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REPORT OF THE PATENT COMMITTEE
OF THE
NATIONAL RESEARCH COUNCIL

Presented for the Committee
By L. H. Baekeland, Acting Chairman

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REPRINT AND CIRCULAR SERIES
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NUMBER 1

REPORT OF THE PATENT COMMITTEE OF THE NATIONAL RESEARCH COUNCIL*

Presented for the Committee

BY L. H. BAEKELAND
ACTING CHAIRMAN

The Commissioner of Patents in 1917, with the approval of the Secretary of the Interior, requested the National Research Council to appoint a committee to investigate the Patent Office and patent system, with a view to increasing their effectiveness, and to consider what might be done to make the Patent Office more of a national institution and more vitally useful to the industrial life of the country.

Mr. Thomas Ewing, who is a member of your Patent Committee, was the Commissioner of Patents who took that action.

The National Research Council, complying with the request, appointed a Patent Committee, consisting of: Dr. William F. Durand, Chairman; Drs. Leo H. Baekeland and M. I. Pupin, scientists and inventors; Drs. R. A. Millikan and S. W. Stratton, scientists; Dr. Reid Hunt, physician; and Messrs. Frederick P. Fish, Thomas Ewing and Edwin J. Prindle, patent lawyers. On the departure of Dr. Durand for Europe, Dr. Baekeland was appointed Acting Chairman of the Committee.

Your Committee has approached its work in the belief that the American patent system has been one of the most potent factors in the development of the prosperity of our country. Americans, being descendants of the European races, are not naturally more inventive than are Europeans, but under the incentive of the American patent system they have produced many more inventions and been able to pay higher wages and live on a better scale than Europeans.

American inventions have played a vital part in the war. There is hardly any implement or explosive that our Army and Navy has used

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which is not more or less the result of American invention. The Patent Office is keeping secret and withholding from publication many inventions made since the beginning of the war and which are useful in war. After the war, it will be imperative that American inventors continuously improve American products and the manufacture of them and make basically new inventions to meet and keep ahead of the strenuous efforts which Germany and other nations will make to attain supremacy by these methods.

Your Committee has, therefore, carefully investigated the Patent Office and the patent system, with a view to increasing their effectiveness, and, based on its investigation and the experience of its members, makes the following recommendations:

The Committee has concluded to propose a program consisting of but four features, because it believes those features are of such fundamental importance that their enactment into law would strengthen the entire system and directly and indirectly establish it upon a new and much more advantageous footing before Congress and the public; and because with a single program, presenting comparatively little opportunity for difference of opinion as to the desirability of the changes proposed, there would be an unanimity of opinion in support of it which could not be obtained if the program were more extended.

A SINGLE COURT OF PATENT APPEALS

The first proposal which your Committee recommends is the establishment of a single Court of Patent Appeals that will have jurisdiction of appeals in patent cases from all the United States District Courts throughout the country, in place of the nine independent Circuit Courts of Appeal in which appellate jurisdiction is now vested.

Until 1891 the Supreme Court of the United States was the appellate court in patent cases for all the lower courts. At that time the right of appeal to the Supreme Court in patent cases was taken away, and that Court now hears patent cases only upon writs of certiorari, which are never granted unless certain very unusual conditions exist.

The existence of nine appellate courts of concurrent jurisdiction in patent cases works serious hardships. While, theoretically, the law is the same in all of these courts, there has been an irresistible tendency to drift apart in the application of the law. It has even happened in a substantial number of cases that two of the appellate courts have taken a different view of one and the same patent. It is, of course, very important that the questions which always exist as to the validity and

scope of a patent should be settled once and for all at the earliest possible date in the life of the patent, for, as a practical matter, seventeen years (the term of a patent) is a comparatively short time in which to reduce the invention to a thoroughly commercial form, to prepare for its manufacture, and to introduce it upon the market, and it is usually necessary to determine the validity and scope of the patent in order to determine the amount of money which it is safe to invest in exploiting the invention. As things are now, whichever party succeeds in the first suit that is tried on the patent, the other party is very likely to feel that in a second trial before another court he might have better luck. He, therefore, is inclined to insist upon a second litigation. Meantime, he advertises that the questions involved were not settled in the first case. This means uncertainty on the part of the owners of the patent as to their rights and uncertainty on the part of the public as to its rights to use the invention or to determine what it must avoid in working in the same field,—a really intolerable situation.

Moreover, we shall never have a uniform and definite patent law, consistently applied, until we have a single Court of Patent Appeals independent of local sentiment, realizing a responsibility to fix the principles of the law and enforcing an harmonious application of these principles on the lower courts. It would be of the utmost value to those in the United States who are engaged in industry if the present confused condition could be corrected and a single tribunal devote itself to crystallizing the fundamentals of the patent law and to educating the courts throughout the land to uniformity in applying these principles in special cases.

Attached hereto is a copy of a bill for the establishment of such a Court, which has been advocated for many years by the American Bar Association, and is No. 5011 of the House of Representatives, 65th Congress, 1st session. It provides for a court of seven members, which would sit in Washington, with a Chief Justice appointed for life by the President. The appointment of the Chief Justice for life is in order that there may be an element of continuity in the Court. The other Judges are to be selected by the Chief Justice of the United States Supreme Court from the various District and Circuit Judges throughout the land, and each is to sit on the Court of Patent Appeals for a period of six years, or longer, if reappointed.

There are many advantages in this plan. Among them are the following:

The Judges would not be men who were appointed as judges primarily to deal with patent matters. There could be no charge that special

interests had a hand in their selection or that they were chosen to promote special views as to the patent law and its application. They would be men who had been primarily selected by the President as fit to be Federal Judges in the localities where they live. Federal Judges are men of a high type, and many of them are broad-minded men, much respected in the communities in which they serve. They would take up the work of the Court of Patent Appeals with a breadth coming from the performance of their general duties of Judges in their own circuits or districts and would, therefore, escape the narrowing which so often comes from continuous work in a specialized field.

