Patent Act of 1870, Ch. 230, 16 Stat. 198-217 (July 8, 1870)

CHAP.CCXXX --An Act to revise, consolidate, and amend the Statutes relating to Patents and Copyrights.

Scope

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be attached to the Department of the Interior the office, heretofore established, known as the patent office, wherein all records, books, models, drawings, specifications, and other papers and things pertaining to patents shall be safely kept and preserved.

SEC. 2.

And be it further enacted, That the officers and employees of said office shall continue to be: one commissioner of patents, one assistant commissioner, and three examiners-in-chief, to be appointed by the President, by and with the advice and consent of the Senate; one chief clerk, one examiner in charge of interferences, twenty-two principal examiners, twenty-two first-assistant examiners, twenty-two second assistant examiners, one librarian, one machinist, five clerks of class four, six clerks of class three, fifty clerks of class two, forty-five clerks of class one, and one messenger and purchasing clerk, all of whom shall be appointed by the Secretary of the Interior, upon nomination of the commissioner of patents.

SEC. 3.

And be it further enacted, That the Secretary of the Interior may also appoint, upon like nomination, such additional clerks of classes two and one, and of lower grades, copyists of drawings, female copyists, skilled laborers, laborers, and watchmen, as may be from time to time appropriated for by Congress.

SEC. 4.

And be it further enacted, That the annual salaries of the officers and employees of the patent office shall be as follows:--

Of the commissioner of patents, four thousand five hundred dollars.

Of the assistant commissioner, three thousand dollars.

Of the examiners-in-chief, three thousand dollars each.

Of the chief clerk, two thousand five hundred dollars.

Of the examiner in charge of interferences, two thousand five hundred dollars.

Of the principal examiners, two thousand five hundred dollars each.

Of the first assistant examiners, one thousand eight hundred dollars each.

Of the second assistant examiners, one thousand six hundred dollars each.

Of the librarian, one thousand eight hundred dollars.

Of the machinist, one thousand six hundred dollars.

Of the clerks of class four, one thousand eight hundred dollars each.

Of the clerks of class three, one thousand six hundred dollars each.

Of the clerks of class two, one thousand four hundred dollars each.

Of the clerks of class one, one thousand two hundred dollars each.

Of the messenger and purchasing clerk, one thousand dollars.

Of laborers and watchmen, seven hundred and twenty dollars each.

Of the additional clerks, copyists of drawings, female copyists, and skilled laborers, such rates as may be fixed by the acts making appropriations for them.

SEC. 5.

And be it further enacted, That all officers and employees of the patent office shall, before entering upon their duties, make oath or affirmation truly and faithfully to execute the trusts committed to them.

SEC. 6.

And be it further enacted, That the commissioner and chief clerk, before entering upon their duties, shall severally give bond, with sureties, to the Treasurer of the United States, the former in the sum of ten thousand dollars, and the latter in the sum of five thousand dollars, conditioned for the faithful discharge of their duties, and that they will render to the proper officers of the treasury a true account of all money received by virtue of their office.

SEC. 7.

And be it further enacted, That it shall be the duty of the commissioner, under the direction of the Secretary of the Interior, to superintend or perform all the duties respecting the granting and issuing of patents which herein are, or may hereafter be, by law directed to be done; and he shall have charge of all books, records, papers, models, machines, and other things belonging to said office.

SEC. 8.

And be it further enacted, That the commissioner may send and receive by mail, free of postage, letters, printed matter, and packages relating to the business of his office, including patent-office reports.

SEC. 9.

And be it further enacted, That the commissioner shall lay before Congress, in the month of January, annually, a report, giving a detailed statement of all moneys received for patents, for copies of records or drawings, or from any other source whatever; a detailed statement of all expenditures for contingent and miscellaneous expenses; a list of all patents which were granted during the preceding year, designating under proper heads the subjects of such patents; an alphabetical list of the patentees, with their places of residence; a list of all patents which have been extended during the year; and such other information of the condition of the patent office, as may be useful to Congress or the public.

SEC. 10.

