Patent Law
Charles F. Murray, '19

In view of the fact that patent law is a distinct branch of the general law and has been the subject of thousands of weighty opinions by Federal courts during the past 75 years, it is somewhat presumptuous to attempt to cover the subject in one short article. Obviously only the high points can be touched upon. Practice in the United States Patent Office is conceded to be more complex and difficult, and more greatly burdened with rules and precedents than any branch of the law. The practice in the Federal courts, however, is much simplified since the adoption of the new Equity Rules in 1912.

WHAT IS A PATENT?

According to the dictionary, a patent is a grant by the crown or government. But there are patents for land and patents for inventions, the former being a grant in perpetuity, and the latter a grant for a limited term. Patents for inventions are provided for under the Constitution, Article 1, Section 8, as follows: "The Congress shall have power to promote the progress of science and useful arts by securing for a limited term to authors and inventors, the exclusive right to their respective writings and discoveries."

The Patent Law, at present, is founded on the statute of July 8, 1870. The patents to which this article is directed are patents for inventions. Such patents are divided into two classes, the larger class being that of mechanical patents, the smaller class, that of design patents, which cover only the appearance of an article without regard to its mechanical functions.

Under the head of mechanical patents are included all the various patentable subjects such as machines, processes, articles of manufacture and compositions of matter.

HOW IS A PATENT SECURED?

In order to obtain a patent, the inventor must furnish to the Patent Office his petition, a complete description of the invention, one or more claims, a drawing illustrating the machine, an oath that he believes himself the first inventor and entitled to a patent, and a fee of $20.00.

All the written parts of a patent application must conform to certain rigid requirements as to wording and arrangement and the drawing must be presented on a sheet of a specified size and character. All these details can be handled after a little instruction, even by a layman, but the value of a patent lies wholly in the claims. The scope of a patent is determined by the claims; if they are too limited the patent may easily be avoided. The patent claim may be compared to the legal description of a piece of ground in a deed. It is too obvious to require explanation that if the property is not clearly and accurately described, the deed is worthless, but the claims of a patent serve the same purpose of defining the metes and bounds of the patent grant and require the utmost skill in their production; it is a test of the ability of the

(Editor's Note: This article, to use the author's language, "touches the high points" of the subject of patent law. Mr. Murray has presented in a concise manner an idea of what patent law is all about, and we believe that our readers will find it very interesting.)
patent lawyer. After the patent application is filed in the Patent Office, it is taken up in its order, and if found to be in proper form, the attorney is notified of the allowance. Thereafter a further fee of $20.00 is payable as a prerequisite to the issuance of the patent.

In probably 95% of the cases, the Patent Office objects to the form or scope of the claims presented, and cites prior patents which are said to anticipate some or all of the claims. The attorney then procures copies of the citations, studies them to determine their pertinency, and revises or withdraws the claims as may appear necessary. This work constitutes a large part of the labor of the attorney, and, unfortunately, is the least appreciated by the client. The average inventor seems to feel that the attorney should have known and anticipated all these citations beforehand. This is obviously impossible as there are over 1,500,000 United States patents and others are being issued at the rate of 750 to 900 each week.

Rather than attempt to discuss patents with an idea of educating the reader in the subject of patent law, I will discuss some of the common fallacies.

**RIGHT TO MAKE THE PATENTED ARTICLE.**

There is a prevailing idea that the possession of a patent gives the patentee the right to make the thing covered by the patent. This is a mistake. The Government only gives the inventor the right to prevent others from making the thing patented; that is the extent of his monopoly. If the inventor can make his article without infringing any prior patents, well and good, but this question does not enter into the discussion in obtaining the patent nor is the Government interested in that question. It frequently happens that an inventor may procure a broad patent on a machine of some kind, but subsequent experiments may show that the machine is costly to operate and impractical to some extent. A subsequent inventor may improve the machine and make it practical. The second inventor cannot manufacture the machine because it is covered by the broad patent of the first inventor; neither can the first inventor make the improved form covered by the patent of the second inventor. Neither inventor, therefore, is able to utilize the invention, although each of the inventors has the monopoly granted to him by the Government. Only by bringing the two parties together and effecting joint ownership of the two inventions can they be utilized.

