# TITLE LX.

## PATENTS, TRADE-MARKS, AND COPYRIGHTS.

## CHAPTER ONE.

### PATENTS.


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Patents, how issued, attested, and recorded.

SEC. 4883. All patents shall be issued in the name of the United States of America, under the seal of the Patent-Office, and shall be signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and they shall be recorded, together with the specifications, in the Patent-Office, in books to be kept for that purpose.

8 July, 1870, c. 230, s. 21, v. 16, p. 200.

Doughty *v.* West, 6 Blatch., 429.

Contents and duration.

SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or 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, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

8 July, 1870, c. 230, s. 22, v. 16, p. 201.

Simpson *v.* Wilson, 4 How., 709; Pitts *v.* Whitman, 2 Story, 614; Sullivan *v.* Redfield, 1 Paine, 441; Emerson *v.* Hogg, 2 Blatch., 9; Doughty *v.* West, 6 Blatch., 429; Whitney *v.* Emmett, Baldw., 314; Boyd *v.* Brown, 3 McLean, 297.

Date of patent.

8 July, 1870, c. 220, s. 23, v. 16, p. 201. 18 *June*, 1874, c. 301, *v.* 18, *p.* 79.

SEC. 4885. Every patent shall bear date as of a day not later than six months from the time at which it was passed and allowed and notice thereof was sent to the applicant or his agent; and if the final fee is not paid within that period the patent shall be withheld.

What inventions are patentable.

8 July, 1870, c. 230, s. 24, v. 16, p. 201.

SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement thereof, 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 for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor.

Gayler *v.* Brown, 10 How., 477; Hotchkiss *v.* Greenwood, 11 How., 248; Le Roy *v.* Tatham, 14 How., 156; O'Reilly *v.* Morse, 15 How., 62; Corning *v.* Burden, 15 How., 252; Kendall *v.* Winsor, 21 How., 322; Appleton *v.* Bacon and North, 2 Bl., 699; Burr *v.* Duryee, 1 Wall., 531; Jacobs *v.* Baker, 7 Wall., 295; Tyler *v.* Boston, 7 Wall., 327; Agawam Co. *v.* Jordan, 7 Wall., 583; Whitely *v.* Swayne, 7 Wall., 685; Rubber Co. *v.* Goodyear, 9 Wall., 788; Stimpson *v.* Woodman, 10 Wall., 117; Gorham Co. *v.* White, 14 Wall., 511; Mowry *v.* Whitney, 14 Wall., 620; Carlton *v.* Bokee, 17 Wall., 463; Coffin *v.* Ogden, 18 Wall., 120; Hicks *v.* Kelsey, 18 Wall., 670; Woodcock *v.* Parker, 1 Gallis., 437; Odiorne *v.* Winkley, 2 Gallis., 51; Ames *v.* Howard, 1 Sumn., 482; Ryan *v.* Goodwin, 3 Sumn., 518; How *v.* Abbott, 2 Story, 194; Bean *v.* Smallwood, 2 Story, 411; Carver *v.* Braintree Manufacturing Co., 2 Story, 438; Hovey *v.* Stevens, 3 Wood. & M., 17; Foote *v.* Silsby, 1 Blatch., 445; Parkhurst *v.* Kinsman, 1 Blatch., 493; Hall *v.* Wiles, 2 Blatch., 194; McCormick *v.* Seymour, 2 Blatch., 240; Ellithorpe *v.* Robinson, 4 Blatch., 307; Morton *v.* The New York Eye Infirmary, 5 Blatch., 116; Hoffman *v.* Stiefel, 7 Blatch., 58; Reutgen *v.* Kanowrs and Graunt, 1 Wash., 171; Park *v.* Little and Wood, 3 Wash., 198; Kneass *v.* The Schuylkill Bank, 4 Wash., 12; Whitney *v.* Emmett, Baldw., 314; Goodyear *v.* The Railroad, 2 Wall., jr., 360; Smith *v.* Pearce, 2 McLean, 178; Root *v.* Ball and Davis, 4 McLean, 177; Hotchkiss *v.* Greenwood and Wood, 4 McLean, 461; Stainthorp *v.* Humiston, 1 Fish. Pat. Cas., 475; Poillon *v.* Schmidt, 3 Fish. Pat. Cas., 476; Consolidated Fruit Jar Co. *v.* Wright, 94 U. S., 92; Dunbar *v.* Myers, 94 U. S., 187; Fuller *v.* Yentzer, 94 U. S., 288; Russell and Erwin Manufacturing Co. *v.* Mallory, 10 Blatch., 140; Nat. Spring Co. *v.* Union Car-Spring Co., 12 Blatch., 80.

Patents for inventions previously patented abroad.

8 July, 1870, c. 230, s. 25, v. 16, p. 201.

SEC. 4887. No person shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid, by reason of its having been first patented or caused to be patented in a foreign country, unless the same has been introduced into public use in the United States for more than two years prior to the application. But every patent granted for an invention which has been previously patented in a foreign country shall be so limited as to expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest term, and in no case shall it be in force more than seventeen years.

O'Reilly *v.* Morse, 15 How., 62; Hays *v.* Sulsor, 1 Fish. Pat. Cas., 532; Judson *v.* Cope, 1 Fish. Pat. Cas., 615; Cammeyer *v.* Newton, 94 U. S., 225; Weston *v.* White, 13 Blatch., 364.

Requisites of application, description, specification, and claim.

8 July, 1870, c. 230, s. 26, v. 16, p. 201.

SEC. 4888. Before any inventor or discoverer shall receive a patent for his invention or discovery, he shall make application therefor, in writing, to the Commissioner of Patents, and shall file in the Patent-Office a written description of the same, and of the manner and process of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of a machine, he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions; and he shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery. The specification and claim shall be signed by the inventor and attested by two witnesses.

Evans *v.* Eaton, 7 Wh., 434; Wood *v.* Underhill, 5 How., 1; Hogg *v.* Emerson, 11 How., 587; O'Reilly *v.* Morse, 15 How., 62; Corning *v.* Burden, 15 How., 252; Le Roy *v.* Tatham, 22 How., 132; Phillips *v.* Paige, 24 How., 164; Tyler *v.* Boston, 7 Wall., 327; Carlton *v.* Bokee, 17 Wall., 463; Langdon *v.* De Groot, 1 Paine, 203; Sullivan *v.* Redfield, 1 Paine, 450; Many *v.* Jagger, 1 Blatch., 372; Gray and Osgood *v.* James, Pet. C. C., 401; Park *v.* Little and Wood, 3 Wash., 198; Brooks and Morris *v.* Bicknell and Jenkins, 3 McLean, 250; Gould's Manufacturing Co. *v.* Cowing, 12 Blatch., 243.

Drawings, when requisite.

SEC. 4889. When the nature of the case admits of drawings, the applicant shall furnish one copy signed by the inventor or his attorney in fact,

and attested by two witnesses, which shall be filed in the Patent-Office; and a copy of the drawing, to be furnished by the Patent-Office, shall be attached to the patent as a part of the specification.

8 July, 1870, c. 230, s. 27, v. 16, p. 201.

O'Reilly *v.* Morse, 15 How., 62; Washburn *v.* Gould, 3 Story, 133.