And be it further enacted, That the examiners-in-chief shall be persons of competent legal knowledge and scientific ability, whose duty it shall be, on the written petition of the appellant, to revise and determine upon the validity of the adverse decisions of examiners upon applications for patents, and for reissues of patents, and in interference cases; and when required by the commissioner, they shall hear and report upon claims for extensions, and perform such other like duties as he may assign them.

SEC. 11.

And be it further enacted, That in case of the death, resignation, absence, or sickness of the commissioner, his duties shall devolve upon the assistant commissioner until a successor shall be appointed, or such absence or sickness shall cease.

SEC. 12.

And be it further enacted, That the commissioner shall cause a seal to be provided for said office, with such device as the President may approve, with which all records or papers issued from said office, to be used in evidence, shall be authenticated.

SEC./ 13.

And be it further enacted, That the commissioner shall cause to be classified and arranged in suitable cases, in the rooms and galleries provided for that purpose, the models, specimens of composition, fabrics, manufactures, works of art, and designs, which have been or shall be deposited in said office; and said rooms and galleries shall be kept open during suitable hours for public inspection.

SEC. 14.

And be it further enacted, That the commissioner may restore to the respective applicants such of the models belonging to rejected applications as he shall not think necessary to be preserved, or he may sell or otherwise dispose of them after the application has been finally rejected for one year, paying the proceeds into the treasury, as other patent moneys are directed to be paid.

SEC./ 15.

And be it further enacted, That there shall be purchased, for the use of said office, a library of such scientific works and periodicals, both foreign and American, as may aid the officers in the discharge of their duties, not exceeding the amount annually appropriated by Congress for that purpose.

SEC. 16.

And be it further enacted, That all officers and employees of the Patent Office shall be incapable, during the period for which they shall hold their appointments, to acquire or take, directly or indirectly, except by inheritance or bequest, any right or interest in any patent issued by said office.

SEC. 17.

And be it further enacted, That for gross misconduct the commissioner may refuse to recognize any person as a patent agent, either generally or in any particular case; but the reasons for such refusal shall be duly recorded, and be subject to the approval of the Secretary of the Interior.

SEC. 18.

And be it further enacted, That the commissioner may require all papers filed in the patent office, if not correctly, legibly, and clearly written, to be printed at the cost of the party filing them.

SEC. 19.

And be it further enacted, That the commissioner, subject to the approval of the Secretary of the Interior, may from time to time establish rules and regulations, not inconsistent with law, for the conduct of proceedings in the patent office.

SEC. 20.

And be it further enacted, That the commissioner may print or cause to be printed copies of the specifications of all letters-patent and of the drawings of the same, and copies of the claims of current issues, and copies of such laws, decisions, rules, regulations, and circulars as may be necessary for the information of the public.

SEC. 21.

And be it further enacted, That all patents shall be issued in the name of the United States of America, under the seal of the patent office, and shall be signed by the Secretary of the Interior and countersigned by the commissioner, and they shall be recorded, together with the specification, in said office, in books to be kept for that purpose.

SEC. 22.

And be it further enacted, That every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use and vend the said invention or discovery throughout the United States and the Territories thereof, referring to the specification for the particulars thereof; and a copy of said specifications and of the drawings shall be annexed to the patent and be a part thereof. [R.S. § 4884]

SEC. 23.

And be it further enacted, That every patent shall date as of a day not later than six months from the time at which it was passed and allowed, and notice thereof was sent to the applicant or his agent; and if the final fee shall not be paid within that period, the patent shall be withheld. [R.S. § 4885]

SEC. 24.

And be it further enacted, That any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented, or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the duty required by law, and other due proceedings had, obtain a patent therefor. [R.S. § 4886]

SEC. 25.

And be it further enacted, That no person shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid, by reason of its having been first patented or caused to be patented in a foreign country; *provided* the same shall not have been introduced into public use in the United States for more than two years prior to the application, and that the patent shall expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest term; but in no case shall it be in force more than seventeen years. [R.S. § 4887]

SEC. 26.

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

SEC. 27.

