the claims of his said patent are now composed, that plaintiff was able to obtain the issuance of said patent at all, and that if he had not so limited his claim to invention in said Patent Office no patent would have been granted to him at all.

Defendant further avers that by the aforesaid amendments of his specification and by so, as aforesaid, limiting his claim to invention, the plaintiff entirely abandoned, in said Patent Office, any and all claim to a treadle hung or swinging generally in the brace of a machine, and is now estopped from asserting any claim to a treadle hung or swinging in the brace of a machine, excepting in the precise combination and precise manner, and in combination with the precise elements and exact details of construction shown and claimed in the claims of his said letters patent, as the same now appear.

Further answering defendant denies that the plaintiff has ever been in any manner injured and damaged or injured or damaged on account of any act or acts of this

defendant, and denies that by reason of any act or acts of defendant plaintiff has been deprived of large or any royalties, or of large or any gains, or of large or any advantages which plaintiff would otherwise have derived, and denies that plaintiff has sustained actual or any damages by reason of any act or acts of defendant, either in the sum of twenty thousand dollars or in any other sum whatever, or at all.

Further answering defendant avers that the cause of action set forth in the amended declaration on file herein is, and at the time of the commencement of this action was, barred by section 339 and subdivision I of said section of the Code of Civil Procedure of the State of California.

Wherefore, having fully answered plaintiff's amended declaration, defendant demands that he be hence dismissed with his costs in this action incurred.

WHEATON, KALLOCH & KIERCE,
Attorneys for Defendant.

ANSWER.

(From Brill vs. Singer Mfg. Co., 154 U. S. 517, 38 L. Ed. 1077.)

In the Circuit Court of the United States, for the Ninth Circuit, Northern District of California.

A. BRILL, Plaintiff,

vs.

THE SINGER MANUFACTURING COMPANY

(a corporation), Defendant.

Now comes the said defendant and denies generally and specifically each and every allegation contained in the plaintiff's complaint, on file herein, and says that it is not guilty of the grievances therein charged against

it or any or either, or any part thereof, and of this the defendant puts itself upon the country.

Wherefore, defendant demands judgment for its costs.

WHEATON, KALLOCH & KIERCE,

and F. M. HUSTED,

Attorneys for Defendant.

SPECIAL DEMURRER.

(From *Cramer vs. Singer Mfg. Co.*, 59 Fed. Rep. 74; 192 U. S. 265, 48 L. Ed. 347.)

(Title of Court and Cause.)

Special demurrer of the defendant, "The Singer Manufacturing Company," to the jurisdiction of the court over the person of this defendant.

And the said defendant, "The Singer Manufacturing Company," by its attorneys, Messrs. Wheaton, Kalloch & Kierce, excepts and demurs to the complaint herein filed upon the one special ground that the said declaration shows that this court had no jurisdiction of this defendant, for the following reasons:

That said complaint shows that this defendant is a corporation created and existing under the laws of the State of New Jersey and that it is an inhabitant of the said State of New Jersey; that the jurisdiction of the United States Courts does not attach in this case because the plaintiff and defendants are citizens of different states but because that such jurisdiction attaches on account of the subject matter of the action; and that for these reasons the defendant is not liable to be sued outside of the said State of New Jersey of which state only it is an inhabitant and citizen.

Wherefore this defendant prays the judgment of this court whether it has jurisdiction of this defendant and asks to be dismissed with judgment for its costs; but, should the court overrule this demurrer and exception, this defendant then asks time and leave to answer to the merits, though excepting to the action of the court in overruling this demurrer.

WHEATON, KALLOCH & KIERCE,
Attorneys for Defendants.

I certify that in my opinion the above and foregoing demurrer of the defendant, "The Singer Manufacturing Company," to the declaration of Herman Cramer, plaintiff, is well founded in law, and is proper to be filed in the above entitled action.

F. J. KIERCE,
Attorney for Defendant.

CITY AND COUNTY OF SAN FRANCISCO. }
STATE OF CALIFORNIA, } ss.

Willis B. Fry, being duly sworn, says that he is the agent of the defendant, "The Singer Manufacturing Company" in the State of California, named in the above and foregoing entitled action; that he has read the above and foregoing demurrer of said defendant to the declaration in said action and that the same is not interposed for the purpose of delaying said action or any of the proceedings therein.

WILLIS B. FRY.

Subscribed and sworn to before me this 12th day of
June, 1893.

GEO. T. KNOX,
Notary Public.

[SEAL.]

 PLEA IN BAR.

(From *Bowers vs. San Francisco Bridge Co.*, 69 Fed. Rep. 640; 91 Fed. Rep. 381.)

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

ALPHONZO B. BOWERS, Plaintiff,)

vs.

SAN FRANCISCO BRIDGE CO.)

Defendant.

To the February Term,
A. D. 1892.

Now comes the defendant, San Francisco Bridge Company, by its attorney, R. Percy Wright, and defends the wrong and injury when, etc., and says: That it is not guilty of the grievances laid to its charge by the plaintiff in the declaration filed herein, or any or either of them, or any part thereof. And of this, the defendant puts itself upon the country.

And for a further plea in that behalf, the defendant says: That none of the matters covered by the letters patent No. 318,859, mentioned in said declaration, nor any part thereof, was a statutory subject of a patent, at the time said patent was issued, or at any other time. And this, the defendant is ready to verify.

And for a further plea in this behalf, the defendant says: That the alleged invention of said plaintiff, mentioned in said declaration, was not useful, at the time said letters patent No. 318,859 were issued, or at any other time. And of this, the defendant puts itself upon the contrary.

And for a further plea in this behalf, the defendant says: That the invention claimed in said letters patent No. 318,859, is substantially different from any indi-

cated, suggested or described in the original application therefor. And this, the defendant is ready to verify.

And for a further plea in this behalf, the defendant says: That the claims in said letters patent No. 318,859, are not distinct, and said claims do not particularly point out the part, improvement or combination which the plaintiff claims as his invention or discovery. And this the defendant is ready to verify.

R. PERCY WRIGHT,
Attorney for Defendant.

I hereby certify that the foregoing pleas are, and each of them is, in my opinion, well founded in point of law.

R. PERCY WRIGHT,
Attorney and Counsel for the Defendant.

NOTICE OF SPECIAL MATTER.

(From Brill vs. Singer Mfg. Co., 154 U. S. 517, 38 L. Ed. 1077.)

In the United States Circuit Court, Northern District of California.

A. BRILL, Plaintiff,

vs.

THE SINGER MANUFACTURING
COMPANY (a corporation),
Defendant.

