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ON

REISSUED PATENTS.

A WARNING TO INVENTORS.

Howson, Henry

REISSUED PATENTS.

Comments

ON THE

Decision of the U. S. Supreme Court

IN THE CASE OF

Miller *vs.* The Bridgeport Brass Co.,

Practical Effects of the Decision, and its Warning to Inventors.

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PREFACE.

A recent decision of the United States Supreme Court, relative to reissued patents, has suggested the following pages, designed to point out the important and, it is believed, beneficial results likely to accrue from it.

In addition to a brief review of the opinion of the Court, given in the first chapter, full copies of its text, of the Reissued Patent passed upon, and of the original patent, are printed as an Appendix.

The value and importance of a remedy are fully appreciated only by those who fully appreciate the mischiefs against which the remedy is directed.

There are not wanting persons whom sorry experience has made only too familiar with some of the more salient evils which have sprung from the undue and untimely expansion of patents by speculative or blackmailing reissues; but, after all, the knowing are the minority, and there are, moreover, many evils, which though due, wholly or partly, to the bad practice, have not come to be associated with it in the public mind, because, perhaps, the connection is not, without reflection, apparent.

Such, for example, are the evils of recklessness in the preparation and prosecution of applications for original

patents, and the ease with which men, utterly incompetent, have entered and maintained themselves in the profession of soliciting patents.

Upon these and cognate mischiefs the writer has dwelt, with the fullness and plainness which the subject calls for: what he has said is based partly on the published comments of different Commissioners of Patents, partly on information derived from prominent officers of the Patent Office, and partly on his own long experience, and that of others, in patent matters.

Able, trustworthy and well-informed solicitors will recognize the evils referred to, and admit that they justify and call for plain speaking.

A clear understanding of the evils traceable, wholly or in part, directly or indirectly, to the license which has so long prevailed in the matter of enlarging patents by reissue, should bring about a lively appreciation of the benefits to be expected from the stand taken by the Supreme Court in "Miller *vs.* The Bridgeport Brass Company."

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Reissued Patents.

EXTRACTS FROM, AND COMMENTS UPON, THE RECENT DECISION OF THE SUPREME COURT, U. S., IN THE CASE OF MILLER *vs.* THE BRIDGEPORT BRASS CO.

Considerable uncertainty and anxiety have latterly prevailed among those interested in such matters, as to the construction of the law of Reissues.

Many patent lawyers have seen, or thought they saw, a tendency on the part of the Supreme Court towards a construction of the law very different from that which has long been the generally accepted construction.

The moot point has been the validity or invalidity of Reissues containing claims of broader scope than the original patents, and the importance of the question resides in the fact that the great majority of Reissues are obtained for the express purpose of securing more extensive claims.

The alarm has been vigorously raised, and as vigorously contradicted, that the tendency of the Supreme Court, as indicated by a number of decisions rendered during the last few years, was towards the ruling, that where the claim of an original patent is valid, and the description sufficient to support that claim, there is no warrant for a Reissue.

The section of the patent statutes providing for Reissues reads as follows:

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

It is obvious, as remarked by the Supreme Court in its late decision, which it is the special intention of these pages to bring to the notice of inventors, that "whilst the law authorizes a reissue when the patentee has claimed *too much*, so as to enable him to contract his claim, it does not, *in*

terms, authorize a reissue to enable him *to expand* his claim."

But the generally accepted interpretation of the law has been that a claim narrower than that which might properly have been based upon what is set forth in the descriptive portion of an original patent, is such a *defect* or *insufficiency* of *specification* as may lawfully be corrected by a Reissue to enlarge the claim.

The lately rendered decision of the Supreme Court, in the case of Edward Miller & Co. *vs.* The Bridgeport Brass Company, has been looked forward to as likely to settle the doubts which have existed on the subject.

While that decision does not go to the extent of holding that Reissues for the purpose of securing larger or expanded claims are not warranted by the law, it is yet of great interest and importance, not only as showing with what a jealous eye the Supreme Court regards expansions of claim by Reissue, but as to a certain extent determining and defining the conditions under which alone the court may hereafter be expected to uphold such cases.

The case in hand was that of a second reissue of a patent originally granted in October, 1860, for an improvement in lamps, the reissue having been obtained *fifteen years* afterwards, or in January, 1876.

The facts of the case, are briefly set forth in the decision, as follows:

"The original patent described a combination of devices, amongst other things, *two* domes or deflectors, one above the other, elevated above a perforated cap, through which a wick tube and vapor tube ascended."

"It was claimed that this combination of devices, especially including the two domes, which admitted the external air between them for producing a more perfect combustion, would make a lamp, which, *without a chimney*, and without danger of explosion, would burn those hydrocarbons which are volatile and contain an excess of carbon. The invention proved a failure, but it was found that *the use of one of the domes* (and the other parts) *with the restoration of the chimney*, would be a real improvement, and both plaintiff *and defendant* made such lamps in large quantities. *Fifteen years after the original patent was granted*, the patentee (or rather his

assignee) discovers that the improved lamp was really a part of his original invention, and that by inadvertence and mistake he had omitted to claim it."

Upon this state of facts, the court said: "We think that the court below was clearly right in holding that the invention specified in the second claim of the reissued patent (the one in question) is *not* the same invention described and *claimed* in the original patent."

Had the decision rested here, it would not, perhaps, have been at all striking, or momentous, for it will probably occur to the reader that the case stated by the court was a clear and extraordinary abuse of the privilege of reissue, the maintenance of which would have been singular.

The court, however, proceeds to say:

"But there is another grave objection to the validity of the reissued patent in this case. It is manifest on the face of the patent when compared with the original, that the suggestion of inadvertence and mistake was a mere pretense; or if not a pretense, *the mistake was so obvious as to be instantly discoverable* on opening the letters patent, *and the right to have it corrected was abandoned and lost by*

unreasonable delay. The only mistake suggested is, that the claim was not as broad as it might have been. THIS MISTAKE, IF IT WAS A MISTAKE, WAS APPARENT UPON THE FIRST INSPECTION OF THE PATENT, AND IF ANY CORRECTION WAS DESIRED, IT SHOULD HAVE BEEN APPLIED FOR IMMEDIATELY."

. . . "These *afterthoughts, developed by the subsequent course of improvement*, and intended, by an expansion of claims, to sweep into one net all the appliances necessary to monopolize a profitable manufacture, are obnoxious to grave animadversion." . . .

"If a patentee who has no corrections to suggest in his specification except to make his claim broader and more comprehensive, *uses due diligence in returning to the Patent Office*, and says, 'I omitted this,' or 'My solicitor did not understand that,' his application may be entertained, *and on a proper showing*, correction may be made."

"But it must be remembered that the claim of a specific device or combination, and an omission to claim other devices or combinations apparent on the face of the patent, ARE, IN LAW, A DEDICATION TO THE PUBLIC OF THAT WHICH IS NOT CLAIMED."

"*It is a declaration that that which is not claimed is either not the patentee's invention, or, if his, he dedicates it to the public.* This legal effect of the patent cannot be revoked unless the patentee surrenders it and *proves* that the specification was framed by real inadvertence, accident, or mistake, without any fraudulent or deceptive intention on his part; *and this should be done with all due diligence and speed.* Any unnecessary laches or delay in a matter thus apparent on the record, affects the right to alter or reissue the patent for such causes. If two years' public enjoyment of an invention with the consent and allowance of the inventor, is evidence of abandonment, and a bar to an application for a patent, *a public disclaimer in the patent itself should be construed equally favorable to the public.* Nothing but a clear mistake, or inadvertence, and a speedy application for its correction, *is admissible where it is sought merely to enlarge the claim.*" . . . .

"Now whilst, as before stated, we do not deny that a claim may be enlarged in a reissued patent, we are of opinion that this can only be done when an actual mistake has occurred, not from a mere error of judgment (for that may be rectified by appeal); but a real, *bona fide* mistake inadvertently

committed, *such as a Court of Chancery, in cases within its ordinary jurisdiction, would correct.* Reissues for the enlargement of claims should be the exception, and not the rule."

It has been suggested that the portions of the decision which we have quoted, may be regarded as mere "dicta," and indeed they are distinctly referred to as such in the " syllabus " prepared for the printed copy of the opinion, which appeared in the Official Gazette of the Patent Office. We do not understand, however, that this syllabus was so prepared with the knowledge and sanction of the court, or of any one connected with it, nor do we conceive that these parts of the decision can be regarded by the lower courts or the Patent Office as mere " extra-judicial " opinions, or " dicta " of no binding force.

The court not only propounds the doctrine of abandonment by *laches* or delay, as applicable to expanded Reissues, but actually applies the doctrine to the particular case in hand, in the following words :

" We think that the delay in this case was " altogether unreasonable, and that the patent could " not lawfully be reissued for the purpose of enlar-

"ging the claim and extending the scope of this "patent."

It will be seen that while the court has not gone so far as to hold that *no* reissue with an expanded claim is valid, but, on the contrary, says it does not deny, that in proper cases, and under proper conditions, "a claim may be enlarged in a reissued patent;" it has yet defined and limited those cases and conditions in such a way as must necessarily tend vitally to affect the status of many existing Reissues, and to greatly narrow for the future the field within which the right of Reissue may be exercised.

The first noticeable point is that to allow of such a Reissue, "*an actual mistake* must have occurred, not from a mere error of judgment, but a real *bona fide* mistake, inadvertently committed; *such as a Court of Chancery, in cases within its ordinary jurisdiction, would correct.*" And again, "This legal effect of the (original) patent cannot be revoked unless the patentee surrenders it and *proves* that the specification was framed by *real* inadvertence, accident, or mistake, without any fraudulent or deceptive intention on his part."

It will be observed that a sharp distinction is drawn between a mere "error of judgment" and such a *mistake* as will warrant a reissue of the kind under discussion, and secondly it is said that there must be *proof* of the mistake.

This seems to point to the necessity of the adoption by the Patent Office of rules much more strict and exacting, for the governance of applications for expanded Reissues, than those which have heretofore prevailed.

Hitherto, if the description of an original patent contained matter not claimed, but which, so far as appeared, was new and original with the patentee, and was patentable, this has, in practice, been deemed sufficient to warrant the allowance of a Reissue with a claim to that matter. In other words, the description or illustration in the original patent, of matter which, so far as appears, was new and original with the patentee, has been practically regarded as proof sufficient, in affirmance of the patentee's oath, that the failure to claim that matter in the original patent was an "inadvertence, accident, or mistake," justifying a Reissue for the purpose of claiming it.

But if the Patent Office is to apply to its action in considering Reissue applications, rules the same as, or similar to, those which are mapped out in this decision for governing the consideration of Reissued Patents, its practice must be considerably changed.

It is not our purpose here to discuss how far it may be proper or practicable for the office to establish and carry out rules for the requisite "*proving*" of "*actual mistake*" as distinguished from "*mere error of judgment*," or just what state of facts is likely to be deemed to constitute a "mistake" as so distinguished.

It is sufficient for present purposes to point out that if the action of the patent office in passing upon applications for expanded Reissues is in any degree to correspond with that of the courts in considering expanded Reissues, rules much stricter and more exacting than those now and heretofore in vogue, must prevail there.

A second and not less important consideration raised by the decision, is what may be regarded as the *new* doctrine, as applied to this class of cases, of abandonment by laches or delay.

As we understand the decision, it clearly indicates that had the Reissue been obnoxious to no other objection, it must yet have been condemned, owing to the lapse of time between the taking of the original and that of the Reissue, considered in connection with the fact that in the interim other parties had largely manufactured articles, which, while covered by the Reissue, were not covered by the original patent.

