

VIII.

AUSTRIAN PATENT LAWS.

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SUPPLEMENT.

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I.

IMPERIAL LAW respecting the PROTECTION by PATENT of NEW DISCOVERIES, INVENTIONS, and IMPROVEMENTS, 15th AUGUST 1852.

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Translated from the Imperial Law Repertory for the Austrian Empire of 1852.
LVIII. No. 184.

IMPERIAL ORDINANCE of 15th August 1852, valid for the whole Empire, in virtue of which a new Law of Patents is promulgated in lieu of the former law of 31st March 1832,* respecting the protection by patent of new discoveries, inventions, and improvements in the department of industry.

WE, Francis Joseph the First, by the Grace of God Emperor of Austria, King of Hungary and Bohemia, &c., &c. :

Protection to inventions.

Actuated by the desire to have the necessary protection afforded to inventions in those Crown lands of our Empire hitherto without a patent-law, and having regard to the experience gained since our Ordinance of 31st March 1832* was issued, which has proved many improvements and completions of the patent laws hitherto in force to be necessary :

After conferring with our Ministers, and hearing our Imperial Council,
Have decreed and determined upon the following, throughout our Empire.

SECTION I.

O the Objects of an exclusive Patent.

§ 1.

Conditions for the grant of an exclusive patent.

An exclusive patent may be granted for each new discovery, invention, or improvement, under the limitations contained in the following §§ 2, 3, 4, and 5, which has for its object—

- a.* A new industrial product, *or*
- b.* A new means of production, *or*
- c.* A new method of production.

Under what conditions a patent may be applied for.

The patent may be applied for by an Austrian subject, or by a foreigner, as long as it does not pertain to those mentioned in the following paragraphs (2-5) as being unpatentable.

However, by discovery is understood every disclosure of an industrial mode of procedure, which has, certainly, been used in former times, but has since become entirely obsolete, or, generally, of one unknown in the country.

By invention is understood every representation of a new article with new means, or of a new article with means already known, or of an already-known article with other than the already applied means for the same article.

Every addition of an appliance, arrangement, or mode of procedure to an already known or patented article, by means of which a more favourable result or a greater economy is to be obtained in the purpose of the article, or in the manner of its production, is regarded as an improvement or alteration.

Any discovery, invention, or improvement is considered to be new if it is neither known by means of a printed publication, nor in operation in the country up to the time of the patent being applied for.

* In the Collection of Laws and Ordinances in the Department of Justice (I. L. G.), No. 2556, and in the Collection of Political Laws and Ordinances, Volume 60, page 42.

§ 2.

A patent is not granted for preparations of provisions, drinks, and medicines, nor for discoveries, inventions, or improvements, the practice of which is forbidden from public motives in regard to health, morality, or security, or the general interest of the State, according to the legal ordinances.

When a patent is not granted.

§ 3.

An exclusive patent can only be granted for a new discovery, invention, or improvement, which it is intended to introduce into Austrian territory from abroad, when the operation of it is likewise limited abroad by an exclusive patent.

What constitutes a claim to an exclusive patent.

Such grant, however, can only be made to the owner of the foreign patent, or to his legal representative or agent. Without these limitations, a patent is not allowed for an invention, discovery, or improvement made abroad, but not yet in operation at home.

§ 4.

A patent for an improvement of an already known article, or one protected by an exclusive patent, is only granted with the limitation that it extends only to the improved portion, and not to the entire article.

Patents for improvements.

§ 5.

An exclusive patent is not granted for a scientific principle, or a purely scientific proposition, even where the principle or proposition is capable of immediate application to industrial objects; but every new application of such principle or proposition, by means of which a new industrial product, a new means, or a new method of production is brought about, is certainly patentable.

Scientific principles not patentable, but only on new application thereof.

§ 6.

The union of two or more discoveries, inventions, or improvements differing from each other in one patent is only allowed when these discoveries, inventions, or improvements refer to one and the same article, as component parts, or operative means.