The plaintiff and Messrs. Scrivner & Schell and C. W. M. Smith, his attorneys will please take notice that upon the trial of the above entitled cause the defendant will prove in accordance with the Statute of the United States in such cases made and provided that the patentee A. Brill to whom the letters patent on which this suit is based were granted, and which are set out in plaintiff's declaration herein filed was not the first and original, or any inventor of the invention and discovery described in and claimed by the said letters pat-

ent, but that the said invention and discovery was in fact invented and discovered by and the same principle was known to and had previously been combined by others, and was described in the following United States letters patents, which were respectively granted to the following named persons at the following named dates, to-wit:

(Here follows list of Patents and Patentees.)

You will further take notice that the said alleged invention of A. Brill was described in the following printed publications prior to the supposed invention or discovery thereof by the said A. Brill, to-wit:

(Here follows List of Publications.)

.....,
Attorneys for Defendants.

SEPARATE DEMURRER OF ONE DEFENDANT TO DECLARATION.

(From Cramer vs. Singer Mfg. Co., 59 Fed. Rep. 74; 192 U. S. 265,
48 L. Ed. 347.)

(Title of Court and Cause.)

The separate demurrer of the defendant Willis B. Fry, one of the defendants, to the declaration of the plaintiff, Herman Cramer:

The defendant Willis B. Fry, by his attorneys Messrs. Wheaton, Kalloch and Kierce, demurs to the declaration on file in said action upon the following grounds:

1. That the said declaration does not state facts sufficient to constitute a cause of action against the said defendant.

2. This defendant demurs to the said declaration upon the ground that there is a misjoinder of parties defendant in this, that this defendant is joined as a defend-

ant with The Singer Manufacturing Company which is a corporation organized, created and existing under and by virtue of the laws of the State of New Jersey, and is therefore a citizen and resident of the State of New Jersey, and this court has no jurisdiction over it and cannot therefore join it as a defendant herein.

WHEATON, KALLOCH & KIERCE,
Attorneys for Defendants.

(Here follows certificate and affidavit, same as to demurrer of Singer Company.)

QUI TAM ACTION: PETITION.

In the District Court of the United States, Eastern District of Missouri, Eastern Division.

BYRON C. ANDERSON, for himself and the United States,
Plaintiff,

vs.

LOCK SAFETY PIN COMPANY,
Defendant.

Action for Penalties under Section 4901, R. S. U. S. No. 3788.

Count 1.

Plaintiff, Byron C. Anderson, a citizen of the State of Missouri and of the United States, brings this his petition in behalf of himself and of the United States, and for cause of action states:

That at the time of the commission of the offense hereinafter complained, Defendant, Lock Safety Pin Company, was, and it now is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri; and that heretofore and on the

second day of January, 1905, in the city of St. Louis, State of Missouri, and within the Eastern Division of the Eastern Judicial District of Missouri, the defendant did wrongfully and unlawfully mark upon or affix to one or more cards or labels, upon each of which said cards or labels were mounted and affixed six certain unpatented articles; to-wit, safety pins, the words,

“U. S. Patents, Dec. 29, '03.

Mar. 22, '04, April 12, '04.

April 12, '04. May 17, '04.”

That from the character of the articles, the said words and figures could not be affixed upon the articles themselves; that the said words were so marked or affixed upon said cards or labels by being printed thereon; and that the said words imported that the said safety pins so mounted upon each of said cards or labels were patented, for the purpose of deceiving the public; contrary to the form of the statute in such case made and provided, and in violation of Section 4901, of the Revised Statutes of the United States.

Whereby an action accrued to plaintiff according to the provisions of said statute, and the defendant became liable to the plaintiff in the penal sum of one hundred (\$100.00) dollars (one-half for his own use and the other half for the use of the United States), with costs.

Wherefore plaintiff prays judgment against defendant in the sum of one hundred (\$100.00) dollars, together with the costs of this suit.

WRIT OF ERROR.

[Official Form of Writ of Error for use in the United States Circuit Court of Appeals, Eighth Circuit.]

UNITED STATES OF AMERICA, SS.

The President of the United States of America,

To the Honorable Judges of the (1)

..... Greeting:

BECAUSE, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Court, before you, at the.....

..... Term, 19.., thereof, between (2)

a manifest error hath happened, to the great damage of the said (3) as by complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the (4) day of 19 .., to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, this day of in the year of our Lord one thousand nine hundred

ISSUED at office in with the seal of the (5) and dated as aforesaid.

..... Clerk of

ALLOWED BY

..... Judge.

WRIT OF ERROR—RETURN.

[Official Form of Return to be endorsed on Writ of Error by the Clerk of the Court to which the writ is addressed.]

UNITED STATES OF AMERICA, } ss.

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and affix the seal of (6)

..... Clerk of

NOTES—(1.) Here insert correct name of the Court to which the writ is addressed and whose judgment is to be reviewed.

(2.) Here insert correct style of cause showing who was plaintiff and who defendant in Court below.

(3.) Here insert name of party who sues out writ of error.

(4.) Rule XIV, subdivision 5, requires writs of error and appeals to be made returnable sixty days after citation is signed.

This blank must be filled accordingly, naming a day not more than sixty days after the date of the citation.

(5.) This blank should be so filled as to show whether the writ is issued by the Clerk of a United States District Court or by the Clerk of the Circuit Court of Appeals.

(6.) Here describe the Court to which the writ is addressed.

[Official Form of Citation.]

UNITED STATES OF AMERICA,

ToGreeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to (1) filed in the Clerk's Office of the (2) wherein is (3) and you are (4), to show cause, if any there be, why the (5) rendered against the said (6) as in said (7) mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS, the Honorable Judge of this day of A. D. 19 ..

..... Judge of

- NOTES—(1.) Insert (a writ or error) or (an appeal allowed and). (2.) Insert name of Court to which writ of error is addressed, or from which appeal is allowed. (3.) Insert Plaintiff in Error or Appellant. (4.) Insert Defendant in Error or Appellee. (5.) Insert Judgment or Decree. (6.) Insert Plaintiff in Error or Appellant. (7.) Insert Writ of Error or Appeal.

 MANDAMUS.

PETITION: RULE TO SHOW CAUSE, RETURN: MOTION FOR JUDGMENT: ORDER DISCHARGING RULE.

(From United States ex rel. Steinmetz vs. Allen, 192 U. S. 543, 48 L. Ed. 555.)

PETITION.

In the Supreme Court of the District of Columbia.

UNITED STATES EX REL. CHARLES
P. STEINMETZ,

vs.

FREDERICK I. ALLEN, Commis-
sioner of Patents.