It is true that the case before the court appears from the decision to have been a peculiarly aggravated one in this particular, *fifteen years* having been allowed to elapse.

But it appears to us that the language and reasoning of the court would apply, and may reasonably be expected to be hereafter applied, when occasion arises, to most, if not all, cases where there has been *any* unreasonable delay, at least if attended with the acquisition of adverse rights by others.

This understanding of the meaning and force of the opinion, seems to be justified by the following passage, which occurs in the contemporaneous opinion of the court in *James* vs. *Campbell et al.*

"Of course, if by actual inadvertence, accident or mistake, innocently committed, the claim does not fully assert or define the patentee's right in the invention *specified in the patent*, a speedy application for its correction, *before adverse rights have accrued*, may be granted, as we have explained in the recent case of *Miller* vs. *Bridgeport Brass Company*."

Just how much or how little delay will constitute "unreasonable" delay must, presumably, depend somewhat upon the circumstances of each particular case; but it sufficiently appears that the more obvious the alleged mistake, the more unsafe must be *any* considerable delay.

Says the court of the case before it: "The only mistake suggested is that the claim was not as broad as it might have been. This mistake, if it was a mistake, was apparent *upon the first inspection of the patent*, and if any correction was desired, it should have been applied for *immediately*." And in the general discussion of the law which follows, these passages occur:

"*Any unnecessary* laches or delay in a matter thus apparent on the record affects the right to alter or reissue the patent for such cause."

"Nothing but a clear mistake or inadvertence and *a speedy application for its correction*, is admissible when it is sought merely to enlarge the claim."

"And when, if a claim is too narrow, that is if it does not contain all that the patentee is entitled to, *the defect is apparent on the face of the patent*, and can be discovered as soon as that document is taken out of its envelope and opened, *there can be no valid excuse for delay in asking to have it corrected.*"

"But in reference to Reissues made for the purpose of enlarging the scope of the patent, the rule of laches should be *strictly* applied, and no one should be relieved *who has slept upon his rights*, and has thus led the public to rely on the implied disclaimer involved in the terms of the original patent. *And when this is a matter apparent on the face of the instrument, upon a mere comparison of the original patent with the Reissue, it is competent for the courts to decide whether the delay was unreasonable, and whether the Reissue was therefore contrary to law and void.*"

The evil which the court points out, and to the destruction or diminution of which its decision is directed, is a very prevalent and gross abuse of the privilege of Reissues, the setting up as "mis-

take or inadvertence" in the securing of the original patent of "*afterthoughts, developed by the subsequent course of improvements*, and intended by an expansion of claims *to sweep into one net all the appliances necessary to monopolize a profitable manufacture.*"

Says the court: "*By a curious misapplication of the law* (of Reissues), it has come to be principally resorted to for the purpose of enlarging and expanding patent claims. And the evils which have grown from the practice have assumed large proportions. Patents have been so expanded and idealized, years after their first issue, that hundreds of mechanics and manufacturers who had just reason to suppose that the field of action was open, have been obliged to discontinue their employments, or to pay an enormous tax for continuing them."

The net result of the decision seems to be that hereafter the maintenance of an expanded Reissue claim cannot reasonably be expected, unless it appear, *1st*, that the taking of the original patent with a less extensive claim arose not from "mere error of judgment," but from "real *bona fide* mistake, inadvertently committed;" and, *2d*, that the

"mistake" was corrected by Reissue without any "unreasonable" delay.

The likely consequence is that Reissues for the *enlargement* of claims will be, as the court says they should be, the *exception*, and not, as heretofore, the rule,—a result which, while it may work hardship in some cases, is upon the whole highly desirable.

Undoubtedly, too, the doctrine of the decision is likely to work "injury" to some of what are termed "vested interests" under existing Reissues; as to how far this is a subject for regret there may perhaps be wide difference of opinion.

But as to the general wholesomeness of the rules announced, for future guidance, there will, we think, be more unanimity of sentiment.

The first and most important practical lesson the decision teaches, is the necessity of care in the procuring of original patents, of applying to that business the homely maxim that, "what is worth doing at all is worth doing well."

The hitherto accepted doctrine as to Reissues has tended to breed carelessness about this matter; in times past it was not uncommon for inventors, *under the advice of solicitors*, to accept any kind of claims, for the sake of obtaining *a patent quickly;*

trusting to a subsequent Reissue at leisure to make the patent good. Such advice and action, always bad, should no longer be possible.

The decision further practically enforces the not unwholesome lesson that a patent being a species of contract between the patentee and the public, the former must, out of a proper regard for the rights of the public, be held to reasonable care and circumspection in the performance of that part of the contract which consists in "particularly pointing out and distinctly claiming the part, improvement or combination which he claims as his invention or discovery."

"It must be remembered," says the court, "that the claim of a specific device or combination, and an omission to claim other devices or combinations apparent on the face of the patent, are in law *a dedication to the public of that which is not claimed*," "*a declaration that that which is not claimed is either not the patentee's invention, or, if his, he dedicates it to the public.*"

This doctrine may, perhaps, be regarded as a rather startling departure from that propounded by the Supreme Court, nearly thirty years ago, in the case of *Battin* vs. *Taggart.*

However this may be, and allowing the right of Reissue to be not merely a privilege, but in the strictest sense a right, not merely a creation of statute, but an equity, which had, before the statute, been recognized and acted upon by the courts and the Patent Office, it is yet hard to see anything unreasonable or inequitable in the proposed restrictions upon the exercise of the right.

They seem to be no more than a practical application to particular cases of "reformation of contract" of the elementary doctrine, of general application in like cases, that equity cannot favor unreasonable delay or *laches*.

The equity of Reissues to enlarge claims, if equitably, *i. e.*, diligently and in good faith, resorted to, is distinctly recognized.

It may be objected that the attendant doctrine of abandonment by *laches* introduces into the treatment of the subject an element not only novel, but uncertain; and it may be suggested that if the right is to be limited in time, the limitation should be one ascertained and fixed by statute. On the other hand, it may be urged that perhaps, upon the whole, substantial justice between patentee and public is more likely to be subserved by leaving the matter

to the determination of the courts, in the light of the circumstances surrounding each particular case, than by providing any positive statutory limitation.

In the meanwhile, the decision can hardly fail to be, so far, beneficial, if it forces upon inventors an appreciation of the truth that it is alike their duty and their interest to take all reasonable care and diligence to avoid the making of any implied "dedication" or "declaration of abandonment" by "mistake"—and if, notwithstanding their care, they do make such a "mistake," then to correct it promptly.

Practical and Beneficial Effects of the Decision, and its Warning to Inventors.

CHANGE OF PRACTICE IN THE PATENT OFFICE AND IN THE COURTS SUGGESTED BY THE DECISION.

The decision in the case of Miller *vs.* The Bridgeport Brass Company having been reviewed in its legal aspect in the foregoing chapter, it will be well to ascertain what will be the probable practical results of the rulings; for it may be reasonably assumed that there will be no retrogression on the part of the Supreme Court from the stand taken in regard to expanded reissues, that the lower courts of the United States will follow the lead of the higher court, and that the Patent Office will, as usual, be guided in its practice by the decisions of the courts.

The parties most aggrieved may, perhaps, look to legislation as a relief from the natural effects of the decision in question, but in the present temper of Congress in relation to patents, it may be doubted whether any comfort can come from

that source, for there are few Senators or Members of Congress who have not become aware, by complaints of constituents, of the evil effects of the expansion of patents by Reissue.

Although the Patent Office may, in some instances, be directly responsible for the grant of outrageous reissued patents, it would be unjust to charge that bureau with the evils resulting from the prevailing latitude in acting on this class of cases, and the permission given patentees to absorb, by reissue, the inventions of others.

Many expanded reissued patents of doubtful character have been sustained by the courts, while many others have been slaughtered.

The treatment of reissued and expanded patents by the courts has not been uniform, and in the light of apparently conflicting judicial opinions, the Office has been unable to draw a well-defined line for the guidance of Examiners in their consideration of Reissue applications.

The understanding and opinions of Examiners naturally enough differed on the subject, and the consequence of all this has been the long continuance of a system of so-called liberality in the grant of reissued patents with enlarged claims.

The Supreme Court, however, has been gradually developing a strong antagonism to such reissued patents, and has finally taken a stand in the case of Miller *vs.* The Bridgeport Brass Company, which cannot be disregarded, but which must necessarily result in material changes in the treatment of expanded Reissue applications by the Patent Office, and of expanded reissued patents by the Circuit courts.

We can best determine what will be the probable results of the action of the Supreme Court in a practical point of view by inquiring into the character of the evils which have resulted from the indiscriminate enlargement of patents by Reissue.

It is contended

First.—That the practice has been detrimental to the welfare of the public; has been injurious to inventors; has disturbed the economy of our manufactures, and has tended to enrich men who are neither inventors nor producers, at the expense of inventors, patentees, manufacturers and the general public.

Second.—That the expansion of patents by Reissue has engendered and sustained unwholesome practices in soliciting patents, tending to the

victimizing of inventors, to lessen the value of patent property, and to degrade our patent system.

THE DISTURBING EFFECT OF THE INDISCRIMINATE REISSUING OF PATENTS, ON THE INDUSTRIAL ARTS.

In discussing subjects relating to patent legislation and patent practice, we must never lose sight of the interests of the public at large, nor fail to inquire whether any modifications of the law or practice are likely to promote or retard the "progress of the useful arts."

The intimate alliance between patents and the advancement of the industrial arts is acknowledged in every patent-granting country in the world, and any legislation or practice which may tend to weaken this alliance, must be prejudicial to the public. Such has been the tendency of the distortion of patents by Reissue, to misrepresent the intentions of the patentee, and to cover ground not contemplated by him, and not warranted by the terms of the original patents.

No greater disturbance of the progress of the useful arts can be imagined than the sudden appearance, years after the first grant, of a reissued patent having a new meaning, and a more comprehensive scope than the original.

In 1863, the Supreme Court said, in the case of Burr *vs.* Duryee *et al.*: "The surrender of valid patents and the granting of reissued patents thereon, with expanded or equivocal claims, where the original was clearly neither inoperative nor invalid, and whose specification was neither defective nor insufficient, is a great abuse of the privilege granted by the statute, and productive of great injury to the public. This privilege was not given to the patentee or his assignees in order that the patent may be rendered more elastic or expansive, and therefore more available for the suppression of all other inventions."

The same Court, in the decision which we are now considering, has said:

"Patents have been so expanded and idealized years after the first issue, that hundreds and thousands of mechanics and manufacturers, who had just reason to suppose that the field of action was open, have been obliged to discontinue their employments, or to pay an enormous tax for continuing them."

There are two classes of men on whom the public must depend for the progress of the useful arts: the inventors, stimulated by wise patent legislation, on the one hand; and on the other hand, the manufacturers, who, by their enterprise and activity, render the conceptions of inventors available to the public.

But there is another class of men which contributes nothing in the way of invention, nothing in the way of production, but yet, and mainly on the strength of reissued patents, has acquired a dangerous influence in patent matters, and may be said to live at the expense of inventors and manufacturers.

If the recent decision of the Supreme Court tends to put a stop to the doings of these men, the inventors and producers can well afford to submit to any temporary inconveniences which they themselves may suffer in consequence of the decision.

