Patent Act of 1839, Ch. 88, 5 Stat. 353-355 (March 3, 1839)

CHAP. LXXXVIII. --An Act in addition to "An act to promote the progress of the useful arts."

Scope

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be appointed, in manner provided in the second section of the act to which this is additional, two assistant examiners, each to receive an annual salary of twelve hundred and fifty dollars.

SEC. 2.

And be it further enacted, That the Commissioner be authorized to employ temporary clerks to do any necessary transcribing whenever the current business of the office requires it; *Provided, however,* That instead of salary, a compensation shall be allowed, at a rate not greater than is charged for copies now furnished by the office.

SEC. 3.

And be it further enacted, That the Commissioner is hereby authorized to publish a classified and alphabetical list of all patents granted by the Patent Office previous to said publication, and retain one hundred copies for the Patent Office and nine hundred copies to be deposited in the library of Congress, for such distribution as may be hereafter directed; and that one thousand dollars, if necessary, be appropriated, out of the patent fund, to defray the expense of the same.

SEC. 4.

And be it further enacted, That the sum of three thousand six hundred and fifty-nine dollars and twenty-two cents be, and is hereby, appropriated from the patent fund, to pay for the use and occupation of rooms in the City Hall by the Patent Office.

SEC. 5.

And be it further enacted, That the sum of one thousand dollars be appropriated from the patent fund, to be expended under the direction of the Commissioner, for the purchase of necessary books for the library of the Patent Office.

SEC. 6.

And be it further enacted, That no person shall be debarred from receiving a patent for any invention or discovery, as provided in the act approved on the fourth day of July, one thousand eight hundred and thirty-six, to which this is additional, by reason of the same having been patented in a foreign country more than six months prior to his application: *Provided,* That the same shall not have been introduced into public and common use in the United States, prior to the application for such patent: *And provided, also,* That in all cases every such patent shall be limited to the term of fourteen years from the date or publication of such foreign letters patent.

SEC. 7.

And be it further enacted, That every person or corporation who has, or shall have, purchased or constructed any newly invented machine, manufacture, or composition of matter, prior to the application by the inventor or discoverer for a patent, shall be held to possess the right to use, and vend to others to be used, the specific machine, manufacture, or composition of matter so made or purchased, without liability therefor to the inventor, or any other person interested in such invention; and no patent shall be held to be invalid by reason of such purchase, sale, or use prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public; or that such purchase, sale, or prior use has been for more than two years prior to such application for a patent.

SEC. 8.

And be it further enacted, That so much of the eleventh section of the above recited act as requires the payment of three dollars to the Commissioner of Patents for recording any assignment, grant, or conveyance of the whole or any part of the interest or right under any patent, be, and the same is hereby, repealed; and all such assignments, grants, and conveyances shall, in future, be recorded without any charge whatever.

SEC. 9.

And be it further enacted, That a sum of money not exceeding one thousand dollars, be, and the same is hereby, appropriated, out of the patent fund, to be expended by the Commissioner of Patents in the collection of agricultural statistics, and for other agricultural purposes; for which the said Commissioner shall account in his next annual report.

SEC. 10.

And be it further enacted, That the provisions of the sixteenth section of the before recited act shall extend to all cases where patents are refused for any reason whatever, either by the Commissioner of Patents or by the chief justice of the District of Columbia, upon appeals from the decision of said Commissioner, as well as where the same shall have been refused on account of, or by reason of, interference with a previously existing patent; and in all cases where there is no

opposing party, a copy of the bill shall be served upon the Commissioner of Patents, when the whole of the expenses of the proceeding shall be paid by the applicant, whether the final decision shall be in his favor or otherwise.

SEC. 11.

And be it further enacted, That in all cases where an appeal is now allowed by law from the decision of the Commissioner of Patents to a board of examiners provided for in the seventh section of the act to which this is additional, the party, instead thereof, shall have a right to appeal to the chief justice of the district court of the United States for the District of Columbia, by giving notice thereof to the Commissioner, and filing in the Patent Office, within such time as the Commissioner shall appoint, his reasons of appeal, specifically set forth in writing, and also paying into the Patent Office, to the credit of the patent fund, the sum of twenty-five dollars. And it shall be the duty of said chief justice, on petition, to hear and determine all such appeals, and to revise such decisions in a summary way, on the evidence produced before the Commissioner, at such early and convenient time as he may appoint, first notifying the Commissioner of the time and place of hearing, whose duty it shall be to give notice thereof to all parties who appear to be interested therein, in such manner as said judge shall prescribe. The Commissioner shall also lay before the said judge all the original papers and evidence in the case, together with the grounds of his decision, fully set forth in writing, touching all the points involved by the reasons of appeal, to which the revision shall be confined. And at the request of any party interested, or at the desire of the judge, the Commissioner and the examiners in the Patent Office, may be examined under oath, in explanation of the principles of the machine or other thing for which a patent, in such case, is prayed for. And it shall be the duty of said judge, after a hearing of any such case, to return all the papers to the Commissioner, with a certificate of his proceedings and decision, which shall be entered of record in the Patent Office; and such decision, so certified, shall govern the further proceedings of the Commissioner in such case; *Provided, however,* That no opinion or decision of the judge in any such case, shall preclude any person interested in favor or against the validity of any patent which has been or may hereafter, be granted, from the right to contest the same in any judicial court, in any action in which its validity may come in question.

SEC. 12.

And be it further enacted, That the Commissioner of Patents shall have power to make all such regulations in respect to the taking of evidence to be used in contested cases before him, as may be just and reasonable. And so much of the act to which this is additional, as provides for a board of examiners, is hereby repealed.

SEC. 13.

And be it further enacted, That there be paid annually, out of the patent fund, to the said chief justice, in consideration of the duties herein imposed, the sum of one hundred dollars.

Legislative History

APPROVED, March 3, 1839.