**NO EXTENSIONS OF PATENTS.**

Another common misunderstanding seems to be that patents can be extended. A patent can only be extended by special act of Congress and the last extension of this kind was granted in 1875. Thus, while an extension is possible it is not probable and very unusual circumstances would be essential in order that Congress might be induced to extend the normal term.

In this country, all patents run for 17 years from the date of issue even though the application for the patent may have been pending for many years. This practice differs from that of many foreign countries in which the patent runs from the date when the application for the patent is filed.

**“PATENT MEDICINES.”**

Another misunderstanding is that the numerous proprietary medicines are patented, that is, the so-called "patent medicines." The term is a misnomer,
because there are comparatively few of such patents. The fact that they are medicines, however, has nothing to do with the question of patentability. A new composition of matter by means of which a new result is secured is patentable, regardless of the particular use to which the composition is put. Usually such proprietary medicines are protected by patenting the method of preparing or producing the substance, rather than by patenting the substance as a new composition of matter.

PERPETUAL MOTION.

The idea that the world has advanced to such a stage that people no longer invent and try to patent perpetual motion machines is incorrect. The crop of such inventors is unfailing, and every patent lawyer has to deal with men who are otherwise sane but persist in the belief that they have invented perpetual motion. The Patent Office long since established the practice of requiring an operating model with any application for a patent on a perpetual motion machine. They found it utterly useless to inform the inventor that the machine would not work and adopted this means to stem the tide. This forms a convenient means for disposing of the inventor by the patent lawyer, as he is able to inform the inventor of the Patent Office rule and to advise him to perfect his model. Strangely enough, such inventions are not limited to cranks or half-wits, but frequently appear from men of a high degree of intelligence. In my experience, I have known two fine engineers, each brilliant in his particular mechanical line, who have spent years of time and thousands of dollars of money in perfecting perpetual motion. Of course they would be offended if bluntly informed that they were working on perpetual motion, because the purpose was to be accomplished by numerous interconnected steps and processes, as the result of which energy was re-created. When, however, the idea was analyzed, it was found to be nothing but attempted perpetual motion.

Occasionally, however, the "wise ones" make a mistake. For many years, the Patent Office classed heavier-than-air flying machines with perpetual motion machines, taking the position that no heavier-than-air flying machine could ever be made to fly. Accordingly, they required an operating model whenever a patent application on such a machine was filed. Such a requirement was made in a case filed many years before the Wright Brothers produced and demonstrated the practicability of the heavier-than-air flying machine, and as was usual at that time, made no limitation of the time within which such model should be filed. Many years thereafter, the inventor appeared and announced that he was ready to produce the required model, and it necessitated much legal action before the matter was disposed of.

I examined some time ago a letter written in 1865 by a patent lawyer of Washington, D. C., to a young man who had written asking his advice concerning the entering of patent law as a profession. This wise counsellor advised him against entering upon the practice of patent law at that time, because, he asserted, all the inventions had been made and by the time he learned his profession, the Patent Office would be closed down. It is interesting to reflect that since that time, the mower, the reaper, the bicycle, the automobile, the electric light, the typewriter, the telephone, the electric car, the submarine, the airplane, the moving picture, the phonograph, and the
radio have been produced. Each of these inventions, together with thousands of others not mentioned, has given birth to many new industries with all its infinite developments.

While we all agree that the re-creation of energy is impossible, I think those of us who are in daily contact with the marvelous developments of the age are hesitant about uttering too broad statements, at least for publication. We believe that progress and development are continuous and inevitable, and that the things that are considered impossible or improbable today may become a child's plaything tomorrow.