Let it be clearly understood who are the men we refer to:

We do not mean the enterprising men who, having acquired interests in patents, are willing to devote their time, to invest money and induce others to invest, in carrying out patented inventions, and

making them available to the public. These men are, perhaps, of all others, the greatest boon to inventors, for it must be borne in mind that the latter are often not endowed with the enterprise, practical skill and business capacity, which must be brought to bear on the introduction of new inventions.

We do not mean the manufacturers under patents, who, very naturally and very properly, exercise every effort to place their patents on the most secure footing, and who have, in good faith, availed themselves of the privilege of reissuing, to that end.

The men to whom we especially refer (professional men and others) are those who, acquiring a knowledge, either in the pursuit of their professional calling, or by hearsay, of some profitable patented manufacture, or process, hunt through the Patent Office for some forgotten patent which may have the appearance of anticipating those under which the manufacturer is prosecuting, in fancied security, a successful business, purchase the patent, generally for a mere song, and in a round-about way—for any supposed interest of the patentee is generally out of the question—reissue the patent, and by cunning changes of wording and claims, make it cover or appear to cover and absorb the patented invention

which the manufacturer is working. Then follows the demand for license fees, or the patent, distorted by Reissue to cover ground never contemplated by the original inventor, is offered for sale at a high price, and is thus, after it has remained in obscurity for years, converted into a weapon for harassing manufacturers. What is to be done under the circumstances? The manufacturer is threatened with a suit for infringing the reissued patent, and often the latter is owned by a ring, backed by prominent counsel and attorneys; the victim counts the cost and harassment of defending the threatened suit, and consents to pay the money demanded; naturally he raises the price of his products, the economy of the manufacture is disturbed, and the public is taxed for the benefit of the non-producing, non-inventing speculator.

It may be well to repeat here what the writer said in a little volume* first published in 1877, when discussions relating to proposed patent legislation took place before the Senate Committee on Patents.

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* Patents and the Useful Arts, by H. H.

In that volume we referred to the law relating to Reissues as a beneficent measure, which "has been grossly abused, and has brought our patent system into such disrepute that remedial legislation is imperatively demanded."

"A patent, or series of patents, relating to some special branch of industry, has been obtained, and capital has been invested in the manufacture of the patented articles. Now in these days, the simplest objects of every-day use cannot be economically manufactured without an outlay for machinery and appliances, and for carrying into effect a proper system of division of labor; the public demands not only new things but better things and cheaper things, and this demand can only be supplied by patents, and by the capital which patents invite. The remarkably cheap products of our workshops at the Centennial Exhibition were matters of surprise and astonishment to our visitors from abroad, where labor is much less expensive than in our own country."

"The factory, based on patents, is in full and successful operation, the proprietor is receiving a fair interest for the capital invested, and the public has the benefit of cheaper and better articles in

return for the protection afforded by the Government in the shape of patents."

"The success of the establishment cannot remain a secret, and it attracts the attention of a patent speculator, whose first move is to try to get hold of some patent preceding those which are owned by the proprietors of the establishment. Failing in discovering a patent to exactly meet the case, he takes an excursion to Washington, probably takes the advice of a solicitor there, to whom he explains what he wants, and together they go on a hunting expedition through the records and model halls, until they find some model of a patent which they think can be doctored by Reissue to resemble a subsequent prominent patent of the manufacturer. The model has, perhaps, long since been almost forgotten by the inventor himself, and has remained on the shelves of the model room without attracting any notice. By cunning manœuvres, the patent to which the model appertains is purchased from the owner, perhaps for a mere song, and then commences the operation of reissuing; the attorney has the copy of the recently discovered patent before him, and also a copy of that for the coveted machine of the successful manufacturer,

and he is told that he must reissue the first patent so as to cover, or, to use a common phrase, wipe out the second."

"The most ingenious devices are adopted to bring this about,—the attorney receives high fees, and the Examiner is cajoled by all sorts of assertions into allowing claims which may appear to be innocent enough."

"The reissued patent is shown to the manufacturer, and he may be induced to purchase it for a large sum in order to avoid expensive litigation. Now this money is taken from the public to enrich the speculator, the non-producer, for, to make up for the withdrawal of capital, the price of the product is increased. Perhaps the manufacturer resists the demand made on him, costly litigation ensues, and the public and manufacturer suffer for the benefit of the owner of the reissued patent."

"The evil wrought by this system is incalculable, it not only disturbs the economy of manufactures, but brings disgrace on the whole patent system. A Reissue of this character cannot promote the progress of the useful arts, it must necessarily obstruct that progress."

A prominent attorney in his argument before the same Senate Committee, in speaking of the evils of Reissues obtained by speculators, and after instancing a man who has invested largely in the manufacture of a patented machine, said:

"Then comes along what I call one of these patent sharks or patent speculators. He goes down to the office and rakes that class over with a fine-tooth comb to see if he cannot find an old patent which can be reissued to cover this successful machine. He comes across the old defunct patent, and goes and buys it. The owner, of course, is glad to get what he spent on it, and he may take a hundred dollars for it. Very frequently the man is dead, and he will go to the widow or heirs, and they will take anything he offers them for it. He reissues that patent. Being an *ex parte* proceeding, of course nobody knows anything about it. He reissues it just as Judge Grier stated in that hat-body case, puts it through the *enlarging* process, not for the purpose of protecting what that patentee invented, but for the purpose of covering other inventions. He has the specifications and claims prepared with special reference to covering this successful machine, and when he gets his patent he goes to

the manufacturer and says, 'You are infringing my patent.' The manufacturer examines the matter, and it seems to be a clear case. Or he refers it to his attorney or counsel, and they examine it, and they tell him that they think he is infringing the patent; and then he has either got to pay that man what the latter chooses for the privilege of going on with his business, or else he has to shut up shop."

There is an instance of a speculator who for years has spent his entire time and exerted all his energies in the accumulation of patents relating to one of the most extensive industries in the country; he buys them cheaply if he can, and then expands by Reissue, or, if he cannot purchase at a low price, threatens the patentee with infringement until he comes to terms. He has emissaries in different cities engaged to pick up patents which can be enlarged by Reissue, and has finally accumulated a host of patents constituting an intricate network of patent property, on the strength of which he levies tribute on manufacturers in a dozen States of the Union. And it must be remembered that the patents thus collected are in many cases so shrouded in mystery that the true character of the aggregation, plain enough to the owner, cannot be

determined by others without having expensive researches made by accomplished experts.

There are scores of instances in which patents have been issued, reissued, and re-reissued to keep pace with "the progress of the arts as developed by time and experience." In many cases a vigorous opposition has ended in the slaughter of the patents by the courts, but not until they had done infinite mischief in the way of harassing manufacturers and obstructing the progress of invention. Inventors are afraid to exercise their ingenuity in a direction which appears to be blockaded by a vague and sweeping reissued patent, or interwoven collection of such patents.

Here is one of many instances:

A patent was granted with a single, modest, and harmless claim; in the branch of industry to which it related several valuable improvements were made, the patent was reissued to absorb these improvements, again reissued to cover other improvements, and again reissued, until at last the little patent with a specification of 450 words and a single claim was converted into two patents with 8,000 words and seventeen claims.

While this process of gradual enlargement was going on, the patent was a continual source of harassment to manufacturers, until by a combined effort it was swept away.

Hundreds of similar instances could be cited.

Let us see how the process of reissuing for such purposes is usually conducted.

The attorney has before him the patent to be reissued, and copies of the patent or patents, and perhaps a drawing of non-patented inventions, all of which it is desired to absorb by Reissue. He may know, or be morally certain, that his clients never contemplated the devices which must be enveloped, but he proceeds with his operations. He is actuated on the one hand by the desire to include all before him, and on the other hand he must be cautious about violently wrenching, or appearing to add new matter to the patent, lest the Examiner shall discover at once the illegal enlargement; he must endeavor to hoodwink that officer. His eye rests on a word descriptive of a certain vital part of the invention; now, he says, if I can only change the word here and there, and substitute for it another word, the Examiner's mind will become gradually and insensibly impressed with the idea of a differ-

ent thing, and thus the way will be paved for absorbing claims. Then he sticks in a word or two, or a sentence, which, while appearing harmless enough, may contribute to the perversion of the patentee's original meaning, and so the game goes on, until the specification for the Reissue is thus prepared for the claims. Then he chuckles at the smartness which he has displayed in thus helping one man to grab the property of others. The Examiner, of course, is kept as much in the dark as possible, and, not knowing the true inwardness of the proceeding, may pass the case for issue.

The circulars even of the most incompetent men always refer to Reissues as cases demanding great ability, of which they have a supply at hand, and they generally charge extra fees for such services.

It may often require great ability to correct an honest blunder, and obtain an honest Reissue; but it requires skill, or rather cunning, of another and less reputable kind, to do the work we have described.

It is a much easier matter to do this kind of tricky work than to prepare an original application in such proper and exact form as will insure the full

protection of an invention, and it very often happens that a man who can prepare a fraudulent Reissue is not the man to do justice to an original application.

Remedies for the evils we have described have been attempted and suggested from time to time. Formerly the owner of the entire interest in a patent could reissue it without the knowledge or assent of the inventor; but under the Act of 1870, the inventor, if alive, must make the application. This, however, has not been a serious obstacle in the way of the speculator, who, by misrepresentations or through the intervention of emissaries, frequently obtained the desired signatures, while he kept the patentee in the dark as to the scope and object of the Reissue, although, occasionally, the patentee discovering the aim of the speculator, insisted upon being a participator in the transaction and in the prospective profits.

General Leggett, one of the ablest of our Commissioners, said: "In these Reissues more deviltry—if I may be permitted to use the phrase—creeps into the practice of the Patent Law than everything else put together."

In his report for the year 1871, he suggested, as a guard against fraudulent Reissues, that "Section 53 should be so amended as to require that a notice of all such applications for Reissues as seek to enlarge the original claim should be published in the Official Gazette for at least four weeks previous to the day set for examining the same, and that opposition be allowed as in extension cases."

This remedy, excellent in other respects, would have entailed an immense amount of additional work upon the Patent Office; and for this reason, perhaps, it failed to meet the views of our legislators.

It has also been suggested that there should be no Reissue of a patent after it has been in existence for more than two years; a plan which appears to accord, in some respects, with the reasoning of the recent decision of the Supreme Court.

In 1876 the writer suggested that, in order to lighten the duties of Examiners in acting on Reissues, and lessen the chance of fraud on those officers, the following rule should be established:

"Every applicant for a Reissue must file a paper setting forth in full and explicit terms wherein consists the error, inadvertence, or mistake contained in the original patent which he desires to correct by

reissue. If language is introduced which does not appear in the original patent, he must state why he introduced it, and whether it is based on the model, drawing, or specification. If new functions, which do not appear to have been contemplated in the original patent, are given in the new specification, a full explanation will be demanded from the applicant, tending to show the accuracy of the new assertions, and when expanded claims are asked, he must state the ground on which they are based."

The decision of the Supreme Court may lead to the adoption of some such rule as this.

We do not, of course, pretend to say that all reissued patents are of the kind we have endeavored to describe, but far too many are.

There is nothing in the decision of the Supreme Court to prevent a patentee from correcting a blundering specification, nor from properly enlarging his claims, providing this be done in reasonable time after the grant of the patent; but there is much in the decision, which must tend to prevent the enlargement of patents for the purpose of absorbing inventions not contemplated by the patentee, much to show that the days of speculators who, on the

strength of reissued patents, with fraudulent claims, have preyed upon manufacturers, are numbered.

THE EVIL EFFECTS OF THE UNRESTRICTED REISSUE OF PATENTS IN PATENT OFFICE PRACTICE.

