Patents

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Of course it is not and never has been disputed that when claimed as the result of a particular process or mode of manufacture, itself new, the product so produced is protected. As an example of an unpatentable product, it might be mentioned that a man could not patent a machine-made cigarette as against a hand-made article.

In class 5, new or improved processes, with or without special machinery, it is obvious that if the result or product of a process is good subject matter, a new or improved process itself, whether applied to the making of a new product or to the manufacture of an old product, is equally good subject matter.

Finally, with regard to class 6, a new principle coupled, with a mode of carrying the same into effect, it has again and again been laid down that a principle by itself cannot be patented; thus Harvey could not have obtained a patent for his discovery of the circulation of the blood. One of the simplest and best-known instances of a patentable invention consisting of a principle coupled with a mode of carrying it into effect, is that of the hot blast. Prior to the date of Neilson's patent, iron smelters had used a blast of cold air to blow up their furnaces. Neilson's improvement was that he heated the blast and he referred in his specification to a heating box as a means of effecting this object. Had he not referred to a means of heating, there is not the least doubt that his patent would have been invalidated, although the least intelligent of iron masters, when once told what the object of the invention was, would have had no difficulty in constructing at once a more or less efficient heating means. Neilson would have been astounded if he had been told that the patentable part of his invention lay, not in the grand secret of heating the air blast, but in the self-evident heating means which had scarcely given him any trouble to devise, and had called for the exercise of no invention at all.

We will now proceed to a brief consideration of the essentials of subject matter, which are: Invention, Novelty and Utility.

Broadly speaking, invention means the using of a man's intelligence, reason and brains so as to evolve something out of the beaten track, and not noticeable to the ordinary mind. The question as to whether there is any ingenuity in the subject matter of a patent is a question of fact which depends on a true view of all the circumstances.

Thus, the argument that the improvement was obvious and the advance slight may be successfully met, or at least combated, by showing that rival manufacturers had never thought of the so-called obvious modifications.

As to the question of invention, where a device is new and useful, very little will suffice to support the patent. To quote the words of Lord Halsbury: "No smallness or simplicity will prevent a patent from being valid." Thus in the case of Hayward versus Hamilton, the invention consisting of a combination of pavement light and prism, differing very little from what had been used before but giving materially increased useful results, was upheld as involving invention.

Mere analogous application, however, is not invention. Thus a fish plate, used to connect wooden beams, cannot be patented for connecting iron rails. Whenever the Court finds a real or appreciable germ of invention, however small, it will uphold the patent. Thus the substitution of a round wick in a lamp for a flat wick was approved as patentable.

The next essential of valid matter is novelty, the grant of a patent being upon the assumption that it is a new manufacture which the inventor is giving to the public; anything which disproves the novelty tends to invalidate the grant.

The novelty of every part claimed must be sustained in an action for infringement, and if it should transpire that any portion of the claimed matter is old, the whole patent is invalid, at least until amendment of the specification.

The laws of various countries differ in the views they take of novelty, but in all cases the broad principle is the same; namely, that the grant is made to the inventor in consideration of his placing the public in possession of something which up to the time of his invention was unknown in the country.

Prior use by members of the public, or, even by the inventor himself, if effected in a sufficiently public manner, will destroy the validity of a patent granted after the date of such use in this country. Mere experiment in his own workshop, or mere confidential disclosure to or experimental use on his behalf by another, will not destroy the inventor's right. The authorities go to show that the inventor is allowed reasonable latitude in testing the usefulness and practicability of his invention before patenting, so long as those experiments do not disclose such invention to others who are not in confidential relationship to him.

But this doctrine must not be pushed too far. The inventor must not, even, experimentally, use his invention for profit before the date of his patent. Thus, in a case in which it was proved that some flour, treated according to a patented process, was sold about three weeks before the date of the patent, such patent was held invalid, although, of course, nobody could say that the flour disclosed the invention.

