Forty-Six Years in the Service of the Public—The Evening Telegram

Some Snares for Inventors

HOW TO AVOID PITFALLS AND PROTECT YOUR IDEAS—WHAT A PATENT REALLY IS.

(By FRANK PARKER STOCKBRIDGE).

With "blood in his eye," a man walked into the office of a famous patent attorney. His hands indicated that he was a mechanic; his clothing, that he had "dressed up" for the occasion.

"See this advertisement of the sky-high carburetor?" he demanded. "I've got a patent on that, and I want you to sue 'em for me for a million dollars. Here's the official copy of my patent—'June 18, 1920, to John P. Smith.' I'm Smith."

The attorney studied the advertisement, taken from an engineering periodical, which showed a detail drawing of the sky-high carburetor. Then he looked over the patent papers.

"Just where do you claim there is an infringement, Mr. Smith?" he asked at last.

"Why, in the method of controlling the air supply," replied the visitor. "See the way they show it in their picture? Now, that's just the way it is in my patent."

The attorney studied the patent papers again, but his attention was fixed on the printed text instead of the drawing.

"I don't find anything in your claims covering this method of air control," he said, finally. "If this is all you have, Mr. Smith, I'm afraid you have not much chance to collect that million."

Smith turned pale. "But—but it was in my application, all right," he stammered. "That's my whole invention—all the other things are just details. And it shows right there on the drawing. Do you mean to tell me my patent's no good?"

"It's a good patent, as far as it goes," the attorney answered; "but it doesn't go far enough. Didn't your original attorney advise you that your application had been amended?"

"Why, I did have some letters from him, but I don't remember now what was in them," the visitor admittcd. He left, worried, promising to bring all the correspondence.

"What Smith thought he had invented and received a patent for was not what his patent described at all," said the attorney, telling me of this incident. "Among the papers he brought me was a letter from his former attorney, telling him that the claim in the original application covering a method of air control had been disallowed by the Patent Office on the ground that it was old. He could use it, if he wanted to, but so could the sky-high people or any other manufacturers of carburetors. It showed on his drawing, because it helped demonstrate the action of his actual inventions, which were patentable, but not of any particular commercial value, since the same results could be accomplished more simply in other ways.

"Smith had fallen into one of the pitfalls with which the way of inventors is beset. He did not read his patent claims, but took it for granted that they covered what he thought they covered. In this country a patent covers nothing but what is set forth in the claims allowed, and there is no way to correct a mistake in the claims but to apply for a reissue. In England and on the Continent a court in which the validity of a patent is challenged will take judicial notice of the inventor's intention.

"No matter what you have invented, if it isn't described in your patent claims, you haven't got a patent on it."

Failure to recognize this important factor cost Renaud, the French inventor of the automobile gear-shifting mechanism now universally used (except on Ford cars), of the enormous fortune he could have collected in royalties from American automobile manufacturers.

"What good is a patent anyway?" I asked another attorney who had been practising before the Patent Office for 30 years.

"If you've got a good invention, a patent is a protection—until somebody else proves that he invented it before you did," he said. "A patent has been described as 'a license to sue and to be sued.' If your invention is good, somebody else is going to claim that he saw it first. And if he can make that claim good, you're sunk.

"Most inventors make the mistake of thinking that a patent is a guarantee that their invention is valuable. It isn't anything of the kind. Of every 1000 patents issued, 900 are without commercial value."

"Then what does a patent prove, anyway?" I pursued.

"It proves that only the specific thing described in the patent claims has not been done or described in that precise way before, so far as the Patent Office experts know or can find out," was his answer.

It sometimes happens that a valuable invention is not patentable because it has been described in print so that anyone could do the same thing. That happened when Morgan Robertson, writer of sea stories, applied for a patent on the submarine periscope. Mr. Robertson went one day with Lewis Nixon, shipbuilder, who was constructing the first Holland submarines for the navy, to see the new craft. "We've been trying to work out a scheme whereby the captain can see where he is going without coming to the surface," said Mr. Nixon. Mr. Robertson immediately suggested a telescoping tube with mirrors set at the proper angles, that could be shoved up to the surface when the submarine was submerged—practically the periscope, now an essential part of every submarine's equipment.

"You've got it!" Mr. Nixon exclaimed. "I'll have one patented and we'll get it patented in your name and we'll pay you so much for everyone made."

