

THE CAMDEN JOURNAL.

BY ROBERT M'KNIGHT.

Publisher of the Laws of the United States.

Edited by JOHN C. WEST.

VOL. XI.

CAMDEN, SOUTH-CAROLINA, SEPTEMBER 10, 1836.

NO. 32.

THE CAMDEN JOURNAL.

Published every Saturday Morning by
ROBERT M'KNIGHT,
PUBLISHER OF THE LAWS OF THE UNITED STATES.

SUBSCRIPTIONS.

Three dollars a year in advance, or four dollars at the end of the year.

ADVERTISEMENTS.

Inserted at seventy five cents the square for the first, and half that amount for each continuance.

The number of insertions to be marked on the margin or they will be continued and charged accordingly. Those inserted semi-monthly 75 cents and monthly \$1 a square for each insertion.

Communications by mail to be post paid or remain unattended to.



[BY AUTHORITY]

LAW OF THE UNITED STATES PASSED AT THE TWENTY FOURTH CONGRESS FIRST SESSION.

[PUBLISHED BY] No. 72.]

AN ACT to promote the progress of useful arts, and to repeal all acts and parts of acts heretofore made for that purpose.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be established and attached to the Department of State, an office to be denominated the Patent Office, the chief officer of which shall be called the Commissioner of Patents, to be appointed by the President, by and with the advice and consent of the Senate, whose duty it shall be, under the direction of the Secretary of State, to superintend, execute, and perform, all business and things touching and respecting the granting and issuing of patents for new and useful discoveries, inventions, and improvements, as are herein provided for, or shall hereafter be, by law, directed to be done and performed, and shall have the charge and custody of all the books, records, papers, models, machines, and all other things belonging to said office. And said Commissioner shall receive the same compensation as is allowed by law to the Commissioner of the Indian Department, and shall be entitled to send and receive letters and packages by mail, relating to the business of the office, free of postage.

Sec. 2. And be it further enacted, That there shall be, in said office, an inferior officer, to be appointed by the said principal officer, with the approval of the Secretary of State, to receive an annual salary of seven hundred dollars, and to be called the Chief Clerk of the Patent Office; who, in all cases during the necessary absence of the Commissioner, or when the said principal officer shall become vacant, shall have the charge and custody of the seal, and of the records, books, papers, machines, models, and all other things belonging to the said office, and shall perform the duties of Commissioner during such vacancy. And the said Commissioner may also, with like approval, appoint an examining clerk, at an annual salary of fifteen hundred dollars; two other clerks at twelve hundred dollars each, one of whom shall be a competent draftsman; one other clerk at one thousand dollars; a machinist at twelve hundred and fifty dollars; and a messenger at seven hundred dollars. And said Commissioner, clerks, and every other person appointed and employed in said office, shall be disqualified and prohibited from acquiring or taking, except by inheritance during the period for which they shall hold their appointments, respectively, any right or interest, directly or indirectly, in any patent for an invention or discovery which has been, or may hereafter be, granted.

Sec. 3. And be it further enacted, That the said principal officer, and every other person to be appointed in the said office, shall, before he enters upon the duties of his office or appointment, make oath or affirmation, truly and faithfully to execute the trust committed to him. And the said Commissioner and the chief clerk shall also, before entering upon their duties, severally give bonds 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, with condition to render a true and faithful account to him or his successor in office, quarterly, of all moneys which shall be by them respectively received for duties on patents, and for copies of records and drawings and all other moneys received by virtue of said office.

Sec. 4. And be it further enacted, That the said Commissioner shall cause a seal to be made and provided for the said office, with such device as the President of the United States shall approve; and copies of any records, books, papers or drawings, belonging to the said office, under the signature of the said Commissioner, or when the office shall be vacant, under the signature of the chief clerk, with the said seal affixed, shall be competent evidence in all cases in which the original records, books, papers, or drawings, could be evidence. And any person making application thereof, shall have certified copies of the records, drawings, and other pa-

pers deposited in said office, on paying for the written copies, the sum of ten cents for every page of one hundred words; and for copies of drawings, the reasonable expense of making the same.

Sec. 5. And be it further enacted, That all patents issuing from said office shall be issued in the name of the United States, and under the seal of said office, and be signed by the Secretary of State, and countersigned by the Commissioner of said office, and shall be recorded, together with the descriptions, specifications, and drawings, in the said office in books to be kept for that purpose. Every such patent shall contain a short description or title of the invention or discovery, correctly indicating its nature and design, and in its terms grant to the applicant or applicants, his or their heirs, administrators, executors, or assigns, for a term not exceeding fourteen years, the full and exclusive right and liberty of making, using and vending to others to be used the said invention or discovery, referring to the specifications for the particulars thereof, a copy of which shall be annexed to the patent, specifying what the patentee claims as his invention or discovery.