Specimens of ingredients, &c.

SEC. 4890. When the invention or discovery is of a composition of matter, the applicant, if required by the Commissioner, shall furnish specimens of ingredients and of the composition, sufficient in quantity for the purpose of experiment.

8 July, 1870, c. 230, s. 28, v. 16, p. 201.

Model, when requisite.

SEC. 4891. In all cases which admit of representation by model, the applicant, if required by the Commissioner, shall furnish a model of convenient size to exhibit advantageously the several parts of his invention or discovery.

8 July, 1830, c. 230,s.29,v.16,p.201.

Hogg *v.* Emerson, 6 How., 437; McCormick *v.* Talcott, 20 How., 409.

Oath required from applicant.

SEC. 4892. The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen. Such oath may be made before any person within the United States authorized by law to administer oaths, or when the applicant resides in a foreign country, before any minister, chargé d'affaires, consul, or commercial agent, holding commission under the Government of the United States, or before any notary public of the foreign country in which the applicant may be.

8 July, 1870, c. 230, s. 30, v. 16, p. 202.

Hogg *v.* Emerson, 6 How.,437; Whittemore *v.* Cutter, 1 Gall., 429; Crompton *v.* Belknap Mills, 3 Fish. Pat. Cas., 536.

Examination, and issuing patent.

SEC. 4893. On the filing of any such application and the payment of the fees required by law, the Commissioner of Patents shall cause an examination to be made of the alleged new invention or discovery; and if on such examination it shall appear that the claimant is justly entitled to a patent under the law, and that the same is sufficiently useful and important, the Commissioner shall issue a patent therefor.

8 July, 1870, c. 230, s. 31, v. 16, p. 202.

LeRoy *v.* Clayton, 2 Saw., 493.

Limitation upon time of completing applications.

SEC. 4894. All applications for patents shall be completed and prepared for examination within two years after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within two years after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable.

8 July, 1870, c. 230,s.32,v.16,p.202.

Bell *v.* Daniels, 1 Bond, 212.

Patents granted to assignee.

SEC. 4895. Patents may be granted and issued or re-issued to the assignee of the inventor or discoverer; but the assignment must first be entered of record in the Patent-Office. And in all cases of an application by an assignee for the issue of a patent, the application shall be made and the specification sworn to by the inventor or discoverer; and in all cases of an application for a re-issue of any patent, the application must be made and the corrected specification signed by the inventor or discoverer, if he is living, unless the patent was issued and the assignment made before the eighth day of July, eighteen hundred and seventy.

8 July, 1870, c. 230,s.33,v.16,p.202. 3 Mar., 1871, c. 132, v. 16, p. 583.

Gayler *v.* Leonard, 10 How., 477; Swift *v.* Whisen, 3 Fish Pat. Cas., 343.

When and on what oath executor or administrator may obtain patent.

SEC. 4896. When any person, having made any new invention or discovery for which a patent might have been granted, dies before a patent is granted, the right of applying for and obtaining the patent shall devolve on his executor or administrator, in trust for the heirs at law of the deceased, in case he shall have died intestate; or if he shall have left a will, disposing of the same, then in trust for his devisees, in as full manner and on the same terms and conditions as the same might have been claimed or enjoyed by him in his life time; and when the application is made by such legal representatives, the oath or affirmation required to be made shall be so varied in form that it can be made by them.

8 July, 1870, c. 230, s. 34, v. 16, p. 202.

Rubber Co. *v.* Goodyear, 9 Wall., 788.

Renewal of application in cases of failure to pay fees in season.

SEC. 4897. Any person who has an interest in an invention or discovery, whether as inventor, discoverer, or assignee, for which a patent was ordered to issue upon the payment of the final fee, but who fails to make payment thereof within six months from the time at which it was passed and allowed, and notice thereof was sent to the applicant or his agent, shall have a right to make an application for a patent for such

8 July, 1870, c. 230, s. 35, v. 16, p. 202.

invention or discovery the same as in the case of an original application. But such second application must be made within two years after the allowance of the original application. But no person shall be held responsible in damages for the manufacture or use of any article or thing for which a patent was ordered to issue under such renewed application prior to the issue of the patent. And upon the hearing of renewed applications preferred under this section, abandonment shall be considered as a question of fact.

Assignments of patents.

8 July, 1870, c. 230, s. 36, v. 16, p. 203.

SEC. 4898. 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 his patent to the whole or any specified part of the United States. An assignment, grant, or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent-Office within three months from the date thereof.

Woodworth *v.* Wilson, 4 How., 712; Wilson *v.* Simpson, 9 How., 109; Gaylor *v.* Wilder, 10 How., 494; Bloomer *v.* McQuewan, 14 How., 539; Kinsman *v.* Parkhurst, 18 How., 289; Hartshorn *v.* Day, 19 How., 211; Railroad Co. *v.* Trimble, 10 Wall., 367; Nicolson Pavement Co. *v.* Jenkins, 14 Wall., 452; Adams *v.* Burke, 17 Wall., 453; Eunson *v.* Dodge, 18 Wall., 414; Goodyear *v.* Cary, 4 Blatch., 271; Perry *v.* Corning, 7 Blatch., 195; Bell *v.* McCullough, 1 Bond, 194; Hussey *v.* Whitely, 1 Bond, 407; Pitts *v.* Jameson, 15 Barb., (N. Y.,) 310; Celluloid Manufacturing Co. *v.* Goodyear Dental Vul. Co., 13 Blatch., 375; May *v.* Chaffee, 2 Dill., 385; McKay *v.* Wooster, 2 Saw., 373; Turnbull *v.* Weir Plow Co., 6 Biss., 225.

Persons purchasing of inventor, before application, may use or sell the thing purchased.

8 July, 1870, c. 230, s. 37, v. 16, p. 203.

SEC. 4899. Every person who purchases of the inventor, or discoverer, or with his knowledge and consent constructs any newly invented or discovered machine, or other patentable article, prior to the application by the inventor or discoverer for a patent, or who sells or uses one so constructed, shall have the right to use, and vend to others to be used, the specific thing so made or purchased, without liability therefor.

Kendall *v.* Winsor, 21 How., 322; Sargent *v.* Seagrave, 2 Curt. C. C., 555; Root *v.* Ball and Davis, 4 McLean, 177.

Patented articles must be marked as such.

8 July, 1870, c. 230, s. 38, v. 16, p. 203.

SEC. 4900. It shall be the duty of all patentees, and their assigns and legal representatives, and of all persons making or vending any patented article for or under them, to give sufficient notice to the public that the same is patented; either by fixing thereon the word "patented," together with the day and year the patent was granted; or when, from the character of the article, this cannot be done, by fixing to it, or to the package wherein one or more of them is inclosed, a label containing the like notice; and in any suit for infringement, by the party failing so to mark, no damages shall be recovered by the plaintiff, except on proof that the defendant was duly notified of the infringement, and continued, after such notice, to make, use, or vend the article so patented.

Rubber Co. *v.* Goodyear, 9 Wall., 788; Goodyear *v.* Allyn, 6 Blatch., 33.

Penalty for falsely marking or labeling articles as patented.