Another evil of a different character, but of no less magnitude, especially as far as the interests of inventors are concerned, has been brought about by the unrestricted reissuing of patents; we refer to the careless presentation and equally careless prosecution of applications for original patents.

Facilities for reissuing patents have engendered in the minds of inventors a belief that a patent can be repaired and re-repaired at any time when it is worth while to do so, or when the efforts of others suggest a Reissue, and that the style of specification, claims, and drawings, is not matter for grave consideration. The very man who would measure every word of an agreement, or other document relating to ordinary property or money matters, will be heedless in the criticism of papers which must define his patent property, and in a great measure determine its value.

It has been the commonest thing, moreover, for attorneys to suggest to inventors that any shortcomings in a specification or claim may be corrected by Reissue, when it is worth while to resort to that measure, and to advise the acceptance from the office of a patent claiming less than the inventor is entitled to, in order to gain time, on the ground that the deficiency can be afterward corrected by Reissue.

With the view of ascertaining the general character of applications for patents as filed in the Patent Office, fourteen principal examiners in charge of as many divisions were consulted on the subject, and readily gave the desired information. Of course there was a variation in the estimates, owing mainly to the fact that in some divisions the inventions examined are of a more complex and elaborate character than in others.

It was found that, on an average, 14 per cent. of the applications were prepared in a *masterly, first-rate* manner, different examiners using the different terms as applied to the preparation of both specifications and drawings; that 26 per cent. were fair to medium, 30 per cent. passable to poor, and

that the remaining 30 per cent. were very bad or butchered.

The estimate may appear to the casual reader to be illiberal and almost incredible, but there are two classes of men who know that it is a fair one, inclining to the side of liberality. These men are examiners of the Patent Office, who furnished the information on which the estimate is based, and the professional men who report on the validity of patents, and whose reports are accepted by manufacturers and those interested in patent property, and whose occupation demands the constant perusal and criticism of patents.

Let any man of the most ordinary literary attainments take a batch of copies of patents, peruse them carefully, and he will be astonished at the want even of common schooling displayed in the composition of many of the specifications.

It cannot be doubted by any one experienced in patent matters that this state of affairs is in a great measure due to the supposed facilities for repairing damages by Reissue.

The following questions will naturally occur to the reader who is not familiar with the subject:

First.—How can the men who do this kind of reckless and clumsy work continue to transact business?

Second.—How can the Patent Office authorities entertain such work, and permit inventors to be victimized?

The first of these questions can be readily answered by saying that the most worthless nostrums can be foisted on the public as life-saving medicines, by wholesale advertising.

As it is not always an easy matter for the wisest men to determine in advance the value of professional services of any kind, it is not much to be wondered at that inventors scattered over the country should be misled by the circulars and apparently liberal terms of incompetent patent attorneys.

The second question will demand a more elaborate answer.

The principal duty of an Examiner is to determine whether an invention claimed by an applicant for a patent is new.

With copies of United States and Foreign patents, and technical works before him, he proceeds to make the necessary search, the result of which will determine his action in the case.

But there is another duty which the Examiner has first to perform: he must determine whether the application is in all respects in proper form; that is to say, he must ascertain whether the formalities required by the rules have been complied with, and he may further demand the amendment and revision of the specification for the purpose of correcting inaccuracies of description, or unnecessary prolixity, and securing correspondence between the claim and the other parts of the specification. He must also determine whether a drawing or drawings submitted with an application fully illustrate the invention.

But an Examiner cannot inform an inventor that his attorney has claimed less for him than he is entitled to; he will take care that an applicant does not obtain more than he is entitled to, but it is not the business of the Examiner to advise the applicant or his attorney, that more might be claimed.

It is a reasonable presumption, upon which the Examiner must proceed, that the applicant has taken care to claim all that, in view of the prior state of the art as known to him, he believes himself entitled to claim.

The Examiner practically depends for his knowledge of the prior state of the art entirely upon the Patent Office Records of prior patents and printed publications; but it may very well be, and no doubt often is so, that things have been in public use, and known to the applicant, which have not been patented, nor described in print, and are therefore not known to the Examiner, hence that officer must assume that a limited claim, where such an one is originally presented, is due to the *knowledge*, not to the *ignorance*, of the applicant.

There are twenty-five principal Examiners, twenty-four first assistant Examiners, twenty-four second assistant Examiners, and twenty-four third assistant Examiners, in all ninety-seven men, who, aided by numerous clerks, are engaged in the examination of applications for patents.

No men in the Government service are harder worked than these officers; it would be impossible for them to accomplish the duties they perform in the absence of the admirable classification of references which they have at hand.

An Examiner can tell when a specification is meagre, he may be certain that justice has not been done to the inventor, he knows when the composi-

tion and arrangement of a specification are bad, and may suspect that too little is claimed, but if his duties extended to the notifying of the applicant that justice had not been done to his case, it would require double the force of Examiners now employed to perform the duties.

Too many applications indicate the want of a schoolmaster, but the time of an Examiner is too fully consumed in the performance of legitimate duties to saddle upon him the functions of a pedagogue.

The general practice is to accept the description found in an application, if the Examiner thinks it intelligible, no matter how clumsily it may be drawn, and hence it is that such a host of stupidly framed patents escape from the office; and it is better, perhaps, that this should be the case than that arbitrary powers, inconsistent with our institutions, should be placed in the hands of any Government officers.

Of course if there is any gross error in a specification, any statement which is palpably absurd, or if the specification is too badly drawn to be understood, it is the duty of the Examiner to insist upon corrections.

It is not his duty, however, to correct errors in the specification, he can point them out, and the applicant or his attorney must correct them. Much of the time of Examiners is consumed in thus setting butchered cases to rights; and sometimes an Examiner, either to save time, or out of good-nature, will suggest what amendments should be made, when he has to deal with a stupid attorney.

Naturally, incompetent attorneys and inexperienced inventors, presenting their own cases, are restive under the demands by Examiners for amended descriptions; these are the men who attribute to Examiners all sorts of motives, prejudice, ignorance, etc., while they are, of course, blind to their own shortcomings.

Here is one of many instances: A specification was presented to the Office in which two or three palpable blunders, stupid errors, occurred on every page, and in which the description was absurdly defective in many particulars; time was consumed in correspondence with the attorney until he took umbrage, and made a formal complaint against the Examiner to the Commissioner. That officer's opinion concluded as follows: "It appears to me that the time of the Office has already been consumed in

attending to errors and imperfections in your specification which ordinary skill and intelligence on the part of the attorney would have avoided, and that complaints so manifestly trivial and causeless should not be made occasion for any further useless labor."

Let us briefly describe a common mode of conducting patent business:

An inventor attracted by the cheap terms offered in one of hundreds of circulars which are scattered broadcast over the country, sends a description or perhaps a model of his invention to the attorney; the latter gets a drawing made for a trifle, scribbles out something which he calls a specification, or employs some one else to do it, the specification generally concluding with comparatively broad claims. The papers are sent to the client, to whom the claims appear attractive; the application is filed, and in due time rejected. Without consulting with his client, or showing him the references on which the rejection is based, the attorney proceeds to cut down the claims until a patent is allowed, and when the inventor receives the deed he finds it nothing but a shadow.

The patent may be worthless because the miserable claim is all that the inventor was entitled

to (and this only shows that he did not receive proper advice in the first instance) or because the claim is much less than he is entitled to.

Sometimes a specification is scribbled out by an attorney, and the case handed over to a so-called associate, who even without consultation with his principal, and often for a miserable pittance, proceeds to do what he likes with the specification by amendment, introduces damaging matter, and cuts down the claims, etc., with the view of getting any kind of patent in the shortest time, so as to earn his pay.

It is scarcely necessary to remark that the evils of this clumsy practice are aggravated in cases where the attorney works on the contingent-fee or no patent, no pay—system.

Let us look for a moment at the bargain involved in this kind of practice. The attorney receives the executed specification from his client, together with a small fee in advance, and practically, if not actually, says to the latter, you have nothing more to do until the patent is allowed; I shall not bother you about rejections which may be received. I reserve to myself the right of cutting down the claims, and mutilating the specification to any extent

I deem proper. You have nothing to do with the kind of patent I obtain for you, but when *a* patent is allowed you must send me my fees and the Government fees, before you can get the deed.

The whole transaction is simply preposterous, and any Examiner can tell us that a very large proportion of butchered applications is due to this pernicious practice.

It has been urged that this mode of procedure and cheap terms are demanded by poor inventors, but it is not seen how the latter can be benefited by bad patents.

It has also been urged, with much truth, by the contingent-fee men, that there are attorneys having no fixed fees, and possessed of more cunning than brains, who make extortionate charges for small services, but one bad practice is no excuse for another.

To return to the applicant who has received a shadowy, worthless patent—he sometimes discovers the fact that his invention is not properly covered, and he resorts to the process of reissuing. What is to become of the patentee in the future under the new rulings suggested by the decision of the Supreme Court? Will the Patent Office and the courts look

upon the proceedings we have described above as an inadvertence, accident, or mistake of the inventor, which may be remedied by Reissue? or will they be considered errors of judgment, for which the patentee alone is responsible?

Let us say a parting word concerning Examiners.

There are doubtless among them a few who could be better employed in some other capacity, but if all attorneys did their work as conscientiously and intelligently as the Examiners do, there would be fewer complaints about the administration of the affairs of the Patent Office, and a diminution of the public disregard of inventors, patents, and patent property.

It is the almost invariable practice of reckless and incompetent attorneys to saddle upon Examiners their own shortcomings; they indulge in a running abuse of these officers in their letters to clients. Hence more or less of a prejudice has been created against Examiners, who unfortunately cannot reply to the charges, or explain to the public how the difficulties, of which inventors complain, are due mainly to the shortcomings of worthless practitioners.

The following occurs in the decision of the Supreme Court:

"Those who have any experience of business at the Patent Office know the fact that the constant struggle between the office and applicants for patents has reference to the claim. The patentee seeks the broadest claim he can get. The office on behalf of the public is obliged to resist the constant pressure."

The applicant of course *desires* the broadest claim he can get, but it is a notorious fact that many attorneys will accept any kind of a claim in order to secure a patent, regardless of the wishes of, and without consulting, the inventor. Very much of the contention which arises in the Patent Office, and the greater portion of the complaints against Examiners, have their origin in attorneys who don't know how to claim what their clients are justly entitled to, or who ask for that which they know well enough they have no right to.

A competent man wishing to deal fairly with his client and the office, will often take a firm stand when nice questions arise in the prosecution of an application, and he will struggle (if the term may be used) to maintain the stand he has taken on

behalf of his client, but this struggle will be one involving the expenditure of brains, and will be conducted without acrimony. These are the men who command the respect of the Office.

We have heard of attorneys who are afraid to run counter to the opinions of Examiners, lest such a proceeding might create in the mind of the officer a prejudice against them; and there are others who advise their clients that they had better accept, without discussion, all that an Examiner may be willing to give in the shape of a claim, lest otherwise they get nothing. These men had better go into some other business, in which a yielding disposition is a desideratum.

Examiners as a body are ready enough to yield to conviction; and where questions arise, concerning which there may well be two opinions, the competent attorney who struggles to enforce his views, intelligently and fairly, without resorting to the tricks and misrepresentations which are far too common, will command more respect in the Patent Office than the man whose too prompt submission may endanger his client's interests.

There are occasional instances in which the action of an Examiner savors of injustice, but these

cases are so few, and the remedies so prompt, that it is hardly worth while to refer to the subject.

Specifications of applications for patents are presented to the Office in a variety of forms.

