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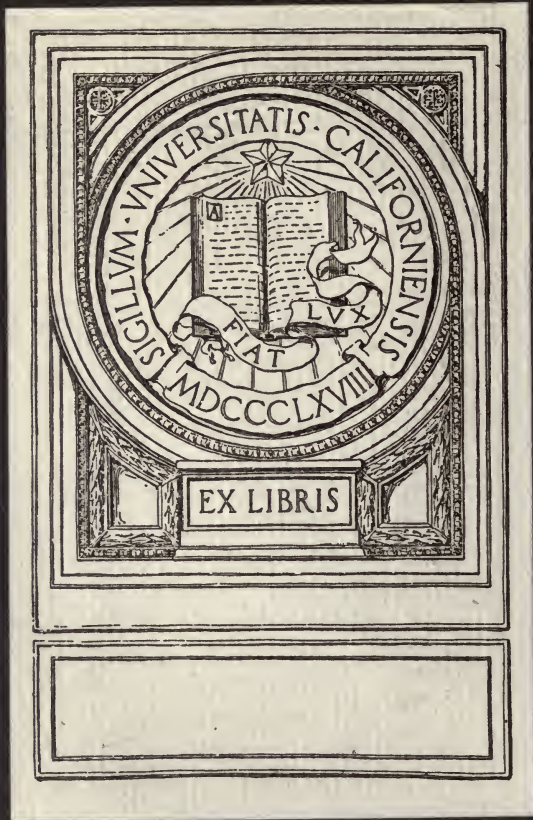
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PROTECTION EXTENDED TO

PATENTS, DESIGNS, TRADE-MARKS AND  
COPYRIGHTS IN CHINA, JAPAN  
AND KOREA

PREPARED BY

ALBERT W. PONTIUS

UNDER THE DIRECTION OF

HON. HUNTINGTON WILSON

*Third Assistant Secretary of State*

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PUBLISHED WITH THE APPROVAL OF THE SECRETARY  
OF THE INTERIOR AND UNDER THE  
DIRECTION OF

EDWARD B. MOORE

*Commissioner of Patents*





UNITED STATES PATENT OFFICE

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PROTECTION EXTENDED TO PATENTS, DESIGNS, TRADE-MARKS,  
AND COPYRIGHTS IN CHINA, JAPAN, AND KOREA.<sup>a</sup>

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Prepared by ALFRED W. PONTIUS.

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CHINA.

COMMERCIAL TREATY OF 1903.

The following articles are quoted from the commercial treaty of 1903, concluded between the United States and China:

ARTICLE IX. Whereas the United States undertakes to protect the citizens of any country in the exclusive use within the United States of any lawful trade-marks, provided that such country agrees by treaty or convention to give like protection to citizens of the United States:

Therefore the Government of China in order to secure such protection in the United States for its subjects now agrees to fully protect any citizen, firm, or corporation of the United States in the exclusive use in the Empire of China of any lawful trade-mark to the exclusive use of which in the United States they are entitled, or which they have adopted and used, or intend to adopt and use as soon as registered, for exclusive use within the Empire of China. To this end the Chinese Government agrees to issue by its proper authorities proclamations, having the force of law, forbidding all subjects of China from infringing on, imitating, colorably imitating, or knowingly passing off an imitation of trade-marks belonging to citizens of the United States which shall have been registered by the proper authorities of the United States at such offices as the Chinese Government will establish for such purpose, on payment of a reasonable fee, after due investigation by the Chinese authorities, and in compliance with reasonable regulations.

ARTICLE X. The United States Government allows subjects of China to patent their inventions in the United States and protects them in the use and ownership of such patents. The Government of China now agrees that it will establish a patent office. After this office has been established and special laws with regard to inventions have been adopted it will thereupon, after the payment of the prescribed fees, issue certificates of protection, valid for a fixed term of years, to citizens of the United States on all their patents issued by the United States in respect of articles the sale of which is lawful in China which do not infringe on previous inventions of Chinese subjects in the same manner as patents are to be issued to subjects of China.

ARTICLE XI. Whereas the Government of the United States undertakes to give the benefits of its copyright laws to the citizens of any foreign State which gives to the citizens of the United States the benefits of copyright on an equal basis with its own citizens:

Therefore the Government of China, in order to secure such benefits in the United States for its subjects, now agrees to give full protection, in the same way and manner and subject the same conditions upon which it agrees to protect trade-marks, to all citizens of the United States who are authors, designers, or proprietors of any book, map, print, or engraving especially prepared for the use and education of the Chinese people, or translation into Chinese of any book, in the exclusive right to print and sell such book, map, print, engraving, or translation in the Empire of China during

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<sup>a</sup> This pamphlet is intended to be suggestive only. Those interested must consult the conventions, laws, and regulations, and take legal advice, if necessary. No official responsibility is assumed by the department in endeavoring herein to embody in convenient form documents, et cetera, giving information and reports on this subject.)

ten years from the date of registration. With the exception of the books, maps, etc., specified above, which may not be reprinted in the same form, no work shall be entitled to copyright privileges under this article. It is understood that Chinese subjects shall be at liberty to make, print, and sell original translations into Chinese of any works written or of maps compiled by a citizen of the United States. This article shall not be held to protect against due process of law any citizen of the United States or Chinese subject who may be author, proprietor, or seller of any publication calculated to injure the well-being of China.