The Chief Justice of the United States Supreme Court would select from the District and Circuit Judges throughout the land men whom he thought most competent to serve for a term on the Court of Patent Appeals. He would seldom, if ever, take more than one Judge at a time from any one Circuit. The Court, therefore, would be made up of men who were primarily Judges and who would be recognized as bringing to the Court of Patent Appeals the instinct and feelings, on the subject of the interpretation of the patent law, of the courts and of the people in the communities in which they live.

Undoubtedly many of them would only be on the appellate court for one term and after that they would go back to their circuits or districts with a training as patent Judges such as could be obtained only by sitting for a period of years in such an appellate court. They would not only be qualified as patent Judges, but they would reflect the atmosphere of the appellate court and cause that atmosphere to pervade their own neighborhood. They would thereafter undoubtedly be selected to hear patent cases in their lower courts in preference to Judges who had not had training in the Court of Patent Appeals. The courts throughout the country would, in time, become educated to the high and definite standards established by the Court of Patent Appeals, not only by study of the decisions of that Court, but by the presence in the lower courts of men who had had this special training in the upper court.

It is of the utmost importance that these Judges in the Court of Patent Appeals should be well paid. Otherwise they might not be willing to break up their homes and go to Washington for a limited term. We think that their salaries should be higher than those of the Judges of any court in the United States except the United States Supreme Court.

The increased expense due to such a court would be small. The aggregate amount of work to be done by the Judges of the United States

Courts as a whole would not be changed to any substantial extent, because all appeals must now be heard by the present courts and Judges and, if there were a single Court of Patent Appeals, the Courts of Appeal in the nine circuits would be relieved of just as many appeals as were heard by it. The Judges in some of the circuits are much overworked, but this is not true of many of the circuits. The Chief Justice of the United States Supreme Court, in selecting these Judges, could, if he chose, take into account the work of the different circuits and whether one circuit or another could best spare a Judge.

As the law now stands, Judges from one circuit may be called upon, and not infrequently are called upon, to go into other circuits which are short-handed. In this way, any undue pressure upon the Judges in any particular circuit, by reason of the loss of any single Judge who went to the Court of Patent Appeals for six years, could be relieved.

Moreover, it is no hardship to increase the number of Judges where necessary. The whole judicial system of the United States is said not to cost as much as it does to run one first-class battleship, and the addition of a few Judges would be a negligible burden upon the Treasury.

A further advantage of a single Court of Patent Appeals would be that it would see clearly where there were defects in the statute and in the conditions and practice in the Patent Office, and would speak with authority on all matters which affect the theory and practical working of the patent system.

THE PATENT OFFICE A SEPARATE INSTITUTION, AND INDEPENDENT OF THE DEPARTMENT OF THE INTERIOR

The second proposal which your Committee recommends is that the Patent Office be made a separate institution, independent of the Interior or any other department.

The Patent Office was originally in the State Department, but, on the formation of the Interior Department in 1849, it was made a bureau of that Department and has been so ever since.

The only matters connected with the Patent Office with which the Secretary of the Interior has anything to do are the following: The Secretary of the Interior must submit to Congress all estimates for appropriations. All appointments, excepting those of the Commissioner, two Assistant-Commissioners, and five Examiners-in-Chief, are made by the Secretary but only on the recommendation of the Commissioner. The eight places named are Presidential appointments, but the Secretary makes recommendations to the President. All matters of dis-

barment or reinstatement after disbarment of attorneys are passed upon finally by the Secretary. All matters of discipline are under the Secretary's jurisdiction. The Secretary of the Interior must approve all changes in the Rules of Practice of the Patent Office, but he cannot compel the Commissioner to make any change whatsoever.

No appeal lies to the Secretary from any decisions of the Commissioner, either in matters of merit or practice. All such matters, as far as they are reviewable, rest with the Courts of the District of Columbia.

The Secretary of the Interior no longer signs the patents, and has no jurisdiction to grant or refuse them.

Thus, it will be seen that the Secretary of the Interior is not required to know anything about patents or patent law. He is not selected because of any qualifications for the granting of patents or supervision over the Patent Office. The Secretary of the Interior has less influence over the Patent Office than over any other bureau of the Interior Department, because there are appeals to him from all the other bureaus. Nor is the Patent Office related to any other bureau of the Interior Department.

The Secretary of the Interior has recently moved out of the Patent Office building, thus severing physical contact with the Patent Office, which is but a type of the lack of mental contact between the office of the Secretary of the Interior and the Patent Office.

The experience of many Commissioners over a period of several generations has shown that, no matter how pleasant the personal relations may be, the Commissioner of Patents cannot expect any real benefit to the Patent Office to flow from its connection with the Interior Department. There is nothing in common between the interests of the Interior Department and those of the Patent Office, and, consequently, nothing to produce any advantage from the amalgamation of the Patent Office into the Interior Department.

Your Committee believes that to make the Patent Office an independent bureau would greatly increase the respect of the public and Congress and the courts for it, and would make it easier to procure enlarged appropriations and better salaries than under present conditions.

As to appropriations, under present conditions the demands of the Patent Office for equipment, personnel, and salaries are necessarily subjected to comparison both by the Secretary of the Interior and by Congress with those of several other unrelated bureaus, each pressing its own demands and criticising any apparent preference. In the opinion

of your Committee, this operates as a severe handicap. In estimating the needs of the Patent Office, there should be no discussion of the demands, for example, of the Pension Office or the General Land Office. As an independent institution, the needs of the Patent Office would be judged on their necessity and the appropriation be determined by consideration of general policy.