There is the document which displays an invention in shadowy outline, and in which the vital points are obscured by vapid generalities.

There is the specification which exhibits a want of common schooling.

Here is an example in a copy of a patent which is incidentally before the writer, and in which the attorney refers to "a stud or spur which is adapted to pierce the bottom of a tree or *otherwise*," and to objects as "assuming a *somewhat* horizontal position." Such absurdities are of quite common occurrence.

There is the oratorical and sententious document of the man who "addresses himself to the intelligence of the mechanics employed to construct," etc., who introduces claims of twenty to twenty-five lines for things which could be better covered by claims of four or five lines, and whose specifications are inflated, either because he can write

in no other way, or because, with an eye to his client's pocket, he wants to impress him with the importance of his services in preparing the swollen document.

It is a pity that the rule relating to unnecessary prolixity could not be more frequently enforced against this sort of nuisance.

There is the crooked, vague and disconnected style of specification, which of all others is dreaded by Examiners, owing to the difficulty of determining what the thing is all about, and what exactly the inventor is driving at.

There is the intensely legal style, which can well be spared for one based more on technical than legal knowledge.

There is the specification especially prepared in advance for the subsequent Reissue of the patent. Vague remarks are introduced here and there, sentences to which no special meaning can be attached, but which may be translated into meaning more than the applicant or even his attorney intended, in the first instance, when the time comes to absorb the subsequent inventions of others.

There is the painfully minute and stilted style of the man, who, in his anxious chase after insignifi-

cant nuts, bolts, and other every-day appliances found in every machine, generally forgets, or is entirely ignorant of, the essence of the machine and the prominent features of the invention. This kind of man is very often the loudest in boasting of the superior style and execution of his specification.

We should not forget the cases in which claims are piled up in the style of the house that Jack built, generally adopted by men who would palm off on their clients this kind of stuffing as a formidable protection, or by men who will not take the time, or who have not the ability, to get at the heart of an invention.

Finally, there is the specification prepared by a master of the art,—a clear, continuous, concise and precise document prepared with care and foresight; nothing is omitted which may put the invention in the best possible light, there are no ambiguous words or sentences, no displays of fine writing and big words, which are often the best proofs of ignorance, but there is a description which goes to the heart of the invention, and concludes with brief, well-digested, claims.

Correspondence with the Patent Office in prosecuting applications for patents is in varied styles;

the supplicating letter urging the Examiner to allow the very narrow claim presented in the amendment; the angry and sometimes insolent letter of the man who looks upon every adverse action of the Examiner as a personal affront; the muddy argument in support of a claim which should never be allowed; the inflated argument, full of legal bombast, "logical conclusions," references to decisions, etc., all meant perhaps for the eyes of an admiring client, and which an Examiner never reads because he knows all about it in advance.

Finally there is the letter which goes straight and briefly to the point.

All sorts of men from all conditions of life enter the profession,—the unfledged errand boy, the country scrivener, the briefless young lawyer, who prates about his knowledge of mechanics, without knowing the meaning of the term, the illiterate workman who has an idea that the ability to skillfully wield an axe or saw, fits him especially for the duty, the ex-tradesman, the draughtsman, whose limited education incapacitates him for the duties he assumes, the college professor, the educated mechanic, who has a practical knowledge of the industrial arts, and who of all others is the best man for the purpose,

and the man who has been content to receive a proper training in the profession. We should not forget the ex-officers of the Patent Office; many of these gentlemen are ornaments to the profession, and they themselves will tell us that there are attorneys, who have been formerly employed in the Patent Office, who are not to be relied upon, and this will be promptly endorsed by Examiners.

If well-educated young men would not think it beneath their dignity to take a practical course of two or three years in a machine-shop, or the law student, after receiving the title of attorney-at-law, which he obtained by such a slight effort, would have the courage to become a student in practical and theoretical matters relating to the industrial arts, (and he would find this a much more absorbing and time-consuming pursuit than that by which he attained his title), there would be no lack of the right sort of men to assume the position of patent solicitors.

Such are the men who, if the decision of the Supreme Court leads, as it should do, to greater care and circumspection on the part of inventors in applying for their patents, must in the future take the place of the many incompetents, who are a nui-

sance to the authorities of the Patent Office, and a curse to inventors.

The circulars issued broadcast by these incompetents are very similar in character, for one is generally copied from another. In one respect they all agree exactly: every man states in his circular that the practice of soliciting patents is a very intricate one, and that he is the man endowed above all others with the skill and experience to tackle intricate cases, and especially to look after Reissues.

There are reasonably modest circulars, and others characterized by boastful assumptions of superiority. We have seen pamphlets, claiming for their authors an accurate knowledge of almost every science and every art known to man; an amazing list of accomplishments, calculated to take away the breath of unsophisticated readers.

These men remind one of Goldsmith's Village Schoolmaster, whose acquirements were the pride and admiration of his rustic constituents, who wondered—

> "And still the wonder grew,
> That one small head could carry all he knew."

But in some, at least, of these cases, the mystery is susceptible of explanation in a way varying with the temperament of the reader; for the man who

thus undertakes to pose as a new and greater Admirable Crichton, will probably exhibit an astounding ignorance of, or most heroic contempt for, the plainest and best known rules of English grammar.

Advertising is of course resorted to extensively, and advertisements are of all kinds, from the quiet, business-like style to the bombastic self-assertive kind.

Sometimes the Vincent Crummles kind of advertising is adopted,—the well-known plan of introducing small puffs amidst the news or variety columns of local papers, something in this order: "We understand that the well-known patent solicitor, Mr. ———, is a practical mechanic," etc., or like this, "Inventors who have a regard for the solidity of their patents are extensively patronizing Mr. ———."

It is a notorious fact that the country is flooded with worthless patents, and this is charged to the authorities of the Patent Office.

The truth of the matter is this: An inventor through an attorney applies for a patent, the application is rejected in view of two or three prior patents, the attorney sets about to alter the claims

with the view of avoiding the references, in nine cases out of ten without consulting his client or even showing him the references; the claim is restricted by adding new elementary parts to it, until it is finally so swollen with a number of elements combined that the Examiner cannot find a reference to meet the exact terms. The miserable combination is new, and so the patent is allowed, after the inventor has been made to say, unwittingly, I do not claim this, and I do not claim that, but I claim the following very restricted combination, and the result is a patent which is not worth the paper it is written upon.

Is the Office to blame for all this? The present practice of the Office must be adhered to, there is only one way of departing from it, and that is by placing in the hands of Examiners an arbitrary authority which could never be tolerated.

An Examiner may know well enough that a patent issued under his direction is worthless, but he cannot so indorse that patent as to indicate its weakness; he has done all he can do to indicate to the public the true character of the instrument by compelling the applicant to admit the prior state of the art and restrict the claims.

The Patent Office is attacked from all directions, and sometimes from curious standpoints. Patentees, for instance, often complain because improvements on their inventions are patented to others. They are ignorant of the fact, *first*, that perfection can rarely be approached, much less reached, without a succession of improvements, made by different inventors; and, *second*, that patents for improvements are very often the most profitable, both to the improver and the patentee of the invention on which the improvement is based.

A writer on this subject* puts the matter very forcibly in this way:

"Elias Howe was, presumedly, the first inventor of an operative sewing machine which formed stitches by the conjoint operation of a grooved and eye-pointed needle and a shuttle.

"Now, although Howe's machine undoubtedly did sew, it never was a practically successful machine; and, had it been left entirely to the unstimulated genius of the original inventor, it probably never would have been, and the present sewing machine industry might still be slumbering in its cradle."

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* Examiner H. Calver in the Sewing Machine Journal, July 1, 1881.

Attacks against the Patent Office come from another source. There are thousands of patentees who believe that the deeds which they receive give them full liberty to manufacture, use and sell their inventions, regardless of the rights of prior inventors, on whose patents their own inventions may be based. From time to time, these men discover, perhaps after incurring many expenses, that they must pay tribute to, or settle with, prior patentees. They become indignant, and want to know why the Patent Office issued such patents.

Many and serious losses are incurred by patentees through their ignorance of the true scope of their patents; and this prevailing ignorance may be attributed mainly to the want of candor on the part of the attorneys employed.

There are very few attorneys who will write to a client thus: "Enclosed is an official notice of allowance of patent for ————, with copy of claims, which are the best that could be obtained. In view of the reference to patent No. ——, cited by the Examiner, you are advised to make arrangements with this patentee before incurring expenses in manufacturing," etc.

The average letters are of the very opposite kind, are sent without any copies of the claims, and are often replete with self-laudation and vain-glorious* assertions as to the efforts the writers had to exert to "squeeze the patent out of an Examiner;" whereas all the efforts, perhaps, consisted in cutting down the claim to a minimum. Sometimes these effusions are accompanied with demands for extra fees for extra services, or for getting out of difficulties, which are most frequently of the attorney's own creation.

All this sort of thing has tended to create more or less of a prejudice against the Patent Office.

Why do not the authorities of the Patent Office, it may be said, caution inventors about employing incompetent attorneys?

This has been attempted several times, but the effort has been of no avail.

As far back as 1855, Commissioner Mason deemed it necessary to post in the Patent Office printed cautions to inventors to beware of pettifoggers. In about three days after the appearance of

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*Commissioner Fisher's Report for 1869.

the notice, it was reproduced at the head of the circular of the very man of all others against whom it was chiefly directed.

Commissioner Fisher published in his report for 1869, and in his usual vigorous style, a caution against employing incompetent solicitors, and those who had adopted the contingent-fee system. It was of but little avail, for solicitors of all sorts interlarded their circulars with quotations from Commissioner Fisher's remarks. It was the same in the time of Commissioner Spear, who repeated the caution in very urgent terms.

A man who has failed to make headway in other pursuits, and suddenly decides to become a patent solicitor, no matter whether he has the slightest capacity or experience for the position or not, always introduces in his circular as the main features, quotations from the tirades of Commissioners Fisher and Spear against incompetent and inexperienced attorneys.

It may be that there are no more impostors in the profession of soliciting patents than in any other profession, but we know that any incompetent person, without diploma or certificate, can declare himself to be a patent solicitor, issue circulars,

delude inventors and the public, and become a nuisance to the Patent Office.

The immense amount of damage done by these men is incalculable; they have for years thrust their valueless services on unwary inventors; they have for years been a source of annoyance to the officers of the Patent Office, have done more than all other evils combined to reduce the value of patent property, and to bring disgrace on a profession to which talents of the highest order should be devoted. Fortunately, that profession also counts among its members men who command the respect alike of inventors and the authorities of the Patent Office; high-toned, educated, and conscientious men, who have prevented the degradation of the profession to the level of petty claim agencies and lottery broking.

Let us suppose for a moment that inventors had been taught from the first to look upon the presentation of their applications to the Patent Office, as one of the serious affairs of life; to know that the same care should be devoted to the preparation of the papers as to the framing of a will or other document relating to ordinary property; that there would be no opportunity of amending their patents, excepting the amendment were made promptly; that

claims could not be enlarged; suppose, in brief, that the doctrine set forth in the decision of the Supreme Court had prevailed from the early days of our patent system, and that the law relating to Reissues had been interpreted as it has now been interpreted; is it reasonable to suppose that the evils described would have existed to anything like so great an extent, or that we should have such a number of incompetent men existing as blots on a profession?

It is not difficult to foresee that the decision of the Supreme Court must eventually result in teaching inventors that shabby documents and the reckless prosecution of applications will not serve their interests; and then the crowd of incompetent so-called attorneys, who have for so many years been imposing on inventors, must be dispersed; and a more wholesome practice must take the place of that which has been a curse to our patent system, and has called for the animadversions of the Supreme Court.