8 July, 1870, c. 230, s. 39, v. 16, p. 203.

SEC. 4901. Every person who, in any manner, marks upon anything made, used, or sold by him for which he has not obtained a patent, the name or any imitation of the name of any person who has obtained a patent therefor without the consent of such patentee, or his assigns or legal representatives; or

Who, in any manner, marks upon or affixes to any such patented article the word "patent" or "patentee," or the words "letters-patent," or any word of like import, with intent to imitate or counterfeit the mark or device of the patentee, without having the license or consent of such patentee or his assigns or legal representatives; or

Who, in any manner, marks upon or affixes to any unpatented article the word "patent," or any word importing that the same is patented, for the purpose of deceiving the public, shall be liable, for every such offense, to a penalty of not less than one hundred dollars, with costs; one-half of said penalty to the person who shall sue for the same, and the other to the use of the United States, to be recovered by suit in any district court of the United States within whose jurisdiction such offense may have been committed.

Filing and effect of caveats.

SEC. 4902. Any citizen of the United States who makes any new invention or discovery, and desires further time to mature the same, may, on

payment of the fees required by law, file in the Patent-Office a caveat setting forth the design thereof, and of its distinguishing characteristics, and praying protection of his right until he shall have matured his invention. Such caveat shall be filed in the confidential archives of the office and preserved in secrecy, and shall be operative for the term of one year from the filing thereof; and if application is made within the year by any other person for a patent with which such caveat would in any manner interfere, the Commissioner shall deposit the description, specification, drawings, and model of such application in like manner in the confidential archives of the office, and give notice thereof, by mail, to the person by whom the caveat was filed. If such person desires to avail himself of his caveat, he shall file his description, specifications, drawings, and model within three months from the time of placing the notice in the post-office in Washington, with the usual time required for transmitting it to the caveator added thereto; which time shall be indorsed on the notice. An alien shall have the privilege herein granted, if he has resided in the United States one year next preceding the filing of his caveat, and has made oath of his intention to become a citizen.

8 July, 1870, c. 230, s. 40, v. 16, p. 203.

Bell *v.* Daniels, 1 Bond, 212.
Weston *v.* White, 13 Blatch., 447.

SEC. 4903. Whenever, on examination, any claim for a patent is rejected, the Commissioner shall notify the applicant thereof, giving him briefly the reasons for such rejection, together with such information and references as may be useful in judging of the propriety of renewing his application or of altering his specification; and if, after receiving such notice, the applicant persists in his claim for a patent, with or without altering his specifications, the Commissioner shall order a re-examination of the case.

Notice of rejection of claim for patent to be given to applicant.

8 July, 1870, c. 230, s. 41, v. 16, p. 204.

SEC. 4904. Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, he shall give notice thereof to the applicants, or applicant and patentee, as the case may be, and shall direct the primary examiner to proceed to determine the question of priority of invention. And the Commissioner may issue a patent to the party who is adjudged the prior inventor, unless the adverse party appeals from the decision of the primary examiner, or of the board of examiners-in-chief, as the case may be, within such time, not less than twenty days, as the Commissioner shall prescribe.

Interferences.

8 July, 1870, c. 230, s. 42, v. 16, p. 204.

SEC. 4905. The Commissioner of Patents may establish rules for taking affidavits and depositions required in cases pending in the Patent-Office, and such affidavits and depositions may be taken before any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where the officer resides.

Affidavits and depositions.

8 July, 1870, c. 230, s. 43, v. 16, p. 204.

SEC. 4906. The clerk of any court of the United States, for any district or Territory wherein testimony is to be taken for use in any contested case pending in the Patent-Office, shall, upon the application of any party thereto, or of his agent or attorney, issue a subpœna for any witness residing or being within such district or Territory, commanding him to appear and testify before any officer in such district or Territory authorized to take depositions and affidavits, at any time and place in the subpœna stated. But no witness shall be required to attend at any place more than forty miles from the place where the subpœna is served upon him.

Subpœnas to witnesses.

8 July, 1870, c. 230, ss. 44, 45, v. 16, p. 204.

SEC. 4907. Every witness duly subpœned and in attendance shall be allowed the same fees as are allowed to witnesses attending the courts of the United States.

Witness fees.

Ibid., s. 45.

SEC. 4908. Whenever any witness, after being duly served with such subpœna, neglects or refuses to appear, or after appearing refuses to testify, the judge of the court whose clerk issued the subpœna may, on proof of such neglect or refusal, enforce obedience to the process, or punish the disobedience, as in other like cases. But no witness shall be deemed guilty of contempt for disobeying such subpœna, unless his fees and traveling expenses in going to, returning from, and one day's attendance at the place of examination, are paid or tendered him at the time

Penalty for failing to attend or refusing to testify.

Ibid., ss. 44, 45.

of the service of the subpœna; nor for refusing to disclose any secret invention or discovery made or owned by himself.

Appeals from primary examiners to examiners-in-chief

Ibid., s. 46.

SEC. 4909. Every applicant for a patent or for the re-issue of a patent, any of the claims of which have been twice rejected, and every party to an interference, may appeal from the decision of the primary examiner, or of the examiner in charge of interferences in such case, to the board of examiners-in-chief; having once paid the fee for such appeal.

From examiners-in-chief to Commissioner.

Ibid., s. 47, p. 205.

SEC. 4910. If such party is dissatisfied with the decision of the examiners-in-chief, he may, on payment of the fee prescribed, appeal to the Commissioner in person.

From the Commissioner to the supreme court, D. C.

Ibid., s. 48.

SEC. 4911. If such party, except a party to an interference, is dissatisfied with the decision of the Commissioner, he may appeal to the supreme court of the District of Columbia, sitting in banc.

Notice of such appeal.

Ibid., s. 49.

SEC. 4912. When an appeal is taken to the supreme court of the District of Columbia, the appellant shall give notice thereof to the Commissioner, and file in the Patent-Office, within such time as the Commissioner shall appoint, his reasons of appeal, specifically set forth in writing.

Proceedings on appeal to supreme court.

Ibid., s. 51.

SEC. 4913. The court shall, before hearing such appeal, give notice to the Commissioner of the time and place of the hearing, and on receiving such notice the Commissioner shall give notice of such time and place in such manner as the court may prescribe, to all parties who appear to be interested therein. The party appealing shall lay before the court certified copies of all the original papers and evidence in the case, and the Commissioner shall furnish the court with the grounds of his decision, fully set forth in writing, touching all the points involved by the reasons of appeal. And at the request of any party interested, or of the court, the Commissioner and the examiners may be examined under oath, in explanation of the principles of the thing for which a patent is demanded.

Determination of such appeal, and its effect.

Ibid., s. 50.

Fry *v.* Quinlan, 13 Blatch., 205.

SEC. 4914. The court, on petition, shall hear and determine such appeal, and revise the decision appealed from in a summary way on the evidence produced before the Commissioner, at such early and convenient time as the court may appoint; and the revision shall be confined to the points set forth in the reasons of appeal. After hearing the case the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent-Office, and shall govern the further proceedings in the case. But no opinion or decision of the court in any such case shall preclude any person interested from the right to contest the validity of such patent in any court wherein the same may be called in question.

Patents obtainable by bill in equity.

Ibid., s. 52.