Robertson saw a fortune coming his way; but at the Patent Office, the examiners turned to a copy of Jules Verne's "Twenty Thousand League's Under the Sea," published years earlier, in which an entirely mythical submarine was equipped with an equally mythical periscope, worked just as Robertson had imagined it. The description was so detailed that the device was obvious, the Patent Office held.

The same sort of an objection was raised in the case of the balloon tire patent recently issued to an inventor after balloon tires had been in use for several years and their principle had been discussed in print years before. In this case, however, the Patent Office held that the invention was not obvious from the articles that had been published; and of course the application had been filed long before the first balloon tire was made.

Many inventors have lost fortunes by neglecting to make any records of the dates when the inventions first took shape in their minds. A simple sketch or a brief written description, dated, signed, and witnessed by one or two friends, may establish a claim to priority when somebody else claims to hape invented the same thing before the patent application was filed.

It is not at all unusual for two or claims to have invented the same thing about the same time. When two or more persons have applications pending for patents covering the same ground, the one who can produce proof of the earliest date of invention gets the patent. Often, however, after a patent is granted, it is challenged on the ground that the same thing was being done in industry before the inventor's application was filed. Then proof often is not easy to get.

Many years ago a man named Smith died in Buffalo, N.Y. He had run a bicycle repair shop in Washington, D.C. His executors sold his business and all the assets were bought by another bicycle dealer named Owen. Included in the property were some patents. These Owens handed to his brother-in-law, a patent attorney, to look into. One of them was apparently a basis patent covering a method of hanging the bicycle crankshaft, the method then used by every American bicycle manufacturer, and still in use.

Suit for infringement was brought against some of the leading manufacturers, and they faced the likelihood of having to pay out a fortune for infringements of a patent, the existence of which they had not known. Then an English mechanic, working in Boston, came forward with an English crankhanger just like the patented article, and declared that he had brought it over from England with him a year before the date of Smith's patent application. Several of his fellow workmen made affidavits that they had seen the device in Smith's hands at that time. The manufacturers decided to defend the suits.

But Owen and his attorney were not discouraged easily. If they could find Mrs. Smith, she might know where the invention was made. But Mrs. Smith had vanished. A search of the vital statistics in Buffalo resulted in finding that Smith had died at a boarding-house that had changed hands. The former landlady was discovered. She remembered that when Mr. Smith died, Mrs. Smith's married sister also lived in the house.

It took weeks to trace the married sister. Through her it was learned that Mrs. Smith had gone into a convent at Batavia. But she had the keys to a trunk, in which was found a signed, witnessed drawing of the crankhanger, dated months earlier than the application for the patent.

But still there was that English device of an even earlier date, if the Boston mechanic's story was true. Owen's attorney suspected that the mechanic was lying. And, on the day when the case came up in court, the manufacturers' attorneys got a letter from the mechanic admitting that he had falsified the date of his arrival in America by a year and had bribed the other witnesses. The dated drawing proved that Smith had invented the device before the first recorded use of it anywhere, and the manufacturers pooled their interests and bought the patent from Owen for $285,000.

A still greater fortune may be waiting for the inventor of the demountable automobile rim, now universally used, who lost his evidence of priority and couldn't find it for 16 years. His application was filed in 1907 and his patent granted in 1916. Its validity was questioned because such rims had been in general use for years and there was evidence that they had been thought of before 1907.

Somewhere, the inventor knew, he had a drawing and description, properly signed and witnessed, dated earlier than that earliest date on which anybody claimed to have any prior evidence. Where it was he could not remember.

Without written evidence of priority of invention the inventor could not sue to collect from everybody who had made and used demountable rims since his patent was applied for. Then, a few weeks ago, he found a perfect drawing, properly signed, witnessed, and dated!

In contrast to the inventor who loses because his claims are not sufficiently specific, one of the largest amounts ever involved in any litigation of a single patent was lost by the inventor because his claim was, too patent on the automobile. On the face of it, the Selden patent, issued in 1895, covered any kind of an automobile propelled by a gasolene engine. From 1901 every automobile manufacturer but one paid royalties to Selden. Henry Ford was not granted a license, and when he began shipping machines in 1903, he went ahead without paying royalties.

Selden sued, and the first court decision sustained the patent. On an appeal, the decision held that the principal claim was limited to a two-cycle gasolene engine. The four-cycle engine had not been in general commercial use when the patent was applied for. Ford and most of the other manufacturers had used a four-cycle engine from the beginning, and the Federal courts decided that the Selden patent didn't cover that in the combination.

(Continued on page. 11.)

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