#### INFRINGEMENT BY CHINESE SUBJECTS.

As regards the protection of American patents, designs, trade-marks, and copyrights against infringement in China by Chinese subjects, no formal regulations for their registration and protection have as yet been adopted. It has, however, been found that protection against Chinese infringement in any given part of the Empire can meanwhile be secured through representations to the respective local authorities made through the American consular offices, a fact which evidences the Chinese Government's present excellent disposition in this matter. The protection thus afforded is by means of proclamations and administrative measures.

#### INFRINGEMENT BY SUBJECTS OF OTHER COUNTRIES.

Since 1904 the different governments, acting through the diplomatic corps at Peking, have been endeavoring to formulate regulations for the protection of trade-marks in China which would be alike satisfactory to foreign interests and to the Chinese Government. In the latter part of 1904 such tentative regulations were agreed upon and given an experimental trial. Certain features of these regulations were soon found to be unsatisfactory and their operation was subsequently suspended. The bad feature discovered in the draft at that time put forward was that the mere fact of registration was allowed to outweigh the fact of actual right in the property registered, and that the operation of the regulations gave a great natural advantage to persons who were at hand to avail of the opportunity to register over other persons who were far distant and might find that they had technically lost their rights before they were even aware, perhaps, that they were expected to register them.

The diplomatic draft regulations were ultimately amended with a view to the remedy of these defects and are still under consideration at Peking. Meanwhile the Chinese Government itself got out a set of regulations. These were, however, found unsatisfactory to foreign interests.

On account of the above-mentioned disposition of the Chinese Government to restrain piracies by Chinese subjects the mutual protection of foreigners against one another has seemed the most urgent need. This, it will be recalled, has been pretty amply secured by exchange of notes between the United States and other powers, and in the case of Japanese and Koreans in China (as well as in Korea) the conventions of May 19, 1908, between the United States and Japan.

Arrangements by the United States with Great Britain, Germany, Italy, France, Belgium, the Netherlands, Russia, and Denmark for the reciprocal protection of trade-marks in China have been effected



by an exchange of notes between the American Government and the foreign governments above mentioned. The remedy for infringement by a citizen or subject of any of these governments is to be sought through its consular courts in China.

The convention with Japan for the protection of American trade-marks against infringement in China by Japanese subjects is given below.

### JAPAN.

#### CONVENTION OF 1897.

A convention was concluded in 1897 between the Governments of the United States and Japan securing immediate protection for patents, trade-marks, and designs. This convention stipulates that "Article XVI of the treaty of commerce and navigation concluded in 1894 between the two countries shall have full force and effect from the date of the exchange of ratification of this convention." This article states that "The citizens or subjects of each of the high contracting parties shall enjoy in the territories of the other the same protection as native citizens or subjects in regard to patents, trade-marks, and designs upon fulfillment of the formalities prescribed by law."

#### CONVENTION OF 1905.

The convention concluded in this year provided for the reciprocal protection of copyrights in the United States and Japan. The following two articles give the substance of the convention:

ARTICLE I. The subjects or citizens of each of the two high contracting parties shall enjoy in the dominions of the other the protection of copyright for their works of literature and art as well as photographs, against illegal reproduction, on the same basis on which protection is granted to the subjects or citizens of the other, subject, however, to the provisions of Article II of the present convention.

ARTICLE II. The subjects or citizens of each of the two high contracting parties may without authorization translate books, pamphlets or any other writings, dramatic works and musical compositions, published in the dominions of the other by the subjects or citizens of the latter, and print and publish such translations.

#### CONVENTIONS OF MAY 19, 1908, FOR THE PROTECTION OF TRADE-MARKS IN CHINA AND KOREA.

The conventions concluded in this year with Japan provide for the extension to Japanese subjects, Korean subjects, and American citizens of reciprocal protection for their inventions, copyrights, trade-marks, et cetera, in China and Korea. These conventions went into effect on August 16, 1908, and the articles thereof are printed below.

#### CONVENTION FOR THE PROTECTION OF TRADE-MARKS, ETC., IN CHINA.

ARTICLE I. Inventions, designs and trade-marks duly patented or registered by citizens or subjects of one high contracting party in the appropriate office of the other contracting party shall have in all parts of China the same protection against infringement by citizens or subjects of such other contracting party as in the dominions and possessions of such other contracting party.

ARTICLE II. The citizens or subjects of each of the two high contracting parties shall enjoy in China the protection of copyright for their works of literature and art as well

as photographs to the same extent as they are protected in the dominions and possessions of the other party.

ARTICLE III. In case of infringement in China by a citizen or subject of one of the two high contracting parties of any invention, design, trade-mark or copyright entitled to protection in virtue of this convention the aggrieved party shall have in the competent territorial or consular courts of such contracting party the same rights and remedies as citizens or subjects of such contracting party.

ARTICLE IV. Each high contracting party engages to extend to the citizens or subjects of the other contracting party the same treatment in China in the matter of protection of their commercial names as they enjoy in the dominions and possessions of such contracting party under the convention for the protection of industrial property signed at Paris March 20, 1883. "Hong" marks shall be considered to be commercial names for the purpose of this convention.

ARTICLE V. Citizens of possessions belonging to the United States and subjects of Korea shall have in China the same treatment under the present convention as citizens of the United States and subjects of Japan respectively.

ARTICLE VI. It is mutually agreed between the high contracting parties that the present convention shall be enforced so far as applicable in any other country in which either contracting party may exercise extraterritorial jurisdiction.

All rights growing out of the present convention shall be recognized in the insular and other possessions and leased territories of the high contracting parties and all legal remedies provided for the protection of such rights shall be duly enforced by the competent courts.