As to personnel: the enhanced dignity and independence of the Patent Office would render all positions of importance in it more attractive, and particularly make it easier to secure and retain in office men of the necessary qualifications to fill the difficult office of Commissioner.

A copy of a proposed bill for making the Patent Office an independent bureau is annexed to this report and its enactment is recommended by your Committee.

INCREASE IN FORCE AND SALARIES OF THE PATENT OFFICE

The third proposal which your Committee recommends is a substantial increase in the force and salaries of the Patent Office. The patents granted by the United States Patent Office are of less average probable validity than formerly, because the number of applications for patent and the field of search are constantly increasing, while the examining force for many years has been insufficiently large and has not been increased proportionately. The inducements are so unattractive that 25% of the examining force has resigned within the past three years. Your Committee finds that the Patent Office is suffering both from lack of examiners and from inadequate compensation.

The salaries of the Patent Office examiners have been increased only 10% since they were fixed in 1848, when they were approximately the same as those of members of Congress. At the time the salaries of the Examiners-in-Chief were fixed, they were the same as those of Federal District Judges. During the past seventy years, the compensation for technical service in almost all other directions has been increased very largely. Congress, in creating new positions, is willing to pay technical men salaries more nearly approximating the usual compensation of such men in private service, but, having started a position at a given salary, is very loth to increase the salary. A Principal Examiner, to pass the entrance examination for the Patent Office, must himself have an education equivalent to that of a college graduate, and yet his salary is so low ($2,700 a year) that it is practically impossible for him to give his own sons a college education.

Your Committee believes that salaries should be paid to the examiners proportionate to those paid for equally high technical work in other departments created recently; such, for example, as are paid in the Army and Navy and in the office of the Attorney General. The examiners are passing upon questions often involving millions of dollars, and they cannot be at their best in this vitally important work unless their salaries are large enough for them to live comfortably and without strain. The chances of making mistakes in the granting of patents are great enough even under the most favorable circumstances, and they should not be increased by compelling the examiners to work for inadequate salaries. The inducements should be such as to present compensation and a career which would attract and hold men of the highest ability. The payment of adequate salaries and the creation of provisions tending to hold out attractive prospects to the examiners would also tend to raise the dignity of the Patent Office and to increase its standing in the estimation of the public and of Congress and the Courts, and so would tend to enhance the value to the public of the patent system.

The work of the Patent Office has grown so much more rapidly than has the examining force that the examination to determine whether or not the invention claimed in an application for patent is novel is imperatively restricted to the field of search where it is most likely that the invention will be found. Many patents are granted which would not be granted if the examiner had time to make a thorough search. One of the Assistant-Commissioners of Patents is compelled to devote a large amount of his time to speeding the work of the examiners in order to prevent further falling behind in the number of unexamined cases. Money is often invested on the strength of patents, only to find later that the patent is upset in the courts, because the Patent Office search did not go far enough to discover that the invention had already been disclosed in some earlier patent or publication. The granting of a patent with invalid claims or claims which are too broad or which are nebulous is a menace to the art to which it relates, and until such a patent has been adjudicated and its effect judicially determined, it tends to prevent manufacturing and commerce in that art. Such a patent may, in this way, cost the public many millions of dollars besides the cost of establishing its invalidity or its true breadth or meaning by litigation, and the prevention of the granting of such patents by any reasonable increase in the examining force of the Patent Office would, in many cases, be a very large saving. The inducement to inventors and investors in patents is consequently lessened, the standing of patents before the

courts and the public is impaired, and the production of inventions discouraged.

Your Committee accordingly recommends a substantial increase in the salaries of the Patent Office officials, and in the number and salaries of the examiners, as provided in the draft of a proposed bill for that purpose which is attached hereto.

While your Committee believes that the Patent Office so fully justifies its existence that it would be an exceedingly profitable investment, even though all expenses were paid from the public income, the Patent Office has always been self-supporting and the increase in salaries and examining force which the Committee recommends can easily be entirely taken care of by the Patent Office income, if necessary.

COMPENSATION FOR INFRINGEMENT OF PATENTS

While an injunction can ordinarily be obtained against an infringer in a case where a patent is adjudged valid, except where it would interfere with Government work, a money recovery has not heretofore been generally possible except under most favorable circumstances. In a case where it cannot be said that the entire salability of the article depends upon the invention, it has been necessary to show just how much of the price of the article is attributable to the invention, and as it is ordinarily impossible to make such a separation, and as most patent cases are ones in which it cannot be said that the whole salability of the article depended upon the invention, it has resulted that recovery of money is seldom obtained in a patent suit.

Recently there have been two or three decisions in which the courts have taken a more liberal attitude, holding in effect that where an invention has been used by an infringer a reasonable royalty may be awarded to the patentee based on a mere estimation or on opinion evidence, even though no exact computation can be made. This is analogous to the attitude of the courts in personal injury cases and is entirely just and reasonable. While, as stated, there have been two or three decisions to this effect, it may take a generation to induce United States courts generally to adopt this position, if at all, and the Committee therefore proposes that the law be amended to provide, that as damages to the complainant, the court, on due proceedings had, may adjudge and decree to the owner payment of a reasonable royalty or other form of general damages. Such an amendment has been provided in the attached bill amending section 4921, the Revised Statutes of the United States, and reading as follows:

If proof is not offered or, in the absence of adequate proof of the amount that should be awarded as damages or profits, the court, on due proceedings had, may adjudge and decree to the owner payment of a reasonable royalty or other form of general damages.

This proposed amendment would enable the patentee in all suits where the patent has been found valid and infringed to recover at least a reasonable royalty, and would provide a money recovery in the great majority of patent suits where no recovery would otherwise be possible. The Committee believes that the comparative certainty of financial return would answer one of the most common and strongest reproaches against the patent system, namely—that a patent does not ordinarily pay the inventor any money, and it believes that the incentive to invent would accordingly be greatly increased.

