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The Patents and Designs Act, 1932

THE new Patents and Designs Act, which comes into force on November 1, represents a serious attempt to remedy some of the outstanding defects of the patent system of Great Britain. The importance of the Act at the present time is due to the close relation, too little understood by politicians and administrators, that exists between invention and unemployment. A good patent system promotes employment by fostering inventions of the 'originative' class, which create new demands and so absorb labour, while it has little effect, one way or the other, on inventions of the 'intensive' class, which cheapen the production of existing commodities and so tend to displace labour. A bad patent system, on the other hand, is a fetter on the limbs of industry and an instrument of blackmail.

The present Act marks a definite advance, and the credit for it must go primarily to the British Science Guild. As the sequel to certain articles that had appeared in NATURE, the Guild appointed a strong committee in April 1927, "to consider what changes could advantageously be made in the British patent law", Dr. W. H. Eccles being chairman and Capt. C. W. Hume, honorary secretary. The report of this Committee, published in October 1928, was very widely discussed, and further reports, based upon it, were prepared on behalf of the General Council of the Bar, a joint committee representing the chemical industry, the Chartered Institute of Patent Agents, and a number of other bodies. In May 1929 the Board of Trade appointed a departmental committee under the chairmanship of Sir Charles Sargant to go into the whole matter, taking the British Science Guild's report as the basis of its discussions. The present Act embodies the findings of the latter Committee, and few pieces of legislation can have been subjected to more extensive expert scrutiny before being passed. Lord Marks remarked at the second reading in the House of Lords: "The bill comes to us from the committee who for sixteen months, with the assistance [*sic*] of the British Science Guild, gave very great attention to this very difficult matter with the object of finding a remedy. Subsequently another committee sat for twenty-six months dealing with the same matter, so that we have in fact a bill which has been, in effect, before a Select Committee for three and a half years."

Whether the new Act achieves a substantial

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part of the purpose underlying the British Science Guild's report will depend very largely on the manner in which it is administered. If the Board of Trade is endowed with enterprise and vision, it will seize this opportunity of making British patents the most valuable and trustiest in the world, and so of encouraging the investment of capital under their shelter.

At the very worst, the improvement in efficiency and smooth working entailed by the Act marks a substantial gain. It is unnecessary here to enter fully into the numerous and highly technical changes that have been introduced. In one instance—the remedy against unjustifiable threats based on alleged patent rights—the Act prescribes even stronger remedies than the Guild thought it politic to suggest. Appeals from the Comptroller's decisions will in future go to a High Court judge specially appointed. Nugatory inventions, such as perpetual motion machines, will no longer be patentable. Anomalies and inconveniences arising out of the procedure under the International Convention have been removed. The Act also remedies an important defect that was missed by the Guild's committee—the notorious Section 32 A, which fostered the introduction of absurdly wide claims into specifications. These and many other changes introduced by the Act are definitely to the good.

A more important aim of the British Science Guild, however, and a policy that has always been advocated in these columns, has been to check the grant of invalid patents. In the grant by the Crown of monopolies that are legally invalid lies the root of the most undesirable features of the patent system. The new Act has not dealt very courageously with this problem, but it has allotted to the administration one discretion which, if exercised with vigour and wisdom, will yet make the British patent one of the safest in which a man can invest. The principal source of invalidity in patents is want of novelty. To test the novelty of inventions, the Patent Office has since 1905 made a search amongst British patent specifications, and by doing so it has greatly improved the status of British patents and diminished the facilities afforded to that form of blackmail which depends on the unscrupulous (or unintentional) use of invalid patents. Now, however, for the first time the examiners are given discretion to make a search, like those which are made in Germany and the United States, in technical periodicals, foreign specifica-

tions, and other published documents. Will this discretion be exercised, or will the great opportunity afforded by the Act be thrown away?

In the articles in NATURE from which the reform movement originated\* it was estimated that a very thorough search of this kind would cost at least £120,000 a year, but it was pointed out that this sum could be provided mainly by the surplus of patent fees which is annually taken away from the Patent Office by the Treasury. Since that date, the annual surplus has risen to between £140,000 and £150,000, and moreover, under the new Act, the application fee is being raised by £1 for each complete specification. The principle underlying the Statute of Monopolies was that it is wrong for the Crown to look upon monopolies as a normal source of revenue. Monopolies for inventions were allowed for the sole reason that they encouraged new manufactures: but the use of them for raising revenue is certainly against the spirit of the constitution. The purpose of the patent system is to encourage inventions, not to raise revenue out of them. The surplus revenue from this source ought to be returned to industry in improved services.

However that may be, the inventor will expect full measure for his additional £1 of fees. He waits with some little anxiety to see how it will be expended. Here is a great opportunity to improve the status of the British patent. Is it appreciated? Will it be seized upon with statesmanlike understanding and foresight? Or will these troublesome men of science, who have clamoured so obstreperously for mysterious improvements relating to the encouragement of invention, be thrown just so much of a dry bone as may serve as an excuse for refusing them a fair meal? It is not unreasonable to feel some perturbation on this point. The recent report on the Post Office shows that British commerce has been prejudiced because Whitehall, having little insight into technical mysteries, could see nothing in the communication services but a possible source of revenue. In mixed metaphor, 'the goose that laid the golden eggs was milked of its last drop of blood.' Now the function of the Patent Office is not to produce revenue but to foster new industries by giving to capitalists and investors a justifiable feeling of confidence in the security of British patents. Will it be deprived, as the Post Office was, of the means for carrying out its new duties efficiently?

\* NATURE 116, 121, July 25; 157, Aug. 1; 1925.