

Senate Report Accompanying Senate Bill No. 239, 24th Cong., 1st Sess. (April 28, 1836)

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APRIL 28, 1836.

Read, ordered to be printed, and that 3,000 additional copies be sent to the Senate.

Mr. RUGGLES made the following

REPORT,

WITH SENATE BILL NO. 239.

*The select committee appointed to take into consideration the state and condition of the Patent Office, and the laws relating to the issuing of patents for new and useful inventions and discoveries, submit the following report:*

The promotion of the arts and the improvements of manufactures, are the objects aimed at in granting patents for inventions. All civilized nations have provided in some form for the encouragement of inventive genius. England, from whom we derived, originally, most of our notions of national polity, and who has hitherto been considered the "queens of arts," is in no small degree indebted for the distinction, to the liberality with which she has always rewarded genius and science for their inventions and discoveries. Individual munificence and the patronage of wealthy associations, have there, as in France and Germany, done much to supply whatever was wanting in the liberality of the Government. But such patronage is necessarily partial in its operation. It is limited to particular objects, if not to particular individuals. There appears to be no better way of measuring out appropriate rewards for useful inventions, than, by a general law, to secure to all descriptions of persons, without discrimination, the exclusive use and sale, for a given period, of the thing invented. In this way they will generally derive a just and appropriate encouragement proportioned to the value of their respective inventions. It is not at this day to be doubted that the evil of the temporary monopoly is greatly overbalanced by the good the community ultimately derives from its toleration.

The granting of exclusive privileges was in England originally assumed as a prerogative of the Crown, from which it derived a revenue. It was at first limited to the introduction of manufactures from other countries. Afterwards like privileges were granted for new inventions made within the realm. Like all other regal prerogatives, it was subject to abuse, and Parliament found it necessary to limit and restrain it. This was done by the famous statute of monopolies, passed in the reign of James I, which defined the King's prerogative in respect to the description of grants which might legally be made, and among them were patents for inventions and new manufactures. The very brief reservation of right in the Crown contained in that statute, and the judicial decisions in cases arising under the grants of privileges made pursuant to it, constituted the whole of the English law on the subject up to 1835, when a law was passed by Parliament giving the right to file a disclaimer in certain cases, and containing some other less material provisions.

It is from those judicial decisions that we have derived most of the principles on which our laws on the subject are founded, and which have entered into and influenced the judicial expositions given to them. But the decisions of our courts have been characterized by a more enlightened and liberal application of equitable principles to cases of this description, in a just endeavor to sustain patents for meritorious inventions, instead of seeking to find, in the technicalities of law, a pretext for setting them aside.

Prior to the adoption of the Federal constitution, the States, within their narrow limits, could give very little encouragement to inventors by grants of exclusive privileges; and up to that time the arts had made very little progress on this side of the Atlantic. By the constitution of the United States that power was wisely vested in Congress.

The first act of Congress on the subject was passed in 1790. It authorized the Secretary of State, Secretary of War and the Attorney General, or any two of them, on application, to grant patents for such new inventions and discoveries as they should deem "*sufficiently useful and important.*" Under that act the board so constituted exercised the power of refusing patents for want of novelty in the invention or of sufficient utility and importance. This act extended the same privilege to aliens as to citizens. In 1793, it was repealed and another act passed, authorizing patents to citizens of the

United States only, to be granted by the Secretary of State, subject to the revision of the Attorney General. In 1800, the privilege to take out patents was extended to aliens who have resided two year in this country, and made oath of their intention of becoming citizens of the United States.