There are some cases in which it seems to many who are familiar with such matters as though the courts were inclined to go to the other extreme and award damages out of all proportion. Where a complainant has shown that profits have been made by the use of an article patented as an entirety, the infringer is liable for all the profits unless he can show —and the burden of proof is on him to show—that a portion of them is a result of some other invention used by him. If the infringer cannot show what proportion of the profits is due to such other invention, then all his profits must go to the complainant. Any rule by which the entire profits are given to a patentee in the absence of proof that they are all due to the invention of the patent sued upon, is unfortunate and sometimes very unjust. The proposed amendment to the statute would permit a court under these circumstances to do substantial justice even though it could not be mathematically exact. In other words, the amendment to the statute would enable a court to avoid awarding either too much or too little.

CONCLUSION

Your Committee, believing that the American patent system is vitally useful in our system of government, therefore recommends that the reforms herein discussed be enacted into law.

Your Committee also recommends that this report be approved by the National Research Council and that the Committee be continued for the purpose of arousing and coördinating interest in and support for

the necessary legislation of various national societies, manufacturing interests, bar associations and other elements of the public.

Respectfully submitted,

L. H. BAEKELAND.

(L. H. BAEKELAND), *Acting Chairman,*
WILLIAM F. DURAND, *Chairman (absent in France),*
EDWIN J. PRINDLE, *Secretary,*
M. I. PUPIN,
R. A. MILLIKAN,
S. W. STRATTON (see reservation below),
REID HUNT,
FREDERICK P. FISH (see reservation below),
THOMAS EWING,

Approved: JAMES T. NEWTON,
Commissioner of Patents.

RESERVATION BY DR. STRATTON

I agree to the terms of the report with the exception of that portion which refers to the establishment of the Patent Office as a separate government institution. It is not quite clear in my own mind that this would be the best thing to do since in general it is best for all government establishments to be represented in the Cabinet.

S. W. STRATTON.

RESERVATION BY MR. FISH

I entirely concur in the substance of the conclusons set out in the above report.

I think, however, that the words 'if proof is not offered, or' in that portion of proposed amendment to Section 4921 which deals with damages and profits, should be omitted so that the sentence in which those words appear should read:

In the absence of adequate proof of the amount that should be awarded as damages or profits, the Court, on due proceedings had, may adjudge and decree to the owner payment of a reasonable royalty or other form of general damages.

I do not think that a Statute should directly or indirectly contemplate a condition in litigation in which 'proof is not offered.' I believe that the clause which I suggest would accomplish the desired purpose and that the Courts in applying the clause would be embarrassed if the phrase 'if proof is not offered' were in the Statute.

I think also that general damages by way of a reasonable royalty or otherwise should not be awarded unless it appeared that actual damages or actual profits due to the unlawful use of the invention could not be determined and that there should not be any language in the Statute which implied that no effort be made to determine such actual damages and profits.

FREDERICK P. FISH.

65TH CONGRESS,
1ST SESSION.

H. R. 5011

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 1917

MR. CHARLES B. SMITH introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed

A BILL

To establish a United States Court of Patent Appeals, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created a United States Court of Patent Appeals, which shall consist of seven judges, of whom five shall constitute a quorum, and shall be a court of record with jurisdiction as is hereinafter limited and established. Such court shall prescribe the form and style of its seal and the forms of its writs and other process and procedure as may be conformable to the exercise of its jurisdiction as shall be conferred by law. It shall have the appointment of the marshal of the court, who shall have the same powers and perform the same duties under the regulations of the court as are now provided for the marshal of the Supreme Court of the United States, so far as the same may be applicable. The court shall also appoint a clerk, who shall have the same powers and perform the same duties now possessed and performed by the clerk of the Supreme Court of the United States, so far as the same may be applicable. The salary of the marshal of the court shall be $3,500 a year, and the salary of the clerk shall be $5,000 a year, both to be paid monthly in twelve equal payments. The costs and fees now provided by law in the Supreme Court of the United States shall be the costs and fees in the United States Court of Patent Appeals; and the same shall be collected, expended, accounted for, and paid over to the Treasury Department of the United States in the same manner as is provided by law in respect to the costs and fees in the Supreme Court of the United States. The court shall have power to establish all needful rules and regulations for the conduct of its business within its jurisdiction as conferred by law.

SEC. 2. That the President of the United States, by and with the advice and consent of the Senate, shall appoint a chief justice of said United States Court

of Patent Appeals, and as vacancies occur shall in like manner appoint others to fill such vacancies from time to time. The acceptance of that office by a circuit or district judge of the United States shall vacate his office as circuit or district judge.

SEC. 3. That upon the taking effect of this Act the Chief Justice of the Supreme Court of the United States shall designate from among the circuit and district judges of the United States six judges to sit as associate judges of the United States Court of Patent Appeals, three of them to sit for three years from the first day of the first term thereof, and three of them to sit for six years from the first day thereof, as associate judges of the same court for six years from the first day of the first term thereof. And after that, as the periods expire for which such designations shall have been made, the Chief Justice of the Supreme Court of the United States shall fill the vacancies thus occurring by designation of the same or other judges from among the circuit and district judges of the United States, to sit for periods of six years each. In case of the death, resignation, or disability of any associate judge of the said court or of his resignation of his seat in said court the Chief Justice of the Supreme Court shall designate another circuit or district judge of the United States to sit for the unexpired period for which his predecessor has been designated. The designation of a judge to sit as associate judge of the United States Court of Patent Appeals must be with his consent, and his service in that court shall not vacate his office as circuit or district judge, as the case may be.