And be it further enacted, That when the nature of the case admits of drawings, the applicant shall furnish one copy signed by the inventor or his attorney in fact, and attested by two witnesses, which shall be filed in the patent office; and a copy of said drawings, to be furnished by the patent office, shall be attached to the patent as part of the specification. [R.S. § 4889]

SEC. 28.

And be it further enacted, That when the invention or discovery is of a composition of matter, the applicant, if required by the commissioner, shall furnish specimens of ingredients and of the composition, sufficient in quantity for the purpose of experiment. [R.S. § 4890]

SEC. 29.

And be it further enacted, That in all cases which admit of representation by model, the applicant, if required by the commissioner, shall furnish one of convenient size to exhibit advantageously the several parts of his invention or discovery. [R.S. § 4891]

SEC. 30.

And be it further enacted, That the applicant shall make oath or affirmation that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen. And said oath or affirmation may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a foreign country, before any minister, charge d'affaires, consul, or commercial agent, holding commission under the government of the United States, or before any notary public of the foreign country in which the applicant may be. [R.S. § 4892]

SEC. 31.

And be it further enacted, That on the filing of any such application and the payment of the duty required by law, the commissioner shall cause an examination to be made of the alleged new invention or discovery; and if on such examination it shall appear that the claimant is justly entitled to a patent under a law, and that the same is sufficiently useful and important, the commissioner shall issue a patent therefor. [R.S. § 4893]

SEC. 32.

And be it further enacted, That all applications for patents shall be completed and prepared for examination within two years after the filing of the petition, and in default thereof, or upon failure of the applicant to prosecute the same within two years after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the commissioner that such delay was unavoidable. [R.S. § 4894]

SEC. 33.

And be it further enacted, That patents may be granted and issued or reissued to the assignee of the inventor or discoverer, the assignment thereof being first entered of record in the patent office; but in such case the application for the patent shall be made and the specification sworn to by the inventor or discoverer; and also, if he be living, in case of an application for reissue. [R.S. § 4895]

SEC. 34.

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

SEC. 35.

And be it further enacted, That any person who has an interest in an invention or discovery, whether as inventor, discoverer, or assignee, for which a patent was ordered to issue upon the payment of the final fee, but who has failed to make payment thereof within six months from the time at which it was passed and allowed, and notice thereof was sent to the applicant or his agent, shall have a right to make an application for a patent for such invention or discovery the same as in the case of an original application: *Provided,* That the second application be made within two years after the allowance of the original application. But no person shall be held responsible in damages for the manufacture or use of any article or thing for which a patent, as aforesaid, was ordered to issue, prior to the issue thereof: *And provided further,* That when an application for a patent has been rejected or withdrawn, prior to the passage of this act, the applicant shall have six months from the date of such passage to renew his application, or to file a new one; and if he omit to do either, his application shall be held to have been abandoned. Upon the hearing of such renewed applications abandonment shall be considered as a question of fact. [R.S. § 4897]

SEC. 36.

And be it further enacted, That every patent or any interest therein shall be assignable in law, by an instrument in writing; and the patentee or his assigns or legal representatives may, in like manner, grant and convey an exclusive right under his patent to the whole or any specified part of the United States; and said assignment, grant, or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the patent office within three months from the date thereof. [R.S. § 4898]

SEC. 37.

And be it further enacted, That every person who may have purchased of the inventor, or with his knowledge and consent may have constructed any newly invented or discovered machine, or other patentable article, prior to the application by the inventor or discoverer for a patent, or sold or used one so constructed, shall have the right to use, and vend to others to be used, the specific thing so made or purchased, without liability therefor. [R.S. § 4899]

SEC. 38.

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

SEC. 39.