Conditions under which two or more discoveries, &c. may become the object of a single patent.

SECTION II.

Of the Conditions of securing an exclusive Patent, and of the Procedure in order to obtain it.

§ 7.

Whoever wishes to obtain an exclusive patent for a new discovery, invention, or improvement, must fulfil the conditions prescribed in this law.

How to obtain an exclusive patent.

These conditions are:—

- (a.) Application to a competent authority by means of a properly drawn up petition, accompanied by the prescribed appendices:
- (b.) Payment of a fixed tariff:
- (c.) The fulfilment of the obligation to describe the new discovery, invention, or improvement so clearly and completely, and, if necessary to the attainment of sufficient distinctness, to illustrate it by annexing drawings or models, so that it will be possible for every professional to copy it, when it is brought under general notice after the expiry of the term of the patent.

§ 8.

Petitions for an exclusive patent can be handed in at the provincial Governments, or to the political district authorities (district offices, delegations, county authorities), where such exist.

Where to lodge petitions for an exclusive patent.

§ 9.

How petitions should be drawn up and presented.

These petitions are to be drawn up according to Formula A. They can be handed in by the applicants for patents themselves, or by a deputy. The petitions are subjected to a stamp duty of fl. 3, Austrian currency, and the supplementary documents to a duty of 15 kreutzers for each sheet. (§ 43. c. 2. of the Law of December 13, 1862.)

Formula of petitions.

Every such petition must contain :—

- (a.) The Christian and surname, business address of the applicant for a patent, and, in case he does not reside permanently in the country, the name, business, and address of a deputy residing therein. It is also necessary to give the Christian and surname, business, &c. of the applicant for a patent, if such is to be made use of by a firm differing in style from the real name of the owner of the patent. In this case the style of the selected firm is also to be stated. But it may not be the same as that of an already existing firm without their consent :
- (b.) The name (appellation) of the discovery, invention, or improvement, and its nature :
- (c.) The number of years for which the patent is desired. This may not exceed fifteen without our special consent, and is confined to the number of years of the foreign patent in the case of those which are already in existence abroad, and are desired to be transferred by the owners of them or their assignees to this country :
- (d.) The statement whether the secrecy of the discovery, invention, or improvement is desired, or not.

§ 10.

What the petition for an exclusive patent should close.

With the petition for an exclusive patent must be enclosed :—

- (a.) The fee payable for the same or the certificate of its having already been deposited at an Imperial or Royal Treasury. No further payment, no matter for what, is to be made for the grant of a patent beyond this fee, even in case of a previous examination having taken place in relation to its admissibility on public grounds :
- (b.) The valid power of authority made out in the name of the representative who hands in the petition (§ 9) for the applicant for a patent :
- (c.) The foreign deed of patent in the original, or a certified copy, in the case of discoveries, inventions, or improvement which are intended to be introduced from abroad :
- (d.) The specification of the article to be patented as prescribed above (§ 7 c.), sealed, and under cover, upon which is to be written the discovery, invention, or improvement to be patented agreeing in substance with the statement in the petition, and giving the address of the applicant for a patent, or his representative.

§ 11.

Price of patents.

The charge for the patent is estimated according to its duration, and is of the same amount, whether the patent for a discovery, invention, or improvement be applied for by a native or a foreigner. It amounts to 100 guildens for the first five years of the patent, to 200 guildens for the following five years, and to 400

guldens for the last five years, fl. 20 of which are to be paid each year separately during the first five years; consequently, for the five years together Fl. 100

For the sixth	year	-	-	-	-	30
„ seventh	„	-	-	-	-	35
„ eighth	„	-	-	-	-	40
„ ninth	„	-	-	-	-	45
„ tenth	„	-	-	-	-	50
„ eleventh	„	-	-	-	-	60
„ twelfth	„	-	-	-	-	70
„ thirteenth	„	-	-	-	-	80
„ fourteenth	„	-	-	-	-	90
„ fifteenth	„	-	-	-	-	100

Together - - - Fl. 700

for the fifteen years, being the longest period during which the patent is allowable.