SEC. 4. That a term of the United States Court of Patent Appeals shall be held annually at the city of Washington, beginning on the second Monday of October in each year, and the same may be adjourned from time to time as the court shall order. If at any time for the meeting of the court a quorum of the judges shall not be present, the judges present may adjourn the court and, if necessary, adjourn again from time to time until a quorum appear. If at a sitting of the court the chief justice shall be absent, the associate judge senior in commission as circuit judge, or senior in age in case of commissions of even date, shall preside. If no circuit judge shall be present, the associate judge senior in commission as a judge of a district court of the United States, or senior in age in case of commissions of even date, shall preside. Until it shall be otherwise provided by Congress the sessions of the court shall be held in a building or rooms to be provided by the marshal of the District of Columbia, under the direction and approval of the Attorney General of the United States. The court shall by order authorize its marshal to employ such deputies and assistants for himself and the clerk of the court and such criers, bailiffs, and messengers as the business of the court shall require, and to pay the salaries of such employees at rates of compensation not exceeding those paid for similar services in the Supreme Court of the United States, and to pay all other necessary incidental expenses of the court. The chief justice and each of the associate judges shall be entitled to employ a clerk, whose salary, at a rate not exceeding that allowed the clerks of the Chief Justice and associate

justices of the Supreme Court, shall be paid as part of the expenses of the court. The court shall have power, in its discretion, to appoint a reporter and to fix by order his salary or other compensation and direct the form and manner of the official publication of its decisions.

SEC. 5. That the chief justice of the United States Court of Patent Appeals shall receive a salary of $12,000 per year. The circuit judges of the United States sitting as associate judges of the same court shall each receive the salary allowed him by law as a circuit judge, and in addition thereto during the time of his service as associate judge of the United States Court of Patent Appeals, but not longer, such additional sum as will make his entire compensation during that service $11,500 per annum. The district judges sitting as associate judges of the United States Court of Patent Appeals shall each receive a salary allowed to him by law as district judge, and, in addition thereto, during the term of his service as associate judge of the United States Court of Patent Appeals, but no longer, such additional sum as will make his entire compensation during that service, $11,500 per annum. All the said salaries shall be payable in twelve equal monthly installments. The time during which any judge shall serve in said court shall be deemed continuous service with that in any other court of the United States, before or after such service within the meaning and intent of section seven hundred and fourteen of the Revised Statutes. The additional compensation received by a circuit or district judge while sitting as associate judge of the United States Court of Patent Appeals shall not be taken into account in determining the amount to be received by him after retirement.

SEC. 6. That the United States Court of Patent Appeals shall have jurisdiction to hear and determine appeals and writs of error from final judgments and decrees in the district courts of the United States in cases arising under the laws of the United States relating to patents for inventions, and from final judgments and decrees in cases arising under the laws of the United States relating to patents for inventions rendered by any other court having jurisdiction under the laws of the United States to hear and decide such cases in the first instance: *Provided, however*, That it shall have no jurisdiction in cases originating in the Court of Claims. All such appeals shall be taken within six months after the entry of the order, judgment, or decree sought to be reviewed. The practice, procedure, and forms to be observed in the taking, hearing, and determination of such appeals and writs of error shall conform to the practice, procedure, and forms observed in like cases in the Supreme Court of the United States, subject to such rules and regulations as shall be prescribed by the court.

SEC. 7. That whenever, by an interlocutory order or decree in a district court of the United States or other court having jurisdiction under the laws of the United States to hear and decide in the first instance cases arising under the patent laws, in a case in which an appeal may be taken from the final decree of such court to the United Sates Court of Patent Appeals, an injunction

or restraining order shall be granted, or refused, or continued, or vacated, or modified, or retained without modification after motion to modify the same, an appeal may be taken from such order or decree by the party aggrieved to the United States Court of Patent Appeals: *Provided*, That the appeal must be taken within thirty days from the service of notice of entry of such order or decree; and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court, or the United States Court of Patent Appeals, or a judge thereof, during the pendency of such appeal.

SEC. 8. That the chief justice and the associate judges of the United States Court of Patent Appeals shall each exercise the same powers in term and vacation in the allowance of appeals, supersedeas orders, and other matters incidental to the jurisdiction and business of the court as are now exercised by the Chief Justice and associate justices of the Supreme Court of the United States in relation to the business and jurisdiction of that court.

SEC. 9. That the decisions of the United States Court of Patent Appeals in all cases within its appellate jurisdiction shall be final, except that it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, any such case to be certified to it for its review and determination with the same power and authority in the case as though it had been carried by appeal or writ of error from the trial court directly to the Supreme Court.

SEC. 10. That whenever any case shall have been certified from the United States Court of Patent Appeals to the Supreme Court of the United States, by certiorari or otherwise, it shall be, upon its determination by the Supreme Court, remanded to the district court of the United States or other court in which it originated for further proceedings to be taken in pursuance of such determination. And in every case determined by the United States Court of Patent Appeals upon appeal or writ of error, the case shall be remanded to the district court of the United States or other court from whence it came, for further proceedings to be taken in pursuance of such determination.

SEC. 11. That all appeals and writs of error in cases in which appellate jurisdiction is by this Act conferred upon the United States Court of Patent Appeals which shall have been pending without hearing in the United States circuit courts of appeals or other court of appellate jurisdiction for less than three calendar months prior to the taking effect of this Act shall be transferred from such circuit courts of appeals or other courts to the United States Court of Patent Appeals and be heard and determined in that court as though they had been taken there from the trial courts by appeal or writ of error without further payment for certifying the record or any new or additional docket or calendar fee; all other appeals and writs of error in cases in which appellate jurisdiction is by this Act conferred upon the United States Court of Patent Appeals which shall be pending in the United States circuit courts of appeals or other courts of appellate jurisdiction at the time of the taking effect of this

Act shall remain and be heard and determined by the courts in which they may be pending, respectively, as though this Act had not been passed.