THE ROAD TO SUCCESS.

(A playlet in two acts. By an unknown author of wide renown.)

Directed by Fate.

Characters: Mr. Wood, Mr. Baker, instructors, class secretary, students, hot air shooters, stage props, chorus, cigars, etc.

ACT I.

Scene: In the freshman assembly Chicago-Kent. Monday or Wednesday following Christmas holidays. (The stage is poorly lighted except for the numerous cigars, cigarettes, and pipes which light up the impenetrable gloom. Students are gathered around in cliques, talking, musing and otherwise imparting advice and raw jokes to their brethren.)

Secretary: "The class will come to order."

All: "Who said so?"

Mr. Baker: "Let's all settle down now." (Taps with pencil on desk.)

*(Indicates ten minutes for order.)*

Secretary: "Aby, Allison (two faint voices heard "Here," "Here.") Who is here, Aby, oh yes, Allison," etc., etc., et seq ad infinitum.

Baker (clearing throat): "Mr. Aby, tell us if you will, what is meant by stoppage in transitu."

Aby: "Gee whiz, why do you always start with Aby? Why, ah, ah,—"

Baker: "Will you speak a bit louder, Mr. Aby, all the class wants to hear you. What's that, you don't understand the question? Mr. Hogan, will you answer that question? Hogan absent? Off the roll. Well, ah, Mr. Liebovitz, will you answer that question?"

Liebovitz: "Why it means that a minor can't buy anything without consulting his parents."

Baker: "That will do Mr. Liebovitz. Mr. Foley, you answer it."

Foley: "Do I understand you to say—"

Baker: "That will do, I don't know what you understood me to say."

*(All hold up hands, some snap fingers, others crouch in seats.)*

Baker: "Now I want someone who knows.

*(Same hands up, much talking between neighbors.)*

Well, I don't think any one knows. Now by stoppage in transitu is meant etc., etc.—"

All: "Question, Question!"

Baker: "Well, what is it, Mr. Chapman?"
Chapman: "Why, I don't think that is right. It says here in the text, something just opposite, and I think that is right."

Baker: "Well, that subject is taken up in Agency, you will get that later. Any more questions? (Many hands go up and "Question," "Question," is heard.) Well, if that is all, we will adjourn."

ACT II.

Scene: Same as in Act I, twenty minutes later.

(Enter Wood, instructor, and others. Secretary closes door.)

Secretary: "Ready for the roll call? Will you please close the door? Miss Burrows has something to say. Miss Burrows—"

Burrows (Pretty little girl, dressed in the latest of girl's fashions for Law Schools): "Why, ah, ah, I just wanted to say that we still owe some money, and if there are any of you who haven't paid up, why ah, well, we would like to have your money."

Secretary: "Aby, Allison, etc., etc., Rothman—"

Rothman: "Here twice."

Secretary: "How do you get that way, you were late. Rausch, Rittlesbarger—"

Rittlesbarger: "Here" (deep voice).

Secretary: "You are wanted at the office at once."

Rittlesbarger: "Right away?"

Secretary: "Yes—Young. (Faint voice from the front, "Here.") You will all find a notice about swimming on the door."

Wood: "Now who can tell me what the subject of the lesson is?"

All: (Hands down. Dead silence.)

Wood: "Mr. Steger, will you tell us?"

Steger: "Why yes (hands in pockets to give full effect to latest cut of clothes). The subject is the liability of minors. Now a—"

Wood: "That will do, Steger. Williams, what do you know about this?"

Williams: "Why, I don't have that case."

(All laugh, and guffaw as only ill-bred freshmen can.)

Wood: "Well now, if I should make a good and binding contract with Mr. Block here, (Block blushes as usual) for a suit of wedding clothes that I have in my closet, would that be binding? Mr. Bosse, you answer that."