ARTICLE VII. Any person amenable to the provisions of this convention who possesses at the time the present convention comes into force merchandise bearing an imitation of a trade-mark owned by another person and entitled to protection under said convention shall remove or cancel such false trade-mark or withdraw such merchandise from market in China within six months from the date of the enforcement of this convention.

ARTICLE VIII. Unauthorized reproductions by the citizens or subjects of one high contracting party prior to the operation of this convention of the works of literature and art as well as photographs of the citizens or subjects of the other contracting party published after the 10th day of May, 1906, and entitled to protection in virtue of this convention shall be withdrawn from sale or circulation in China within one year from the date of the enforcement of this convention.

#### CONVENTION FOR THE PROTECTION OF TRADE-MARKS, ETC., IN KOREA.

ARTICLE I. The Japanese Government shall cause to be enforced in Korea simultaneously with the operation of this convention, laws and regulations relative to inventions, designs, trade-marks, and copyrights similar to those which now exist in Japan.

These laws and regulations are to be applicable to American citizens in Korea equally as to Japanese and Korean subjects. In case the existing laws and regulations of Japan referred to in the preceding paragraph shall hereafter be modified, those laws and regulations enforced in Korea shall also be modified according to the principle of such new legislation.

ARTICLE II. The Government of the United States of America engages that in case of the infringement by American citizens of inventions, designs, trade-marks or copyrights entitled to protection in Korea, such citizens shall in these respects be under the exclusive jurisdiction of the Japanese courts in Korea, the extraterritorial jurisdiction of the United States being waived in these particulars.

ARTICLE III. Citizens of possessions belonging to the United States shall have in respect to the application of the present convention the same treatment as citizens of the United States.

ARTICLE IV. Korean subjects shall enjoy in the United States the same protection as native citizens in regard to inventions, designs, trade-marks and copyrights upon the fulfillment of the formalities prescribed by the laws and regulations of the United States.

ARTICLE V. Inventions, designs, trade-marks, and copyrights duly patented or registered in Japan by citizens of the United States prior to the enforcement of the laws and regulations mentioned in Article I hereof shall without further procedure be entitled under the present convention to the same protection in Korea as is or may hereafter be there accorded to the same industrial and literary properties similarly patented or registered by Japanese or Korean subjects.

Inventions, designs, trade-marks, and copyrights duly patented or registered in the United States by citizens or subjects of either high contracting party or by Korean subjects prior to the operation of the present convention shall similarly be entitled to patent or registration in Korea without the payment of any fees, provided that said inventions, designs, trade-marks and copyrights are of such a character as to permit of their patent or registration under the laws and regulations above-mentioned, and provided further that such patent or registration is effected within a period of one year after this convention comes into force.<sup>a</sup>

ARTICLE VI. The Japanese Government engages to extend to American citizens the same treatment in Korea in the matter of protection of their commercial names as they enjoy in the dominions and possessions of Japan under the convention for the protection of industrial property signed at Paris March 20, 1883.

"Hong" marks shall be considered to be commercial names for the purpose of this convention.

**JAPANESE IMPERIAL ORDINANCES AFFECTING KOREAN PATENTS.**

**IMPERIAL ORDINANCE NO. 196.**

ARTICLE 1. In regard to patents in Korea the patent law<sup>b</sup> shall be followed; but in the said law the term "Empire" shall correspond<sup>c</sup> to "Korea," "Patent bureau" to "Patent bureau of the residency-general," "Courts of law" to "Residencies and the residency-general court," "Local court" to "residencies," and "Supreme court" to "Residency-general courts."

The term "Empire" mentioned in article 6 of the patent law shall correspond to "Japan" or "Korea" according to the application of this ordinance.

ARTICLE 2. This ordinance shall accord the same protection to Japanese and to Korean subjects with regard to inventions, and shall be also applicable to subjects or citizens of countries which do not exercise extraterritorial jurisdiction in Korea with reference to the protection of inventions.

**SUPPLEMENTARY ARTICLES.**

ARTICLE 3. This ordinance shall take effect on and after August 16, 1908.

ARTICLE 4. Patents obtained in Japan prior to the operation of this ordinance by Japanese subjects, Korean subjects, or American citizens shall be regarded as patents obtained in Korea in accordance with this ordinance; but the term of the said patents shall correspond to the term of the same in Japan.

A patentee mentioned in the preceding paragraph may not set up his patent against a person actually using in Korea at the time of the operation of this ordinance the product or the process of the invention in question, nor against the successor of such person.

ARTICLE 5. Inventions for which patents have been obtained in the United States prior to the operation of this ordinance by Japanese subjects, Korean subjects, or American citizens may be patented free of charge if application for patent be made to the patent bureau of the residency-general within one year from the date of operation of this ordinance; but the term of the said patent shall correspond to the term of the same in the United States.

<sup>a</sup> It appears from the following statement of applications filed and granted furnished by the American consul at Seoul, Korea, that the advantage of the protection afforded by this paragraph does not seem to be appreciated by citizens of the United States to the same extent as by the subjects of the Emperor of Japan:

	American.					Japanese.					Korean.					Grand total.
	Patents.	Designs.	Trade-marks.	Copyrights.	Total.	Patents.	Designs.	Trade-marks.	Copyrights.	Total.	Patents.	Designs.	Trade-marks.	Copyrights.	Total.	
Applied for.....	.....	.....	11	.....	11	76	5	348	1	430	.....	.....	4	.....	4	445
Granted.....	.....	.....	6	.....	6	49	3	43	1	96	.....	.....	3	.....	3	105
Under investigation.....	.....	.....	5	.....	5	24	2	256	.....	282	.....	.....	1	.....	1	288
Refused.....	.....	.....	.....	.....	.....	.....	.....	44	.....	47	.....	.....	.....	.....	.....	47
Cancelled.....	.....	.....	.....	.....	.....	.....	.....	5	.....	5	.....	.....	.....	.....	.....	5

<sup>b</sup> I. e., of Japan.