Sec. 6. And be it further enacted, That any person or persons having discovered or invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement, or any art, machine, manufacture or composition of matter, not known or used by others before his or their discovery or invention thereof, and not, at the time of his application for a patent, in public use or on sale, with his consent or allowance, as the inventor or discoverer; and shall desire to obtain an exclusive property therein, may make application in writing to the Commissioner of Patents, expressing such desire, and the Commissioner, on due proceedings had, may grant a patent therefor. But before any inventor shall receive a patent for any such new invention or discovery, he shall deliver a written description of his invention or discovery, and of the manner and process of making, constructing, using and compounding the same, in such full, clear and exact terms, avoiding unnecessary prolixity, 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 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 shall particularly specify and point out the part, improvement, or combination, which he claims as his own invention or discovery. He shall, furthermore, accompany the whole with a drawing or drawings, and written references, where the nature of the case admits of drawings, or with specimens of ingredients, and of the composition of matter, sufficient in quantity for the purpose of experiment where the invention or discovery is of a composition of matter; which descriptions and drawings, signed by the inventor and attested by two witnesses, shall be filed in the Patent Office; and he shall moreover furnish a model of his invention, in all cases which admit of a representation by model, of a convenient size to exhibit advantageously its several parts. The applicant shall also make oath or affirmation that he does verily believe that he is the original and first inventor or discoverer of the art, machine, composition or improvement, for which he claims a patent, and that he does not know or believe that the same was ever before known or used, and also of what country he is a citizen, which oath or affirmation may be made before any person authorized by law to administer oaths.

Sec. 7. And be it further enacted, That, on the filing of any such application, description, and specification, and the payment of the duty hereinafter provided, the Commissioner shall make or cause to be made, an examination of the alleged new invention or discovery, and if, on such examination, it shall not appear to the Commissioner that the same had been invented or discovered by any other person in this country prior to the alleged invention or discovery thereof by the applicant, or that it had been patented or described in any printed publication in this or any foreign country, or had been in public use or on sale with the applicant's consent or allowance prior to the application, if the Commissioner shall deem it sufficiently useful and important, it shall be his duty to issue a patent therefor. But whenever, on such examination, it shall appear to the Commissioner that the applicant was not the original and first inventor or discoverer thereof, or that any part of which is claimed as new had before been invented or discovered, or patented, or described in any printed publication in this or any foreign country, as aforesaid, or that the description is defective and insufficient, he shall notify the applicant thereof, giving him, briefly, such information and references as may be useful in judging of the propriety of renewing his application, or altering his specification to embrace only that part of the invention or discovery which is new. In every such case, if the applicant shall elect to withdraw his application, relinquishing his claim to the model, he shall be entitled to receive back twenty dollars, part of the duty required by this act, on filing a notice in writing of such election in the Patent Office, a copy of which, cer-

tified by the Commissioner, shall be a sufficient warrant to the Treasurer for paying back to the said applicant the said sum of twenty dollars. But if the applicant in such case shall persist in his claim for a patent, with or without any alteration of his specification, he shall be required to make oath or affirmation anew, in manner as aforesaid. And if the specification and claim shall not have been so modified as, in the opinion of the Commissioner, shall entitle the applicant to a patent, he may, on appeal, and upon request in writing, have the decision of a board of examiners, to be composed of three disinterested persons, who shall be appointed for that purpose by the Secretary of State, one of whom at least to be selected, if practicable and convenient, for his knowledge and skill in the particular art, manufacture, or branch of science to which the alleged invention appertains; who shall be under oath or affirmation for the faithful and impartial performance of the duty imposed upon them by said appointment. Said board shall be furnished with a certificate in writing, of the opinion and decision of the Commissioner, stating the particular grounds of his objection, and the part or parts of the invention which he considers as not entitled to be patented. And the said board shall give reasonable notice to the applicant, as well as to the Commissioner, of the time and place of their meeting, that they may have an opportunity of furnishing them with such facts and evidence as they may deem necessary to a just decision; and it shall be the duty of the Commissioner to furnish to the board of examiners such information as he may possess relative to the matter under their consideration. And on an examination and consideration of the matter by such board, it shall be in their power, or of a majority of them, to reverse the decision of the Commissioner, either in whole or in part, and their opinion being certified to the Commissioner, he shall be governed thereby; in the further proceedings, to be had on such application: *Provided, however,* That before a board shall be instituted in any such case, the applicant shall pay to the credit of the Treasury, as provided in the ninth section of this act, the sum of twenty-five dollars, and each of said persons so appointed shall be entitled to receive for his services in each case, a sum not exceeding ten dollars, to be determined and paid by the Commissioner out of any moneys in his hands, which shall be in full compensation to the persons who may be appointed, for their examination and certificate aforesaid.