The above charges are now to be defrayed in Austrian currency, 5 per cent. being added to the sums above indicated. Imperial ordinance of July 8, 1858, in the Imp. Law Gazette, No. 102.

The tariff thus payable must be deposited all at once for the entire number of years for which the patent is applied for, or it must be shown that the deposit has been made, otherwise the petition will be laid aside at once, without any official treatment of it.

A return of the deposited fee after granting the petition subject to it can only take place when the patent is annulled on public grounds after granting it, and, moreover, only in proportion to the unexpired duration of the patent.

§ 12.

The specification (§ 10), which is regarded as an essential condition to obtaining an exclusive patent, must coincide with the following requirements:—

Instructions regarding specifications.

- (a.) It must be drawn up in the German or official language of the Crown land where the petition is handed in, and must be signed by the applicant for a patent, or his representative mentioned in the petition.
- (b.) It must contain the detailed representation of the discovery, invention, or improvement stated in effect in the petition.
- (c.) It must be so drawn up that every professional would be able to manufacture the article in accordance therewith, without having recourse to new inventions, additions, or improvements.
- (d.) That which is new, and consequently the article to be patented, must be distinctly shown in the specification, or be accurately distinguished.
- (e.) The discovery, invention, or improvement must be shown clearly and distinctly, without ambiguities which could mislead, and which are contrary to the object stated under (c.).
- (f.) Nothing may be concealed, either as to the means or the mode of execution, therefore neither more expensive means, nor means not producing quite the same effect, nor handles which are necessary for the success of an operation, may be suppressed.
- (g.) If drawings, samples, or models are necessary for the intelligibility of the specification, these must be enclosed, executed in a durable colour. They may, besides, be added at the pleasure of the applicant for a patent, in so far as the distinctness of the specification drawn up in accordance with

the requirements expressed in (c.) may be increased thereby. At present the annexed documents must be deposited in two identical copies.

§ 13.

The authorities to whom is handed the petition for a patent are to examine the same in the presence of the depositor as to whether—

- (a.) The petition is properly drawn up and signed.
- (b.) The necessary enclosures are appended.
- (c.) The prescribed tariff is enclosed, or proof furnished of its having been deposited.

Acknowledgment of receipt of specification.

If the authorities find that the petition is in order in these respects, they note on the cover containing the specification the day and hour of its presentation, and the deposited amount of tariff, signing it jointly with the applicant for the patent, or with his representative. They then give the depositor a receipt (certificate) for the application received, which contains, besides, the name and address of the applicant for the patent, as well as of his eventual representative, the day and hour of the deposit, the acknowledgment of the tariff deposit paid, and the discovery invention, or improvement stated in effect in the petition.

Right of priority in inventions, &c.

The priority of the announced discovery, invention, or improvement is established from this day and hour, *i.e.*, every objection raised against a similar discovery, invention, or improvement made or worked hereafter is regarded as invalid, and cannot negative nor neutralise the novelty of a discovery, invention, or improvement described and announced by the applicant for a patent in conformity with the regulations.

If, on examination of the petition, a defect or other fault becomes apparent, it will be simply returned to the applicant for rectification or erasure of the fault denoted without taking official cognizance of it.

§ 14.

Lodging of petitions.

The petition for a patent, together with all vouchers received for official treatment, are forwarded by the authorities in each Crown land with whom the deposit has been made to the provincial Government without delay, and within three days at latest, unless it is lodged at the provincial Government itself.

§ 15.

Examination of petitions.

The provincial Government examines every such petition in the following respects:—

- (a.) Whether the object of the petition may not, perhaps, be absolutely unsuitable for the grant of a patent.
- (b.) Whether the enclosures conform with the prescribed conditions, namely, whether the article to be patented described on the cover tallies with the statement made in the petition, and whether it is properly signed.

Petitions for unsuitable objects.