The act 1793 , which is still in force, gives, according to the practical construction it has received, no power to the Secretary to refuse a patent for want of either novelty or usefulness. The only inquiry is whether the terms and forms prescribed are complied with. The granting of patents therefore is but a ministerial duty. Every one who makes application is entitled to receive a patent by paying the duty required, and making his application and specification in conformity with the law. The necessary consequence is, that patents have, under the act of 1793 , been daily granted without regard to the question of novelty, or even utility in the ordinary sense; for it has been settled that the term useful, as used in this statute, is only in contradistinction to hurtful, injurious or pernicious. This construction (that no right is conferred to refuse a patent) has been given to the law by the Department charged with the duty of granting patents, not so much probably from any necessary and unavoidable import of the terms of it, as from a disinclination to exercise a power of so much importance, in cases where it is not clearly and distinctly granted. And it may be reasonably doubted whether it was the intention of Congress to confer such a power on the Secretary of State alone, since no provision is made for an appeal or other remedy for an incorrect decision adverse to the applicant. Besides, any person occupying that station might be supposed as little qualified by an acquaintance with the appropriate branches of science or of the arts, to decide such questions, as any other officer of the Government. And were he to undertake the task of such an examination as would be necessary to a decision in each case, he would have little time for other official duties.

Under the act referred to, the Department of State has been going on for more than forty years, issuing patents on every application, without any examination into the merit or novelty of the invention. And the evils which necessarily result from the law as it now exists, must continue to increase and multiply daily till Congress shall put a stop to them. Some of them are as follows:

1. A considerable portion of all the patents granted are worthless and void, as conflicting with, and infringing upon one another, or upon, public rights not subject to patent privileges; arising either from a want of due attention to the specifications of claim, or from the ignorance of the patentees of the state of the arts and manufactures, and of the inventions made in other countries, and even in our own.

2. The country becomes flooded with patent monopolies, embarrassing to bona fide patentees, whose rights are thus invaded on all sides; and not less embarrassing to the community generally, in the use of even the most common machinery and long-known improvements in the arts and common manufactures of the country.

3. Out of this interference and collision of patents and privileges, a great number of lawsuits arise, which are daily increasing in an alarming degree, onerous to the courts, ruinous to the parties, and injurious to society.

4. It opens the door to frauds, which have already become extensive and serious. It is represented to the committee that it is not uncommon for persons to copy patented machines in the model-room; and having made some slight immaterial alterations, they apply in the next room for patents. There being no power given to refuse them, patents are issued of course. Thus prepared, they go forth on a retailing expedition, selling out their patent rights for States, counties, and townships, to those who have no means at hand of detecting the imposition, and who find, when it is too late, that they have purchased what the vendors had no right to sell, and which they obtain thereby no right to use. This speculation in patent rights has become a regular business, and several hundred thousand dollars, it is estimated, are paid annually for void patents, many of which are thus fraudulently obtained.

In this collision and interference of patents, the original and meritorious inventor sees his invention, to the perfection of which he has devoted much time and expense, pirated from him, and he must forego the reward which the law was intended to secure to him in the exclusive right it grants; or he must become involved in numerous and expensive lawsuits in distant and various sections of the country, to protect and confirm his rights. If he be wise, he will generally avoid the latter, and submit to the former alternative of injustice, to which the Government, as the law now is, makes itself accessory. The practice is scarcely less reprehensible, of taking out patents for what has been long in public use, and what every one has therefore a right to use. The patentee in such cases being armed with the apparent authority of the Government, having the sanction of its highest officers the seal of state, scours the country, and by threats of prosecution, compels those who are found using the thing patented, to pay the patent price or commutation tribute. This exaction, unjust and iniquitous as it is, is usually submitted to.

The extent of the evils resulting from the unrestrained and promiscuous grants of patent privileges, may be imagined, when it is considered that there are now issued, since this year commenced, at the rate of more than a thousand a year; a considerable portion of which are doubtless void for want of originality in the inventions patented, either in whole or in some of the parts claimed as new.

A necessary consequence is, that patents even for new and meritorious inventions are so much depreciated in general estimation that they are of but little value to the patentees, and the object of the patent laws, that of promoting the arts by encouragement, is in a great measure defeated.

