WHAT IS PATENTABLE UNDER THE LAWS OF THE UNITED STATES.

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"The invention all admired, and each, how he
To be the inventor missed; so easy it seem'd
Once found, which yet unfound most would
have thought impossible."
—Milton's Paradise Lost, book 6, lines 499 to 502.

The foundation of our patent system is clause 8 of section 8 of article I of the constitution of the United States, in these words: "The congress shall have power to promote the progress of science, and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."

The constitution nowhere defines who is an inventor, nor what is a discovery, within the meaning of the above quoted clause.

The development of this provision of our constitution into statute law, and the true spirit which should prevail in the consideration of letters-patent granted in pursuance thereof, is nowhere better stated than by Chief Justice Marshall, in 1832, in delivering the opinion of the supreme court in the case of Grant v. Raymond (6 Peters, 218) in these words: "To promote the progress of useful arts, is the interest and policy of every enlightened government. It entered into the views of the framers of our constitution, and the power 'to promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries', is among those expressly given to congress. This subject was among the first which followed the organization of our government. It was taken up by the first congress at its second session, and an act was passed authorizing a patent to be issued to the inventor of any useful art, etc., on his petition, 'granting to such petitioner, his heirs, administrators, or assigns, for any term not exceeding fourteen years, the sole and exclusive right and liberty of making, using, and vending to others to be used the said invention or discovery.' The law farther declares that the patent 'shall be good and available to the grantee or grantees, by force of this act, to all and every intent and purpose herein contained.' The amendatory act, of 1793, contains the same language, and it cannot be doubted that the settled purpose of the United States has ever been, and continues to be, to confer on the authors of useful inventions an exclusive right in their inventions for the time mentioned in their patent. It is the reward stipulated for the advantages derived by the public for the exertions of the individual, and is intended as a stimulus to those exertions. The laws which are passed to give effect to this purpose ought, we think, to be construed in the spirit in which they have been made, and to execute the contract fairly on the part of the United States where the full benefit has been actually received—if this can be done without transcending the intention of the statute, or countenancing acts which are fraudulent or may prove mischievous.

"The public yields nothing which it has not agreed to yield; it receives all which it has contracted to receive. The full benefit of the discovery, after its enjoyment by the discoverer for fourteen years, is preserved; and for his exclusive enjoyment of it during that time the public faith is pledged. That sense of justice and of right, which all feel, pleads strongly against depriving the inventor of the compensation thus solemnly promised."

The constitution of the United States was ordained and established by the people of the United States in 1787.

First Law Relating to Patents.

In 1790 congress enacted the first statute relating to patents, which provided:

"That upon the petition of any person or persons to the secretary of state, the secretary for the department of war, and the attorney-general of the United States, setting forth that he, she, or they hath or have invented or discovered *any useful* art, manufacture, engine, machine, or device, or *any* improvement thereon, not before known or used, and praying that a patent may be granted therefor," etc., shall obtain a patent. (The italics are ours).

This was the first statutory expression, by those in touch with the framers of our constitution, of what should be protected by way of letters-patent, to the end that the progress of science and the *useful* arts should be promoted.

It is clear that these legislators were imbued with the spirit of our constitution; that as they interpreted that spirit, so far as it related to the grant of letters-patent, they attach much importance to utility and novelty; but that if novelty and utility were present, even to the comparatively slight extent of the thing being *any improvement* on an old manufacture or old device, the thing was worthy of a patent.

No definition, other than as contained in the above, was given of invention, and no special dignity was supposed to rest in the thing invented. If it were new and useful; if it were a simple improvement in a tooth pick or a rat trap, it as clearly came within the provisions of this act as a complicated steam or electric engine.

If the humble inventor had discovered (brought to light) "*any improvement*" on an old device or manufacture which made it perform its old functions in a better way or made it perform a new function, by that fact he became entitled, under the law, to a patent; he was an inventor, whom the framers of our constitution intended congress to protect, in order that the progress of science and the *useful* arts might be promoted. When such an one disclosed his new and useful device or manufacture, or his new and useful improvement on an old device or manufacture, by letters-patent, he had added something (it matters not how much or little) to the stock of *useful* knowledge, and just that thing, during the limited term of his patent, our legislators, imbued with the spirit of those great minds who framed our constitution, intended he should have to the exclusion of others.

This is the spirit of justice and of right interpretation of our patent system which is so eloquently expressed in the language of that great jurist, Chief Justice Marshall, in one of the very first patent causes which came before the supreme court for adjudication.

Given the fact that the patentee has disclosed by his specification something new and useful, no matter how simple, even though it be "*any*" improvement in an old device or manufacture, when the patent is granted, he is entitled to his new and useful contribution to the stock of useful knowledge, during the term of the patent; and it would be contrary to a proper sense of justice and of right to deprive the inventor of the special privileges granted in and by his patent, thus solemnly promised by the government in consideration of his contribution, by the disclosures in his patent, of something which is, in fact, new and useful.

At least, this is the voice of the supreme court of the United States, expressed by its chief justice, the great Marshall, when our constitution was so new and fresh that many of those who had signed it were still numbered among the living, and our congress, deriving its inspiration from that great source, had but recently passed the act to which we have referred.

Dead Founders.

The founders of our government passed away; a new generation arose. The living voice of the fathers was no longer heard, and their influence was less felt every succeeding year. Judges not imbued with the spirit of the framers of our constitution, nor realizing the object of this early legislation, were called upon to render judgment in patent causes. Forgetting, or not perceiving, that these statutes are entitled to a liberal construction, they have been led away by sophistry which sought to rob the inventor of his covenanted recompense. As a consequence, an interpretation has sometimes been given these laws which plays right into the hands of the designing infringer. Thus, an unscrupulous money-getter may see a patented device, admittedly not known or used before its disclosure in the patent, and, thereupon, proves its merit by using it, without the owner's consent. When sued for infringement, he admits that