Miscellaneous.

British Patent Workings.

BY G. CROYDON MARKS, M.P.

The very serious misconception that has arisen in the minds of foreign owners of British patents concerning the intention and operative conditions of the British Patent Act of 1907 has been fostered by the absolutely erroneous statements that have been published by the British and foreign non-technical press as to the supposed necessity for working every patent granted to a foreigner whether such invention was worked or not in the patentee's own country. The statements that have been made concerning an alleged conspiracy upon the part of the British people to capture the inventions of unwary foreigners are too ridiculous to be discussed were it not that owing to the misconception, some unnecessary trouble is being occasioned those who have been misinformed as to the position of certain patents that are supposed to have become invalid by reason of such inventions not having been worked in this country.

A Misapprehension.

It is perhaps not surprising that the general public, alike on the Continent of Europe and of America, should be under a misapprehension as to the requirements of this British law when the patent attorneys of those countries have by some strange misreading quite failed to interpret the actual words of the section governing the working of patents. The fact that other foreign countries have long required an actual working of the patents granted by them upon very rigorous terms has apparently caused many patentees to assume that similar compulsory terms were implied, although not actually stated, in Section 27 of the British Patent Act of 1907.

The Workers Section.

The words of the Section admit of no difference of treatment or interpretation in favour of English patentees over foreign patentees, and are as follows:—

"(1) At any time not less than four years after the date of a patent, and not less than one year after the passing of this Act, any person may apply to the Comptroller for the revocation of the patent on the ground that the patent article or process is manufactured or carried on exclusively or mainly outside the United Kingdom."

The words, it should be noted, refer to any and every patent, whether granted to a Britisher or foreigner, and only become operative upon the initiation of "any person" who may apply to the Patent Office Comptroller to revoke the patent on one ground, and one ground only, viz., "that the patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom." If there is no spontaneous action taken by an outside person to revoke the patent by applying to the Patent Office for that purpose, then the Patent Office will not in any way interfere or take any steps to worry or force the patentee into working his patent.

No Automatic Nullity.

The nullity of the patent is not brought about automatically after four years' inaction, or, indeed, after any lengthened period of failing to work the invention in England, but is only obtained after the formal application for such has been properly and carefully considered by the Comptroller during his official and exhaustive enquiry into the allegations that have been made against the patentee. At the enquiry thus held the patentee will be entitled to be present, or be represented in order that he may give his reasons why the article or process which is being made by him abroad is not being also made in this country.

Enquiry Before Revocation.

The fact that an enquiry is to be held to ascertain the reasons why the invention is not being worked should assuredly convince the patentee that the positive working of his patent is not absolutely and automatically imperative simply because it has been in existence beyond four years. If there is no working abroad, the patent cannot be attacked at all, or if there is but an experimental working only abroad in the inventor's own country, it would not be reasonable to demand a working in this country, and full opportunity is therefore given to the patentee, when he is assailed, to explain why he is not working in England, or why he has considered it unnecessary to work. The reasons that may be advanced are required by the section to be "satisfactory" to the Comptroller; and if they are not satisfactory then the patentee will be given an interval or period of grace, before the end of which, unless it is further extended, he must work the invention to an "adequate extent," or, in extreme cases, it will be within the power of the Comptroller to revoke the patent forthwith. Any decision of the Comptroller can be appealed to a Court, where the Judge's decision, however, will be final.

Known Demand.

In the event of there being a known demand for the invention in England, it will be to the interest of the patentee to meet it by licensing a British manufacturer or to himself manufacture it in England on or before the end of the fourth year of the patent, otherwise it will be open to an infringer to plead, by way of defence in action, should he be attacked by the patentee, that the patent is weakened or possibly invalid by reason of the non-working in England while working abroad. This new defence, however, is a somewhat hazardous and risky one to solely rely upon, as the patentee may have very "satisfactory reasons" to adduce why he has not manufactured, such as would satisfy the Court and comply with the terms concerning inaction required by the Act.

Reasons for Non-working.

There is no working law existing in any other country so favourable to the patentees as the new British Section 27, for it is not only a passive condition, unless set in operation by an opponent, but the patent cannot be revoked by the mere lapse of the first four years within which no requirement for working exists, and can only then be revoked after the patentee has been given an opportunity of being fully and completely heard in his own defence before two tribunals, viz., the Comptroller and a Judge.

Upon the interpretation of the words "satisfactory reasons" much depends, but possibly the terms of the International Convention may not be without import, in that it is therein set out that no patent can be nullified if the patentee can justify his inactivity. The Comptroller and the Court must decide upon a question as one of fact. Similarly, the words "adequate extent" will have to be interpreted in relation to the known demand in each particular case; they must be judged, too, by the relative extent of the importations from abroad of the patented articles, for obviously, if more were being imported than were being made at home, such would, under ordinary conditions, not be adequate for the value of the monopoly granted the patentee against those engaged in the home trade.

Patent is Restraint of Competition.

The ordinary laws of competition or freedom of trade cannot be applied to a patented article, seeing that the very existence of a patent is a Royal form of special protection or actual restraint of trade in favour of the individual who has invented or introduced something new. It is, in effect, a restraint or closing of the ordinary forms of competitive trading from rival home traders who could, and would, readily make the article on cheaper terms, but for the Royal Letters Patent requiring them not to do so under pain of incurring penalties for any infringement that might thus be committed.

"Public Good" the Consideration.

The justification of, and the consideration for, this patent protection is stated to be that the King is "willing to encourage all inventions which may be for the public good," but it is also provided in terms printed upon the face of every patent that has been granted that if such grant is "contrary to law or prejudicial or inconvenient to our subjects in general," then "these our Letters Patent shall forthwith determine and be void. From these extracts, taken from the terms contained in every British patent, it will be seen that Section 27 of the new Patent Law of 1907 simply provides a simpler method or means for economically and efficiently ascertaining and determining whether any patent that has been granted for four years is prejudicial or inconvenient to the subjects of the realm, and the new proposal should therefore not occasion hostile criticism as though unfairly totally new conditions had been for the first time attached to those fortunate enough to secure British patents for their inventions.

English as She is Spoke.

To the Editor of "The Over-Seas Daily Mail."

Sir,—The following example of "English as she is spoke," or, rather, written, will no doubt interest your readers.—Yours faithfully,

BRITON.

Maritzburg, South Africa.

Dear Sirs: I received de stove which i by from you anute for why dont you send me no feet I am lose to me my customer sure ting by no having de feet so dats no very pleasure for me. What is de matter wit you is not my trade money's so good like anoder mans you lose to me my trade and I am very anger for dat and now i tells you are a dam fools and no good I send you back at once you stove tomorro for sure bekaswe you are such a dam foolishness of peoples.

Yours respectfullee,

P.S.—Sinse i write you dis letter i find der feet in de oven excuse to me.