If the provincial Government deems the object of the petition absolutely unsuitable for the grant of a patent, in accordance with §§ 2-6, they inform the petitioner of the fact, and request him to take back the sealed specification handed in with the petition against a receipt, as well as to receive the deposited fees, or else appeal to the Ministry of Trade and Commerce within the term appointed in trade matters, *viz.*, six weeks (§ 146 of the Law for Trade and Industry of December 20, 1859).

Appendices to petition to conform with prescribed conditions therein contained.

If it appears that the appendices to the petition do not conform with the prescribed conditions, or that the object of the patent as stated on the cover of the sealed specification does not tally with the contents of the petition, the provincial

Government invites the applicant to rectify the same within a suitable space of time, retaining the petition meanwhile. If this space of time is exceeded the petition is returned.

All petitions drawn up in proper form and not deemed absolutely unsuitable for the grant of a patent, as well as those which receive the rectifications alluded to within the allotted space of time, are submitted by the provincial Government with the sealed specifications, and all other vouchers to the Ministry of Trade and Commerce.

§ 16.

The Ministry of Trade and Commerce is appointed to re-examine all the requirements prescribed for the petition for a patent. It is, however, its exclusive right to open the sealed specification and examine it in the following respects:—

Re-examination of requirements for petition.

- (a.) Whether the specification is drawn up in a language mentioned as allowable (§ 12), and whether it is properly signed.
- (b.) Whether the object for which a patent is sought is not divisible into two or more articles differing from one another, and requiring a division.
- (c.) Whether the statement in the petition, on the cover of the enclosed specification and in the specification itself of the object of the patent agree; further, whether the specification is characterised by that clearness and perspicuity which § 12 requires; more especially, whether the drawings, patterns, or models necessary to its distinctness are to hand, and whether all purely formal requirements of the same have been observed.
- (d.) Whether the article to be patented, as stated in effect in the petition and on the cover of the specification, is in contravention to the existing laws and ordinances, either in sanitary or other public respects, and therefore not at all adapted for the grant of a patent, or only under certain conditions or limitations. Moreover, care is to be taken that the strict secrecy which the subject demands be observed, and all means for insuring against a possible breach of it adopted.

§ 17.

An examination, no matter of what nature, into the novelty or the usefulness of the discovery, invention, or improvement stated, can in no case take place before the patent is granted, for which, however, the State administration do by no means hold themselves responsible; on the contrary, the patent is granted in this respect solely at the risk, expense, and costs of the patentee.

No examination to take place before the granting of the patent.

§ 18.

In all those cases where no hindrance presents itself, after estimation and examination in accordance with § 16, the grant of the patent by the Minister of Trade and Commerce is made by drawing up a special deed, but, in other cases, a petition unadapted for such grant of patent is rejected, the reason being given, and an order issued that the deposited patent fees be refunded. But if objections are apparent which can be removed, the rejection only takes place after the applicant has failed to remove them within the suitable space of time granted him for so doing.

Grant or rejection of patent.

Regulations and ordinances to which patents are subjected.

§ 19.

The grant of a patent in no wise relieves the patentee from the legal ordinances and regulations which exist, or are issued, for the benefit of the public health, security, or morality, or in the interest of the State. Consequently, the use of such patent is subject to all such ordinances and regulations conformably to which it may only take place in a restricted form, or not at all, according as it is restricted or altogether forbidden by them, unless the patent can be made to prove an exception thereto.

Custody of specifications.

§ 20.

The enclosed specifications appertaining to the patents, together with the Appendices (§ 16) are handed over to the Central Archives for Patents for custody and further use, as to which Section V. of this law contains further directions.

SECTION III.

Of the Advantages and Powers appertaining to Exclusive Patents.

Privileges of patentees.

§ 21.

An exclusive patent secures to, and protects the patentee in, the sole use of his discovery, invention, or improvement as set forth in the specification he has submitted, for the number of years for which his patent is made out.

§ 22.