SEC. 12. That after the taking effect of this Act no appeal or writ of error shall be taken from any district court or other court of the United States to any United States circuit court of appeals or other appellate court in any case in which an appeal or writ of error may be taken to the United States Court of Patent Appeals under the provisions of this Act.

SEC. 13. That all laws and parts of laws inconsistent with the provisions of this Act are hereby repealed.

SEC. 14. That this Act shall take effect and be in force on the day of , nineteen hundred and

A PROPOSED BILL

TO ESTABLISH A PATENT AND TRADE-MARK OFFICE INDEPENDENT OF ANY OTHER DEPARTMENT AND TO PROVIDE FOR COMPENSATION FOR INFRINGEMENT OF PATENTS IN THE FORM OF GENERAL DAMAGES, AND FOR OTHER PURPOSES, and amending sections four hundred and forty, four hundred and forty-one, four hundred and seventy-five, four hundred and seventy-six, four hundred and seventy-nine, four hundred and eighty-one, four hundred and eighty-three, four hundred and eighty-four, four hundred and eighty-six, four hundred and eighty-seven; four hundred and ninety-six, forty-eight hundred and ninety-eight, forty-nine hundred and six, forty-nine hundred and twenty-one, forty-nine hundred and thirty-four, forty-nine hundred and thirty-five, and forty-nine hundred and thirty six, of the Revised Statutes of the United States and to amend the Act of January 12, 1895, Ch. 23, Sec. 73; 28 Stat. L. 619.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SEC. 1. That so much of section four hundred and forty of the Revised Statutes as follows the words "In the Patent Office" and refers to said office only be repealed.

SEC. 2. That section four hundred and forty-one of the Revised Statutes be, and the same is hereby amended to read as follows:

"SEC. 441. The Secretary of the Interior is charged with the supervision of public business relating to the following subjects:

First. The public lands, including mines.
Second. The Indians.
Third. Pensions and Bounty Lands.
Fourth. Education.
Fifth. Government Hospital for the Insane.
Sixth. Columbia Asylum for the Deaf and Dumb."

SEC. 3. That Section four hundred and seventy-five of the Revised Statutes be and the same is hereby amended to read as follows:

"SEC. 475. There is hereby created an office known as the Patent and Trade-mark Office where all records, books, models, drawings, specifications and other papers and things pertaining to letters patent, trade-marks, prints and labels shall be safely kept and preserved. The short title of the office shall be Patent Office. Wherever in existing law there are provisions referring to the Patent Office, these provisions shall remain in full force and effect and shall apply to the Patent and Trade-mark Office hereby created."

SEC. 4. That section four hundred and seventy-six of the Revised Statutes be and the same is hereby amended to read as follows:

"SEC. 476. There shall be in the Patent and Trade-mark Office a Commissioner of Patents, one first assistant commissioner, one assistant commissioner, and five examiners-in-chief, who shall be appointed by the President by and with the consent of the Senate and shall hold office during the pleasure of the President. The first assistant commissioner and the assistant commissioner shall perform such duties pertaining to the office of commissioner as may be assigned to them respectively from time to time by the Commissioner.

"The Commissioner may appoint a private secretary. All other officers, clerks and employees authorized by law for the office shall be appointed by the Commissioner in accordance with existing law. There shall be one chief clerk who shall be qualified to act as a principal examiner, one librarian who shall be qualified to act as an assistant examiner, a disbursing clerk, a financial clerk and such examiners, assistant examiners, clerks, messengers and other employees of various grades and designations as Congress shall from time to time provide for, provided however that among the assistant examiners of patents there shall not be in any grade a smaller number than in a lower grade."

SEC. 5. That section four hundred and seventy-nine of the Revised Statutes be and the same is hereby amended to read as follows:

"SEC. 479. The Commissioner of Patents before entering upon his duties shall give bond with sureties to the Treasurer of the United States in the sum of ten thousand dollars ($10,000) conditioned for the faithful discharge of his duties, and shall render to the proper officers of the Treasury a true account of all monies received and disbursed by virtue of his office. The first assistant and assistant commissioner of patents, the chief clerk, the disbursing clerk and the financial clerk of the Patent and Trade-mark Office before entering upon their duties shall severally give bond with sureties to the Treasurer of the United States in such amount not exceeding ten thousand dollars ($10,000), as the Commissioner of Patents may determine, conditioned upon the faithful discharge of their respective duties. The chief clerk, the disbursing clerk and the financial clerk shall severally render to the Commissioner a true account of all monies received and disbursed by virtue of their offices, the said accounts to be included by the Commissioner in his account to the Treasurer of the United States."

SEC. 6. That section four hundred and eighty-one of the Revised Statutes be, and the same is hereby amended to read as follows:

"SEC. 481. The Commissioner of Patents shall superintend and perform all duties respecting the granting and issuing of patents, and the registration of trade-marks, prints and labels directed by law, and he shall have charge of all books, papers, records, models, machines and other things belonging to the Patent and Trade-mark Office. The Commissioner shall sign all requisitions for the advance or payment of money out of the treasury upon estimates or accounts for expenditures upon business assigned by law to his office: subject, however, to adjustment and control by the proper accounting officers of the Department of the Treasury; and shall generally perform all acts heretofore provided by law to be performed by the Secretary of the Interior, or the Commissioner of Patents or both with respect to the Patent and Trade-mark Office."

SEC. 7. That section four hundred and eighty-three of the Revised Statutes be, and the same is hereby, amended to read as follows:

"SEC. 483. The Commissioner of Patents may from time to time establish regulations not inconsistent with law for the conduct of proceedings in the Patent and Trade-mark Office."