<sup>c</sup> I. e., "shall be understood to mean."

## DESIGNS.

## IMPERIAL ORDINANCE No. 197.

ARTICLE 1. In regard to designs in Korea the design law <sup>a</sup> shall be followed; but in the said law the term "Minister of agriculture and commerce" shall correspond <sup>b</sup> to "Resident-general;" "Patent bureau" to "Patent bureau of the residency-general;" "Courts of law" to "Residencies and the residency-general court;" "Local courts" to "Residencies;" and "Supreme court" to "Residency-general court."

The term "Empire" mentioned in article 6 of the patent law shall correspond to "Japan" or "Korea," according to the application of this ordinance.

ARTICLE 2. Designs identical with or similar to the form or pattern of the imperial crest of Japan or Korea may not be registered.

If a registered design is in contravention of the provisions of the preceding paragraph, the registration thereof shall be invalid.

A person who has discovered that a registered design falls under the provisions of the preceding paragraph may apply for a trial to the patent bureau of the residency-general for the purpose of invalidating the registration thereof.

ARTICLE 3. This ordinance shall accord the same protection to Japanese and to Korean subjects with reference to designs, and shall be also applicable to subjects or citizens of countries which do not exercise extraterritorial jurisdiction in Korea with reference to the protection of designs.

## SUPPLEMENTARY ARTICLES.

ARTICLE 4. This ordinance shall take effect on August 16, 1908.

ARTICLE 5. Designs registered in Japan prior to the operation of this ordinance by Japanese subjects, Korean subjects, or American citizens shall be regarded as designs registered in Korea in accordance with this ordinance; but the period for the exclusive use of the said designs shall correspond to the period for the exclusive use of the same in Japan.

An owner of a registered design mentioned in the preceding paragraph may not set up such registration against a person actually using in Korea at the time of the operation of this ordinance the design in question, nor against the successor of such person.

ARTICLE 6. Designs registered in the United States prior to the operation of this ordinance by Japanese subjects, Korean subjects, or American citizens may be registered free of charge if application for registration be made to the patent bureau of the residency-general within one year from the date of operation of this ordinance; but the term for exclusive use of the said designs shall correspond to the term for exclusive use of the same in the United States.

## TRADE-MARKS.

## IMPERIAL ORDINANCE No. 198.

ARTICLE 1. In regard to trade-marks in Korea, the trade-mark law <sup>a</sup> shall be followed; but in the said law the term "Empire" shall correspond <sup>b</sup> to "Korea;" "Minister of agriculture and commerce" to "Resident-general;" "Patent bureau" to "Patent bureau of the residency-general;" "Courts of law" to "Residencies and the residency-general court;" "Local courts" to "Residencies;" and "Supreme court" to "Residency-general court."

The term "Empire" mentioned in article 6 of the patent law shall be understood to mean "Japan" or "Korea," according to the application of this ordinance.

ARTICLE 2. Trade-marks bearing devices identical with or similar to the imperial crest, national flag, military or naval flags, or orders of merit of Japan or Korea, or the national flags of other countries, may not be registered.

If a registered trade-mark is in contravention of the provisions of the preceding paragraph, the registration thereof shall be invalid.

A person who has discovered that a registered trade-mark falls under the provisions of the preceding paragraph may apply for a trial to the patent bureau of the residency-general for the purpose of invalidating the registration thereof.

ARTICLE 3. This ordinance shall accord the same protection to Japanese and to Korean subjects with reference to trade-marks, and shall be also applicable to subjects or citizens of countries which do not exercise extraterritorial jurisdiction in Korea with reference to the protection of trade-marks.

<sup>a</sup> I. e., of Japan.

<sup>b</sup> I. e., "shall be understood to mean."

## SUPPLEMENTARY ARTICLES.

ARTICLE 4. This ordinance shall take effect on August 16, 1908.

ARTICLE 5. Trade-marks registered in Japan prior to the operation of this ordinance by Japanese subjects, Korean subjects, or American citizens shall be regarded as trade-marks registered in Korea in accordance with this ordinance; but the period for the exclusive use of the said trade-marks shall correspond to the period for exclusive use of the same in Japan.

ARTICLE 6. With reference to merchandise which has borne, prior to the operation of this ordinance, a trade-mark entitled to protection in accordance with the provisions of the preceding article or a trade-mark similar to the same, the provisions of article 16 of the trade-mark law<sup>a</sup> shall be applicable only to such persons as, after six months from the date of operation of this ordinance, give, sell, or store for sale the said merchandise.

ARTICLE 7. In regard to trade-marks registered in the United States prior to the operation of this ordinance by Japanese subjects, Korean subjects, or American citizens, no registration fees shall be collected if the owners of the said trade-marks apply for registration to the patent bureau of the residency-general within one year from the date of operation of this ordinance.

## TRADE NAMES.

## IMPERIAL ORDINANCE No. 199.

ARTICLE 1. In regard to trade names in Korea the commercial code and the code of procedure relating to noncontentious matters<sup>b</sup> shall be followed; but in the said codes the terms "cities, towns, and villages" (Shi-Cho-Son) shall correspond<sup>c</sup> to "Fu and Gun;" "prefectures" (Fu-Ken) to "Do;" "Court of law" to "Residencies and the residency-general court;" "Japan" to "Korea;" and "Minister of justice" to "Resident-general."