To prevent these evils in future is the first and most desirable object of a revision and alteration of the existing laws on this subject. The most obvious, if not the only means of effecting it, appears to be to establish a check upon the granting of patents, allowing them to issue only for such invention as are in fact new and entitled, by the merit of originality and utility, to be protected by law. The difficulty encountered in effecting this, is in determining what the check shall be; in whom the power to judge of inventions before granting a patent can safely be reposed, and how its exercise can be regulated and guarded, to prevent injustice through mistake of judgement or otherwise, by which honest and meritorious inventors might suffer wrong.

It is obvious that the power must, in the first instance, be exercised by the department charged with this branch of the public service. But as it may not be thought proper to intrust its final exercise to the department, it is deemed advisable to provide for an occasional tribunal to which an appeal may be taken. And as a further security against any possible injustice, it is thought proper to give the applicant in certain cases, where there may be an adverse party to contest his right, an opportunity to have the decision revised in a court of law.

The duty of examination and investigation necessary to a first decision at the Patent Office, is an important one, and will call for the exercise and application of much scientific acquirement and knowledge of the existing state of the arts in all their branches, not only in our own, but in other countries. Such qualifications in the officers charged with the duty, will be the more necessary and desirable, because the information upon which a rejection is made at the office, will be available in the final decision. It becomes necessary, then, to give the Patent Office a new organization, and to secure to it a character altogether above a mere clerkship. The competency and efficiency of its officers should correspond with their responsibility, and with the nature and importance of the duties required of them. When the existing organization was adopted, the granting of patents was a matter of little importance, compared with what it now is. The arts in this country were but little understood, and but little cultivated. Agriculture and commerce constituted our principal business. We had few manufactures, except those of a domestic character, adapted to ordinary domestic wants. Our workshops were in Europe. Enterprise, in this country, ran in other channels. The War of 1812 gave it a new direction, and a new impulse, by creating an occasion for workshops of our own. Necessity became the mother of invention, and American manufactures sprang into existence as by enchantment. Their rise and progress may be dated from that period; and a more rapid advancement in the arts, and a more astonishing development of human ingenuity, have never taken place in any other age or country. This remark will appear far from extravagant to every one who will take the trouble to examine the subject. This awakening of dormant genius to a practical and active existence, next to the arousing of the political and patriotic energies of the Union, was one of the great results of that contest. It opened to the country a new era. The nation entered upon a new existence. And since that period, American industry and enterprise, guided by American ingenuity and intellect, have achieved what would have taken Europe a century to accomplish. She has become all at once a manufacturing, as well as an agricultural and commercial nation. The useful arts have been cultivated with a success before unexampled, and have contributed, in no small degree, to the wonderful improvements which have spread themselves over our whole country. Who can predict the results, even in a few years, of that spirit of enterprise which pervades the Union, when, aided by the Genius of Invention, and propelled onward by powers which she alone can bring into exercise? The very elements are submissive to her will, and all the endless combinations of mechanism are subservient to her purposes. She participates in almost every business and employment of man. Agriculture itself might as well dispense with fertility of soil, as with her aid in its cultivation.

The greatly increasing number of patents granted, affords some indication of the improvements which have been going on in the useful arts from year to year. The average number issued annually, from 1790 to 1800, was but 26; from 1800 to 1810, the average number was 91; from 1810 to 1820, it was 200; and, for the last ten years, the average number has been 535. During the last year, there were issued 776; and there have been granted in the first quarter of the present year 274, being more in three months than were issued in the whole of the first period of ten years. In the 22 years preceding the war of 1812, the average annual number was 73. The first quarter of the present year indicates an aggregate for the year, of 1,096; the amount of the duties on which will be upwards of \$ 32,000. The whole number issued at the Patent Office, under the laws of the United States, up to the 31st of March last, is 9,731. This is more than

double the number which have been issued either in England or France, during the same period. In England for ten years preceding 1830, the average number of patents granted in one year was 145.