Bosse (champion staller): "Why, ah, ah, why, yes, it would, I think, at least in some states." (Kansas cited.)

Wood: "Well, Mr. Bosse, what can a minor be held for, do you mean to tell me that a wedding suit need be paid for. Why, that is an extravagance."

Bosse: "You said it, well, ah, I guess you are right."

Wood: "Who agrees with Bosse?"

(Three-fourths raise hands.)

Wood: "Did you have a question, Mr. James?"

James (refreshing youth): "Why, I thought a wedding suit was a necessity."

Wood: "Well, you will learn more about that in the subject of domestic relations, I don't know very much about it."

(Titter among the wise, then a general guffaw.)
Wood (blushing as only Wood can do): "Well, I meant—" (drowned out by continued outbursts.)

(All are silent waiting for the next break.)

Wood: "Well, our next lesson will be in charge of a friend of mine, I won't be here (general titter). I have given him the names of all whom I wished called upon, and he has the cases too. If that is all we will be excused."

(Exit all, the strong stumbling over the weak.)

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**JUNIOR-SENIOR DEBATE.**

The final interclass debate was held on Friday evening, December 19th, the result being that the class of '25 annexed the college championship by a very close score. The question was: "Resolved: That Congress should have the power by a two-thirds majority to nullify decisions of the United States Supreme Court declaring Federal laws unconstitutional." The Juniors debated the affirmative of the question and the Seniors the negative.

The first speaker for the affirmative was Eli D. Langert, who dwelt on some of the faults of our present system after sketching the history of some supreme court decisions. He was followed by L. E. Terry of the class of '25, who spoke on the constitution and the inherent power of the supreme court to declare unconstitutional legislation so. F. Allen Minne, '26, and Walter A. O'Brien, '25, followed, arguing pro and con questions of the constitution and its framing. Harold T. Huber wound up the affirmative argument with caustic comment on the antiquity and inefficiency of the supreme court, and was followed by Helmer Hansen in a summing up of the negative arguments.

The rebuttal speeches were delightful in their pithy sarcasm and humor, tinged now and then with the bitterness of eager argument, and yet never bordering on the edge of malice or unwarranted sarcasm. Hansen and Huber waxed well nigh eloquent in their denunciations of the arguments advanced by their opponents.

Hon. Ninian H. Welch acted as chairman for the evening, with Reuben B. Short as timekeeper. Following the rebuttal speeches the judges, Edward Bangs, William G. Wood and Byron S. Powell retired, returning shortly with the announcement that the Seniors had the better of the argument, although their decision was a very close one. The scores were as follows:

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A poll of the audience had been taken during the absence of the judges, which resulted in the following expressions of opinions:

- Affirmative before and after: 6
- Affirmative before and negative after: 1
- Negative before and after: 16
- Negative before and affirmative after: 2
- Neutral before, negative after: 2
- Neutral before and affirmative after: 1
from which it would seem that the audience was biased throughout in favor of the negative team.

It is doubtful if a more interesting or a better attended debate has ever been held at the college. Chairman Welch expressed himself as having picked up several new pointers on the constitution, and as having enjoyed the evening very much. Several members of the audience voiced the same expression of their enjoyment and profit following the discourse.

This victory for the team of '25, close as it was, leaves them the champion debaters of the college. During the three years of their debating career they have lost only one debate out of five, and that being with a two to one decision. Team Manager William M. James announces that a debate will be held with Grinnell College at the Y. M. C. A. Auditorium, 19 South La Salle Street, Saturday, February 28, at 8:15 p. m. The question will be the same as that for the Junior-Senior debate, Chicago-Kent debating the negative. A return debate will be held at Grinnell, Iowa, on March 26th, and on March 27th with either Iowa State Agricultural College at Ames, Iowa, or Simpson College at Indianola, Iowa. As far as possible, the Supreme Court question will be debated, to avoid the necessity of having the college teams prepare on several subjects.