ARTICLE 2. This ordinance shall accord the same protection in regard to trade names of Japanese and of Korean subjects, and shall be also applicable to subjects or citizens of countries which do not exercise extraterritorial jurisdiction in Korea with reference to the protection of trade names.

## SUPPLEMENTARY ARTICLES.

ARTICLE 3. This ordinance shall take effect on and after August 16, 1908.

ARTICLE 4. The provisions of article 18 of the commercial code<sup>d</sup> shall not be applicable to those trade names which have been used in Korea prior to the operation of this ordinance.

## COPYRIGHTS.

## IMPERIAL ORDINANCE No. 200.

ARTICLE 1. In regard to copyrights in Korea, the copyright law<sup>b</sup> shall be followed; but in the said law the term "Empire" shall correspond<sup>c</sup> to "Korea;" and "Courts of law" to "Residencies and the residency-general court."

ARTICLE 2. This ordinance shall accord the same protection to Japanese and to Korean subjects with reference to copyrights, and shall be also applicable to subjects or citizens of countries which do not exercise extraterritorial jurisdiction in Korea with reference to the protection of copyrights.

<sup>a</sup> Article 16 of the trade-mark law of Japan reads as follows:

"Any person who manufactures and gives or sells a trade-mark identical with or similar to one which he knows to be the registered trade-mark of another, without the latter's permission, or who uses for articles of the same kind a trade-mark identical with or similar to one which he knows to be the registered trade-mark of another person, or who knowingly sells such articles or stores them for sale, shall be punished with imprisonment with hard labor for not less than one month and not more than two years, or with a fine of not less than 20 yen and not more than 500 yen.

"Any person who uses for articles of the same kind a vessel, wrapper, etc. bearing the registered trade-mark of another person, or who knowingly sells such articles or stores them for sale, or who by advertisement, sign-board, hand-bill, or other means, uses, for the purposes of selling his goods, a trade-mark identical with or similar to one which he knows to be the registered trade-mark of another person, shall be liable to the same punishment as that mentioned in the preceding clause."

<sup>b</sup> I. e., of Japan.

<sup>c</sup> I. e., "shall be understood to mean."

<sup>d</sup> Article 18 of the commercial code of Japan reads as follows:

"Where no commercial company exists, the trade name must not contain any word indicating the existence of a commercial company. This applies when a person takes over the business of a commercial company.

"A person who acts in contravention of this provision is liable to a fine of from 5 to 50 yen."

## SUPPLEMENTARY ARTICLES.

ARTICLE 3. This ordinance shall take effect on and after August 16, 1908.

ARTICLE 4. Copyrights held in Japan prior to the operation of this ordinance by Japanese subjects, Korean subjects, or American citizens shall be protected by virtue of this ordinance.

ARTICLE 5. Japanese subjects, Korean subjects, or American citizens whose copyrights have been registered in the United States prior to the operation of this ordinance may apply for registration of the said copyrights free of charge to the patent bureau of the residency-general within one year from the date of the operation of this ordinance.

ARTICLE 6. A person who, without the consent of the holder of a copyright, has reproduced, translated, or performed, or has commenced to reproduce, translate, or perform in Korea, prior to the operation of this ordinance, the works of Japanese subjects, Korean subjects, or American citizens, which are protected in Japan or the United States, may complete the same and sell, distribute, or perform the same during one year following the date of the operation of this ordinance.

ARTICLE 7. In the cases mentioned in the preceding article the reproductions may only be sold, distributed, or publicly performed subject to the procedure determined by an ordinance of the residency-general.

GENERAL PROVISIONS REGARDING PATENTS, DESIGNS, TRADE-MARKS,  
AND COPYRIGHTS.

## IMPERIAL ORDINANCE No. 201.

ARTICLE 1. The validity of rights of patent, design, trade-mark, and of copyright enjoyed in Japan by Japanese or Korean subjects shall extend to Japanese and Korean subjects in the Province of Kwantung and other countries where Japan may exercise extraterritorial jurisdiction.

ARTICLE 2. The provisions relating to penalties in the patent law, design law, trade-mark law, and copyright law<sup>a</sup> shall be applicable to Japanese and Korean subjects in the Province of Kwantung and other countries where Japan may exercise extraterritorial jurisdiction.

ARTICLE 3. With reference to industrial property rights and copyrights enjoyed in Japan by subjects or citizens of countries other than Japan and Korea, the provisions of the two preceding articles shall be applicable only when such other countries afford protection of industrial property rights and copyrights to Japanese and Korean subjects in foreign countries where the said countries may exercise extraterritorial jurisdiction, and when the said countries do not exercise extraterritorial jurisdiction in Korea with reference to the protection of industrial property rights and copyrights.<sup>b</sup>

## SUPPLEMENTARY ARTICLES.

ARTICLE 4. This ordinance shall take effect on August 16, 1908.

ARTICLE 5. Any person who has on hand for purpose of sale at the time this ordinance takes effect, merchandise fraudulently bearing trade-marks owned by another person and protected by virtue of this ordinance, or bearing an imitation of such a mark, shall remove or cancel the said trade-marks or withdraw the said merchandise from the market in China within six months after the operation of this ordinance.

ARTICLE 6. Any person who, without the consent of the holder of a copyright, has reproduced, translated, or performed, or has commenced to reproduce, translate, or perform in China prior to the operation of this ordinance, works copyrighted in Japan or the United States by Japanese subjects, Korean subjects, or American citizens, may complete the same, and sell, distribute, or perform the same during one year following the date of the operation of this ordinance.