Sec. 8. And be it further enacted, That whenever an application shall be made for a patent which, in the opinion of the Commissioner, would interfere with any other patent for which an application may be pending, or with any unexpired patent which shall have been granted, it shall be the duty of the Commissioner to give notice thereof to such applicants, or patentees, as the case may be; and if either shall be dissatisfied with the decision of the Commissioner on the question of priority of right or invention, on a hearing thereof, he may appeal from such decision, on the like terms and conditions as are provided in the preceding section of this act; and the like proceedings shall be had, to determine which of whether either of the applicants is entitled to receive a patent as prayed for. But nothing in this act contained shall be construed to deprive an original and true inventor of the right to a patent for his invention, by reason of his having previously taken out letters patent therefor in a foreign country, and the same having been published, at any time within six months next preceding the filing of his specification and drawing. And whenever the applicant shall request it, the patent shall take date from the time of the filing of the specification and drawings, not however exceeding six months prior to the actual issuing of the patent; and on like request, and the payment of the duty herein required, by any applicant, his specification and drawings shall be filed in the secret archives of the office until he shall furnish the model and the patent be issued, not exceeding the term of one year, the applicant being entitled to notice of interfering applications.

Sec. 9. And be it further enacted, That before any application for a patent shall be considered by the Commissioner as aforesaid, the applicant shall pay into the Treasury of the United States, or into the Patent Office, or into any of the depository banks to the credit of the Treasury, if he be a citizen of the United States, or an alien and shall have been resident in the United States for one year next preceding, and shall have made oath of his intention to become a citizen thereof, the sum of thirty dollars; if a subject of the King of Great Britain, the sum of five hundred dollars; and all other persons the sum of three hundred dollars; for which payment duplicate receipts shall be taken, one of which to be filed in the office of the Treasurer. And the moneys received into the Treasury under this act, shall constitute a fund for the payment of the salaries of the officers and clerks herein provided for, and all other expenses of the

Patent Office, and to be called the patent fund.

Sec. 10. And be it further enacted, That where any person hath made, or shall have made, any new invention, discovery, or improvement, on account of which a patent might by virtue of this act be granted, and such person shall die before any patent shall be granted therefor, the right of applying for, and obtaining such patent shall devolve on the executor or administrator of such person, in trust for the heirs at law of the deceased, in case he shall have died intestate; but if otherwise, then in trust for his devisees, in as full and simple manner, and under the same conditions, limitations, and restrictions, as the same was held, or might have been claimed or enjoyed by such person in his or her lifetime; and when application for a patent shall be made by such legal representatives, the oath or affirmation provided in the sixth section of this act, shall be so varied as to be applicable to them.

Sec. 11. And be it further enacted, That every patent shall be assignable in law, either as to the whole interest, or any undivided part thereof, by any instrument in writing; which assignment, and also every grant and conveyance of the exclusive right under any patent, to make and use, and to grant to others to make and use, the thing patented within and throughout any specified part or portion of the United States, shall be recorded in the Patent Office within three months from the execution thereof, for which the assignee or grantee shall pay to the Commissioner the sum of three dollars.

Sec. 12. And be it further enacted, That any citizen of the United States, or alien who shall have been resident in the United States one year next preceding, and shall have made oath of his intention to become a citizen thereof, who shall have invented any new art, machine, or improvement thereof, and shall desire further time to mature the same, may, on paying to the credit of the Treasury, in manner as provided in the ninth section of this act, the sum of twenty dollars, file in the Patent Office a caveat, setting forth the design and purpose thereof, and its principal and distinguishing characteristics, and praying protection of his right, till he shall have matured his invention; which sum of twenty dollars, in case the person filing such caveat shall afterwards take out a patent for the invention therein mentioned, shall be considered a part of the sum herein required for the same. And such caveat shall be filed in the confidential archives of the office, and preserved in secrecy. And if application shall be made by any other person within one year from the time of filing such caveat, for a patent of any invention with which it may in any respect interfere, it shall be the duty of the Commissioner to deposit the description, specifications, drawings, and model in the confidential archives of the office, and to give notice, by mail, to the person filing the caveat, of such application who shall, within three months after receiving the notice, if he would avail himself of the benefit of his caveat, file his description, specifications, drawings, and model; and if, in the opinion of the Commissioner, the specifications of claim interfere with each other, like proceedings may be had in all respects as are in this act provided in the case of interfering applications: *Provided, however,* That no opinion or decision of any board of examiners, under the provisions of this act, shall preclude any person interested in favor of 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. 13. And be it further enacted, That whenever any patent which has heretofore been granted, or which shall hereafter be granted, shall be inoperative or invalid, by reason of a defective or insufficient description or specification, or by reason of the patentee claiming in his specification as his own invention, more than he had or shall have a right to claim as new; if the error has, or shall have arisen by inadvertency, accident, or mistake, and without any fraudulent or deceptive intention, it shall be lawful for the Commissioner, upon the surrender to him of such patent, and the payment of the further duty of fifteen dollars, to cause a new patent to be issued to the said inventor, for the same invention, for the residue of the period then unexpired for which the original patent was granted, in accordance with the patentee's corrected description and specification. And in case of his death, or any assignment by him made of the original patent, a similar right shall vest in his executors, administrators, or assigns. And the patent, so re-issued, together with the corrected description and specification, shall have the same effect and operation in law, on the trial of actions hereafter commenced for causes subsequently accruing, as though the same had been originally filed in such corrected form, before the issuing of the original patent. And whenever the original patentee shall be desirous of adding the description and specification of any new improvement of the original