SEC. 4915. Whenever a patent on application is refused, either by the Commissioner of Patents or by the supreme court of the District of Columbia upon appeal from the Commissioner, the applicant may have remedy by bill in equity; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge that such applicant is entitled, according to law, to receive a patent for his invention, as specified in his claim, or for any part thereof, as the facts in the case may appear. And such adjudication, if it be in favor of the right of the applicant, shall authorize the Commissioner to issue such patent on the applicant filing in the Patent-Office a copy of the adjudication, and otherwise complying with the requirements of law. In all cases, where there is no opposing party, a copy of the bill shall be served on the Commissioner; and all the expenses of the proceeding shall be paid by the applicant, whether the final decision is in his favor or not. [See § 629, ¶ 9.]

Re-issue of defective patents.

8 July, 1870, c. 230, s. 53, v. 16, p. 205.

Shaw *v.* Cooper, 7 Pet., 292; Wilson *v.* Rousseau, 4 How.,

SEC. 4916. Whenever any patent is inoperative or invalid, by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new, if the error has arisen by inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, the Commissioner shall, on the surrender of such patent and the payment of the duty required by law, cause a new patent for the same invention, and in accordance with the corrected specification, to be issued to the patentee, or, in

the case of his death or of an assignment of the whole or any undivided part of the original patent, then to his executors, administrators, or assigns, for the unexpired part of the term of the original patent. Such surrender shall take effect upon the issue of the amended patent. 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 a re-issue for each of such re-issued letters-patent. The specifications and claim in every such case shall be subject to revision and restriction in the same manner as original applications are. Every patent so re-issued, together with the corrected specification, shall have the same effect and operation in law, on the trial of all actions for causes thereafter arising, as if the same had been originally filed in such corrected form; but no new matter shall be introduced into the specification, nor in case of a machine-patent shall the model or drawings be amended, except each by the other; but when there is neither model nor drawing, amendments may be made upon proof satisfactory to the Commissioner that such new matter or amendment was a part of the original invention, and was omitted from the specification by inadvertence, accident, or mistake, as aforesaid.

646; Moffit *v.* Garr, 1 Bl., 273; Reed *v.* Bowman, 2 Wall., 591; Commissioner *v.* Whitely, 4 Wall., 522; Bennet *v.* Fowler, 8 Wall., 445; Morey *v.* Lockwood, 8 Wall., 230; Seymour *v.* Osborne, 11 Wall., 516; Carlton *v.* Bokee, 17 Wall., 463; Ames *v.* Howard, 1 Sumn., 488; Carver *v.* Braintree Manufacturing Company, 2 Story, 439; Allen *v.* Blunt, 3 Story, 743; Woodward *v.* Stone, 3 Story, 753; Woodworth *v.* Hall, 1 Wood. & M., 261, 262; Allen *v.* Blunt, 2 Wood. & M., 138; Woodworth *v.* Edwards, 3 Wood. & M., 126; Forbes *v.* Stove Company, 2 Cliff., 379; Cahart *v.* Austin, 2 Cliff., 528; Gibson *v.* Harris, 1 Blatch., 169; Potter *v.* Holland, 4 Blatch., 206; Batten *v.* Taggert, 2 Wall., jr., 102; Stanley *v.* Whipple, 2 McLean, 37; Moffit *v.* Garr, 1 Bond, 315; Russell *v.* Dodge, 93 U. S., 460; Tarr *v.* Webb, 10 Blatch., 96; Salamanca Company *v.* Haven, 3 Dill., 131; McComb *v.* Ernest et al., 1 Woods., 195; Calkins *v.* Bertram, 6 Biss., 494.

Disclaimer.

8 July, 1870, c. 230, s. 54, v. 16, p. 206.

SEC. 4917. Whenever, through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, a patentee has claimed more than that of which he was the original or first inventor or discoverer, 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, make disclaimer of such parts of the thing patented as he 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 its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing it.

Silsby *v.* Foote, 14 How., 218; O'Reily *v.* Morse, 15 How., 121; Seymour v. McCormick, 19 How., 206; Wyeth v. Stone, 1 Story, 294; Reed *v.* Cutter, 1 Story, 600; Guyon *v.* Serrell, 1 Blatch., 244; Hall *v.* Wilds, 2 Blatch., 198; Tuck *v.* Bramhill, 6 Blatch., 95; Whitney *v.* Emmett, 1 Baldw., 313; Brooks *v.* Jenkins, 4 McLean, 449; Rumford Chemical Works *v.* Laner, 10 Blatch., 122.

Suits touching interfering patents.

8 July, 1870, c. 230, s. 58, v. 16, p. 207.

SEC. 4918. Whenever there are interfering patents, any person interested in any one of them, or in the working of the invention claimed under either of them, may have relief against the interfering patentee, and all parties interested under him, by suit in equity against the owners of the interfering patent; and the court, on notice to adverse parties, and other due proceedings had according to the course of equity, may adjudge and declare either of the patents void in whole or in part, or inoperative, or invalid in any particular part of the United States, according to the interest of the parties in the patent or the invention patented. But no such judgment or adjudication shall affect the right of any person except the parties to the suit and those deriving title under them subsequent to the rendition of such judgment.

Foster *v.* Lindsay, 3 Dill., 127.

Suits for infringement; damages.

8 July, 1870, c. 230, s. 59, v. 16, p. 207.

SEC. 4919. Damages for the infringement of any patent may be recovered by action on the case, in the name of the party interested, either as patentee, assignee, or grantee. And whenever in any such action a verdict is rendered for the plaintiff, the court may enter judgment thereon for any sum above the amount found by the verdict as the actual damages sustained, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs.

Dean *v.* Mason, 20 How., 198; Corporation of New York *v.* Ransom, 23 How., 487; Moore *v.* Marsh, 7 Wall., 515; Mowry *v.* Whitney, 14 Wall., 620; Mitchell *v.* Hawley, 16 Wall., 544; Philp *v.* Nock, 17 Wall., 460; Birdsall et al. *v.* Coolidge, 93 U. S., 64.

Pleading and proof in actions for infringement.

Ibid., s. 61, p. 208.

SEC. 4920. In any action for infringement the defendant may plead the general issue, and having given notice in writing to the plaintiff or his attorney, thirty days before, may prove on trial any one or more of the following special matters:

Blanchard *v.* Putnam, 8 Wall., 420; Wise *v.* Allis, 9 Wall., 737; Collender *v.* Griffith, 11 Blatch., 212; Union Paper-Bag Machine Co. *v.* Newell, 11 Blatch., 549; Cohn *v.* U. S. Corset Co., 12 Blatch., 225; Andrews *v.* Carman, 13 Blatch., 307; Webster Loom Co. *v.* Higgins, 13 Blatch., 349; Johnson *v.* Farrman et al., 1 Woods, 138; Coolidge *v.* McCone, 2 Saw., 571.

First. That for the purpose of deceiving the public the description and specification filed by the patentee in the Patent-Office was made to contain less than the whole truth relative to his invention or discovery, or more than is necessary to produce the desired effect; or,

Second. That he had surreptitiously or unjustly obtained the patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same; or,

Third. That it had been patented or described in some printed publication prior to his supposed invention or discovery thereof; or,

Fourth. That he was not the original and first inventor or discoverer of any material and substantial part of the thing patented; or,

Fifth. That it had been in public use or on sale in this country for more than two years before his application for a patent, or had been abandoned to the public.