And be it further enacted, That if any person shall, in any manner, mark upon anything made, used, or sold by him for which he has not obtained a patent, the name or any imitation of the name of any person who has obtained a patent therefor, without the consent of such patentee, or his assigns or legal representatives; or shall in any manner mark upon or affix to any such patented article the word "patent" or "patentee," or the words "letters-patent," or any word of like import, with intent to imitate or counterfeit the mark or device of the patentee, without having the license or consent of such patentee or his assigns or legal representatives; or shall in any manner mark upon or affix to any unpatented article the word "patent," or any word importing that the same is patented, for the purpose of deceiving the public, he shall be liable for every such offense to a penalty of not less than one hundred dollars, with costs; one moiety of said penalty to the person who shall sue for the same, and the other to the use of the United States, to be recovered by suit in any district court of the United States within whose jurisdiction such offense may have been committed. [R.S. § 4901]

SEC. 40.

And be it further enacted, That any citizen of the United States, who shall have made any new invention or discovery, and shall desire further time to mature the same, may, on payment of the duty required by law, file in the patent office a caveat setting forth the design thereof, and of its distinguishing characteristics, and praying protection of his right until he shall have matured his invention; and such caveat shall be filed in the confidential archives of the office and preserved in secrecy, and shall be operative for the term of one year from the filing thereof; and if application shall be made within the year by any other person for a patent with which such caveat would in any manner interfere, the commisioner shall deposit the description, specification, drawings, and model of such application in like manner in the confidential archives of the office, and give notice thereof, by mail, to the person filing the caveat, who, if he would avail himself of his caveat, shall file his description, specifications, drawings, and model within three months from the time of placing said notice in the post-office in Washington, with the usual time required for transmitting it to the caveator added thereto, which time shall be indorsed on the notice. And an alien shall have the privilege herein granted,

if he shall have resided in the United States one year next preceding the filing of his caveat, and made oath of his intention to become a citizen. [R.S. § 4902]

SEC. 41.

And be it further enacted, That whenever, on examination, any claim for a patent is rejected for any reason whatever, the commissioner shall notify the applicant thereof, giving him briefly the reasons for such rejection, together with such information and references as may be useful in judging of the propriety of renewing his application or of altering his specification; and if, after receiving such notice, the applicant shall persist in his claim for a patent, with or without altering his specifications, the commissioner shall order a re-examination of the case. [R.S. § 4903]

SEC. 42.

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

SEC. 43.

And be it further enacted, That the commissioner may establish rules for taking affidavits and depositions required in cases pending in the patent office, and such affidavits and depositions may be taken before any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where the officer resides. [R.S. § 4905]

SEC. 44.

And be it further enacted, That the clerk of any court of the United States, for any district or Territory wherein testimony is to be taken for use in any contested case pending in the patent office, shall, upon the application of any party thereto, or his agent or attorney, issue [a] subpoena for any witness residing or being within said district or Territory, commanding him to appear and testify before any officer in said district or Territory authorized to take depositions and affidavits, at any time and place in the subpoena stated; and if any witness, after being duly served with such subpoena, shall neglect or refuse to appear, or after appearing shall refuse to testify, the judge of the court whose clerk issued the subpoena, may, on proof of such neglect or refusal, enforce obedience to the process, or punish the disobedience as in other like cases. [R.S. § 4906]

SEC. 45.

And be it further enacted, That every witness duly subpoenaed and in attendance shall be allowed the same fees as are allowed to witnesses attending the courts of the United States, but no witness shall be required to attend at any place more than forty miles from the place where the subpoena is served upon him, nor be deemed guilty of contempt for disobeying such subpoena, unless his fees and travelling expenses in going to, returning from, and one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret invention or discovery made or owned by himself. [R.S. § 4907][R.S. § 4908]

SEC. 46.

And be it further enacted, That every applicant for a patent or the reissue of a patent, any of the claims of which have been twice rejected, and every party to an interference, may appeal from the decision of the primary examiner, or of the examiner in charge of interference[s], in such case to the board of examiners-in-chief, having once paid the fee for such appeal provided by law. [R.S. § 4909]

SEC. 47.

And be it further enacted, That if such party is dissatisfied with the decision of the examiners-in-chief, he may, on payment of the duty required by law, appeal to the commissioner in person. [R.S. § 4910]

SEC. 48.

And be it further enacted, That if such party, except a party to an interference, is dissatisfied with the decision of the commissioner, he may appeal to the supreme court of the District of Columbia, sitting in banc. [R.S. § 4911]

SEC. 49.