SEC. 8. That section four hundred and eighty-four of the Revised Statutes be, and the same is hereby, amended to read as follows:

"SEC. 484. The Commissioner of Patents shall cause to be classified and arranged and properly stored in suitable cases models, specimens of composition, fabrics, manufactures, works of art and design, which have been deposited in the Patent Office or which shall be deposited in the Patent and Trade-mark Office."

SEC. 9. That section four hundred and eighty-six of the Revised Statutes be, and the same is hereby amended, to read as follows:

"SEC. 486. There shall be purchased for the use of the Patent and Trade-mark Office a library of such legal, scientific and technical works and periodicals, both foreign and domestic, as may aid the officers in the discharge of their duties, not exceeding the amount annually appropriated for that purpose."

SEC. 10. That section four hundred and eighty-seven of the Revised Statutes be, and the same is hereby, amended to read as follows:

"SEC. 487. The Commissioner of Patents may prescribe rules and regulations governing the recognition of agents, attorneys or other persons representing applicants or other parties before his office, and may require of such persons, agents or attorneys before being recognized as representatives of applicants or other persons that they shall show that they are of good moral character and in good repute, are possessed of the necessary qualifications to enable them to render to applicants or other persons valuable service, and are likewise competent to advise and assist applicants or other persons in the presentation or prosecution of their applications or other business before the Office. And the Commissioner may after notice and opportunity for a hearing suspend or exclude, either generally or in any particular case, from further practice before his office, any person, agent or attorney shown to be incompetent or dis-

reputable or who refuses to comply with the said rules and regulations, or who shall with intent to defraud in any manner, deceive, mislead or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the office by word, circular, letter or by advertising. But the reasons for any such suspension or exclusion shall be duly recorded, and the action of the Commissioner may be reviewed upon the petition of the person so refused recognition, by the Supreme Court of the District of Columbia, under such conditions and upon such proceedings had as the court may by its rules determine."

SEC. 11. That the Act of January 12, 1895, ch. 23, Sec. 73; 28 Stat. L., 619, as amended, be and the same is hereby amended to read as follows:

"The Commissioner of Patents is authorized to continue the printing of the following:

First. The patents for inventions and designs issued by the Patent and Trade-mark Office, including grants, specifications and drawings, together with copies of the same, and of patents already issued, in such number as may be needed for the business of the Office.

Second. The certificates of trade-marks and labels registered in the Patent and Trade-mark Office, including descriptions and drawings, together with copies of the same, and of trade-marks and labels heretofore registered, in such numbers as may be needed for the business of the Office.

Third. The Official Gazette of the United States Patent and Trade-mark Office in numbers sufficient to supply all who shall subscribe therefor at five dollars per annum; also for exchange for other scientific publications desirable for the use of the Patent and Trade-mark Office; also to supply one copy to each Senator, Representative, and Delegate in Congress; also to supply one copy to eight such public libraries having over one thousand volumes, exclusive of Government publications, as shall be designated by each Senator, Representative, and Delegate in Congress, with one hundred additional copies, together with bi-monthly and annual indexes for all the same; of the Official Gazette, the 'usual number' shall not be printed.

Fourth. The Report of the Commissioner of Patents for the fiscal year, not exceeding five hundred in number, for distribution by him; the Annual Report of the Commissioner of Patents to Congress, without the list of patents, not exceeding one thousand five hundred in number, for distribution by him; and of the Annual Report of the Commissioner of Patents to Congress, with the list of patents, five hundred copies for sale by him, if needed, and in addition thereto the 'usual number' only shall be printed.

Fifth. Pamphlet copies of the rules of practice, pamphlet copies of the patent laws, and pamphlet copies of the laws and rules relating to trade-marks and labels, and circulars relating to the business of the Office, all in such numbers as may be needed for the business of the Office. The 'usual number' shall not be printed.

Sixth. Annual volumes of the decisions of the Commissioner of Patents and of the United States courts in patent cases, not exceeding one thousand five hundred in number, of which the 'usual number' shall be printed, and for this purpose a copy of each shall be transmitted to Congress promptly when prepared.

Seventh. Indexes to patents relating to electricity, and indexes to foreign patents, in such numbers as may be needed for the business of the Office. The 'usual number' shall not be printed.

All printing for the Patent and Trade-mark Office making use of lithography or photolithography, together with the plates for the same, shall be contracted for and performed under the direction of the Commissioner of Patents, under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe, and all other printing for the Patent and Trade-mark Office shall be done by the Public Printer under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe: PROVIDED, That the entire work may be done at the Government Printing Office whenever in the judgment of the Joint Committee on Printing the same would be to the interest of the Government."

SEC. 12. That section four hundred and ninety-six of the Revised Statutes be, and the same is hereby, amended to read as follows:

"SEC. 496. All disbursements for the Patent and Trade-mark Office shall be made by the disbursing clerk thereof or in his absence and upon the express order of the Commissioner by the chief clerk."

SEC. 13. That section forty-eight hundred and ninety-eight of the Revised Statutes be, and the same is hereby amended to read as follows:

"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 or prior to such subsequent purchase or mortgage.

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

SEC. 14. That section forty-nine hundred and six of the Revised Statutes be, and the same is hereby, amended to read as follows:

"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 subpoena 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 subpoena stated. But no witness shall be required to attend at any place more than forty miles from the place where the subpoena is served upon him; and the provisions of section eight hundred and sixty-nine of the Revised Statutes relating to the issuance of subpoenas duces tecum shall apply to contested cases in the Patent Office."

