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"SOONER or later every business man is interested in a patent," is a well known saying. And what is a business man's interest is a lawyer's business.

To have a working knowledge of patents, a lawyer should know generally what is patentable, which is very clear when we are in the field of machinery. Beet harvesters, printing presses and automobiles are all patentable, if they are new in a patentable sense. That is easy. However, when we come to a rubberized glove, an automobile reflector light, or a dandelion digger the way is less clear.

But when we get into the twilight zone, we meet with a street car transfer (the Denver transfers were patented on February 18, 1919), a process of recovering precious minerals by the use of certain chemicals or reagents, a cash refund slip, a combination note and mortgage, a new variety of rose, a new hair tonic, an attractive radiator cap, or a design for a ring.

Articles, plants or designs of the above nature have all been patented, except the combination note and mortgage, which was expressly held not patentable (Ex parte Dixon, 44 F. (2d) 881). The above list shows the broad field that is covered by patents.

Many attorneys in the general practice think that when an article is patented no one may use any of its features. For instance, suppose a client wants to manufacture a dandelion digger and he tells his attorney of a competitor's patented dandelion digger, certain features of which he wants to use. The problem, of course, is whether he will be infringing by using those certain features in his dandelion digger.

As technical as this question is, it can be answered quite positively. The way to avoid infringement of any patent is to use features of prior patents, or, as usually stated, by using features that are "old in the art." In answering a question of this kind, the first thing to do is to obtain a copy of the competitor's patent. Another thing to do is to get copies of all the patents cited by the Examiner in the Patent Office during the months, or more probably years, on which the com-

petitor was trying to get a patent, and determine how broad the competitor's patent is. It maay be a surprise to learn that it takes two years and ten months on the average to get a patent.

As a final step, it is advisable that an infringement search be made to ascertain whether the client's dandelion digger infringes upon any other patent. It is excellent advice to a client that he should be quite cautious before entering the manufacturing field with a new article, on account of the many fields that are covered by the almost two million United States patents (a thousand more are issued every week).

Not only the manufacturer, however, needs to fear infringement, but also the seller and the user. A patent is infringed in any one or more of the following three ways: First, making; second, using; and, third, selling. A question often asked is, "May I make one just for my own use?"

The answer is, "No." That is none the less an infringement.

It will probably be of value to the attorney in general practice to know what the stock defenses in an infringement suit are. They are primarily two, to wit, invalidity of the patent sued on, by reason of prior patents and/or prior public use, and, second, that the article in question is not an infringement. These defenses are spoken of as, "Invalidity and non-infringement."

Practically every important invention from barbed wire (which was important and the patent on which went to the Supreme Court) to radio tubes has been confronted with the defense that it was invented at some earlier date by some one else. There is a psychological reason for this. After a thing has been in use for a while, the human being, after he has adopted himself to it, feels as though he has always had it. As the courts have put it, "It is hard to blaze a trail, but easy to follow one," and "Problems once solved present no difficulties."

It may of course be that some one did invent it previously. In this connection, it is interesting to note that it has happened 60,000 times in the history of the United States Patent Office that two or more people have filed applications on the same invention. In one case fifty-two people filed applications on

the same thing. Only the Almighty knows how many people have independently invented things that were later invented by some one else, and as to which later inventors reaped the rewards. Probably every reader of this article can remember of one or more persons who claim to have invented an important article now in general use, which the world acknowledges as having been invented by some one else, and for which that some one else received the financial reward.

The philosophy of the foregoing is this: Human advancement and progress reaches a certain point and there is a need for a certain improvement. Minds all over the country, yes all over the world, begin working on the solution and since no man, nation or race has a monopoly on all the brains, men at widely different points think of the same solution to the problem. Some times one inventor accuses another of "stealing" his invention. The fact usually is that neither knew of the other.

An example may clarify this point. Not many years ago all radios had three dials and each dial had to be adjusted separately. Since man only has two hands, three dials were inconvenient. The need was seen for a two-dial radio, or, better still, a one-dial radio. It seems easy now, but there were many problems to overcome before a commercial one-dial radio could be put on the market. In the days of three-dial radios, fifteen inventors, one a Denver man, (fourteen were in the United States and one in Germany) filed applications within a span of approximately a year and a half covering the same way of providing a one-dial radio. Probably none of the fifteen inventors ever heard of any of the others, so that none of them "stole" the invention.

The question is asked, "Well, who gets the patent under such circumstances?" In the first place, it is not a race for the Patent Office, and, therefore, the first to file an application for patent is not necessarily the one who is awarded the patent, although the first to file does have a decided advantage, and it has been stated that in over 90% of such cases, the first to file is issued the patent.

The rule very broadly stated is that the first one to "reduce to practice" is awarded the patent. One cannot travel very far in Patent Law without encountering the phrase

"Reduction to Practice," which means generally making and successfully testing the article in question as it was intended to be used; e. g., if the invention is a gun, it is reduced to practice by making one and firing it. In lieu of actual reduction to practice, the invention may be constructively reduced to practice by filing an application for patent.

There is one feature of securing a patent that is not clearly understood by the attorney in general practice. Probably 99.44% of the applications filed in the Patent Office require amendment before the patents are issued on same. The word "amendment", while universally used, is somewhat misleading. Filing amendments really means the prosecution of an application through the Patent Office, which involves molding and changing the claims which the inventor makes to cover the invention as broadly as possible and yet not covering what is shown in prior patents, which are cited by the Examiner.

Here is where the skill and experience of a patent attorney is called into play, for as Rule 17 of the Patent Office says, "The value of patents depends largely upon the skillful preparation of the specification and claims."

In other words, a patent is no better than the attorney who gets it and generally a poor attorney gets a poor patent and a good attorney gets a good patent. If it were possible for ten different patent attorneys to obtain a patent on the same thing, the patents that each would get would be a very close reflection of the attorneys themselves, their bull-doggedness, their ability and their experience.

In trial work, for instance, a judge might take compassion upon a young or unskilled counsel and decide the case in favor of such attorney's client notwithstanding his feeble efforts. But not so with the Patent Office. The first Commandment of a patent attorney is, "Ask or it shall not be given thee."

Government is a contrivance of human wisdom to provide for human wants. Men have a right that wants should be provided for by this wisdom.
—*Edmund Burke*

Liberty too must be limited in order to be possessed.—*Edmund Burke.*