## FORCE OF CONVENTIONS SIGNED WITH JAPAN.

The trade-mark conventions signed on May 19, 1908, by the United States and Japan, protect American patents, designs, trade-marks, and also copyrights against infringement in China and Korea by either

<sup>a</sup> I. e., of Japan.

<sup>b</sup> Translator's note: The two conditions are: (a) Reciprocal protection of industrial property wherever extraterritorial jurisdiction may be exercised, and (b) the surrender of such jurisdiction in Korea with reference to industrial property rights.

Japanese or Korean subjects. These conventions extend the effect of the American-Japanese conventions of 1897 and of 1905, wherein, respectively, protection is secured in Japan to the above-named classes of American-owned property.

The Japanese Government has given assurances in the sense that by the future interpretation of the existing laws and regulations it will henceforth refuse to entertain applications for wrongful registration of American rights and will annul such registrations previously made.

#### SUGGESTIONS REGARDING REGISTRATION.

Americans desirous of securing protection for their copyrights, patents, trade-marks and designs against infringement should promptly secure registration of the same at the Tokyo patent office. Such registration will protect them in China as well as in Japan and Korea, provided, however, in the case of the latter country, that such registrations are to be made matter of record at the patent offices of the residency-general.

Under the laws of Japan an application for the registration of a trade-mark, patent, or design, the applicant having no domicile in Japan, must show the appointment of a duly qualified agent resident in Japan, who must have been admitted to practice as a patent agent and entered on the register of the Japanese patent bureau in that capacity. (See Hall's Manual of Japanese Patent, Trade-Mark, and Design Law, pages 1 and 2; also Article VI of the patent law and Article XX of the trade-mark law.) It is also required that this agent must be furnished with full power of attorney authorizing him to represent his client in all proceedings before the patent bureau, both as regards the original application and as regards any matter that may arise after the registration has been affected. (For a list of Tokyo patent lawyers, see appendix.)

#### PROTECTION OF "HONG," OR COMMERCIAL NAMES, WITHOUT COMPULSORY REGISTRATION.

Article 4 of the treaty with Japan in relation to the protection of trade-marks, et cetera, in China, and article 6 of the same treaty regarding Korea, provide that "hong, or commercial names, in China or Korea shall enjoy the same protection as extended in the dominions and possessions of Japan under the convention for the protection of industrial property, signed at Paris, March 20, 1883." Reference to article 8 of this convention shows that " \* \* \* commercial names are entitled to protection without obligation of deposit \* \* \*," or, in other words, without compulsory registration.

#### GENERAL NOTES ON JAPANESE REGULATIONS.

The following information, based on official Japanese utterances, is of material interest to prospective applicants for registration of trade-marks, patents, copyrights, etc.

#### EXPIRATION OF TRADE-MARKS.

Article 12 of the Japanese trade-mark law states that "The right of exclusive use of a trade-mark expires with the cessation of the business for which it is used by the proprietor." Various misunder-

standings in regard to the correct interpretation of this clause have arisen in the past, but it is now understood that this article is applicable only to a case where business has been discontinued after having enjoyed the protection of a registered trade-mark, but not to a case of mere nonuse of a registered trade-mark. There is no provision in the law by which a registered trade-mark can be canceled on the ground that it has not been used or that the person who had the trade-mark registered has not begun business. Further, under the trade-mark law at present in force in Japan it is not necessary, in obtaining registration of a trade-mark, to have a business in Japan at the time, nor does the right of exclusive use of a trade-mark expire if the trade-mark is not used, so long as the business be not discontinued.

As regards foreign registered trade-marks which have been registered also in Japan and are under the protection of the Japanese trade-mark law, the right of exclusive use of such marks remains even if the business and the use of the trade-mark cease in Japan and in places to which the protection of the Japanese trade-mark law extends, providing the business be continued in the country of origin.

In case, however, the trade-mark is not a foreign registered trade-mark, but is merely a trade-mark registered by a foreigner in the same way as by a Japanese, in Japan only, the right of exclusive use of the trade-mark expires with the cessation of business in Japan and places to which the protection of the Japanese trade-mark law extends. The cancellation of registration due to the expiration of the right of exclusive use of a trade-mark is carried out by official authority of the Japanese patent bureau in accordance with the detailed regulations for the carrying out of the law of trade-marks and patent law, and not by means of a legal suit or (patent bureau) trial.

#### TRADE-MARK RIGHTS IN KOREA.

Those rights registered in Japan prior to the enforcement of the new laws shall be properly protected in Korea, but those not yet registered and which are to enjoy such protection should receive attention without loss of time. The laws now promulgated for Korea are similar to those already operative in Japan, and Korean subjects and American citizens will thereunder receive a like protection. Those rights already registered in America for Japanese, Koreans, or Americans may be registered without fee in Korea within one year after the enforcement of these laws, if they are found to be in conformity with them. The privilege of "prior application" as heretofore existing in Japan does not extend to Korea in the matter of trade-marks, but the owners of these rights can contest any opponent's adverse registration six months after the enforcement of the above laws. The similar immunity in Korea concerning copyrights is confined to one year. Hereafter, the principles of "prior use" and "prior application" will be taken into consideration, and not, as has formerly been the case, only the question of "prior application."

#### PROTECTION AGAINST REGISTRATION OF A SIMILAR MARK.

Official assurances have been given by the Japanese Government that any registered trade-mark which is similar to the known trade-mark of another may be canceled within three years on the



ground of such similarity; or the trade-mark may be canceled at any time thereafter if the registered mark is calculated to work fraud upon the public.