} At Law. No. 45620.

To the Supreme Court of the District of Columbia:

Your petitioner, Charles P. Steinmetz, respectfully represents:

1. That he is a citizen of the United States, and resides at Schenectady, in the county of Schenectady, and State of New York.

2. That prior to the 21st day of November, 1896, he was the true, original and first inventor and discoverer of certain new and useful improvements in motor meters, not known or used by others in this country and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, and not in public use or on sale in this country for more than two years prior to his hereinafter-mentioned application for letters patent therefor; and so being the true, original and first inventor thereof, he, on the said 21st day of November, 1896, filed in the United

States Patent Office an application for letters patent of the United States for said invention.

3. That said application was made, by your petitioner, in writing, and addressed to the Commissioner of Patents, in due form, as required by the statutes of the United States, and by the rules of practice in the United States Patent Office in such case made and provided and with said application was filed by your petitioner a written description of his said invention, and of the manner and process of making, constructing, practicing and using the same, in such full, clear, concise and exact terms as to enable any person skilled in the art of science to which said invention appertains or with which it is most closely connected, to make, construct, practice and use the same; and in such written description the principle of your petitioner's said invention and the best mode in which your petitioner contemplated applying the same were explained; and your petitioner particularly pointed out and distinctly claimed in his said application the parts, improvements, combinations and methods which he claimed as his invention; and the specification and claims of said applications were signed by your petitioner and attested by two witnesses;

4. That your petitioner did further furnish with said application drawings of his said invention, signed by his attorney and attested by two witnesses;

5. That your petitioner did further make oath before a proper officer, according to law, that he verily believed himself to be the original and first and sole inventor and discoverer of the said invention for which he solicited a patent, that he did not know and did not believe that the same was ever known or used, and did state of what country he was a citizen;

6. That your petitioner at the time of the filing of his said application did pay to the said Commissioner of

Patents fifteen dollars, the fee required by law and did in all other respects fully comply with the statutes of the United States and with the rules of practice in the United States Patent Office in such cases made and provided and that the said application became known and designed as application Serial No. 612,943.

7. That the said application contained and contains the following claims of invention to which your petitioner believes himself entitled, viz.:

1. The herein-described method of measuring alternating electric currents, which consists in setting up or establishing a shifting field of magnetism from three intersecting lines or axes of magnetization and adapted to actuate a rotatable armature in a motor meter arranged within the energizing coils producing said lines of magnetization.

2. The herein-described method of actuating an alternating-current motor meter, which consists, in setting up or establishing a shifting field of magnetism from three intersecting lines or axes of magnetization and adapted to actuate a rotatable armature arranged within the energizing coils producing said lines of magnetization.

3. The herein-described method of actuating a single phase alternating-current motor meter, which consists in setting up or establishing a shifting field of magnetism from three intersecting lines or axes of magnetization and adapted to actuate a rotatable armature arranged within the energizing coils producing said lines of magnetization.

4. The herein-described method of actuating an alternating current motor meter, which consists in setting up or establishing a shifting field of magnetism by means of magneto-motive forces acting along three intersecting

lines and subjecting an armature to the inductive action of said field.

5. The herein described method of actuating an alternating-current motor meter which consists in setting up or establishing a shifting field of magnetism by means of magneto-motive forces acting along three intersecting lines, one magneto-motive force being proportional to the current and the other two to the electro-motive force, and subjecting an armature to the inductive action of said field.

6. The herein-described method of actuating an alternating-current motor meter which consists in setting up or establishing a shifting field of magnetism by means of magneto-motive forces acting along three intersecting lines, one magneto-motive force being proportional to the current and the other two to the electro-motive force, the several magneto-motive forces being so proportioned and related to each other than the resultant of the last two is displaced in phase from the first by the complement of the angle of lag, and subjecting an armature to the inductive action of said field.

7. In a watt meter for alternating electric currents, means for producing a magnetic flux proportional to the current and varying in phase therewith, means for producing a second magnetic flux proportional to the electro-motive force and lagging in phase behind the same, and means for producing an auxiliary flux along a line at an angle to said second flux and of such magnitude and phase that the resultant of the two last-mentioned fluxes will lag behind the first by the complement of the angle of lag.

8. The combination in an electric motor of a field-magnet system and means for inducing therein magnetic fluxes of three phases, one a flux due to a series coil and proportional to the current, a second flux due to a shunt

potential coil and lagging behind the electro-motive force and a third flux lagging behind said second flux and having a fixed angular relation thereto such that the resultant of the second and third fluxes is dephased by substantially the complement of the angle of lag from the flux due to the series coil.

9. The combination in a recording electric meter of a field-magnet system acting on the armature and having a plurality of intersecting magnetic axes, means for inducing along one of said magnetic axes a flux proportional to the current and varying in phase therewith, and means for inducing along the other magnetic axes a plurality of other fluxes dependent upon the potential of the metered circuit, which lag behind the electro-motive force by different amounts and act upon the armature at different points said fluxes being so proportioned in value and phase that their joint action upon the armature will enable the meter to register the true energy consumed in an alternating-current circuit without being substantially affected by changes of phase relation.

10. In a watt meter for alternating currents, the combination of a field-magnet system having three intersecting magnetic axes, means for producing along one of said axes a magnetic flux proportional to the current and varying in phase therewith, means for producing along another of said axis an alternating flux proportional to the electro-motive force and lagging behind the same and means for producing along the third axis an auxiliary magnetic flux also proportional to the electro-motive force, of such a magnitude and phase that the joint action of the several fluxes upon the armature will enable the meter to register the true energy consumed in an alternating-current circuit without being substantially affected by changes of phase relation.

11. In a meter for alternating currents, the combination of a field-magnet system having three intersecting magnetic axes, means of producing along one of said axes, a magnetic flux proportional to the current and carrying in phase therewith, means for producing along another of said axes an alternating flux proportional to the electro-motive force and lagging behind the same, and means for producing along the third axis an auxiliary magnetic flux also proportional to the electro-motive force and of such magnitude and phase that the joint action of the two potential fluxes upon the armature will produce a torque sufficient to overcome the static friction of the meter.

12. In a single-phase alternating-current meter, the combination of a field-magnet system having three intersecting magnetic axes, a field coil in which the current phase varies as the conditions of the circuit change, producing a magnetization along one magnetic axis, a potential coil producing a magnetization along another magnetic axis, a reactance device in series with said potential coil for lagging the current behind the electro-motive force and a second potential coil depending for its current upon the first potential coil, producing a magnetization along the third magnetic axis; the two potential coils conveying currents which differ in phase from each other, and each generating a flux which acts upon the armature at a point removed from the point at which the flux due to the other potential coil acts upon the armature.