invention or discovery which shall have been invented or discovered by him subsequent to the date of his patent, he may, like proceedings being had in all respects as in the case of original applications and on the payment of fifteen dollars, as hereinbefore provided, have the same annexed to the original description and specification; and the Commissioner shall, on the margin of such annexed description and specification, the time of its being annexed and recorded, and the same shall thereafter have the same effect in law, to all intents and purposes as though it had been embraced in the original description and specification.

Sec. 14. And be it further enacted, That whenever, in any action for damages for making, using, or selling the thing whereof the exclusive right is secured by patent heretofore granted, or by any patent which may hereafter be granted, a verdict shall be rendered for the plaintiff in such action, it shall be in the power of the court to render judgment for any sum above the amount found by such verdict as the actual damages sustained by the plaintiff, not exceeding three times the amount thereof, according to the circumstances of the case, with costs; and such damages may be recovered by action on the case, in any court of competent jurisdiction, to be brought in the name of names of the person or persons interested, whether as patentee, assignee, or as grantee of the exclusive right within and throughout a specified part of the United States.

Sec. 15. And be it further enacted, That the defendant in any such action shall be permitted to plead the general issue, and to give this act and any special matter in evidence, of which notice in writing may have been given to the plaintiff or his attorney, thirty days before trial, tending to prove that the description and specification filed by plaintiff does not contain the whole truth relative to his invention or discovery, or that it contains more than is necessary to produce the described effect; which concealment or addition shall fully appear to have been made for the purpose of deceiving the public, or that the patentee was not the original and first inventor or discoverer of the thing patented, or of a substantial and material part thereof claimed as new, or that it had been described in some public work anterior to the supposed discovery thereof by the patentee, or had been in public use, or on sale with the consent and allowance of the patentee before his application for a patent, or that he had unretrospectively or unjustly obtained the patent for that which was in fact invented or discovered by another, who was using reasonable diligence in adapting and perfecting the same; or that the patentee, if an alien at the time the patent was granted, had failed and neglected for the space of eighteen months from the date of the patent, to put and continue on sale to the public, on reasonable terms, the invention or discovery for which the patent issued; and whenever the defendant relies in his defence on the fact of a previous invention, knowledge, or use of the thing patented, he shall state, in his notice of special matter, the names and places of residence of those whom he intends to prove to have possessed a prior knowledge of the thing, and where the same had been used; in either of which cases judgment shall be rendered for the defendant, with costs: *Provided, however,* That whenever it shall satisfactorily appear that the patentee, at the time of making his application for the patent, believed himself to be the 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 before known or used in any foreign country, it not appearing that the same or any substantial part thereof had before been patented or described in any printed publication. And provided, also, That whenever the plaintiff shall fail to sustain his action on the ground that in his specification of claim is embraced more than that of which he was the first inventor, if it shall appear that the defendant had used or violated any part of the invention justly and truly specified and claimed as new, it shall be in the power of the court to adjudge and award as to costs as may appear to be just and equitable.

Sec. 16. And be it further enacted, That whenever there shall be two interfering patents, or whenever a patent on application shall have been refused, on an adverse decision of a board of examiners, on the ground that the patent applied for would interfere with an unexpired patent previously granted, any person interested in any such patent, either by assignment or otherwise, in the one case, and any such applicant in the other case, 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 and declare either the patents void in the whole or in part, or inoperative and invalid in any particular part or portion of the United States, according to the interest which the parties to such suit may possess in the patent or the inventions patented, and may also adjudge that such applicant is entitled, according to the principles and