And be it further enacted, That when an appeal is taken to the supreme court of the District of Columbia, the appellant shall give notice thereof to the commissioner, and file in the patent office, within such time as the commissioner shall appoint, his reasons of appeal, specifically set forth in writing. [R.S. § 4912]

SEC. 50.

And be it further enacted, That it shall be the duty of said court, on petition, to hear and determine such appeal, and to revise the decision appealed from in a summary way, on the evidence produced before the commissioner, at such early and convenient time as the court may appoint, notifying the commissioner of the time and place of hearing; and the revision shall be confined to the points set forth in the reasons of appeal. And after hearing the case, the court shall return to the commissioner a certificate of its proceedings and decision, which shall be entered of record in the patent office, and govern the further proceedings in the case. But no opinion or decision of the court in any such case shall preclude any person interested from the right to contest the validity of such patent in any court wherein the same may be called in question. [R.S. § 4914]

SEC. 51.

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

SEC. 52.

And be it further enacted, That whenever a patent on applicaton is refused, for any reason whatever, either by the commissioner or by the supreme court of the District of Columbia upon appeal from the commissioner, the applicant may have remedy by bill in equity; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge that such applicant is entitled, according to law, to receive a patent for his invention, as specified in his claim, or for any part thereof, as the facts in the case may appear. And such adjudication, if it be in favor of the right of the applicant, shall authorize the commissioner to issue such patent, on the applicant filing in the patent office a copy of the adjudication, and otherwise complying with the requisitions of law. And in all cases where there is no opposing party a copy of the bill shall be served on the commissioner, and all the expenses of the proceeding shall be paid by the applicant, whether the final decision is in his favor or not. [R.S. § 4915]

SEC. 53.

And be it further enacted, That whenever any patent is inoperative or invalid, by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new, if the error has arisen by inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, the commissioner shall, on the surrender of such patent and the payment of the duty required by law, cause a new patent for the same invention, and in accordance with the corrected specification, to be issued to the patentee, or, in the case of his death or assignment of the whole or any undivided part of the original patent, to his executors, administrators, or assigns, for the unexpired part of the term of the original patent, the surrender of which shall take effect upon the issue of the amended patent; and the commissioner may, in his discretion, cause several patents to be issued for distinct and

separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued letters-patent. And the specifications and claim in every such case shall be subject to revision and restriction in the same manner as original applications are. And the patent so reissued, together with the corrected specification, shall have the effect and operation in law, on the trial of all actions for causes thereafter arising, as though the same had been originally filed in such corrected form; but no new matter shall be introduced into the specification, nor in case of a machine patent shall the model or drawings be amended, except each by the other; but when there is neither model nor drawing, amendments may be made upon proof satisfactory to the commissioner that such new matter or amendment was a part of the original invention, and was omitted from the specification by inadvertence, accident, or mistake, as aforesaid. [R.S. § 4916]

SEC. 54.

And be it further enacted, That whenever, through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, a patentee has claimed more than that of which he was the original or first inventor or discoverer, his patent shall be valid for all that part which is truly and justly his own, provided the same is a material or substantial part of the thing patented; and any such patentee, his heirs or assigns, whether of the whole or any sectional interest therein, may, on payment of the duty required by law, make disclaimer of such parts of the thing patented as he shall not choose to claim or to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent; said disclaimer shall be in writing, attested by one or more witnesses, and recorded in the patent office, and it shall thereafter be considered as part of the original specification to the extent of the interest possessed by the claimant and by those claiming under him after the record thereof. But no such disclaimer shall affect any action pending at the time of its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing it. [R.S. § 4917]

SEC. 55.

And be it further enacted, That all actions, suits, controversies, and cases arising under the patent laws of the United States shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of a circuit court, or by the supreme court of the District of Columbia, or of any Territory; and the court shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for an infringement, the *claimant* [complainant] shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby, and the court shall assess the same or cause the same to be assessed under its direction, and the court shall have the same powers to increase the same in its discretion that are given by this act to increase the damages found by verdicts in actions upon the case; but all actions shall be brought during the term for which the letters-patent shall be granted or extended, or within six years after the expiration thereof.