The patentee is entitled to erect all those workshops, and to engage all kinds of assistants for them necessary to the complete use of his patented article to the greatest extent desired; therefore he can erect everywhere throughout the empire establishments and dépôts for the manufacture and sale of the patented article, and authorise others to carry out his discovery, invention, or improvement under the protection of his patent; he can admit any partners he likes, and increase the use of the patented article to any extent, dispose of his patent himself, entail it, sell it, farm it out, or otherwise dispose of it at his pleasure, and also take out a patent for the same article abroad.

Limitation of said privileges.

These rights are, however, strictly confined to the precise object of the patented discovery, invention, or improvement, and may not, therefore, be extended to cognate objects, nor be exercised in contravention to the existing laws or other prerogatives.

Improvement or alteration of a patented article.

§ 23.

If the patent refers to an improvement or alteration of a patented article, it remains exclusively confined to the individual improvement or alteration itself, and does not give the patentee of the improvement or alteration any right to the remaining portions of an already patented article, or already known mode of procedure. Whereas, on the other hand, the patentee to whose patented article the patented improvement or alteration made by another has reference, has no right to use the latter, unless he comes to some agreement with the other concerning it.

SECTION IV.

Of the Extent and Duration of Exclusive Patents, and of the Publication of same.

§ 24.

The legal validity of each patent extends to the entire Austrian Empire.

Extent and duration of exclusive patents.

§ 25.

The longest duration of patents is fixed at fifteen years. We reserve to Ourselves the concession of a further period, which is only to be applied for to Us by the authorities in cases specially worthy of consideration.

§ 26.

Every exclusive patent takes effect from the day of issue.

The publication of the granted patent has, however, to take place in the manner, and at the time of its coming into operation, as set forth by the laws in general.

Publication of patent.

§ 27.

Every patentee whose patent is granted for a shorter period than the maximum time allowed for the same (§ 9 c.) can claim the extension of it for one or several years within the longest duration appointed, if he takes steps for that purpose before its expiry (§ 29-2, a, b.). In order to obtain this, the petition for the extension is to be handed in betimes with the patent deed appended, and the full tariff for the extension of time desired (§ 11), or the certificate of its having already been deposited at an Imperial or Royal Treasury enclosed.

Extension of period allowed for patent.

The extension is granted by the Ministry of Trade and Commerce, and is officially confirmed on the patent deed itself.

§ 28.

Every patent granted or extended by the Ministry of Trade and Commerce, every transfer of a patent, as well as the fact of its having become void, will be published as prescribed in § 26.

Publication of patent.
See § 26.

§ 29.

Patents become void—

1. By annulment (rescission, suspension, or sentence).

Annulment of patents.

(a.) Annulment can take place if it be found that the legal requirements for a sole patent do not exist, more especially:

aa. If it appears that the specification of the patent is defective, and, more especially, is not provided with the requirements stated in § 12, c-f, and is therefore insufficient.

bb. If any one legally proves that the patented discovery, invention, and improvement did not possess the quality of novelty in the country, according as prescribed in § 1, even before the day and hour of issue of the official certificate; or that the patented discovery, invention,

or improvement was introduced from abroad, and the inland patent thereof not granted to the owner of the previously obtained foreign patent for the same article, or to his legal assignee (§ 3).

- cc. If the owner of a patent in force shows that the discovery, invention, or improvement patented at a later period is identical with his own discovery, invention, or improvement previously announced and patented in conformity with the rules.
 - b. If an obligation which the validity of the patent requires is not fulfilled.
 - c. If it is objectionable on public grounds (§ 19).
2. By expiry. This occurs—
- a. When the patentee has not commenced to make use of his discovery, invention, or improvement at home within one year from the day of issue of the deed of patent, at latest; or if he has entirely discontinued the use of it at home for two entire years. Further:
 - b. When the original or subsequently prolonged duration of the patent has ceased.
 - c. When the patent is voluntarily laid aside.

It is, of course, understood that these means by which a patent may become void, or expire, apply to every one who subsequently acquires a patent, as well as to the original patentee.