Whoever imagines that, because so many inventions and so many improvements in machinery have been made, there remains little else to be discovered, has but a feeble conception of the infinitude and vastness of mechanical powers, or of the unlimited reach of science. Much as has been discovered, infinitely more remains unrevealed. The ingenuity of man is exploring a region without limits, and delving in a mine whose treasures are exhaustless. "Neither are all the mysteries of nature unfolded, nor the mind tired in the pursuit of them."

The first conceptions of ingenuity, like the first suggestions of science, are theories which require something of experiment and practical exemplification to perfect. Mechanical inventions are at first necessarily crude and incomplete. Time is required to develop their imperfections and to make the improvements necessary to their adaptation to practical uses. Inventors generally obtain patents before they venture upon those experiments which only can test their inventions. They are apprehensive of being forestalled in their discoveries, and see no other means of protecting themselves against piracy and fraud, than by securing patents at once.

A remedy for this may be easily had in a provision authorizing caveats to be filed in the office, giving security to the right of discovery for a time sufficient for making the necessary experiments, inquiries and improvements.

Heretofore aliens not resident in this country, have not been admitted to the privileges of our patent laws. But, as American citizens are allowed to take out patents in England and in other countries, a principle of reciprocity would seem to require that foreigners should have similar privileges here, on paying a similar duty or amount of fees that is exacted of our citizens abroad. The fees payable in England, on taking out a patent, amount to \$ 585. If a patent be taken out for the three kingdoms of England, Ireland, and Scotland, they amount to \$ 1,680. In France they are \$ 309; in Spain \$ 292; Austria, \$ 208.

A power in the Commissioner of the Patent Office to reject applications for want of novelty in the invention, it is believed, will have a most beneficial and salutary effect in relieving meritorious inventors, and the community generally, from serious evils growing out of the granting of patents for every thing indiscriminately, creating interfering claims, encouraging fraudulent speculators in patent rights, deluging the country with worthless monopolies, and laying the foundation for endless litigation.

In nineteen cases out of twenty, probably, the opinion of the Commissioner, accompanied by the information on which his decision is founded, will be acquiesced in. When unsatisfactory, the rights of the applicant will find ample protection in an appeal to a board of examiners, selected for their particular knowledge of the subject-matter of the invention in each case.

By this means, without danger to actual and honest inventors, the number of patents would be somewhat diminished. But there would be more confidence in those which should be granted, and as those which have been heretofore issued, should be daily expiring by their limitation, the community would begin to feel and realize the advantages of such a change. The present law waits till infringements and frauds are consummated--nay, it even aids them; and then it offers an inadequate remedy for the injury, by giving an action of damages. It ought, rather, by refusing to grant interfering patents, to render prosecutions unnecessary. Instead of sanctioning the wrong by granting the privilege to commit it, it should arrest injury and injustice at the threshold, and put an end to litigation before it begins.

Important and interesting as the Patent Office is now considered, it is believed that, under such new organization as is contemplated by the bill present herewith, it will contribute largely to the great interests of the country, and bear no small part in elevating our national character. American ingenuity has obtained much consideration on the other side of the Atlantic. Even the manufactures of England are not a little indebted to it for some of their most valuable improvements. Her woollen manufactures, especially, have, within a few years, undergone an entire change, by the adoption of American inventions, by which wool has been made as yielding and submissive to the power of machinery as any material whatever. Cotton machinery has also been greatly improved in the hands of our mechanics; and while England received from us three-fourths of the cotton she uses in raw material, we furnish her also with some of the most valuable improvements in the means of manufacturing it. Indeed, what mechanism or manufacture has, for the last twenty years, been brought across the Atlantic, that has not, on being returned, borne the distinguishing marks of the superior ingenuity of American mechanists? Formerly, we borrowed and copied much that was valuable from Europe. Now, Europe is borrowing and copying, with no little advantage, from us; and she must not be too much surprised if she shall soon find a formidable balance against her.