SEC. 56.

And be it further enacted, That a writ of error or appeal to the Supreme Court of the United States shall lie from all judgments and decrees of any circuit court, or of any district court exercising the jurisdiction of a circuit court, or of the supreme court of the District of Columbia or of any Territory, in any action, suit, controversy, or case, at law or in

equity, touching patent rights, in the same manner and under the same circumstances as in other judgments and decrees of such circuit courts, without regard to the sum or value in controversy.

SEC. 57.

And be it further enacted, That written or printed copies of any records, books, papers, or drawings belonging to the patent office, and of letters-patent under the signature of the commissioner or acting commissioner, with the seal of office affixed, shall be competent evidence in all cases where the originals could be evidence, and any person making application therefor, and paying the fee required by law, shall have certified copies thereof. And copies of the specifications and drawings of foreign letters-patent, certified in like manner, shall be prima facie evidence of the fact of the granting of such foreign letters-patent, and of the date and contents thereof.

SEC. 58.

And be it further enacted, That whenever there shall be interfering patents, any person interested in any one of such interfering patents, or in the working of the invention claimed under either of such patents, may have relief against the interfering patentee, and all parties interested under him, by suit in equity against the owners of the interfering patent; and the court having cognizance thereof, as hereinbefore provided, on notice to adverse parties, and other due proceedings had according to the course of equity, may adjudge and declare either of the patents void in whole or in part, or inoperative, or invalid in any particular part of the United States, according to the interest of the parties in the patent or the invention patented. But no such judgment or adjudication shall affect the rights of any person except the parties to the suit and those deriving title under them subsequent to the rendition of such judgment. [R.S. § 4918].

SEC. 59.

And be it further enacted, That damages for the infringement of any patent may be recovered by action on the case in any circuit court of the United States, or district court exercising the jurisdiction of a circuit court, or in the supreme court of the District of Columbia, or of any Territory, in the name of the party interested, either as patentee, assignee, or grantee. And whenever in any such action a verdict shall be rendered for the plaintiff, the court may enter judgment thereon for any sum above the amount found by the verdict as the actual damages sustained, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs. [R.S. § 4919]

SEC. 60.

And be it further enacted, That whenever, through inadvertence, accident, or mistake, and without any wil[l]ful default or intent to defraud or mislead the public, a patentee shall have (in his specification) claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor or discoverer as aforesaid, every such patentee, his executors, administrators, and assigns, whether of the whole or any sectional interest in the pa- tent, may maintain a suit at law or in equity, for the infringement of any part thereof,

which was bona fide his own, provided it shall be a material and substantial part of the thing patented, and be definitely distinguishable from the parts so claimed, without right as aforesaid, notwithstanding the specifications may embrace more than that of which the patentee was the original or first inventor or discoverer. But in every such case in which a judgment or decree shall be rendered for the plaintiff, no costs shall be recovered unless the proper disclaimer has been entered at the patent office before the commencement of the suit; nor shall he be entitled to the benefits of this section if he shall have unreasonably neglected or delayed to enter said disclaimer. [R.S. § 4922]

SEC. 61.

And be it further enacted, That in any action for infringement the defendant may plead the general issue, and having given notice in writing to the plaintiff or his attorney, thirty days before, may prove on trial any one or more of the following special matters:--

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

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

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

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

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

And in notices as to proof of previous invention, knowledge, or use of the thing being patented, the defendant shall state the names of patentees and the dates of their patents, and when granted, and the names and residences of the persons alleged to have invented, or to have had the prior knowledge of the thing patented, and where and by whom it had been used; and if any one or more of the special matters alleged shall be found for the defendant, judgment shall be rendered for him with costs. And the like defenses may be pleaded in any suit in equity for relief against an alleged infringement; and proofs of the same may be given upon like notice in the answer of the defendant, and with the like effect. [R.S. § 4920]

SEC. 62.