In view of the above assurances it is believed that Americans whose trade-marks or other forms of industrial property have been pirated, even in cases where these piracies have occurred a long time previously, should lose no time in obtaining the registration of their rights and in seeking the annulment of any wrongful registration from which their business might be suffering. It is of first importance, moreover, that American merchants and others interested in the protection of their trade-marks or other forms of industrial property against infringement by Japanese or Korean subjects in Japan, Korea, or China should not fail to register their rights both for Korea and for Japan in the Japanese patent bureau at Tokyo. These points can not be impressed too strongly upon those concerned.

## APPENDIX.

### OFFICIAL LIST OF PATENT LAWYERS IN TOKYO.

- Akiyama, G., 15, Uneme-cho, Kyobashi-ku.  
 Akiyama, K., 29, Yanagi-cho, Koishikawaku.  
 Akiyama, R., 3, Horiye-cho, Nichome, Nihonbashi-ku.  
 Akiyama, T., 1, Sojuro-cho, Kyobashi-ku.  
 Amano, K., 9, Kobicki-cho, Shichome, Kyobashi-ku.  
 Aoyama, T., 19, Nishinokubo, Akefuno-cho, Shiba-ku.  
 Araki, T., Minami Kayaba-cho, Nihonbashi-ku.  
 Arai, Y., Uchisaiwai-cho, Itchome, Kojimachi-ku.  
 Asami, Y., 9, Minami Daiku-cho, Kyobashi-ku.  
 Brindley, H. S. B., 3, Uchisaiwaicho, Itchome, Kojimachi-ku.  
 Egi, C., 7, Awaji-cho, Nichome, Kanda-ku.  
 Fujii, T., Nishiki-cho, Nichome, Kanda-ku.  
 Fukuda, T., Nishigawa-machi, Nichome, Kanda-ku.  
 Fukuoka, U., 29, Tomiyoshi-cho, Fukagawa-ku.  
 Havilland, W. A. de, M. A., successor to W. Silver Hall (Foreign Member of Chartered Institute of British Patent Agents), 4, Mitsu Bishi Building, Yayesu-cho, Itchome, Kojimachi-ku.  
 Hada, C., 7, Ginza, Shichome, Kyobashi-ku.  
 Hada, C., 24, Nishi Toyotama-gashi, Kyobashi-ku.  
 Hamaji, H., 9, Minami Konya-cho, Kyobashi-ku.  
 Hanai, T., 2, Nishiki-cho, Itchome, Kanda-ku.  
 Hara, Y., 20, Kirakawa-cho, Kojimachi-ku.  
 Harada K., 4, Minami Nabecho, Itchome, Kyobashi-ku.  
 Harima, T., Nishinokubo, Akefune-cho.  
 Hasegawa, K., 8, Kabatake, Mitsumi-cho, Honjo-ku.  
 Hasegawa, K., 5, Ginza, Itchome, Kyobashi-ku.  
 Hasegawa, K., 80, Mikumi-cho, Yushima, Honjo-ku.  
 Hatoyama, K., 3, Yamashiro-cho, Kyobashi-ku.  
 Hayakawa, T., 9, Yariya-cho, Kyobashi-ku.  
 Hiramatsu, I., 5, Uchisaiwai-cho, Itchome, Kojimachi-ku.  
 Hiraoka, M., 15, Yazeamon-cho, Kyobashi-ku.  
 Hirasawa, K., Shibuya-mura, Toyotama-gun.  
 Hirata, K., Okamachi, Itchome, Shitaya-ku.  
 Hirooka, U., 16, Tsukiji, Nichome, Kyobashi-ku.  
 Hiyma, T., 5, Goken-cho, Kanda-ku.  
 Honda, H., Kamakura-cho, Kanda-ku.  
 Hoshino, N., Midori-cho, Sancho, Honjo-ku.  
 Hosokawa, Y., 9, Kobiki-cho, Shichome, Kyobashi-ku.  
 Iida, H., Hongo, Sancho, Hongo-ku.  
 Iida, T., 11, Uneme-cho, Kyobashi-ku.  
 Ikeda, S., 15, Uneme-cho, Kyobashi-ku.  
 Imamura, R., 14, Imagawakoji, Nichome, Kanda-ku.  
 Inagi, S., 7, Kobiki-cho, Ku-chome, Kyobashi-ku.  
 Ishikawa, J., Kawase-cho, Kyobashi-ku.  
 Ishihara, U., 21, Uneme-cho, Kyobashi-ku.  
 Ishiyama, Y., 14, Hayabusa-cho, Kojimachi-ku.  
 Ishiwara, M., 2, Shintomi-cho, Rokucho, Kyobashi-ku.  
 Ishiwara, U., 21, Uneme-cho, Kyobashi-ku.  
 Isobe, S., Kamezawa-cho, Nichome, Honjo-ku.  
 Isobe, Sho, Kamezawa-cho, Nichome, Honjo-ku.  
 Itakura, Chi, 5, Shinkoku-cho, Kanda-ku.  
 Ito, W., 2, Gorobei-cho, Kyobashi-ku.  
 Itoyama, K., Tsukijima, Higashi Nakano-cho, Kyobashi-ku.  
 Iwasaki, H., 5, Shin-Sakana-cho, Kyobashi-ku.  
 Iwasaki, H., 26, Ise-cho, Nihonbashi-ku.  
 Iwata, C., Yayesu-cho, Nichome, Kojimachi-ku.  
 Kessler, H., 48, Tsukiji, Kyobashi-ku.

