ARE YOU AN INVENTOR?

Willard D. Eakin Writes Interesting Article About the Woes of the Inventor

(Editor's Note—This is an exclusive and highly instructive article by Mr. Eakin, on a subject in which thousands of Nebraskans are interested.)

To say that the one branch of Uncle Sam's government which is truly self-supporting makes money for him through the issuance of documents that are worthless to the man who pays for them in 99 cases out of 100 is not an extravagant statement. It is a fact.

"Get a patent" is the will-o-the-wisp, the gay delusion, that has caused thousands of poverty-stricken inventors or near inventors to pawn their shirts, so to speak, for money with which to prosecute their claims in the hope of attaining fame and fortune at a bound.

One Million Issued

Over a million United States patents have been issued to date. That is about one for every hundred people. Yet how few, how very few, have made the inventor rich! One of the official examiners in the patent office told me that he did not believe more than one patent in a thousand was a commercial success. Yet each of the 999 worthless ones cost the inventor usually or at least frequently an individual of slender means, 50 to 100 dollars to secure. Since it was established, the patent office has "earned" and turned over to the treasury over $7,000,000.

Surely it is an evil that men who have spent days of hard labor and sleepless nights inventing something go on and spend their hard earned or borrowed money to secure patents that never bring them any returns. But the examiners say, "It is not for us to judge of the value of the invention. The only requirement of the law in this conection is that the device be useful, and if it appears to have even the slightest degree of usefulness, we have no right to withhold a patent. In fact the degree of usefulness cannot be foretold until the article has been put upon the market."

300 Patent Attorneys

In the Washington telephone directory on my desk there are the names of nearly three hundred patent attorneys, many of them not lawyers, who make their living and in some cases large fortunes chiefly from fees for securing patents, although some of them do make a part of their incomes from infringement causes and other litigation involving patents already granted.

The temptations that beset a patent attorney are great. Some inventors fairly insist on being fleeced. I went with a man from Nebraska to the patent office and after making an examination of the patents already granted advised him that it would not be worth the money or the time to file an application. Then we went to the division in wh'ch devices such as his were considered, and the examiner there, after investigation, told him the same thing—that, although there was a bare possibility that he might eventually secure a patent, it could be a patent only on some little, insignificant feature of his device, all other features being covered by prior patents. But the first thing the man said when we left the building was, "Well, you go ahead and file an application. If I can get a patent, I want to get it." He seemed to think it would be worth the money merely to be able to say to his friends that he had secured a patent.

Beat Him to It

His device was all right. In fact, since that time similar devices have been placed on the market under the rpatents that anticipated his invention and are destined to save farmers thousands of dollars. The only trouble was that someone else was ahead of him.

His case illustrates the ease with which patent attorneys, if unscrupulous, find it possible to lead an inventor on and get him to file applications where they can, as they claim, "get a patent," but one that is not worth the paper it is written on. The inventor is of a hopeful nature, and in fact it is sometimes difficult, as in the case mentioned, to convince him that he should give up the idea. He naturally magnifies the value of his invention. He may even accuse the attorney, as has frequently happened, of trying to steal the invention.

Value of a Patent

The value of a patent is determined by the nature of the claims, which form usually brief paragraphs at the end of long specifications. The specifications are not the vital part of the patent. They merely disclose the device and show how it is to be operated. They may describe features of the device that are not patentable or that have been previously patented. They do not secure any rights to the inventor, but on the other hand represent his gift to the public. The claims show what particular features he claims as his own invention, the exclusive right to make, use and sell them being secured to him by the patent. The specifications may describe a whole threshing machine and the claims relate only to the cylinder. As a rule, the shorter a claim is, the more it covers, as additional words have not been used to narrow it down, which shows the point in the frequently told story of the inventor who found fault with his patent because the claims were too short.

The value of a patent also depends upon whether the device can be used by itself or is useful only in connection with something else upon which someone else holds a patent, who may not be willing to buy, sell or license.

A patent on a shift-key for a typewriter may not be of much value to you if you do not have and can not get the right to "make, use or sell" the typewriter itself.