And be it further enacted, That whenever it shall appear that the patentee, at the time of making his application for the patent, believed himself to be the original and first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery, or any part thereof, having been known or used in a foreign country, before his invention or discovery thereof, if it had not been patented or described in a printed publication. [R.S. § 4923]

SEC. 63.

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

SEC. 64.

And be it further enacted, That upon the receipt of such application, and the payment of the duty required by law, the commissioner shall cause to be published in one newspaper in the city of Washington, and in such other papers published in the section of the country most interested adversely to the extension of the patent as he may deem proper, for at least sixty days prior to the day set for hearing the case, a notice of such application, and of the time and place when and where the same will be considered, that any person may appear and show cause why the extension should not be granted. [R.S. § 4925]

SEC. 65.

And be it further enacted, That on the publication of such notice, the commissioner shall refer the case to the principal examiner having charge of the class of inventions to which it belongs, who shall make to said commissioner a full report of the case, and particularly whether the invention or discovery was new and patentable when the original patent was granted. [R.S. § 4926]

SEC. 66.

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

SEC. 67.

And be it further enacted, That the benefit of the extension of a patent shall extend to the assignees and grantees of the right to use the thing patented to the extent of their interest therein. [R.S. § 4928]

SEC. 68.

And be it further enacted, That the following shall be the rates for patent fees:--

On filing each original application for a patent, fifteen dollars.

On issuing each original patent, twenty dollars.

On filing each caveat, ten dollars.

On every application for the reissue of a patent, thirty dollars.

On filing each disclaimer, ten dollars.

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

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

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

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

For certifed copies of patents and other papers, ten cents per hundred words.

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

For copies of drawings, the reasonable cost of making them. [R.S. § 4934]

SEC. 69.

And be it further enacted, That patent fees may be paid to the commissioner, or to the treasurer or any of the assistant treasurers of the United States, or to any of the designated depositaries, national banks, or receivers of public money, designated by the Secretary of the Treasury for that purpose, who shall give the depositor a receipt or certificate of deposit therefor. And all money received at the patent office, for any purpose, or from any source whatever, shall be paid into the treasury as received, without any deduction whatever; and all disbursements for said office shall be made by the disbursing clerk of the Interior Department. [R.S. § 4935]

SEC. 70.

And be it further enacted, That the treasurer of the United States is authorized to pay back any sum or sums of money to any person who shall have paid the same into the treasury, or to any receiver or depositary, to the credit of the treasurer, as for fees accruing at the patent office through mistake, certificate thereof being made to said treasurer by the commissioner of patents. [R.S. § 4936]

SEC. 71.

And be it further enacted, That any person who, by his own industry, genius, efforts, and expense, has invented or produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of wool[l]en, silk, cotton, or other fabrics; any new and original impression, ornament, pattern, print or picture, to be printed, painted, cast or otherwise placed on or worked into any article of manufacture; or any new, useful, and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication, may, upon payment of the duty required by law, and other due proceedings had the same as in cases of inventions or discoveries, obtain a patent therefor. [R.S. § 4929]

SEC. 72.

And be it further enacted, That the commissioner may dispense with models of designs when the design can be sufficiently represented by drawings or photographs. [R.S. § 4930]

SEC. 73.

And be it further enacted, That patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant may, in his application, elect. [R.S. § 4931]

SEC. 74.

And be it further enacted, That patentees of designs issued prior to March two, eighteen hundred and sixty-one, shall be entitled to extension of their respective patents for the term of seven years, in the same manner and under the same restrictions as are provided for the extension of patents for inventions or discoveries, issued prior to the second day of March, eighteen hundred and sixty-one. [R.S. § 4932]

SEC. 75.

And be it further enacted, That the following shall be the rates of fees in design cases:--

For three years and six months, ten dollars.

For seven years, fifteen dollars.

For fourteen years, thirty dollars.

For all other cases in which fees are required, the same rates as in cases of inventions or discoveries.

SEC. 76.

And be it further enacted, That all the regulations and provisions which apply to the obtaining or protection of patents for inventions or discoveries, not inconsistent with the provisions of this act, shall apply to patents for designs. [R.S. § 4933]