13. In an electric meter, the combination of a multipolar field-magnet structure having three magnetic axes, current coils mounted upon some of the field poles and producing a magnetization along one of said magnetic axes, potential coils mounted upon other field poles and producing a magnetization along another one of said

magnetic axes, and other potential coils mounted upon a portion only of the last-named field poles, or some of them, and producing a magnetization along the third magnetic axis and an armature acted upon by the flux induced by the field coils.

8. That on or about the 15th day of May, 1900, the primary examiner to whom, according to law, your petitioner's said application was referred by the Commissioner of Patents for examination, examined and considered said application and decided that your petitioner must cancel from said application his aforesaid claims numbered 7, 8, 9, 10, 11, 12 and 13, the same being all claims for the apparatus part of your petitioner's said invention and notified your petitioner of such decision.

9. That, after receiving the notice of said decision your petitioner persisted in his said claims in said application without altering his specification in any way and his said application was thereupon, by the primary examiner, reconsidered and his aforesaid claims numbered 7, 8, 9, 10, 11, 12 and 13 were, on or about the 31st day of July, 1900, a second time required to be cancelled from said application.

10. That on, or about the 4th day of August, 1900, your petitioner regarding the last-mentioned decision a second final rejection and refusal of his said claims Nos. 7, 8, 9, 10, 11, 12 and 13, by the primary examiner, and feeling aggrieved thereby, appealed therefrom, by written petition, to the board of examiners-in-chief, in accordance with the statute in such case made and provided and with the rules of practice in the United States Patent Office regulating such appeals, and paid to the Commissioner of Patents the statutory fee of \$10, required for such appeal.

11. That on or about the 9th day of August, 1900, the primary examiner, contrary to his duty, refused to

answer said appeal and to forward the said appeal with his answer thereto and the statement required by the rules of practice in the United States Patent Office, to the said board of examiners-in-chief, and on or about the 16th day of August, 1900, upon your petitioner's request for a reconsideration of said action repeated his said last-mentioned decision and refusal;

12. That on or about the 20th day of August, 1900, your petitioner petitioned the Commissioner of Patents to direct the said primary examiner to answer and forward said appeal, which petition was, on or about the 28th day of September, 1900, denied;

13. That thereafter, to-wit, on or about the 16th day of January, 1902, your petitioner petitioned the present Commissioner of Patents, the said Frederick I. Allen, to direct the said primary examiner to answer said appeal, to forward said appeal with his said answer thereto and with the statement required by the rules of practice of the United States Patent Office to the said board of examiners-in-chief for the determination of said board, which petition was on the 7th day of February, 1902, denied.

14. That your petitioner is advised and believes that the said decision of the primary examiner of the 31st day of July, 1900, repeating his previous decision of the 15th day of May, 1900, requiring the cancellation from your petitioner's said application of all claims covering the apparatus part of his said invention, namely, his aforesaid claims 7, 8, 9, 10, 11 and 13, constituted and constitutes, in fact and in law, an adverse decision upon the merits of your petitioner's aforesaid application and was and is a second rejection of the said claims 7, 8, 9, 10, 11, 12 and 13 of said application and that he is entitled, as a matter of right, under the statutes of the United States in such case made and provided, to an appeal from said adverse decision and second rejection of

said claims by said primary examiner to the said board of examiners-in-chief and is entitled, as a matter of right, to have the validity of said adverse decision and second rejection revised and determined by the said board of examiners-in-chief;

15. That, under the rules of practice of the United States Patent Office, it became and was the duty of the said primary examiner to, within five days of the filing of your petitioner's aforesaid appeal, answer such appeal by furnishing the board of examiners-in-chief with a written statement of the grounds of his decision on all the points involved in the appeal and to forward such answer and statement with such appeal, to the said board of examiners-in-chief, for the revision and determination by said board of such appeal;

16. That upon the refusal of the primary examiner to furnish such answer and statement and to forward the same to the said board of examiners-in-chief as aforesaid, it became and was the duty of the said Frederick I. Allen, Commissioner of Patents, to direct the said primary examiner to furnish said answer and statement and forward the same with such appeal to the board of examiners-in-chief, and the failure and refusal of the said Frederick I. Allen, Commissioner of Patents, when so requested by your petitioner as aforesaid, to perform said duty and to make such direction rendered and renders it impossible for your petitioner to have the validity of the said rejection and refusal by the said primary examiner of the aforesaid claims Nos. 7, 8, 9, 10, 11, 12, and 13, of his said application, revised and determined by the said board of examiners-in-chief, and in turn, if necessary, by the other duly constituted statutory tribunals of higher authority and operates to the great wrong and injury of your petitioner in the premises;

17. That, well hoping that the said board of examiners-in-chief might take jurisdiction of his said appeal

and revise and determine the same, even without an answer or statement from the primary examiner in regard thereto and notwithstanding the action of the said Frederick I. Allen, Commissioner of Patents, aforesaid, your petitioner on the 28th day of February, 1902, petitioned the said board of examiners-in-chief, praying that said board of examiners-in-chief take jurisdiction of said appeal and revise and determine the same and reverse the aforesaid adverse decision of the said primary examiner but said petition was, on the 6th day of March, 1902, denied by said board of examiners-in-chief on the ground that said board could not revise and determine said appeal without the said primary examiner's answer and statement, and further, in view of the decision of the said Frederick I. Allen, Commissioner of Patents, in the premises;

18. That by the refusal of the said Frederick I. Allen, Commissioner of Patents, to so direct the said primary examiner to furnish his said answer and statement and to forward the same with petitioner's said appeal to the board of examiners-in-chief, as requested, your petitioner was and is deprived of a legal right vested in him by the laws of the United States relating to the granting of letters patent for inventions and is entirely without redress or remedy in the premises, unless this Honorable Court by writ of mandamus shall interpose in his behalf.

Wherefore your petitioner prays that a writ of mandamus may be issued by this Honorable Court to the said Frederick I. Allen, Commissioner of Patents, commanding him to direct the primary examiner to forward your petitioner's said appeal to the board of examiners-in-chief with his proper answer and statement required by the rules of practice of the United States Patent Office, to the end that the aforesaid adverse decision of the primary examiner and the aforesaid second rejection of the

said claims 7, 8, 9, 10, 11, 12 and 13, of your petitioner's said application by said primary examiner, complained of, may, by said board of examiners-in-chief, be revised and determined according to law, and that speedy justice may be done your petitioner in the premises. And as in duty bound your petitioner will ever pray, etc.