SEC. 15. That section forty-nine hundred and twenty-one of the Revised Statutes be and the same is hereby amended to read as follows:

"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. If proof is not offered or, in the absence of adequate proof of the amount that shall be awarded as damages or profits, the court, on due proceedings had, may adjudge and decree to the owner payment of a reasonable royalty or other form of general damages. 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; but in any suit or action brought for the infringement of any patent there shall be no recovery of profits or damages for any infringement committed more than six years before the filing of the bill of complaint or the issuing of the writ in such suit or action, and this provision shall apply to existing causes of action. And it shall be the duty of the clerks of such courts within one month after the filing of any action, suit or proceeding arising under the patent laws to give notice thereof in writing to the Commissioner of Patents, setting forth in order the names and addresses of the litigants, names of the inventors, and the designating numbers of the patents involved, and it shall be the duty of the Commissioner of Patents on receipt of such notice forthwith to indorse the same upon the file wrapper of the said patent or patents and to incorporate the same as a part of the contents of the said file or file wrapper; and for each notice required to be furnished to the Commissioner of Patents in compliance herewith a fee of 50 cents shall be taxed by the clerk as costs of suit."

SEC. 16. That section forty-nine hundred and thirty-four of the Revised Statutes be and the same is hereby amended to read as follows:

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

"On filing each original application for a patent, except in design cases, $20.

"On issuing each original patent, except in design cases, $15.

"In design cases. For three years and six months, $10; for seven years, $15; for fourteen years, $30.

"On every application for the reissue of a patent, $30.

"On filing each disclaimer, $10.

"On an appeal for the first time from the primary examiners to the examiners in chief, $10.

"On every appeal from the examiners in chief to the commissioner, $20.

"For copies of records made by the Patent Office, excluding printed copies, 10 cents per hundred words.

"For each certification, 25 cents.

"For recording every assignment, agreement, power of attorney, or other paper under one patent, application, or invention, of three hundred words or under, $1; of over three hundred and under one thousand words, $2; and for each additional thousand words or fraction thereof, $1; and for each additional patent, application, or invention included in one writing, 25 cents.

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

SEC. 17. That sections forty-nine hundred and thirty-five and forty-nine hundred and thirty-six of the Revised Statutes be amended to read as follows:

"SEC. 4935. All patent fees shall be paid to the Commissioner of Patents, who shall deposit the same in the Treasury of the United States in such manner as the Secretary of the Treasury shall direct."

"SEC. 4936. The Commissioner of Patents is authorized to pay back any sum or sums of money paid to him by any person by mistake or in excess of the fee required by law."

"And be it further enacted that all unexpended appropriations made for the benefit of the Patent Office and all allotments or apportionments of appropriations made to the Interior Department and intended for the use of the Patent Office, which shall be available at the time when this act takes effect, shall become available at such time for expenditure on and by the Patent and Trade-mark Office, and shall be treated the same as though said office had been directly named in the laws making such appropriations. And all estimates heretofore submitted to the Congress by the Secretary of the Interior for appropriations for the Patent Office shall be acted upon as though made by the Commissioner for the Patent and Trade-mark Office."

A PROPOSED BILL

To Increase the Force and Salaries in the Patent Office, and amending Public Act No. 188, 65th Congress, entitled "An Act Making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and for other purposes."

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress Assembled, that Public Act No. 188 of the 65th Congress, entitled, "An Act Making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and for other purposes," be amended as follows:

The Section relating to the "Department of the Interior" of appropriation for the Patent Office, is hereby stricken out, and immediately following the said section relating to the Department of the Interior, the following is inserted:

Patent and Trade-mark Office: Commissioner, $7,500; first assistant commissioner, $6,000; assistant commissioner, $5,000; chief clerk (who shall be qualified to act as principal examiner), $3,500; seven law examiners at $3,000 each; examiner of classification, $3,600; five examiners in chief, at $5,000 each; two examiners of interferences, at $3,000 each; examiners of trade-marks and designs one $3,000, first assistant $2,700, two second assistants at $2,400 each, two third assistants at $2,000 each, six fourth assistants at $1,600 each; examiners—fifty principals at $3,000 each, one hundred and fifty first assistants at $2,700 each, one hundred and fifty second assistants at $2,400 each, one hundred and twenty-five third assistants at $2,000 each, one hundred and twenty-five fourth assistants at $1,600 each; financial clerk, who shall give bond in such amount as the Secretary of the Interior may determine, $2,250; librarian, who shall be qualified to act as an assistant examiner, $2,000; six chiefs of division, at $2,000 each; three assistant chiefs of division, at $1,800 each; private secretary, to be selected and appointed by the commissioner, $1,800; translator of languages, $1,800; clerks—nine of class four, nine of class three, seventeen of class two, one hundred and thirty-five of class one, ninety-one at $1,000 each; three skilled draughtsmen, at $1,200 each; four draughtsmen, at $1,000 each; ninety copyists; forty copyists, at $720 each; three messengers; thirty-three assistant messengers; thirteen laborers, at $600 each; forty-five examiners' aids, at $600 each; twenty-four copy pullers, who shall be selected without regard to apportionment, at $480 each; in all, $1,887,350.

For special and temporary services of typewriters certified by the Civil Service Commission, who may be employed in such numbers, at $2.50 per diem, as may, in the judgment of the Commissioner of Patents, be necessary to keep current the work of furnishing manuscript copies of records, $7,500.

For purchase of law, professional and other reference books and publications and scientific books and expense of transporting publications of patents issued by the Patent Office to foreign governments, $10,000.

For producing copies of weekly issue of patents, designs, and trade-marks, production of copies of drawings and specifications of exhausted patents and other papers, $140,000.

For investigating the question of public use or sale of inventions for two years or more prior to filing applications for patents, and such other questions arising in connection with applications for patents as may be deemed necessary by the Commissioner of Patents; and expense attending defense of suits instituted against the Commissioner of Patents, $2,500.

For the share of the United States in the expense of conducting the International Bureau at Berne, Switzerland, $750.

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