The following warning to inventors, given in the little volume previously referred to,* may

* Patents and the Useful Arts, by H. H.

not form an inappropriate conclusion to this chapter:

"Inventors may save themselves from the many pitfalls which beset them as patentees, and may acquire much salutary information, by observing the following instructions:

"Never sign blank petitions for applications for patents; insist upon examining the specification and drawings before the application is signed and filed, noting especially the character of the claims. You may be told that you cannot understand them; but you have at least a right to try and understand them, and if you cannot, your attorney ought to explain them. Keep a copy of the specification, or at least of the claims; and bear in mind that the protection you acquire by a patent will depend upon the claims which are allowed. If you ask the government for less protection than you are entitled to, the officers of the government cannot undertake to notify you that you have not done yourself justice; they will take care that you do not get more than you are entitled to, but it is your own fault if you ask for less. After your application is filed, insist upon knowing every step taken in the prosecution of the case. If the application is rejected, in view of prior patents, insist upon having a copy of the official letter and particulars of the prior patents referred to, and of such changes as the attorney proposes to make; you have a right to an opinion of your own as to the character of the references, which may not have the bearing on your case which the Examiner or even the attorney supposes. Bear in mind that the prosecution of the case, after rejection, is the most important duty of all, for any neglect might result in the granting of a patent with narrower claims than you are entitled to. When the case is allowed, insist upon having a copy of the allowed claims, which, with the copy of the originals, and of letters

of rejection and references, will give you a pretty clear idea of the kind of patent you will receive on the payment of the second fees, and you will have acquired some information of the character of patent property generally, as well as of your own patent property in particular.

"No respectable attorney can refuse to comply with such demands as we have mentioned; indeed, the practice is adopted to a greater or less extent in all our cities; it is a practice which experienced inventors and those who have most at stake in patent property insist upon, and it is a practice which can be carried out with comparatively slight effort,—it is an honest and wholesome practice."

HOW THE DECISION WILL AFFECT INVENTORS AND PATENTEES.

Of course, there can be no sudden alteration in patent practice, such as that which is foreshadowed in the decision of the Supreme Court, without disturbing influences tending to work injury to some of those who are interested in patents.

Let us see, in the first place, what the effect of the change will be on inventors and patentees.

There are hosts of original (not reissued) patents which, as before remarked, are worthless, because the inventions to which they relate are worthless. The status of these patents cannot be injured by the change of practice.

Then there are numbers of patents for really useful and practical things, but which involve very little invention, in view of prior patents, and which cover so little ground, that the interests of the patentees and assignees cannot be jeopardized by the change.

There are very many defective patents which relate to inventions of more or less value, but which have not been fully described, or claimed in proper terms: patents, in fact, which, owing to stupid or reckless attorneys, do not cover the invention.

It may be said that many of these defective patents are due to the carelessness or ignorance of inventors themselves, in not getting the help of good attorneys to draw their papers.

During the previously mentioned discussion before the Senate Committee on Patents, a patent lawyer of prominence made the following remarks:

"The specification of a patent, which is published as a part of the patent, forms a part of the contract between the patentee and the public—by the public, on the one hand, that he shall have a monopoly of what he discloses, for a certain term, and by the patentee, on the other hand, that he will disclose then and there all that he claims, so that

the public may not be misled by false lights; and if he suffers hardship on account of the ignorance or incapacity of the attorney whom he employs, he suffers but the same hardship which every contracting party suffers who has a contract unskillfully drawn by reason of employing incompetent attorneys."

But it must be remembered that the practice of the Patent Office, based on decisions of the Courts, has induced every patentee to believe that he can change and re-change the contract he has entered into with the public at any time by the process of reissuing, and this belief, as before remarked, has induced carelessness on the part of inventors as to the selection of attorneys.

We venture to say that there is hardly a patentee in the land who has not been thus induced to look upon a patent as a thing which can be altered and modified whenever he thinks it worth while to do so, or whenever a hungry attorney persuades him to resort to that expanding operation.

Instances of hardships must necessarily occur under the new rulings.

An inventor may have a patent which has been in his possession for several years. It may have

been acknowledged by manufacturers, and license fees may have been paid. Another manufacturer, too mean to pay for the required license, and having ascertained the weak points of the patent, proceeds to infringe. The indignant inventor commences suit, only to find that the patent cannot be sustained, that the claims do not cover the invention.

Should the Patent Office, acting in accordance with the opinion of the Supreme Court, refuse to grant the Reissue because there has been unreasonable delay, or because the claims have been unduly expanded, the patentee will be in a helpless condition.

If the Patent Office grants the Reissue, the Courts may say that it should not have been granted. This would be a case of great hardship.

Apropos of patent suits, let us here refer to a practice as detrimental in its way to the interests of inventors and owners of patents as that we have described; that is, the hurried commencement of suits without first determining the true status of the patents on which the suits are based.

The loss of money to inventors, and owners of patent property, from this source cannot be calculated.

The evil is mainly due to the advice of lawyers who know so little about patent business that they recommend legal proceedings, before inquiring, and without knowing how to inquire, into the actual condition of the patents, and especially to young lawyers who do not understand the true meaning of a patent, have had no teaching or practice in patent cases, and cannot tell the difference between a power loom and a spinning machine, and think that the title of attorney-at-law, which they have acquired with so little trouble, gives them a license to bleed the unwary patentee.

It would be well if some remedy could be provided against this evil.

But to return to the occasional hardships which inventors may suffer under such change of practice as the Supreme Court decision foreshadows, it must be remembered that under this practice every patentee can correct his patent, and even expand his claims by Reissue, providing this be done in reasonable time; the decision is directed against Reissues framed, long after the grant of the original patent, to absorb inventions which the patentee never contemplated.

Patentees, moreover, must remember that the Courts interpret patents liberally, and will always

lean to the side of the inventor if he has made an improvement of value. It was the late Judge Grier who said, "When there is a real invention we have done violence to our own conscience in sustaining a patent drawn by some blockhead."

This liberality, this leaning towards the ingenious inventor, will certainly not diminish when the practice suggested by the Supreme Court has restricted the Reissue of patents.

It has been urged in favor of what is termed liberality in reissuing patents, that it serves to protect real inventors from the machinations of adapters and copyists.

It is admitted, in the first place, that these copyists are as great a curse to real inventors as are incompetent advisers; but inventors are not the only originators who are harassed by pirates. Originators are the few; adapters and plagiarists the many; and there is a general propensity, a tendency of human nature, to begrudge the credit of originality, where the work of the brains is involved.

The author, the composer, the architect, the artist, the orator, all are afflicted with the doings of those who would steal the brains of others, and appropriate ideas which they could never originate.

The law provides for the protection of inventors, perhaps a better protection than is afforded to any other originators, and they have only to take proper care in securing that protection, to be as free as men can be from the attacks of creatures, whose want of originality is compensated for by great absorbent power and cunning.

Adapters who cannot originate, have been in the habit of obtaining patents for undeveloped things which they misname inventions, and quietly waiting until some meritorious and practical inventor, in the same line, appears, and then distorting their own crude ideas into a counterfeit resemblance of the practical reality, which they had not the brains to achieve.

Patentees are not armed, but rather disarmed, against these pirates by the loose practice of reissuing which has prevailed for many years.

Hardships other than those we have mentioned may follow the adoption of a new practice; but when we remember that facilities will be afforded for the prompt and honest correction of honest blunders, and that new avenues will be opened for the exercise of ingenuity, which have hitherto been blockaded by fraudulent reissues in the hands of

speculators, and especially when we remember that the decision of the Supreme Court must be a lesson soon learned in an intelligent community, the ultimate advantage to inventors must far outweigh any evils or inconveniences which can be suggested by those who advocate the continuance of the old system.

HOW THE DECISION WILL AFFECT MANUFACTURERS UNDER REISSUED PATENTS.

A long residence in this large manufacturing city enables the writer to say that although our industries are to large extent based on patents, and very many owe their origin to patents, the proportion of reissued patents on which our manufacturers rely is very small indeed compared with the number of original patents.

The most dangerous and fraudulent reissues are not in the hands of manufacturers, but in the possession of men and formidable corporations, who have grown rich on the brains of others, and who tax manufacturers for every description of material and labor-saving appliances, and disturb the economy of manufactures. Manufacturers would readily forget temporary inconveniences, which

might be due to a change of practice, if that change swept away those unjust reissues.

Many of the existing reissued patents are harmless; many are honest reissues; many might be improved by reissuing them back to their original condition, for there has been in the minds of patentees a sort of charm about a reissued patent, and they have been in many cases persuaded to reissue when they had nothing to gain from it.

The reissued patents, which are and have long been a curse to the community, are those manufactured out of originals, by a process of distortion, misrepresentation and expansion to include things which the original inventor never contemplated.

The Supreme Court has declared that this sort of thing must stop, and has pointed out what promises to be an effectual way of bringing about that desirable consummation.

The check placed upon expansions of claim by Reissue, by attaching as a requisite to validity the condition that the right shall have been promptly exercised, before adverse rights have arisen—recommends itself as reasonable, equitable and conducive to the good of true inventors and honest patentees.

APPENDIX.

J. E. AMBROSE LAMP.

No. 30,381. Patented October 16, 1860.

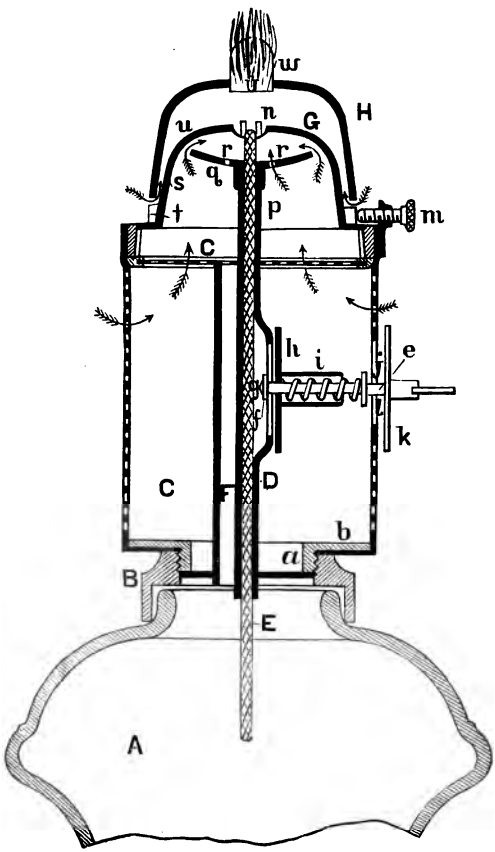

Fig. 1.

Appendix.

Specification of Original Patent of J. E. Ambrose, October 16, 1860.

To all whom it may concern:

Be it known that I, J. E. Ambrose of Batavia, in the county of Kane, and State of Illinois, have invented a new and improved lamp; and I do hereby declare that the following is a full, clear and exact description of the same, reference being had to the annexed drawings forming part of this specification, in which

Fig. 1 is a vertical central section of my invention taken in the line x x, Figure 2.

Fig. 2, a plan or top view of ditto.

Fig. 3, a plan or top view of ditto, with the heaters detached.

Fig. 4, a detached plan or top view of the wick-adjusting mechanism.

Similar letters of reference indicate corresponding parts of the several figures.

The object of this invention is to obtain a lamp which will burn without a chimney, and without danger of explosion, those hydro carbons which are volatile, and contain an excess of carbon.