CHARLES P. STEINMETZ.

O. K.

A. S. D.

CHURCH & CHURCH, Attorneys.

ALBERT G. DAVIS, Of Counsel.

STATE OF NEW YORK, }
COUNTY OF SCHENECTADY, } ss.

Charles P. Steinmetz, being duly sworn deposes and says, that he has read the foregoing petition by him signed and knows the contents thereof; that the statements therein contained are true to his own knowledge, except as to those matters therein stated to be on information and belief and as to such matters he verily believes it to be true.

CHARLES P. STEINMETZ.

Subscribed and sworn to before me this 28th day of August, 1902.

BENJAMIN B. HULL.

(Seal) Notary Public, Schenectady County, N. Y.

RULE TO SHOW CAUSE.

Filed September 9, 1902.

In the Supreme Court of the District of Columbia.

UNITED STATES EX REL. CHARLES P. STEINMETZ, Petitioner,

vs.

FREDERICK I. ALLEN, Commissioner of Patents, Respondent.

At Law. No. 45620.

Upon consideration of the petition for mandamus in the above-entitled cause, it is ordered, on this 9th day of September, 1902, the respondent herein show cause, on the 17th day of September, 1902, at 10 o'clock a. m., before me at the special term of the court, why a writ of mandamus should not issue, as prayed in said petition; provided a copy of this order and of said petition be served upon the respondent on or before the 17th day of September, 1902.

JOB BARNARD.

Associate Justice of the Supreme Court of the District of Columbia.

RETURN OF RESPONDENT.

Filed September 17, 1902.

In the Supreme Court of the District of Columbia.

THE UNITED STATES EX REL. CHARLES P. STEINMETZ,
vs.

FREDERICK I. ALLEN, Commissioner of Patents.

At Law. No. 45620.

To the Honorable, the Justices of the Supreme Court of the District of Columbia:

The return of the respondent to the rule to show cause issued herein upon the 9th of September, 1902.

The said Frederick I. Allen, Commissioner of Patent, comes and for answer to the order to show cause why the said writ of mandamus should not issue says, upon information and belief:

1. The respondent admits the allegations of the first paragraph of the petition.

2. The respondent admits the allegations of the second paragraph of the petition.

3. As to the third paragraph of the petition, the respondent denies that the application was in due form

as required by the statutes and rules of practice, since it included claims to an apparatus and claims to a process. The respondent admits that in other respects the application was in proper form.

4. The respondent admits the allegations of the fourth paragraph of the petition.

5. The respondent admits the allegations of the fifth paragraph of the petition.

6. As to the sixth paragraph of the petition, the respondent denies that the application fully complied with the statutes and rules of practice, since it included claims to an apparatus and claims to a process.

7. The respondent admits the allegations of the seventh paragraph of the petition.

8. As to the eighth paragraph of the petition, the respondent admits that the examiner having charge of the relator's application wrote a letter to him on May 15, 1900, saying:

“In accordance with office letter of January 2, 1900, applicant is required to cancel from this case all claims except those for the method.”

In further explanation of this matter, the respondent says that prior to May 15, 1900, and on October 9, 1899, the primary examiner wrote a letter to the relator, requiring division between the process claims and the apparatus claims, in accordance with Rule 41, before further action would be given upon the merits of the case. In a reply filed December 15, 1899, the respondent asked that his process claims be placed in interference with the claims of a patent granted to one Duncan, and said:

“It is therefore requested that the retirement for division be waived for the present in order that an interference with the patent to Duncan above referred to may be declared.”

The examiner then wrote a letter on January 2, 1900, saying:

“Pending the determination of the interference applicant may retain the method and apparatus claims in this case, but the acceptance of an interference on one of the method claims will be held by the office to be an election of the prosecution of the method claims, and further prosecution of the apparatus claims in this application will not be permitted.”

The relator's reply, filed January 19, 1900, was:

“It is respectfully requested that the interference with the Duncan Patent, No. 604,464, be declared as soon as possible.”

The interference was thereupon declared on February 7, 1900, and the decision therein was in favor of the relator and against Duncan. After that decision the examiner wrote the said letter of May 15, 1900.

By his request for the interference in reply to the examiner's warning as to the effect of such request, the relator eliminated from consideration the question which of the two inventions claimed would be retained in this case if division was finally insisted upon, and he is estopped from denying that the apparatus, if either, must be presented in a separate application. His action in accepting the ruling of the office upon the question of election, and thereby obtaining the interference, left open for final decision only the question whether division should be required, and it was upon this question that the examiner ruled in this letter of May 15, 1900.

9. As to the ninth paragraph of the petition, it is admitted that the relator filed a letter on July 16, 1900, asking for a reconsideration of the examiner's action, and that the examiner thereupon repeated his action.

10. The respondent admits that the relator filed an appeal and paid the fee, but denies that the statute and

rules of practice provide for such appeal, as alleged in the tenth paragraph of the petition herein.

11. The respondent admits that the primary examiner refused to answer and forward the appeal, as alleged in the eleventh paragraph of the petition.

12. The respondent admits the allegations of the twelfth paragraph of the petition; a copy of the decision denying the petition is hereto attached, as Exhibit A.

13. The respondent admits the allegations of the thirteenth paragraph of the petition, and attaches hereto and as a part hereof a copy of his decision dated February 7, 1902, marked Exhibit B.

The respondent further alleges that before the date of the said petition and decision, the relator had under the provision of Rule 145 petitioned the respondent as Commissioner of Patents to review and reverse the action of the primary examiner requiring division, and after a full consideration of the matter the respondent was of the opinion that the requirement for division was proper and for that reason denied the petition on January 2, 1902.

14. The respondent denies that the examiner's letter of July 31, 1900, was a second rejection of claims made by the relator, and denies that the relator has the right of appeal therefrom to the examiners-in-chief. The examiner's action was merely a ruling that the relator should present in two applications, in accordance with the provisions of Rule 41, approved by the Secretary of the Interior, the two inventions now claimed in one application, and did not involve the rejection of any claim or an action upon the merits of any claim made by the relator. The statutes and Rule 133 of the rules of practice do not provide for an appeal to the examiners-in-chief from an examiner's requirement for division, and the examiners-in-chief have no jurisdiction to pass upon the question whether or not division should be required.

15. The respondent denies that it was the duty of the primary examiner to forward the appeal and to furnish a statement of the grounds of his action, as alleged in the fifteenth paragraph of the petition herein.

16. The respondent denies that it was his duty to direct the primary examiner to forward the appeal, for the reason that no authorized appeal had been filed, as alleged in the sixteenth paragraph of the petition herein.