And in notices as to proof of previous invention, knowledge, or use of the thing patented, the defendant shall state the names of patentees and the dates of their patents, and when granted, and the names and residences of the persons alleged to have invented, or to have had the prior knowledge of the thing patented, and where and by whom it had been used; and if any one or more of the special matters alleged shall be found for the defendant, judgment shall be rendered for him with costs. And the like defenses may be pleaded in any suit in equity for relief against an alleged infringement; and proofs of the same may be given upon like notice in the answer of the defendant, and with the like effect.

Power of courts to grant injunctions and estimate damages.

Ibid., s. 55, p. 206.

SEC. 4921. The several courts vested with jurisdiction of cases arising under the patent laws shall have power to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for an infringement, the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby; and the court shall assess the same or cause the same to be assessed under its direction. And the court shall have the same power to increase such damages, in its discretion, as is given to increase the damages found by verdicts in actions in the nature of actions of trespass upon the case.

Woodworth *v.* Wilson, 4 How., 712; Hogg *v.* Emerson, 11 How., 587; Livingston *v.* Woodworth, 15 How., 546; Seymour *v.* McCormick, 16 How., 489; Dean *v.* Mason, 20 How., 198; Corporation of New York *v.* Ransom, 23 How., 487; Moore *v.* Marsh, 7 Wall., 515; Rubber Company *v.* Goodyear, 9 Wall., 788; Mowry v. Whitney, 14 Wall., 629; Mitchell *v.* Hawley, 16 Wall., 544; Philp *v.* Nock, 17 Wall., 460; Nesmith *v.* Calvert, 1 Wood. & M., 34; Woodworth *v.* Edwards, 3 Wood. & M., 120; Woodworth *v.* Weed, 1 Blatch., 165; Allen *v.* Blunt, 1 Blatch., 486; Wilson *v.* Sherman, 1 Blatch., 536; Goodyear *v.* Day, 1 Blatch., 565; Goodyear *v.* Rubber Company, 4 Blatch., 63; Tatham *v.* Lowber; 4 Blatch., 86; Goodyear *v.* Allyn, 6 Blatch., 33; Ogle *v.* Ege, 4 Wash., 584; Blank *v.* Manufacturing Company, 3 Wall., jr., 196; Brooks *v.* Stolley, 3 McLean, 523; Hussy *v.* Whitely, 1 Bond, 407; Cochrane *v.* Deener, 94 U. S., 780; Rumford Chemical Works *v.* Hecker, 11 Blatch., 552; Hockholzer *v.* Eager, 2 Saw., 361; Smith *v.* Pryor, 2 Saw., 461.

Suit for infringement where specification is too broad.

8 July, 1870, c. 230, s. 60, v. 16, p. 207.

O'Reilly *v.* Morse, 15 How., 62; Seymour *v.* McCormick, 19 How., 106; Silsby *v.* Foote, 20 How., 378; Vance *v.* Campbell, 1 Bl., 427; Wyeth *v.* Stone, 1 Story, 273; Reed *v.* Cutter, 1

SEC. 4922. Whenever, through inadvertence, accident, or mistake, and without any willful default or intent to defraud or mislead the public, a patentee has, in his specification, claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor or discoverer, every such patentee, his executors, administrators, and assigns, whether of the whole or any sectional interest in the patent, may maintain a suit at law or in equity, for the infringement of any part thereof, which was bona fide his own, if it is a material and substantial part of the thing patented, and definitely distinguishable from the parts claimed without right, notwithstanding the specifications may embrace more than that of which the patentee was the first inventor or discoverer. But in every such case in which a judgment or decree shall be rendered for the plaintiff no costs shall be recovered unless the proper disclaimer

has been entered at the Patent-Office before the commencement of the suit. But no patentee shall be entitled to the benefits of this section if he has unreasonably neglected or delayed to enter a disclaimer.

Story, 600; Pitts *v.* Whitman, 2 Story, 621; Guyon *v.* Serrell, 1 Blatch., 244; Hall *v.* Wilds, 2 Blatch., 198, 199; Brooks *v.* Jenkins, 3 McLean, 449.

Patent not void on account of previous use in foreign country.

SEC. 4923. Whenever it appears that a patentee, at the time of making his application for the patent, believed himself to be the original and first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery, or any part thereof, having been known or used in a foreign country, before his invention or discovery thereof, if it had not been patented or described in a printed publication.

8 July, 1870, c. 230, s. 62, v. 16, p. 208.

Judson *v.* Cope, 1 Bond, 327; Bartholomew *v.* Sawyer, 1 Fish. Pat. Cas., 516; How *v.* Morton, 1 Fish. Pat. Cas., 586.

Extension of patents granted prior to March 2, 1861.

SEC. 4924. Where the patentee of any invention or discovery, the patent for which was granted prior to the second day of March, eighteen hundred and sixty-one, shall desire an extension of this patent beyond the original term of its limitation, he shall make application therefor, in writing, to the Commissioner of Patents, setting forth the reasons why such extension should be granted; and he shall also furnish a written statement under oath of the ascertained value of the invention or discovery, and of his receipts and expenditures on account thereof, sufficiently in detail to exhibit a true and faithful account of the loss and profit in any manner accruing to him by reason of the invention or discovery. Such application shall be filed not more than six months nor less than ninety days before the expiration of the original term of the patent; and no extension shall be granted after the expiration of the original term.

8 July, 1870, c. 230, s. 63, v. 16, p. 208.

Commissioner *v.* Whitely, 4 Wall., 522.

What notice of application for extension must be given.

SEC. 4925. Upon the receipt of such application, and the payment of the fees required by law, the Commissioner shall cause to be published in one newspaper in the city of Washington, and in such other papers published in the section of the country most interested adversely to the extension of the patent as he may deem proper, for at least sixty days prior to the day set for hearing the case, a notice of such application, and of the time and place when and where the same will be considered, that any person may appear and show cause why the extension should not be granted.

8 July, 1870, c. 230, s. 64, v. 16, p. 208.

Applications for extension, to whom to be referred.

SEC. 4926. Upon the publication of the notice of an application for an extension, the Commissioner shall refer the case to the principal examiner having charge of the class of inventions to which it belongs, who shall make the Commissioner a full report of the case, stating particularly whether the invention or discovery was new and patentable when the original patent was granted.

Ibid., s. 65.

Commissioner to hear and decide the question of extension.

SEC. 4927. The Commissioner shall, at the time and place designated in the published notice, hear and decide upon the evidence produced, both for and against the extension; and if it shall appear to the satisfaction of the Commissioner that the patentee, without neglect or fault on his part, has failed to obtain from the use and sale of his invention or discovery a reasonable remuneration for the time, ingenuity, and expense bestowed upon it, and the introduction of it into use, and that it is just and proper, having due regard to the public interest, that the term of the patent should be extended, the Commissioner shall make a certificate thereon, renewing and extending the patent for the term of seven years from the expiration of the first term. Such certificate shall be recorded in the Patent-Office; and thereupon such patent shall have the same effect in law as though it had been originally granted for twenty-one years.