The invention consists in the employment or use of a perforated cap, vapor tube, wick tube, heaters and deflecting plate, arranged as hereinafter described, to effect the desired end. The invention also consists in a wick-adjusting mechanism so arranged as to admit, when operated, of the wick being elevated with certainty, and, when not used, admitting of the wick being in a loose free state within the tube, without being subjected to any pressure which would retard the free ascent of the oil in the wick.

To enable those skilled in the art to fully understand and construct my invention, I will proceed to describe it:—

A, Figure 1, represents the upper part of the body of a lamp provided with a socket B at its upper end to receive the cap C, the lower end of which is provided with a screw flange *a*, which screws into the socket B. The cap C is of cylindrical form, and may be constructed of perforated sheet metal, the lower end having a plate *b*, fitted in it, from which the flange *a* projects, and the upper end having a perforated plate *c* fitted in it.

Within the cap or perforated cylinder *c* there is secured centrally, a wick tube D. This wick tube is of the usual flat form, and in it the wick E is fitted, the wick extending down into the body A of the lamp. Adjoining the wick tube D, there is a tube F, the lower end of which communicates with the interior of the body of the lamp, the upper end of said tube being covered by the perforated plate *c*.

The wick tube D, at one side opposite to that where the tube F is attached, has an enlarged space or a chamber *d*, in

which the inner end of a horizontal shaft *e* passes. This shaft *e* has a horizontal rod *f* fitted on it, containing spurs *g*, the rod and spurs being within the chamber *d*. On the shaft *e*, there is placed loosely a metal plate *n*, said plate being at the outer side of the chamber *d*, the latter having its side slotted to admit the shaft *e*, and rod *f*. On the shaft *e*, there is placed a spiral spring *i*, the inner end of which bears against the plate *h*, the outer end bearing against a plate or step *j*, which is attached permanently to shaft *e*. The spring *i*, it will be seen, has a tendency to keep the shaft *e* shoved outward to the extent of its movement, and keep the rod *f*, and spurs *g*, within the chamber *d*, and free from the wick E. On the shaft *e*, and at the outer side of the cap C, there is secured a plate *k*. The shaft *e* passes through a slot *l* in the cap C.

In order to raise or lower the wick E, the shaft *e* is pressed inward, and the spurs *g* will penetrate the wick, and by raising or lowering the shaft *e*, the wick will be raised or lowered accordingly. The plate *h* covers the slot in the side of chamber *d*, and prevents the escape of gas or vapor from the wick tube and chamber *d*; the plate *k* retains the rod *e* in a horizontal position as it is raised and lowered. On the upper end of the cap C, there is placed a copper dome-shaped heater G, which is secured in proper position by a thumb-screw *m*. This heater is slotted at its upper end as shown at *n*, and at the centre of the slot there is fitted a longitudinal bar *o*, the latter dividing the slot *n* into two equal and longitudinal parts.

The wick tube E extends some distance above the perforated plate *c*, and on its upper end a collar *p* is fitted, said collar having plates *q*, projecting from it, slightly inclined from a horizontal plane. Between the inner ends of the plates *q* and the collars *p* there are openings *r*.

On the outer side of the heater G, there are vertical ribs *s*, at the lower end of which there are projections *t*. These projections *t* serve as bearings for a heater H, which is similar to G in form. The ribs and projections *t* admit of a space *u* being between the two heaters, and the upper end of the heater H is slotted, as shown at *v*, and has a plate *w* extending upward from each end of it, and inclined at an angle of about forty-five degrees.

The tube F admits of all vapor generated in the body A of the lamp escaping up into the heater G, and to the flame, the perforated plate *c* preventing the ignition of the vapor below the orifice of the tube.

The plates *q* of the collar *p*, and the openings *r*, cause a draught to ascend directly upward to the flame, and air is also deflected directly against the inner sides of the heater G, and becomes intensely heated so as to supply the flame with warm oxygen. The bar *o*, in the slot *n*, of heater G, serves to divide the flame, and prevents it from ascending up through the slot *n*, before the carbon is consumed. Between the two heaters G, H, oxygen passes and becomes highly rarefied, and unites with the carbon in the flame, insuring perfect combustion.

The plates *w* at the ends of the slot *v* of heater H, serve to spread the flame, and diminish its height, thereby

keeping the flame at the point where the heat is most intense. The flame at the slot *n*, in heater G, is merely a gas-generating flame, the illuminating flame having its base at the slot *v* of heater H.

By this arrangement the flame is supplied with sufficient oxygen without a chimney to support proper combustion, and produce a brilliant illuminating flame, and the vapor which passes up through tube F is consumed without danger of being ignited below the orifice of said tube.

I am aware that dome-shaped heaters have been previously used, and also that perforated caps have been used in connection with said heaters, and I do not claim said parts when separately considered, but

I do claim as new and desire to secure by Letters Patent:

First.–The arrangement of the heaters G, H, with a space between them, communicating directly with the external air in connection with the collar *p*, and plates *q*, *q*, fitted to the top of the wick tube E, and the perforated cap C, substantially as and for the purpose set forth.

Second.—In combination with the parts aforesaid, the vapor tube F, placed within the cap C, and adjoining or contiguous to the wick tube, as and for the purpose specified.

Third.—The shaft *e*, provided with the rod *f*, and spurs *g*, which are within the chamber *d* of the wick tube in connection with the plates *h*, *j*, *k*, and spring *i*, on said shaft, all being arranged to operate as and for the purpose set forth.

SPECIFICATION OF REISSUE.

To all whom it may concern:

Be it known that I, Joshua E. Ambrose, of Plattsville, in the county of Weld and Territory of Colorado, have invented a new improvement in lamps; and I do hereby declare the following, when taken in connection with the accompanying drawings, and the letters of reference marked thereon, to be a full, clear, and exact description of the same, and which said drawings constitute part of this specification, and represent, in—

Figure 1, vertical central section; Fig. 2, top view; Fig. 3, a top view with the heater detached; Fig. 4, detached plan or top view of the wick adjuster.

This invention relates to an improvement in that class of burners designed for burning hydrocarbons. In this class of burners the wick adjuster must necessarily penetrate the wick tube in order to come in contact with the wick. In the use of these burners it is found that the gas which is unavoidably generated witnin the lamp will escape through the tube around the wick adjuster, and pass off to mingle with the surrounding atmosphere to the discomfort of persons near, if not detrimental to their health, and as this gas is highly inflammable it frequently ignites from the flame of the lamp, and often causes explosion.

The object of this invention is to combine with the wick tube and adjuster, such a means of escape for the gas that it may pass so freely directly to the flame as to be there consumed, and thus prevent its escape around the adjuster; also, the construction of a burner which may be used without a chimney.

The invention consists, first, in combining with the wick tube and adjuster an auxiliary passage leading directly from the lamp up to within such proximity to the flame that the gas from the lamp, flowing freely through this auxiliary passage, will pass to, and be consumed by, the flame; second, in combining in a lamp-burner a deflector, a perforated air-distributer, with the deflector forming the combustion-chamber, a wick tube extending from the fount to the combustion chamber, an adjusting device to regulate the elevation of the wick, and a tube to conduct the gas from the fount to the chamber above the air-distributer; third, in the employment of a perforated cap, wick-tube, heaters, and deflecting-plate, combined and arranged as hereinafter described; fourth, in a wick-adjusting mechanism, arranged so as to admit of the wick being elevated with certainty, and when not in use allow the wick to be loose and free within the tube—that is, without any pressure from the adjuster—to allow the free flow of the oil.

A represents the upper or neck portion of the body of a lamp, provided at its upper end with the usual socket B, to receive the cap C, the lower end of the cap being provided with a threaded flange *a*, to fit the corresponding thread in the socket. The cap C is, by preference, of cylindrical

form, and constructed from perforated sheet metal, the lower end having a plate, *b*, fitted into it, the said plate being a part of, or attached to, the flange *a*. *c* is a perforated air-distributer, which, with the deflector, forms the combustion-chamber, into which the wick-tube D extends. Within the tube the wick E is arranged, and the tube is fitted with an adjuster (here represented as an improved adjuster), to be hereinafter described. An auxiliary tube or passage, F, is formed, the lower end of which communicates with the interior of the body of the lamp, and the upper end opening near the upper end of the wick tube, so that the gas which is generated within the lamp, instead of passing out through the opening in the tube for the wick adjuster, as it otherwise would, will pass up through this tube or passage in such proximity to the flame that it is consumed. The termination of this tube is here represented as at the perforated plate *c*, the perforations of the plate being sufficient for the free passage of gas to the flame. On the upper end of the cap C there is placed a copper dome-shaped heater, G, which is secured in proper position by a thumb-screw, *m*. This heater is slotted at its upper end, as shown at *n*, and at the centre of the slot there is fitted a longitudinal bar, *o*, the latter dividing the slot *n* into two equal longitudinal parts. The wick tube D extends some distance above the perforated plate *c*, and on its upper end a collar, *p*, is fitted, the said collar having plates *q* projecting from it, slightly inclined from a horizontal plane. Between the outer edges of the plates *q* and the collar *p* there are openings *r*. On the outer side of the heater G there are vertical ribs *s*, at the

lower ends of which there are projections *t*. These projections *t* serve as bearings for a heater, H, which is similar to G in form. The ribs and projections *t* admit of a space, *u*, being between the two heaters, and the upper end of the heater H is slotted, as shown at *v*, Fig. 2, and has plates *w*, extending upward from each end of it, and inclined toward each other at an angle of about forty-five degrees. The plates *q* of the collar *p* and the openings *r*, cause a draft to ascend directly upward to the flame, and air is also deflected directly against the inner sides of the heater G, and becomes intensely heated, so as to supply the flame with warm oxygen. The bar *o* in the slot *n* of the heater G serves to divide the flame, and prevents it from ascending up through the slot *n* before the carbon is consumed. Between the two heaters G, H, oxygen passes, and becomes highly rarefied, and unites with the carbon in the flame, insuring perfect combustion.

The plates *w*, at the ends of the slot *v* of the heater H, serve to spread the flame and diminish its height, thereby keeping the flame at the point where the heat is most intense. The flame at the slot *n* in the heater G is merely a gas-generating flame, the illuminating flame having its base at the slot *v* of the heater H. The wick tube D at one side (the side opposite that to which the tube F is attached) has an enlarged space or a chamber, *d*, in which the inner end of a horizontal shaft, *e*, passes. This shaft *e* has a horizontal rod, *f*, fitted on it, containing spurs *g*, the rod and spurs being within the chamber *d*. On the shaft *e* there is placed loosely a metal plate, *h*, the said plate being at the outer

side of the chamber *d*, the latter having its side slotted to admit the shaft *e* and rod *f*. On the shaft *e* there is placed a spiral spring, *i*, the inner end of which bears against the plate *h*, the outer end bearing against a plate or step, *j*, which is attached permanently to the shaft *e*. The spring *i*, it will be seen, has a tendency to keep the shaft *e* shoved outward to the extent of this movement, and keep the rod *f* and spurs *g* within the chamber *d*, and free from the wick E. On the shaft *e*, and at the outer side of the cap C, there is secured a plate, *k*. The shaft *e* passes through a slot, *l*, in the cap C.

In order to raise or lower the wick E the shaft *e* is pressed inward, and the spurs *g* will penetrate the wick, and by raising or lowering the shaft *e* the wick will be raised or lowered accordingly. The plate *h* covers the slot in the side of the chamber *d*, and prevents the escape of gas or vapor from the wick tube and chamber *d*. The plate *k* retains the rod *e* in a horizontal position as it is raised and lowered.