The Patent Attorney

In 99 cases out of 100 the greatest service the patent attorney can render his client is, after making the necessary thorough search for prior patents, to frankly tell the inventor that it is not worth while for him to proceed, although the device may be "patentable" in that some little curve or crook at the end of a wire or some little notch or some combination of parts might be the subject of a worthless patent, so the preliminary search is very important. Yet some attorneys will make the search free of charge, looking to later developments for their compensation for that valuable service, which means that their only hope of being paid is in filing and prosecuting an application, whether it is warranted or not.

Last year alone there were 6,970 allowed aplications forfeited by operation of law for non-payment of the final fee, which shows what a large number of patents, after being prosecuted at the inventors' expense and allowed, were not considered worth the final government fee of $20 necessary to get the letters patent finally issued.

Some firms of patent attorneys operate under a bonded agreement to return a certain part of their fee if a patent is not secured. Some of their circulars are so adroitly drawn that the hopeful inventor might construe it to mean that government fees and all would be returned, but a strict reading will not permit that construction. The hopeful reader also thinks that it protects him against rejection of his claim on any ground, while as a matter of fact it relates only to final rejection on the ground that prior United States patents have been granted on the same thing. So, if it is finally rejected upon reference to a foreign patent, or for want of novelty without reference to anticipating patents, or for want of utility, or any one of several other possible grounds of rejection, it lets them out. They are also relieved from liability if they get any kind of a patent at all, however much they have had to narrow it down by repeatedly amending their claims. After each rejection, they have a year in which to amend, and so long as they can thus keep the claim alive by repeatedly amending and amending, from year to year, until final rejection, they are not bound to return the fee. Is it any wonder that claims are so frequently amended and narrowed down until quite worthless patents are finally issued?

How many inventors know that even after a patent has been secured, its validity, if attacked, is not accepted by a court until proven? The patentee cannot secure an injunction to prevent infringement pending suit unless he can show his patent has heretofore been declared valid by a court or that the public has long acquiesced in its validity, and such public acquiescence must be shown by some positive evidence, as that infringers have ceased infringement upon protest, that licenses have been sold for a substantial price under it, or that persons to whom it would be a material advantage to have the patent declared invalid have not succeeded in doing so. So a patent may not mean so much, after all.

If They Knew

Inventors would not be in so great a hurry to secure patents if it were generally known that they have two years after completing the invention in which to file the application, and anyone but the first inventor can be prevented from securing a patent on it even though the imposter files his application first. And for that matter, if some one should steal the invention and even secure a patent on it, the invalidity of the thief's patent, on the ground that he is not the first inventor, can be proven in court. After the thief has filed his application the true inventor can file an "interference" in the patent office and the question of which was the real inventor or the first inventor is then decided upon proper evidence and the patent issued to the one entitled.

Try Out First

There seems to be litti ereason, then, why an inventor should not try out his invention commercially before applying for a patent, if he has proper witnesses as to the fact and the time of his invention, except that he must file within two years after his invention is perfected or be considered as having abandoned his right. Such a course also has the effect of extending the life of his patent, as it is good for only 17 years from the day it is finally issued, and by filing his application at the end instead of at the beginning of the two-year period allowed, he secures protection for 19 years instead of 17 years.

Since the patent office cannot deny a patent on the ground that it would be of litite value, the only hope of abolishing the evil of so many worthless patents being issued is in the conscientious action of patent attorneys, in frankly advising their clients when it is manifestly not worth while to proceed.

NEIGHBORLY ADVICE

Freely Given by Alliance Citizen

When one has suffered tortures from a bad back and found relief from the aches and pains, that person's advice is of untild value to friends and neighbors. The following neighborly advice comes from an Alliance resident.

Mrs. J. E. Whaley, 422 E. Oregon St., Alliance, says: "Over three years ago I had a lame back and the kidney secretions were unnatural. Whenever I stooped, sharp pains darted through my loins and it was hard for me to straighten. I tried many remedies, but all failed to help me until I used Doan's Kidney Pills. They brought relief in a short time and I continued using them until I was free from kidney complaint. I have had no reason to change my high opinion of Doan's Kidney Pills since I recommended them some years ago."

Price 50c, at all dealers. Don't simply ask for a kidney remedy — get Doan's Kidney Pills—the same that Mrs. Whaley had. Foster-Milburn Co., Props., Buffalo, N. Y.