Ibid., s. 66, p. 209.

Woodworth *v.* Edwards, 3 Wood. & M., 120; Gibson *v.* Harris, 1 Blatch., 167; Colt *v.* Young, 2 Blatch., 471.

Operation of extensions.

SEC. 4928. The benefit of the extension of a patent shall extend to the assignees and grantees of the right to use the thing patented, to the extent of their interest therein.

8 July, 1870, c. 230, s. 67, v. 16, p. 209.—Wilson *v.* Rousseau, 4 How., 646; Bloomer *v.* McQuewan, 14 How., 549; Chaffee *v.* The Boston Belting Co., 22 How., 223; Bloomer *v.* Millinger, 1 Wall., 340; Nicolson Paving Co. *v.* Jenkins, 14 Wall., 452; Eunson *v.* Dodge, 18 Wall., 414; Gibson *v.* Cook, 2 Blatch., 146; Blanchard *v.* Whitney, 3 Blatch., 307; Day *v.* Rubber Company, 3 Blatch., 488; Phelps *v.* Comstock, 4 McLean, 353; Wooster *v.* Seidenberg, 13 Blatch., 88.

Patents for designs authorized.

8 July, 1870, c. 230, s. 71, v. 16, p. 209. 18 *June*, 1874, c. 301, *r.* 18, *p.* 78.

Clark *v.* Bousfield, 10 Wall., 133; Gorham Co. *v.* White, 14 Wall., 511; Booth *v.* Garelly, 1 Blatch., 247; Root *v.* Ball, 4 McLean, 180.

SEC. 4929. Any person who, by his own industry, genius, efforts, and expense, has invented and produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of woolen, silk, cotton, or other fabrics; any new and original impression, ornament, patent, print, or picture to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture; or any new, useful, and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention of production thereof, or patented or described in any printed publication, may, upon payment of the fee prescribed, and other due proceedings had the same as in cases of inventions or discoveries, obtain a patent therefor.

Models of designs.

8 July, 1870, c. 230, s. 72, v. 16, p. 210.

SEC. 4930. The Commissioner may dispense with models of designs when the design can be sufficiently represented by drawings or photographs.

Duration of patents for designs.

Ibid., s. 73.

SEC. 4931. Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant may, in his application, elect.

Extension of patents for designs.

Ibid., s. 74.

SEC. 4932. Patentees of designs issued prior to the second day of March, eighteen hundred and sixty-one, shall be entitled to extension of their respective patents for the term of seven years, in the same manner and under the same restrictions as are provided for the extension of patents for inventions or discoveries, issued prior to the second day of March, eighteen hundred and sixty-one.

Patents for designs subject to general rules of patent law.

Ibid., s. 76.

SEC. 4933. All the regulations and provisions which apply to obtaining or protecting patents for inventions or discoveries not inconsistent with the provisions of this Title, shall apply to patents for designs.

Fees in obtaining patents, &c.

8 July, 1870, c. 230, s. 68, v. 16, p. 209.

8 July, 1870, c. 230, s. 75, v. 16, p. 210.

24 Mar., 1871, c. 5, s. 2, v. 7, p. 3.

SEC. 4934. The following shall be the rates for patent-fees:

On filing each original application for a patent, except in design cases, fifteen dollars.

On issuing each original patent, except in design cases, twenty dollars.

In design cases: For three years and six months, ten dollars; for seven years, fifteen dollars; for fourteen years, thirty dollars.

On filing each caveat, ten dollars.

On every application for the re-issue of a patent, thirty dollars.

On filing each disclaimer, ten dollars.

On every application for the extension of a patent, fifty dollars.

On the granting of every extension of a patent, fifty dollars.

On an appeal for the first time from the primary examiners to the examiners in-chief, ten dollars.

On every appeal from the examiners-in-chief to the Commissioner, twenty dollars.

For certified copies of patents and other papers, including certified printed copies, ten cents per hundred words.

For recording every assignment, agreement, power of attorney, or other paper, of three hundred words or under, one dollar; of over three hundred and under one thousand words, two dollars; of over one thousand words, three dollars.

For copies of drawings, the reasonable cost of making them.

Mode of payment.

8 July, 1870, c. 230, s. 69, v. 16, p. 209.

SEC. 4935. Patent-fees may be paid to the Commissioner of Patents, or to the Treasurer or any of the assistant treasurers of the United States, or to any of the designated depositaries, national banks, or receivers of public money, designated by the Secretary of the Treasury for that purpose; and such officer shall give the depositor a receipt or certificate of deposit therefor. All money received at the Patent-Office, for any purpose, or from any source whatever, shall be paid into the Treasury as received, without any deduction whatever.

Refunding.

Ibid., s. 70.

SEC. 4936. The Treasurer of the United States is authorized to pay back any sum or sums of money to any person who has through mistake paid the same into the Treasury, or to any receiver, or depositary, to the

credit of the Treasury, as for fees accruing at the Patent-Office, upon a certificate thereof being made to the Treasurer by the Commissioner of Patents.

## CHAPTER TWO.

### TRADE-MARKS.

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4937. Registration of trade-marks authorized.
4938. Accompanying declaration under oath.
4939. Restriction on the registration of trade-marks.
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4945. Former rights and remedies preserved.
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Registration of trade-marks authorized.

8 July, 1870, c. 230, s. 77, v. 16, p. 210.
14 *Aug.*, 1876, *c.* 274, *v.* 19, *p.* 141.

SEC. 4937. Any person or firm domiciled in the United States and any corporation created by the authority of the United States, or of any State or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which by treaty or convention affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trade-mark, or who intend to adopt and use any trade-mark for exclusive use within the United States, may obtain protection for such lawful trade-mark by complying with the following requirements:

Smith *v.* Reynolds, 10 Blatch., 85; Smith *v.* Reynolds, 10 Blatch., 100; Osgood *v.* Rockwood, 11 Blatch., 310; Moorman *v.* Hodge, 2 Saw., 78.

First. By causing to be recorded in the Patent-Office a statement specifying the names of the parties, and their residences and place of business, who desire the protection of the trade-mark; the class of merchandise, and the particular description of goods comprised in such class, by which the trade-mark has been or is intended to be appropriated; a description of the trade-mark itself, with fac-similes thereof, showing the mode in which it has been or is intended to be applied and used; and the length of time, if any, during which the trade-mark has been in use.

Second. By making payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents.

Third. By complying with such regulations as may be prescribed by the Commissioner of Patents.

Accompanying declaration under oath.

8 July, 1870, c. 230, s. 77, v. 16, p. 210.

SEC. 4938. The certificate prescribed by the preceding section must, in order to create any right whatever in favor of the party filing it, be accompanied by a written declaration verified by the person, or by some member of the firm or officer of the corporation by whom it is filed, to the effect that the party claiming protection for the trade-mark has a right to the use of the same, and that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; and that the description and fac-similes presented for record are true copies of the trade-mark sought to be protected.

Restriction on the registration of trade-marks.

Ibid., s. 79, p. 211.