I claim as my invention—

1. In combination with the wick tube and a mechanism for adjusting the wick, an auxiliary tube or passage leading from the lamp upward, to conduct the gas from within the lamp to the flame without the mixture of air with the gas below the upper orifice of the tube, substantially as set forth.

2. The combination, in a lamp-burner, of the following elements: First, a deflector; second a perforated air-distributer, which, with the deflector, forms the combustion-

chamber; third, a wick tube extending from the fount to the combustion-chamber; fourth, a tube or passage to conduct the gas from the fount to said combustion-chamber, substantially as described.

3. The combination, in a lamp-burner, of the following elements: First, a deflector; second, a perforated air-distributer, which, with the deflector, forms the combustion-chamber; third, a wick tube extending from the fount to the combustion-chamber; fourth, a tube or passage to conduct the gas from the fount to said combustion-chamber; fifth, an adjusting device to regulate the elevation of the wick, substantially as described.

4. The combination of the heaters G H, with a space between them, communicating directly with the external air, in connection with the collar *p* and plates *q q*, fitted on the top of the wick tube E, and the perforated cap C, substantially as and for the purpose set forth.

5. The shaft *e*, provided with the rod *f* and spurs *g*, which are within the chamber *d* of the wick tube, in connection with the plates *h j k* and spring *i* on the said shaft, all being arranged to operate as and for the purpose set forth.

JOSHUA E. AMBROSE.

DECISION OF SUPREME COURT OF THE UNITED STATES.

NO. 31, OCTOBER TERM, 1881.

EDWARD MILLER & Co., Appellants,

vs.

THE BRIDGEPORT BRASS COMPANY.

This was a suit brought to restrain the infringement of a patent, and for an account of profits, etc. The patent was for an alleged improvement in lamps, and was originally granted to Joshua E. Ambrose, October 16, 1860, for fourteen years, and was extended for seven years longer. It was twice surrendered and reissued, once in May, 1873, and again in January, 1876. The court below dismissed the bill on the ground that the second reissue, on which the suit was brought, was not for the same invention which was described and claimed in the original patent. We agree with the Circuit Court in the conclusion to which it came. The original patent described a combination of devices, amongst other things, two domes or deflectors, one above the other, elevated above a perforated cap through which a wick tube and a vapor tube ascended. It was claimed that this combination of devices, especially including the two

domes, which admitted the external air between them for producing a more perfect combustion, would make a lamp which, without a chimney, and without danger of explosion, would burn those hydrocarbons which are volatile and contain an excess of carbon. The invention proved a failure, but it was found that the use of one of the domes (and the other parts), with the restoration of the chimney, would be a real improvement, and both plaintiff and defendant made such lamps in large quantities. Fifteen years after the original patent was granted, the patentee (or rather his assignee) discovers that the improved lamp was really a part of his original invention, and that by *inadvertence and mistake* he had omitted to claim it. We think, however, that the court below was clearly right in holding that the invention specified in the second claim of the reissued patent (which is the one in question here) is not the same invention which was described and claimed in the original patent. The latter was for a double dome without a chimney, the peculiarity of the supposed invention being the use of the double dome as a means of dispensing with the chimney. The reissue is for a single dome with a chimney. It is not only obviously a different thing, but it is the very thing which the patentee professed to avoid and dispense with.

But there is another grave objection to the validity of the reissued patent in this case. It is manifest on the face of the patent when compared with the original, that the suggestion of inadvertence and mistake in the specification was a mere pretence; or if not a pretence, the mistake was

so obvious as to be instantly discernible on opening the Letters Patent, and the right to have it corrected was abandoned and lost by unreasonable delay. The only mistake suggested is, that the claim was not as broad as it might have been. This mistake, if it was a mistake, was apparent upon the first inspection of the patent, and if any correction was desired, it should have been applied for immediately.

These afterthoughts, developed by the subsequent course of improvement, and intended, by an expansion of claims, to sweep into one net all the appliances necessary to monopolize a profitable manufacture, are obnoxious to grave animadversion. The pretence in this case that there was an inadvertence and oversight which had escaped the notice of the patentee for fifteen years is too bald for human credence. He simply appealed from the judgment of the Office in 1860, to its judgment in 1876; from the commissioner and examiners of that date to the commissioner and examiners of this: and upon a matter that was obvious on the first inspection of the patent. If a patentee who has no corrections to suggest in his specification except to make his claim broader and more comprehensive, uses due diligence in returning to the Patent Office, and says "I omitted this," or "My solicitor did not understand that," his application may be entertained, and, on a proper showing, correction may be made. But it must be remembered that the claim of a specific device or combination, and an omission to claim other devices or combinations apparent on the face of the patent, are, in law, a dedication to the public of that which is not claimed. It

is a declaration that that which is not claimed is either not the patentee's invention, or, if his, he dedicates it to the public. This legal effect of the patent cannot be revoked unless the patentee surrenders it and proves that the specification was framed by real inadvertence, accident, or mistake, without any fraudulent or deceptive intention on his part: and this should be done with all due diligence and speed. Any unnecessary laches or delay in a matter thus apparent on the record affects the right to alter or reissue the patent for such cause. If two years' public enjoyment of an invention with the consent and allowance of the inventor, is evidence of abandonment, and a bar to an application for a patent, a public disclaimer in the patent itself should be construed equally favorable to the public. Nothing but a clear mistake, or inadvertence, and a speedy application for its correction, is admissible when it is sought merely to enlarge the claim.

The power given by the law to issue a new patent upon the surrender of the original, for the correction of errors and mistakes, has been greatly misunderstood and abused. It was first contained in the Act of July 3, 1832, and the law was adopted in view of suggestions made in several judgments of this court. But it was carefully confined to cases where the patent was *invalid* or *inoperative* by reason of a failure to comply with any of the terms and conditions prescribed by the law, for giving a clear and exact description of the invention, and where such failure was due to inadvertence, accident, or mistake, without any fraudulent or deceptive intention. This being shown, a new patent,

with a correct specification, was authorized to be issued for the same invention. The Act of 1836 enlarged the power to grant reissues by adding an additional ground for reissue, namely, that the patentee had inadvertently claimed in his specification, as his own invention, more than he had a right to claim as new. And, with that addition, the law has continued substantially the same to the present time. The 53d section of the Act of 1870, which was the law on this subject when the reissue in the present case was granted, was in the following words: "Whenever any patent is inoperative or invalid by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own invention or discovery, more than he has a right to claim as new, if the error has arisen by inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, the commissioner shall, on the surrender of such patent, and the payment of the duty required by law, cause a new patent for the same invention, and in accordance with the corrected specification, to be issued to the patentee." It will be observed that whilst the law authorizes a reissue when the patentee has claimed too much, so as to enable him to contract his claim, it does not, in terms, authorize a reissue to enable him to expand his claim. The great object of the law of reissues seems to have been to enable a patentee to make the description of his invention more clear, plain, and specific, so as to comply with the requirements of the law in that behalf, which were very comprehensive and exacting. The Act of 1793, section 3, required an applicant for a patent "to deliver a written description of his invention,

and of the manner of using, or process of compounding the same, in such full, clear, and exact terms as to distinguish the same from all other things before known, and to enable any person skilled in the art or science of which it is a branch, or with which it is most nearly connected, to make, compound, and use the same. And in the case of any machine, he shall fully explain the principle, and the several modes in which he has contemplated the application of that principle or character, by which it may be distinguished from other inventions; and he shall accompany the whole with drawings and written references, where the nature of the case admits of drawings." This careful and elaborate requirement was substantially repeated in the Patent Act of July 4th, 1836 (sec. 6), with this addition: "and shall particularly specify and point out the part, improvement, or combination which he *claims* as his own invention or discovery." Although it had been customary to append a claim to most specifications, this was the first statutory requirement on the subject. It was introduced into the law several years subsequent to the creation of reissues; and it was in the 13th section of this Act of 1836, that provision was made for a reissue to correct a claim which was too broad in the original. Now, in view of the fact, that a reissue was authorized for the correction of mistakes in the specification before a formal claim was required to be made; and of the further fact that when such formal claim was required, express power was given to grant a reissue for the purpose of making a claim more narrow than it was in the original, without any mention of a reissue for the purpose of

making a claim broader than it was in the original; it is natural to conclude that the reissue of a patent for the latter purpose was not in the mind of Congress when it passed the laws in question. It was probably supposed that the patentee would never err in claiming too little. Those who have any experience in business at the Patent Office know the fact, that the constant struggle between the office and applicants for patents has reference to the claim. The patentee seeks the broadest claim he can get. The office, in behalf of the public, is obliged to resist this constant pressure. At all events, we think it clear that it was not the special purpose of the legislation on this subject to authorize the surrender of patents for the purpose of reissuing them with broader and more comprehensive claims, although, under the general terms of the law, such a reissue may be made where it clearly appears that an actual mistake has inadvertently been made. But, by a curious misapplication of the law it has come to be principally resorted to for the purpose of enlarging and expanding patent claims. And the evils which have grown from the practice have assumed large proportions. Patents have been so expanded and idealized, years after their first issue, that hundreds and thousands of mechanics and manufacturers, who had just reason to suppose that the field of action was open, have been obliged to discontinue their employments, or to pay an enormous tax for continuing them.

Now whilst, as before stated, we do not deny that a claim may be enlarged in a reissued patent, we are of opinion that this can only be done when an actual mistake has

occurred;—not from a mere error of judgment, (for that may be rectified by appeal,) but a real bona-fide mistake, inadvertently committed; such as a court of chancery, in cases within its ordinary jurisdiction, would correct. Reissues for the enlargement of claims should be the exception and not the rule. And when, if a claim is too narrow, that is, if it does not contain all that the patentee is entitled to, the defect is apparent on the face of the patent, and can be discovered as soon as that document is taken out of its envelope and opened, there can be no valid excuse for delay in asking to have it corrected. Every independent inventor, every mechanic, every citizen, is affected by such delay, and by the issue of a new patent with a broader and more comprehensive claim. The granting of a reissue for such a purpose, after an unreasonable delay, is clearly an abuse of the power to grant reissues, and may justly be declared illegal and void. It will not do for the patentee to wait until other inventors have produced new forms of improvement, and then, with the new light thus acquired, under pretence of inadvertence and mistake, apply for such an enlargement of his claim as to make it embrace these new forms. Such a process of expansion carried on indefinitely, without regard to lapse of time, would operate most unjustly against the public, and is totally unauthorized by the law. In such a case, even he who has rights, and sleeps upon them, justly loses them.

The correction of a patent by means of a reissue, where it is invalid or inoperative for want of a full and clear description of the invention, cannot be attended with such

injurious results as follow from the enlargement of the claim. And, hence, a reissue may be proper in such cases, though a longer period has elapsed since the issue of the original patent. But in reference to reissues made for the purpose of enlarging the scope of the patent, the rule of laches should be strictly applied ; and no one should be relieved who has slept upon his rights, and has thus led the public to rely on the implied disclaimer involved in the terms of the original patent. And when this is a matter apparent on the face of the instrument, upon a mere comparison of the original patent with the reissue, it is competent for the courts to decide whether the delay was unreasonable, and whether the reissue was therefore contrary to law and void.

We think that the delay in this case was altogether unreasonable, and that the patent could not lawfully be reissued for the purpose of enlarging the claim and extending the scope of the patent.

The decree of the Circuit Court is affirmed.

True copy.

Test: JAMES H. McKENNA,
Clerk Sup. Court U. S.