- Kido, D., 27, Uneme-cho, Kyobashi-ku.  
 Kishi, S., 1, Sojuro-cho, Kyobashi-ku.  
 Kishimoto, T., 9, Nishi-Konya-cho, Kyobashi-ku.  
 Kumakura, M., 17, Yumi-cho, Kyobashi-ku.  
 Magaki, T., Nishinobuko, Akefune-cho, Shiba-ku.  
 Maruyama, C., 6, Motosukiya-cho, Nichome, Kyobashi-ku.  
 Masujima, R., 3, Uchisaiwai-cho, Itchome, Kojimachi-ku.  
 Matsuda, G., 18, Kobiki-cho, Kuchome, Kyobashi-ku.  
 Matsukawa, K., 30, Aoyama, Minami-machi, Gochome, Akasaka-ku.  
 Matsumoto, G., 18, Tsukiji, Itchome, Kyobashi-ku.  
 Matsumoto, R., 48, Muramatsu-cho, Kanda-ku.  
 Matsuo, S., 11, Kaga-cho, Kyobashi-ku.  
 Matsuoka, T., Minaminabe-cho, Kyobashi-ku.  
 Mitsuhashi, S., 1, Sanban-cho, Kojimachi-ku.  
 Mitsumi, H., Kagigara-cho, Sancho, Nihonbashi-ku.  
 Mitani, Shin-Sakurada-cho, Shiba-ku.  
 Miyake, S., 9, Ginza, Nichome, Kyobashi-ku.  
 Miyako, K., 28, Hon-Zaimoku-cho, Sancho, Kyobashi-ku.  
 Miyata, Y., 8, Hachikan-cho, Kyobashi-ku.  
 Miyazaki, S., Kamezawa-cho, Itchome, Honjo-ku.  
 Miye, S., 11, Muro-machi, Sancho, Nihonbashi-ku.  
 Mori, H., 21, Uneme-cho, Kyobashi-ku.  
 Mori, S., 19, Ginza, Itchome, Kyobashi-ku.  
 Muramatsu, Y., Misaki-cho, Kanda-ku.  
 Muranaga, K., 22, Yokoami-cho, Itchome, Honjo-ku.  
 Murata, K., Kamikami-cho, Nihonbashi-ku.  
 Murata, T., Sarugaku-cho, Kanda-ku.  
 Nishiwaki, I., 15, Tsukiji, Sancho, Kyobashi-ku.  
 Nagano, M., 3, Tameike-cho, Akasaka-ku.  
 Nagashima, W., 14, Tsukiji, Sancho, Kyobashi-ku.  
 Naita, S., 4, Maruyama-cho, Kyobashi-ku.  
 Nakagawa, S., Yariya-cho, Kyobashi-ku.  
 Nakamura, H., 19, Ginza, Sancho, Kyobashi-ku.  
 Nakamura, R., 32, Honkoku-cho, Nihonbashi-ku.  
 Nakazawa, T., 4, Kojimachi, Sancho, Kyobashi-ku.  
 Nambu, M., 9, Yariya-cho, Kyobashi-ku.  
 Nishi, J., 1, Tori Nichome, Nihonbashi-ku.  
 Nishi, M., Uchisaiwai-cho, Itchome, Kojimachi-ku.  
 Nishimura, T., 15, Hanozono-cho, Shitaya-ku.  
 Nishimura, N., 9, Kobiki-cho, Jitchome, Kyobashi-ku.  
 Nishiwaki, I., 21, Uneme-cho, Kyobashi-ku.  
 Nobuoka, U., Uchisaiwai-cho, Itchome, Kojimachi-ku.  
 Noguchi, M., 15, Hon-Zaimoku-cho, Itchome, Nihonbashi-ku.  
 Nomura, Y., 1, Yazayemon-cho, Kyobashi-ku.  
 Nukiyama, S., 18, Kobiki-cho, Kuchome, Kyobashi-ku.  
 Numata, U., 2, Kitajimbo-cho, Kanda-ku.  
 Ohira, M., 1, Kawara-machi, Nakanogo, Honjo-ku.  
 Ono, S., 7, Kubiki-cho, Kuchome, Kyobashi-ku.  
 Okazaki, M., 3, Nishi-Konya-cho, Kyobashi-ku.  
 Ota, S., 14, Yamashiro-cho, Kyobashi-ku.  
 Otobe, T., 8, Kobiki-cho, Jitchome, Kyobashi-ku.  
 Oura, S., 10, Hiyoshi-cho, Kyobashi-ku.  
 Sakamoto, S., 6, Kobiki-cho, Jitchome, Kyobashi-ku.  
 Sawada, S., 8, Hiyoshi-cho, Kyobashi-ku.  
 Seki, N., 12, Minami-Kinroku-cho, Kyobashi-ku.  
 Serizawa, K., 10, Shin-Sakana-cho, Kyobashi-ku.  
 Shinoda, J., 1, Moto Sukiya-cho, Kyobashi-ku.  
 Shioiri, T., 14, Tsukiji, Nichome, Kyobashi-ku.  
 Shioya, T., 1, Moto Sukiya-cho, Itchome, Kyobashi-ku.  
 Takao, D., 2, Yumi-cho, Kyobashi-ku.  
 Tanaka, R., 11, Hon-Zaimoku-cho, Itchome, Nihonbashi-ku.  
 Yamada, T., 15, Ginza, Nichome, Kyobashi-ku.  
 Yokota, S., 14, Yamashita-cho, Kyobashi-ku.  
 Yoshida, C., 25, Aomono-cho, Nihonbashi-ku.







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