17. The respondent admits the allegations of the seventeenth paragraph of the petition.

18. The respondent denies that the relator has by the action of the respondent been deprived of any legal right vested in him by the laws of the United States, as alleged in the eighteenth paragraph of the petition herein.

The respondent further says that by reason of the facts hereinbefore alleged, he should be dismissed with his reasonable costs.

FREDERICK I. ALLEN.

JOHN M. COIT, Attorney.

DISTRICT OF COLUMBIA, SS.:

On this day personally appeared before me, a notary public in and for the said District of Columbia, Frederick I. Allen, and made oath that he is the respondent in the above-entitled cause; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

FREDERICK I. ALLEN.

Given under my hand this 16th day of September, 1902.

A. M. BUNN,

(Seal) Notary Public for the District of Columbia.

EXHIBIT A.

Filed September 17, 1902.

Where applicant does not care to comply with the examiner's requirements in a matter of division such as is here involved, it has been the practice for the past thirty years to treat the question not as one of merits and appealable to the examiners-in-chief, but as a proper matter for petition to the Commissioner. I see no reason for overturning this practice. The petition is denied.

WALTER H. CHAMBERLIN,
Assistant Commissioner.

September 28, 1900.

EXHIBIT B.

Filed September 17, 1902.

United States Patent Office. Ex Parte Charles P.
Steinmetz.
Motor Meters.
Petition.

Application filed November 21, 1896; No. 612,943. Mr. Albert G. Davis for applicant.

This is a petition from the action of the primary examiner refusing to forward to the examiners-in-chief an appeal in the above-entitled case.

The examiner required division in this application between claims to the apparatus and claims to the process, and this action was clearly correct under the express provisions of Rule 41. The applicant then asked for an interference with a patent containing the process claims, and that interference was declared, the applicant being informed that the request for an interference upon the process was considered an election to retain the process claims in this case, and that after the conclusion of the interference he would be required to cancel from the

case the apparatus claims. The interference was decided in favor of this applicant and the examiner then insisted upon his requirement that the application be divided and that the apparatus claims be canceled. The petitioner states that this action amounted to a refusal of the apparatus claims, and therefore took an appeal to the examiners-in-chief. The examiner refused to forward the appeal, upon the ground that the questions involved are petitionable to the Commissioner and are not appealable to the examiners-in-chief.

The requirement for division is clearly a matter of form, not involving the merits of the claims, since the claims may be, and in the present case are, regarded as allowable. The examiner has not refused to grant a patent to this application upon any of the claims presented, but has merely required that they be included in two patents instead of one. It is a question of procedure or of the manner of securing the protection which is in controversy and not the right of the applicant to a patent upon any of the claims presented.

The examiner was right in taking the position that the question involved is not appealable to the examiners-in-chief, and although it is a general rule of law that the appellate tribunal is the one to determine whether or not it has jurisdiction when an appeal is taken to it, it is not considered necessary in the office practice to follow that practice strictly, since the Commissioner is the head of the office and has the final decision upon all questions arising within it and may settle questions of this kind upon direct petition. The examiner's decision upon the question whether or not an appeal to the examiners-in-chief is regular and proper is not final, since it may be reviewable by the Commissioner upon petition, but he has authority to pass upon that question in the first instance.

The petition is denied.
February 7, 1902.

F. I. ALLEN,
Commissioner.

MOTION FOR JUDGMENT.

Filed September 25, 1902.

In the Supreme Court of the District of Columbia.

UNITED STATES EX REL. CHARLES P. STEINMETZ,

vs.

FREDERICK I. ALLEN, Commissioner of Patents.

At Law. No. 45620.

And now comes the relator, by Church & Church, his attorneys, and moves the court for judgment for a peremptory writ of mandamus against the respondent, notwithstanding the return of the respondent herein.

CHURCH & CHURCH,
Attorneys for Relator.

FINAL JUDGMENT.

Filed December 19, 1902.

In the Supreme Court of the District of Columbia.

UNITED STATES EX REL. CHARLES P. STEINMETZ,

vs.

FREDERICK I. ALLEN, Commissioner of Patents.

At Law. No. 45620.

This cause coming on to be heard upon the relator's petition for a writ of mandamus against the respondent, the rule to show cause, the return and the motion of the relator for a peremptory writ of mandamus notwithstanding the return, and having been argued by counsel for the respective parties and considered by the court, it is by the court this 19th day of December, 1902, ordered and adjudged that the rule to show cause is hereby discharged and that the relator's petition be, and the same is hereby, dismissed at the costs of the relator.

The relator having prayed an appeal to the Court of Appeals of the District of Columbia from the judgment of this court dismissing his petition, such appeal is hereby allowed, and the bond is fixed in the penalty of two hundred and fifty dollars.

JOB BARNARD, Justice.

Approved as to form:

JOHN M. COIT,
Attorney for Respondent.

FORMS---SUITS IN EQUITY

BILL OF COMPLAINT—PATENT INFRINGEMENT.

(From *Westinghouse vs. Boyden Power Brake Company*, 170 U. S. 537, 42 L. Ed. 1136.)

Circuit Court of the United States in and for the District of Maryland. No. — of — Term, 19—.

GEORGE WESTINGHOUSE, JR., and THE WESTINGHOUSE AIR BRAKE COMPANY,

vs.

BOYDEN POWER BRAKE COMPANY; CHARLES A. BOYDEN, President; CHARLES B. MANN, Secretary, and WILLIAM WHITRIDGE, Treasurer.

} In Equity.

To the Honorable the Judges of the Circuit Court of the United States in and for the District of Maryland:

George Westinghouse, Jr., a resident of Pittsburg, Allegheny County, Pennsylvania, and the Westinghouse Air Brake Company, a corporation duly organized under the laws of the State of Pennsylvania, and doing business at Pittsburg aforesaid, and both being citizens of said State, bring this their bill of complaint against Boyden Power Brake Company, a corporation organized under the laws of the State of Maryland, and doing business at Baltimore, in said State; George A. Boyden, president of said corporation last named;

Charles B. Mann, secretary thereof; and William Whitridge, treasurer thereof—all residing in Baltimore aforesaid, and all being citizens of the State last named.

And thereupon your orators complain and say that George Westinghouse, Jr., one of your orators was and is the true, original and first inventor of certain new and useful improvements in air valve for power brakes, not known or used before his invention thereof, and not,

for more than two years prior to the date of his application for a patent thereof, in public use or on sale.

