Contributing Editor's Page

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A Square Deal for Inventors

By H. Ward Leonard

An Engineer Who Has Figured Largely in the Industrial Development of the World

IT is a common impression among those who are not familiar with the origin and development of patent systems that the United States Patent Office exists in order to reward meritorious inventors. This is an open question. There is no reason why inventors should have any exceptional privileges and they never have had. But they merit a square deal, insofar as invention is the principal factor in efficiency of production. and is largely responsible for the manufacturing supremacy of the United States. Hence the important question arises: what is the best method of stimulating the creation of the most valuable inventions and ensuring prompt disclosure?

If, as frequently asserted, a corporation, by employing men of inventive minds and furnishing them the best equipped laboratories, libraries and assistants, can produce inventions of greater value than can be produced by independent inventors, then the logical thing to do is to abolish the patent system. But if it is a fact that the great inventions have always been made by independent inventors, then the logical thing to do is to adopt as the platform of patent reform "Back to the Constitution," and see to it that a patent gives to the inventor the reasonable security in an exclusive right which the Constitution intended he should have.

The practical question is how can a patentee be given reasonable protection, when, for example, his patent has been deliberately infringed by one of perhaps several hundred members of an association, in which such members join forces to furnish the money, influence and legal talent needed to make the inventor accept the terms offered by their one representative. Or when his patent is deliberately appropriated by members of an association whose members tax themselves to "protect themselves" against any inventor who tries to assert his patent rights against any of their members. Or when a large manufacturing company, which after combining numerous companies and thereby securing the protection due to several thousand patents in one field of industry, infringes scores of patents of one inventor and says it is too large to be bothered with paying royalties.

ORVILLE WRIGHT is reported to have said recently that $200,000 was needed to pay for his side of the legal fight on one patent, and this is not very exceptional.

Evidently if it is good policy for the United States to stimulate the patenting of inventions by independent inventors, some way must be found for reasonably and promptly securing a patentee against unscrupulous and piratical infringement.

It should be born in mind that before a patent is sustained by a court the court must be convinced that the patent is clearly infringed and also that it is clearly valid.

In trying to prove that the patent is invalid the wealthy infringer can go back to the origin of historic records, and drag the inventor all over the world to meet the paid-for testimony of false witnesses.

But as to the question of infringement of the claims it is different. The real patent pirate is undoubtedly infringing the claims of the patent. In fact it is customary in such cases for the pirate to stipulate the fact that he is infringing the claims when the suit is first started. He merely asserts that the government erred in granting the patent and would not have done so had the Patent Office known its business.

To meet such cases of unquestionable and deliberate infringement of a patent which the Patent Office has said is valid and the infringer says is invalid, a bill has been introduced in Congress by Chairman Oldfield, of the Patent Committee. This bill provides that whenever the patentee has established to the satisfaction of the court that the claims granted by the Patent Office are infringed and the patentee has made a motion for a royalty payment in the way provided for in the bill, the court shall order that, pending the determination of the question of validity by the court, the infringer shall pay a royalty of five per cent upon every infringing article he sells until he has established to the satisfaction of the court that the Patent Office was wrong in issuing his patent to him.

But in accepting this five per cent royalty the patentee waives any further claim as to the articles upon which the royalty is paid, in the nature of damages and profits, and can never make any further claim against those articles based upon other patents owned or controlled by him at the time the court grants the five per cent royalty.

UNDER such a modification of the Patent Laws, the average inventor could probably cope single handed with the largest and most powerful Association or Chamber of Commerce or equivalent combination. And in fact the unconscionable infringement of patents would probably cease because this five per cent royalty would enable the inventor to pay for his legal fight and hence such legal fights would seldom start. A capitalist would dare once more to invest money in a good patent. Inventors would be stimulated to increased efforts.

The courts would be freed from the clog of intentionally complicated and delayed patent suits and in many cases the inventor would become the most efficient manufacturer in his line in the world.

One thing is very clear. Congress ought to either abolish the present patent system, on the ground that it is no longer necessary or desirable, or else it should make a patent an asset instead of a liability to the patentee.

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