SEC. 4939. The Commissioner of Patents shall not receive and record any proposed trade-mark which is not and cannot become a lawful trade-mark, or which is merely the name of a person, firm, or corporation unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, or which is identical with a trade-mark appropriate to the same class of merchandise and belonging to a different owner, and already registered or received for registration, or which so nearly resembles such last-mentioned trade-mark as to be likely to deceive the public. But this section shall not prevent the registry of any lawful trade-mark rightfully in use on the eighth day of July, eighteen hundred and seventy.

Time of receipt of trade-mark for registration to be certified.

Ibid., s. 80.

SEC. 4940. The time of the receipt of any trade-mark at the Patent-Office for registration shall be noted and recorded. Copies of the trade-mark and of the date of the receipt thereof, and of the statement filed therewith, under the seal of the Patent-Office, certified by the Commissioner, shall be evidence in any suit in which such trade-mark shall be brought in controversy.

Duration of protection of registered trade-mark and renewal.

8 July, 1870, c. 230, s. 78, v. 16, p. 211.

SEC. 4941. A trade-mark registered as above prescribed shall remain in force for thirty years from the date of such registration; except in cases where such trade-mark is claimed for and applied to articles not manufactured in this country and in which it receives protection under the laws of any foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this act at the same time that it becomes of no effect elsewhere. Such trade-mark during the period that it remains in force shall entitle the person, firm, or corporation registering the same to the exclusive use thereof so far as regards the description of goods to which it is appropriated in the statement filed under oath as aforesaid, and no other person shall lawfully use the same trade-mark, or substantially the same, or so nearly resembling it as to be calculated to deceive, upon substantially the same description of goods. And at any time during the six months prior to the expiration of the term of thirty years, application may be made for a renewal of such registration, under regulations to be prescribed by the Commissioner of Patents. The fee for such renewal shall be the same as for the original registration; and a certificate of such renewal shall be issued in the same manner as for the original registration; and such trade-mark shall remain in force for a further term of thirty years.

Remedy for infringement of registered trade-marks.

Ibid., s. 79.

14 Aug., 1876, c. 274, s. 2, v. 19, p. 141.

SEC. 4942. Any person who shall reproduce, counterfeit, copy, or imitate any recorded trade-mark, and affix the same to goods of substantially the same descriptive properties and qualities as those referred to in the registration, shall be liable to an action on the case for damages for such wrongful use of such trade-mark, at the suit of the owner thereof; and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade-mark and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful use.

Restriction upon actions for infringement.

8 July, 1870, c. 230, s. 84, v. 16, p. 212.

SEC. 4943. No action shall be maintained under the provisions of this chapter by any person claiming the exclusive right to any trade-mark which is used or claimed in any unlawful business, or upon any article which is injurious in itself, or upon any trade-mark which has been fraudulently obtained, or which has been formed and used with the design of deceiving the public in the purchase or use of any article of merchandise.

Penalty for false registration of trade-marks.

Ibid., s. 82.

SEC. 4944. Any person who shall procure the registry of any trade-mark, or of himself as the owner of a trade-mark, or an entry respecting a trade-mark in the Patent-Office, by making any false or fraudulent representations or declarations, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such registry or entry, to the person injured thereby; to be recovered in an action on the case.

Former rights and remedies preserved.

Ibid., s. 83.

SEC. 4945. Nothing in this chapter shall prevent, lessen, impeach, or avoid any remedy at law or in equity, which any party aggrieved by any wrongful use of any trade-mark might have had if the provisions of this chapter had not been enacted.

Saving as to rights after expiration of term for which a trade-mark has been registered.

Ibid., s. 78, p. 211.

SEC. 4946. Nothing in this chapter shall be construed by any court as abridging or in any matter affecting unfavorably the claim of any person to any trade-mark after the expiration of the term for which such trade-mark was registered.

Regulations for transfer of rights to trade-marks.

Ibid., s. 81.

SEC. 4947. The Commissioner of Patents is authorized to make rules, regulations, and prescribe forms for the transfer of the right to the use of trade-marks, conforming as nearly as practicable to the requirements of law respecting the transfer and transmission of copyrights.

# CHAPTER THREE.

## COPYRIGHTS.

Sec.
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4968. Limitation of action in copyright cases.
4969. Defenses to action in copyright cases.
4970. Injunctions in copyright cases.
4971. Aliens and non-residents not privileged.

Copyrights to be under charge of Librarian of Congress.

SEC. 4948. All records and other things relating to copyrights and required by law to be preserved, shall be under the control of the Librarian of Congress, and kept and preserved in the Library of Congress; and the Librarian of Congress shall have the immediate care and supervision thereof, and, under the supervision of the joint committee of Congress on the Library, shall perform all acts and duties required by law touching copyrights.

8 July, 1870, c. 230, s. 85, v. 16, p. 212.

18 *June*, 1874, c. 301, *p.* 79.—Shook *v.* Rankin, 6 Biss., 477.

Seal of office.

SEC. 4949. The seal provided for the office of the Librarian of Congress shall be the seal thereof, and by it all records and papers issued from the office and to be used in evidence shall be authenticated.

8 July, 1870, c. 230, s. 85, v. 16, p. 212.

Bond of Librarian.

SEC. 4950. The Librarian of Congress shall give a bond, with sureties, to the Treasurer of the United States, in the sum of five thousand dollars, with the condition that he will render to the proper officers of the Treasury a true account of all moneys received by virtue of his office.

Ibid.

Annual report.

SEC. 4951. The Librarian of Congress shall make an annual report to Congress of the number and description of copyright publications for which entries have been made during the year.

Ibid.

What publications may be entered for copyright.

SEC. 4952. Any citizen of the United States or resident therein, who shall be the author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors may reserve the right to dramatize or to translate their own works.

Ibid., s. 86.

Wheaton *v.* Peters, 8 Pet., 591; Stephens *v.* Cady, 14 How., 528; Jollie *v.* Jaques, 1 Blatch., 625; Boucicault *v.* Fox, 5 Blatch., 87; Wood *v.* Abbott, 5 Blatch., 325; Rossiter *v.* Hall, 5 Blatch., 362; Daly *v.* Palmer, 6 Blatch., 256.

Term of copyrights.

SEC. 4953. Copyrights shall be granted for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed.

8 July, 1870, c. 230, s. 87, v. 16, p. 212.

Continuance of term.

SEC. 4954. The author, inventor, or designer, if he be still living and a citizen of the United States or resident therein, or his widow or children, if he be dead, shall have the same exclusive right continued for the further term of fourteen years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights, within six

Ibid., s. 88.

Wheaton *v.* Peters, 8 Pet., 591; Pierrpont *v.* Fowle, 2 Wood. & M., 42.

months before the expiration of the first term. And such person shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers, printed in the United States, for the space of four weeks.

Assignment of copyrights and recording.

8 July, 1870, c. 230, s. 89, v. 16, p. 213.

SEC. 4955. Copyrights shall be assignable in law, by any instrument of writing, and such assignment shall be recorded in the office of the Librarian of Congress within sixty days after its execution; in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice.

Wheaton *v.* Peters, 8 Pet., 591; Little *v.* Hall, 18 How., 165; Pierrpont *v.* Fowle, 2 Wood. & M., 42; Webb *v.* Powers, 2 Wood. & M., 497.