Public use might be brought about by exhibiting a sample of the invention and by offering it for sale even though no sale was effected, or by manufacturing an article and storing it in a warehouse for purposes of sale.

The remaining element in subject matter is utility. By utility is not meant the mere capacity to be put to a useful or profitable purpose, but rather usefulness for the purpose indicated by the inventor.

As an example of this, we will suppose that the inventor claims that his invention serves a certain purpose, and it is proved that it will not serve that purpose, the patent could be declared invalid through want of utility, irrespective of any commercial value it may possess. It is therefore, a fatal mistake for an inventor to make any rash statement in connection with the application of his invention.

Thus in the case Easterbrook versus the Great Western Railway Company, it was shown that the plaintiff's railway signal lock was, under certain conditions, a possible source of danger, and the patent was in these grounds held void.

Patents

The following list of applications for Patents, filed in New Zealand during the month ending August 17th, 1911, has been specially prepared for PROGRESS.

29507—Johnstone, W. L., and Hosking, A., both of Palmerston North: Milk heater, etc.
29508—Norrie, A. E., Christchurch: Decoy.
29509—Bartlett, R. H., Kaponga: Milking machine bucket.
29510—Player, C. E., Auckland: Gate, etc., fastening.
29511—Dennison, M. U., Dunedin: Dress-shield.
29512—Porter, G., Dunedin: Fire alarm.
29513—Pirani, S. G., Melbourne, Vic.: Tire cover.
29514—Booth, G. T., Christchurch: Cream separator driving gear.
29515—Booth, G. T., Christchurch: Teat cup.
29516—Davies, G. W., Wellington: Explosive.
29517—Goodhart, G. C., Willows, Eng.: Internal combustion engine.
29518—Fraser, W. A., Melbourne, Vic.: White lead.
29519—Young, A. E., and Holmes, G. G., both of Christchurch: Envelope sealing.
29520—Charley, J. J., Malvern, Vic.: Vehicle and carrier.
29521—Marsom, W. J., Normanby: Gate.
29522—Olson, C. F., and Harrington, J., both of Petone: Egg tester.
29523—Roberts, A. H., Brunswick, Vic.: Tire rim.
29524—Gesellschaft fur Drahtlose Telegraphie m.b.H., Berlin, Ger.: Producing electrical oscillations.
29525—Gesellschaft fur Drahtlose Telegraphie m.b.H., Berlin, Ger.: Producing electrical oscillations.
29526—Wilson, J., Auckland: Concrete structure.
29527—Grace, T., Sydney, N.S.W.: Wheel.
29528—Banes, E. E., Sydney, N.S.W.: Sulphide ore treatment.
29529—Banes, E. E. Sydney, N.S.W.: Ore furnace tuyere.
29530—Best, P. H., Nelson: Milking machine teat cup.
29531—Reeves, W., Henderson: Swingletree.
29532—Toon, C., Christchurch: Gas-main closing.
29533—De Montalk, R. W., Auckland: Studs and boards.
29534—Simpson, R. M., Wellington: Centrifugal separator.
29535—Behrns, A., Rakaia, Turnip digger and slicer.
29536—Townley, J., and Sharples, W. J., both of Gisborne: Extension table.
29537—Powell, J. C., Timaru: Window showstand.
29538—Walker, J. A., Auckland: Closet pan-cover.
29539—Fountain, W. G., and Paterson, W. J., both of Hamilton: Milk-releaser.
29540—Andrew, N., Wanganui: Generator and washer.
29541—Blythe, A. J. S., Te Awamutu: Floor-polish.
29542—McGill, D., Petone: Flax treatment.
29543—Hogg, W. M., Lawrence, and Hogg, F. M., Evan's Flat: Plough coulter.
29544—Bevan Lock Nut Company, Limited, London, Eng.: Nut-lock.
29545—Westinghouse, G., Pittsberg, U.S.A.: Power-transmission mechanism.

For any particulars or copies of the drawings and specifications in connection with the above applications, which have been completed and accepted, apply to

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