To carry fully into effect the objects which have been had in view, it will be necessary to provide larger and more commodious rooms for models, &c., than those now occupied for that purpose. They are insufficient for the models of machinery and other inventions now deposited there, and the number will be increasing several hundred, perhaps a thousand, every year. A great number, supposed to be about five hundred, from a want of room for them elsewhere, have been stowed away in a dark garret. Those which occupy the rooms designed for them, as crowded together in a manner unfavorable for exhibition or examination. In such a situation, it is impossible to give them any systematic or scientific arrangement. This disorder and confusion must necessarily be consigned to the garret, the common receptacle, where, instead of promoting a taste for, and facilitating the study of, the useful arts, they will only afford evidence of the improvidence of the Government. In addition to this, the present building is too much exposed to destruction by fire. The loss of the records and drawings and of the several thousands of interesting and valuable models now preserved there, would be, in a great degree, irreparable. There is not additional room to be had in the building they now occupy. The Post Office Department, in the same building, instead of having any room to spare which is not appropriated to it, requires a considerable extension of accommodations, from its increased and increasing business. It needs the whole building. The only way, therefore, of providing the necessary extension of room for the accommodation of the Post Office Department, and the city post office, and of providing the requisite accommodations for the Patent Office, is to erect a suitable fire-proof building for the latter on some one of the public lots. There are ample funds arising from duties on patents, heretofore paid into the Treasury, to the account of clerk hire in that office, which remain unexpended. A portion of that surplus fund, being now about \$ 152,000, may well be appropriated to the construction of a building which should be commodious and comparatively safe from fire.

Such a building as this branch of the public interests requires, would do honor to the Government and the country. The Patent Office, with such accommodations, containing the records of this age of inventions, displaying in its halls and galleries numberless models of ingenious and useful mechanism, and contrivances in almost infinite variety, adapted to the mechanic arts, to manufactures, to husbandry, to navigation, steam power, horse power, water power, railroad transportation, and, in fine, to all the common trades and mechanical pursuits of life, as well as to our rapidly multiplying and magnificent public works, would present an object of great interest and tend not a little to elevate our national character. It has been justly remarked that we can go into no mechanic shop, in to no manufactory of any description, upon no farm or plantation, or travel a mile on our railroads or in our steamboats, without seeing the evidence of our originality, and witnessing the fruits and effects of our ingenuity and enterprise. All the inventions and improvements in mechanism which have done so much towards advancing the useful arts and manufactures, should, as far as practicable, be exhibited in one view in the halls of the Patent Office. Such a display would attract the attention of the many thousands who annually visit the capital of the Union from all quarters of the country, and all parts of the world. No other nation has yet anything to be compared with it; neither England nor France has ever required models to be deposited of patented machinery. Collections of models and drawings have sometimes been made by private associations, but they are small in number compared with those we possess.

In addition to the models of machinery, it is proposed to embrace an exhibition of specimens of useful and elegant fabrics and of works of art, which manufactures and artifices may place there for that purpose. It might, too, embrace a cabinet of interesting minerals, which may be received from time to time from the various parts of our widely-extended country, with polished specimens of its beautiful marbles from their different locations, illustrating the geology and many of the natural resources of the country; and, also, a collection of Indian curiosities and antiquities, many of which are now in the possession of one of the Departments, boxed up for want of some suitable place for their exhibition.

In short, the halls of the Patent Office should present a national museum of the arts, and be a general repository of all the inventions and improvements in machinery and manufactures, of which our country can claim the honor; together with such other objects of interest as might conveniently and properly be placed under the superintendence of the Commissioner. Such an institution, while it would be an object of just pride to every American, would have scarcely less influence in advancing and accelerating the progress of the useful arts and the improvement of our manufactures, than would even the encouragement afforded by granting patents for inventions or establishing high tariffs of protection.

With these views, the committee cannot hesitate to recommend an entire reorganization of the Patent Office, and several material alterations in our law of patents, suiting it to the present condition of the arts and the altered circumstances of the country.

A bill in conformity with their views is herewith submitted.