Deposit of title and published copies.

8 July, 1870, c. 230, s. 90, v. 16, p. 213.

SEC. 4956. No person shall be entitled to a copyright unless he shall, before publication, deliver at the office of the Librarian of Congress or deposit in the mail addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book or other article, or a description of the painting, drawing, chromo, statue, statuary, or a model or design for a work of the fine arts, for which he desires a copyright, nor unless he shall also, within ten days from the publication thereof, deliver at the office of the Librarian of Congress or deposit in the mail addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such copyright book or other article, or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same.

Record of entry and attested copy.

8 July, 1870, c. 230, s. 91, v. 16, p. 213.

SEC. 4957. The Librarian of Congress shall record the name of such copyright book or other article, forthwith, in a book to be kept for that purpose, in the words following: "Library of Congress, to wit: Be it remembered that on the day of , A. B., of , hath deposited in this office the title of a book, (map, chart, or otherwise, as the case may be, or description of the article,) the title or description of which is in the following words, to wit: (here insert the title or description,) the right whereof he claims as author, (originator, or proprietor, as the case may be,) in conformity with the laws of the United States respecting copyrights. C. D., Librarian of Congress." And he shall give a copy of the title or description, under the seal of the Librarian of Congress, to the proprietor whenever he shall require it.

Fees.

Ibid., s. 92.

18 *June*, 1874, c. 301, *v.* 18, *p.* 78.

SEC. 4958. The Librarian of Congress shall receive, from the persons to whom the services designated are rendered, the following fees:

First. For recording the title or description of any copyright book or other article, fifty cents.

Second. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents.

Third. For recording any instrument of writing for the assignment of a copyright, fifteen cents for every one hundred words.

Fourth. For every copy of an assignment, ten cents for every one hundred words.

All fees so received shall be paid into the Treasury of the United States.

Copies of copyright works to be furnished to Librarian of Congress.

8 July, 1870, c. 230, s. 93, v. 16, p. 213.

SEC. 4959. The proprietor of every copyright book or other article shall deliver at the office of the Librarian of Congress, or deposit in the mail addressed to the Librarian of Congress at Washington, District of Columbia, within ten days after its publication, two complete printed copies thereof, of the best edition issued, or description or photograph of such article as hereinbefore required, and a copy of every subsequent edition wherein any substantial changes shall be made.

Penalty for omission.

8 July, 1870, c. 230, s. 93, v. 16, p. 213.

SEC. 4960. For every failure on the part of the proprietor of any copyright to deliver or deposit in the mail either of the published copies, or description or photograph, required by sections four thousand nine hundred and fifty-six, and four thousand nine hundred and fifty-nine, the proprietor of the copyright shall be liable to a penalty of twenty-five dollars, to be recovered by the Librarian of Congress, in the name of the United States, in an action in the nature of an action of debt, in any district court of the United States within the jurisdiction of which the delinquent may reside or be found.

Postmasters to give receipts.

Ibid., s. 96, p. 214.

SEC. 4961. The postmaster to whom such copyright book, title, or other article is delivered, shall, if requested, give a receipt therefor; and when so delivered he shall mail it to its destination.

Publication of notice of entry for copyright prescribed.

Ibid., s. 97.

18 *June*, 1874, *c.* 301, *v.* 18, *p.* 78.

Rossiter *v.* Hall, 5 Blatch., 362.

SEC. 4962. No person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page or the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some portion of the face or front thereof, or on the face of the substance on which the same shall be mounted, the following words, "Entered according to act of Congress, in the year , by A. B., in the office of the Librarian of Congress, at Washington."

Penalty for false publication of notice of entry.

8 July, 1870, c. 230, s. 98, v. 18, p. 214.

Ferrett *v.* Atwill, 1 Blatch., 154.

SEC. 4963. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, musical composition, print, cut, engraving, or photograph, or other article, for which he has not obtained a copyright, shall be liable to a penalty of one hundred dollars, recoverable one-half for the person who shall sue for such penalty, and one-half to the use of the United States.

Damages for violation of copyright of books.

8 July, 1870, c. 230, s. 99, v. 16, p. 214.

Gray *v.* Russell, 1 Story, 19; Folsom *v.* Marsh, 2 Story, 115; Atwill *v.* Ferrett, 2 Blatch., 39; Van Hook *v.* Pendleton, 2 Blatch., 85; Story's Executors *v.* Holcombe, 4 McLean, 306; Webb *v.* Powers, 2 Wood. & M., 497.

SEC. 4964. Every person who, after the recording of the title of any book as provided by this chapter, shall within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, or import, or knowing the same to be so printed, published, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction.

For violating copyright of maps, charts, prints, &c.

8 July, 1870, c. 230, s. 100, v. 16, p. 214.

Gray *v.* Russell, 1 Story, 19; Folsom *v.* Marsh, 2 Story, 115; Atwill *v.* Ferrett, 2 Blatch., 39; Van Hook *v.* Pendleton, 2 Blatch., 85; Story's Ex'rs *v.* Holcombe, 4 McLean, 306.

SEC. 4965. If any person, after the recording of the title of any map, chart, musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as provided by this chapter, shall, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, or import, either in whole or in part, or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published, or imported, shall sell or expose to sale any copy of such map or other article, as aforesaid, he shall forfeit to the proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale; one-half thereof to the proprietor and the other half to the use of the United States.

For violating copyright of dramatic compositions.

8 July, 1870, c. 230, s. 101, v. 16, p. 214.

Boucicault *v.* Fox, 5 Blatch., 87; Daly *v.* Palmer, 6 Blatch., 256; Boucicault *v.* Hart, 13 Blatch., 47.

SEC. 4966. Any person publicly performing or representing any dramatic composition for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just.

Damages for printing or publishing any manu-

SEC. 4967. Every person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained, if such author or proprietor is a citizen of the United States, or resident

script without consent of author, &c.

therein, shall be liable to the author or proprietor for all damages occasioned by such injury.

8 July, 1870, c. 230, s. 102, v. 16, p. 215.—Wheaton *v.* Peters, 8 Pet., 657; Bartlette *v.* Crittenden, 4 McLean, 300; Eyre *v.* Higbee, 22 How. Pr. R., 207.

Limitation of action in copyright cases.

SEC. 4968. No action shall be maintained in any case of forfeiture or penalty under the copyright laws, unless the same is commenced within two years after the cause of action has arisen.

8 July, 1870, c. 230, s. 104, v. 16, p. 215.

Defenses to action in copyright cases.

SEC. 4969. In all actions arising under the laws respecting copyrights, the defendant may plead the general issue, and give the special matter in evidence.

Ibid., s. 105.

Injunctions in copyright cases.

SEC. 4970. The circuit courts, and district courts having the jurisdiction of circuit courts, shall have power, upon bill in equity, filed by any party aggrieved, to grant injunctions to prevent the violation of any right secured by the laws respecting copyrights, according to the course and principles of courts of equity, on such terms as the court may deem reasonable.

Ibid., s. 106.

Aliens and non-residents not privileged.

SEC. 4971. Nothing in this chapter shall be construed to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, written, composed, or made by any person not a citizen of the United States nor resident therein.

Ibid., s. 103.