And your orators further show unto your honors that the said George Westinghouse, Jr., so being the inventor of said improvement, and being a citizen of the United States, made application to the proper department of the Government of the United States for letters patent, in accordance with the then existing laws of Congress, and having duly complied in all respects with the conditions and requisitions of said laws, on the fifth day of October, A. D. 1875, letters patent of the United States No. 168,359, signed, sealed and executed in due form of law, for his invention were issued and delivered to the aforesaid George Westinghouse, Jr., whereby there was secured to him and to his heirs, legal representatives and assigns, for the term of seventeen years from the fifth day of October, in the year A. D. 1875, the full and exclusive right of making, using and vending to others to be used, the said improvement.

And your orators further show that a description or specification of the aforesaid improvement was given in the schedule to the aforesaid letters patent annexed accompanied by certain drawings referred to in said last-mentioned schedule, and forming part of said letters patent. The said letters patent, and the said specification thereto annexed (which, or an exemplified copy of which, your orators will produce as your honors may direct), were duly recorded in the Patent Office.

And thereupon your orators further complain and say that the said George Westinghouse, Jr., was and is the true, original and first inventor of certain new and useful improvements in fluid-pressure automatic brake mechanism, not known or used before his invention thereof, and not, for more than two years prior to the date of his application for a patent therefor, in public use or on sale.

And your orators further show unto your honors that the said George Westinghouse, Jr., so being the inventor of said improvement, and being a citizen of the United States, made application to the proper department of the Government of the United States for letters patent, in accordance with the then existing laws of Congress, and having duly complied in all respects with the conditions and requisitions of said laws, on the 29th day of March, A. D. 1887, letters patent of the United States No. 360,070, signed, sealed and executed in due form of law, for his invention, were issued and delivered to the aforesaid George Westinghouse, Jr., whereby there was secured to him and to his heirs, legal representatives and assigns, for the term of seventeen years from the 29th day of March, in the year A. D. 1887, the full and exclusive right of making, using, and vending to others to be used, the said improvement.

And your orators further show that a description or specification of the aforesaid improvement was given in the schedule to the aforesaid letters patent annexed accompanied by certain drawings referred to in said last-mentioned schedule, and forming part of said letters patent. The said letters patent, and the said specification thereto annexed (which, or an exemplified copy of which, your orators will produce as your honors may direct), were duly recorded in the Patent Office.

And your orators further show unto your honors that prior to the commission of the acts of infringement charged, by virtue of said patents and a certain instrument in writing, duly executed and recorded in the United States Patent Office, the said recited patents, and the entire right, title and interest therein and thereunder, became and still is duly vested in your orators, as by said patents and instrument in writing, or duly certified copies thereof, ready in court to be produced, will fully and at large appear.

And your orators further show unto your honors that the said patented inventions are so nearly allied in character as to be capable of conjoint as well as separate use in the construction and operation of railway fluid-pressure brake mechanism, and have been so used by the defendants herein.

And your orators further show that they, your orators, have extensively applied the said several improvements to practical use, and have seen, and but for the infringement hereinafter complained of, to-wit, of claim 7 of patent No. 168,359, and claims 1, 2, 4 and 5 of patent No. 360,070, your orators would still be in the undisturbed possession, use and enjoyment of the exclusive privileges secured by the said letters patent and in the receipt of the profits of the same.

And your orators further show your honors, as they are informed and believe, that the said defendants herein named, well knowing all the facts hereinbefore set forth, are now constructing, selling and using railway fluid-pressure brake apparatus in material parts thereof substantially the same in construction and operation as in the said several letters patent mentioned, the exclusive right and privilege to make and use which, and vend the same to others to be used, is thus by law vested in your orators.

And so it is, may it please your honors, that the said defendants, as your orators are informed and believe, without the license of your orators, against their will and in violation of their rights have made, sold and used, and intend to continue still to make, sell and use the said improvement within the — District of Maryland and elsewhere in the United States, and refuse to pay your orators any of the profits which they have made by such unlawful manufacture and use, or to desist from the further infringement of said recited letters patent, all of which acts and doings are in violation of the ex-

clusive rights and privileges so as aforesaid vested in your orators and by virtue of said recited letters patent Nos. 168,359 and 360,070, and are contrary to equity and good conscience, and tend to the manifest injury of your orators in the premises.

To the end, therefore, that the defendants may, if they can, show reason why your orators should not have the relief hereby prayed, and that they may make a full disclosure and discovery of all the matters aforesaid, and upon their corporal oaths and under corporate seal, and according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters and things hereinbefore stated and charged.

And that the said defendants may answer the premises, and that they may be decreed to account for and pay over the income or profits thus unlawfully derived, or which might have been derived from the violation of the rights of your orators, as aforesaid, your orators pray that your honors, upon entering of the decree in favor of your orators against said defendants for infringement, as above prayed for, may also proceed to assess, or cause to be assessed, under your directions, as well the profits or income derived therefrom, to be accounted for as aforesaid, as also, in addition thereto, the damages sustained by your orators by reason of such infringement, and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the willful and unjust infringement committed by said defendants as hereinbefore set forth; and further, that the said defendants may be restrained from any further violation of the rights of your orators as aforesaid, your orators pray that your honors may grant a writ of injunction issuing from and under the seal of this honorable court, or issued by one of your honors, perpetually en-

joining or restraining the said defendants, their clerks, attorneys, servants, agents and workmen, from any further construction, or sale, or use in any manner of said patented improvements, or any part thereof, in violation of the rights of your orators as aforesaid. And your orators further pray that a provisional or preliminary injunction be issued, restraining the said defendants from any further infringement of said recited letters patent, pending this cause, and they pray for such other relief as the equity of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orators not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpoena of the United States of America, directed to the said Boyden Power Brake Company, George A. Boyden, Charles B. Mann and William Whitridge, commanding them, on a day certain therein to be named, to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem meet and may be required by the principles of equity and good conscience.

GEORGE H. CHRISTY,
Solicitor for Complainant.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF PENNSYLVANIA, } ss.

Before me, the subscriber, duly authorized to administer oaths, personally came H. H. Westinghouse, general manager of The Westinghouse Air Brake Company, one of the complainants in the foregoing bill named, who, being duly sworn, deposes and says that, so far as the statements herein contained are within his own knowledge, they are true, and so far as they are derived from the information of others he verily believes them to be true. And he further says that he verily believes the

said George Westinghouse, Jr., in said bill named, to be the original, true and first inventor of the new and useful improvements which are described in the letters patent Nos. 168,359, and 360,070 granted to George Westinghouse, Jr., and mentioned in the foregoing bill. And further, that the said deponent verily believes that the title of the said complainants is as set forth in said bill.

H. H. WESTINGHOUSE.

Sworn and subscribed before me this tenth day of December, A. D. 1889.

H. H. WHITTLESEY,
Notary Public.

(Notary's seal)

AMENDED BILL, SUIT TO ENJOIN PROSECUTION OF SUIT FOR INFRINGEMENT.

(Kessler vs. Eldred, 206 U. S. 285, 51 L. Ed. 1065.)

AMENDED BILL.

United States Circuit Court, Northern District of Illinois.

WILLIAM F. KESSLER, }
vs. }
GEORGE S. ELDRED. }

To the Judges of the Circuit Court of the United States for the Northern District of Illinois.

William F. Kessler, a citizen of the State of Indiana, residing at Auburn, in DeKalb County in said State, by leave of the court granted, brings this his amended bill against George S. Eldred, a citizen of the State of Illinois, and an inhabitant of the Northern District of said State, upon a cause of action in which the matter in dispute exceeds, exclusive of interest and costs, the sum and value of two thousand dollars.

I.

And thereupon your orator complains and says that prior to the year 1892, and from that time to the present continuously he was and has continued to be engaged, under the business name and style of the Standard Manufacturing Company, in the manufacture and sale of electric cigar lighters; that on the 10th day of October, 1898, said defendant, George S. Eldred, filed a bill in the Circuit Court of the United States for the District of Indiana against your orator as defendant, in which bill it was alleged among other things that the complainant therein was the owner of a certain patent granted out of the Patent Office of the United States to Josephus C. Chambers on the 7th day of March, 1893, and numbered 492,913, for an Electric Lamp Lighter, and that the defendant (your orator herein) had infringed said patent by the manufacture and sale of electric cigar lighters embodying the elements of the invention described and claimed in said patent: Your orator appeared to said bill and answered the same, setting up, among other defenses, that he had not infringed said patent; the complainant in said cause filed a replication to said answer, and proofs were taken by the parties respectively, and said cause submitted for final hearing by said court upon the bill, answer, replication, proofs and argument of counsel on the 13th day of June, 1899, and take under advisement by the court; afterwards, to-wit: on the 22d day of February, 1900, said court made and rendered its decision in said cause in which it found for the defendant upon the grounds, stated in the opinion filed at the time of the decision, that the electric cigar lighter manufactured and sold by the defendant in said cause (your orator here), of which a specimen was in evidence before the court, was not an infringement of said patent; and thereupon said court on the 19th day of June, 1900, made and

entered a final decree by which it was ordered and adjudged that said bill be dismissed for want of equity.

And thereupon said George S. Eldred, complainant there and defendant here, prayed an appeal from said judgment and decree to the United States Circuit Court of Appeals for the Seventh Circuit, which was granted, and after due proceedings had said George S. Eldred filed a duly certified transcript of the pleadings, record, proceedings and judgment in said cause with his appeal bond as required by the court in the office of the clerk of said United States Circuit Court of Appeals for the Seventh Circuit, and the said cause came on to be heard in due form on appeal in said court on the day of 1900, and was argued by counsel, and taken under advisement until the 7th day of February, 1900, when the said court rendered its decision in said cause and affirmed the said judgment of the United States Circuit Court for the District of Indiana. The opinion of said United States Circuit Court of Appeals making and announcing said decision and stating the ground of the same is printed in the February Reporter, Volume 106, Page 509, to which reference is hereby made. A printed copy of the record of said cause in the Circuit Court of the United States for the District of Indiana is filed herewith marked Exhibit A, and a copy of the judgment of said United States Circuit Court of Appeals affirming the judgment of the said Circuit Court is filed herewith marked Exhibit B.

II.

And your orator, further complaining, shows to the court on information and belief that afterwards, to-wit: on the day of said George S. Eldred, defendant herein, instituted a suit by bill in equity in the United States Circuit Court for the Western District of New York against one Alfred T. Kirkland, in which

he set up the same United States patent to Josephus C. Chambers, numbered 492,913 granted March 7, 1893, for Electric Lamp Lighter which was set up in his said suit against your orator, and in which he alleged that the defendant Kirkland had bought, used and sold certain electric cigar lighters which were infringements of said Chambers patent, and prayed an injunction, damages and other relief. Said cause came on for final hearing in said court and was decided in favor of the defendant, and it was adjudged that the said bill be dismissed for want of equity. And thereupon said Eldred took an appeal from said judgment to the United States Circuit Court of Appeals for the Second Circuit, by which court said judgment of the United States Circuit for the Western District of New York was reversed April 19, 1904, and said cause was remanded to the circuit court with directions to enter a decree for the complainant, and is now still pending for an accounting and such other proceedings as may be ordered. Your orator, further complaining, shows to the court on information and belief that the electric cigar lighter handled, used and sold by said Alfred T. Kirkland and put in evidence in said suit, and to which said judgment of said United States Circuit Court of Appeals for the Second Circuit related, was not manufactured by your orator, but by another manufacturer; that your orator was not a party to said suit, nor in any way connected therewith, and was not in any manner bound nor affected by said judgment.

III.

Your orator, further complaining, shows to the court on information and belief that on the 15th day of June, 1904, the defendant brought suit by bill in equity in the Circuit Court of the United States for the Western District of New York against John Breitwieser and Edward Breitwieser, setting up the same United States patent to

Josephus C. Chambers, numbered 492,913 dated March 7, 1893, which was set up in said suit against your orator and alleging infringement thereof by the manufacturers, use and sale of electric cigar lighters by the defendants therein containing the invention covered by said patent, and praying a permanent and also a temporary injunction, and is intending and threatening to push said suit to final hearing. Said John Breitwieser and Edward Breitwieser, defendants in said cause, are customers of your orator and all the electric cigar lighters which they have handled, used or sold were, as your orator is informed and believes, manufactured by your orator and sold to them by him and not by the manufacturer of the cigar lighters which were before the court in the said suit of said defendant Eldred against Alfred T. Kirkland, aforesaid.

IV.

Your orator, complaining further, shows to the court that since before the commencement of the suit hereinbefore recited by the defendant herein against your orator in the Circuit Court of the United States for the District of Indiana he has manufactured a style and type of electric cigar lighter identical in its construction and operation with the particular device which was introduced in evidence in said suit and referred to in the finding and judgment of both said circuit court and said United States Circuit Court of Appeals for the Seventh Circuit; that all the electric cigar lighters which he has sold to said John Breitwieser and Edward Breitwieser and which are the sole subject of said suit against them, were of the same kind and construction, and were and are identical in construction with the electric lighter which was the subject of the adjudication in said decrees in this complainant's favor against said Eldred. Inasmuch, therefore, as the particular issue decided in those