§ 30.

Public use of patent.

As soon as a patent has become void the use of the discovery, invention, or improvement in question is allowed generally, subject to the observance of the existing trade laws and other ordinances thereto referring.

SECTION V.

Of the Registration of Patents and the Custody of the Specifications.

§ 31.

Registration of patent.

Every patent, as soon as granted, is entered in a register at the Ministry of Trade and Commerce.

If the patent is used in the style of a firm, differing from the real name of the owner of the patent, the name of the firm will also be registered.

The specifications, drawings, models, &c. belonging to the patent will be preserved in a separate archive at the Ministry of Commerce. Every alteration occurring in the existence of a patent is noted in the above register.

§ 32.

Information concerning patents when and where obtained.

Every one is allowed to obtain verbal or written information about patents granted at the Office of Patents, and even personally inspect the register for this purpose. In like manner every one may look at the descriptions, together with appendices in custody there, the secrecy of which was not applied for, or which relate to patents no longer valid. Finally, he can take copies, or have copies taken from the register, at his own expense, of certain portions of such patents, or of

those specifications not kept secret. At the same time, however, express attention is directed to those regulations contained in this law concerning infringements of patents (§ 44).

§ 33.

The Patent Office submits to the Ministry for Trade and Commerce, at the end of each month, a statement of the alterations occurring during this period in the condition of the patents in consequence of new grants, extensions, changes of ownership, and expiry of their duration. One copy of each statement is sent to the provincial authorities and to the Chambers of Commerce and Trade in all the Crown lands, for the purpose of making an index to the register for granting information in such matters, on application being made in proper form.

At the end of each year a similar annual statement is published.

Statements submitted by the Patent Office.

§ 34.

The specifications of the patents whose validity has ceased are put in print annually, and published according as may be deemed suitable.

Publication of statements of expired patents.

SECTION VI.

Of the Transfer of Patents.

§ 35.

Every exclusive patent obtained can be legally transferred to heirs, in part or entirely, in case of death, through trustees or assigns.

Transfer of patents.

§ 36.

Every deed of transfer must be enclosed and submitted to the Ministry of Trade and Commerce, either direct, or by the Governor of the Crown Land in which the transfer is made, or where the petitioner resides.

Conditions of transfer.

If not issued by a public jurisdiction it must be legalised in proper form.

Should the proof of transfer be found faulty by the provincial Government, or by the Ministry, it is to be returned for rectification.

But if satisfactory proofs of the transfer are given, the Ministry are to have it entered in the appointed register, the entry confirmed in writing on the deed of patent, and in the case of an only partial transfer, a special certificate issued besides concerning it.

§ 37.

The registered transfers of patent are to be made public without delay. After this has taken place, no one can excuse himself by pleading ignorance of the transfer having been effected.

SECTION VII.

Of the Infringements of Patents and the Litigation resulting therefrom.

§ 38.

It is regarded as an infringement of, or encroachment upon, a patent—

(a.) If any one copies or counterfeits the patented article in the way shown in the enclosed specification without the consent of the patentee, even in

Litigation resulting from infringement of patent.

cases where the copy or counterfeit should be made on the basis of an entirely or partially identical patent which has, however, been granted him at a later period.

(b.) If anyone introduces or obtains from abroad, without the consent of the patentee, imitations or counterfeits of an inland patent for the purpose of sale in trade, or of the custody or exhibition of it for such sale, or, finally,

(c.) If any one undertakes the sale, or even only the custody or exhibition of such articles for sale, without the consent of the patentee.

§ 39.

Proof of infringement of patent, and its consequences.

If the specification of a patent has been registered the first infringement constitutes an infringement of the law; if, however, the specification has been kept secret every repetition of the infringement is, at the request of the aggrieved party, to be punished by a fine of fl. 25-1,000 in addition to the forfeiture (confiscation) of the imitations or counterfeits. In case of the insolvency of the delinquent, he is to be sentenced to one day's arrest for every five guldens, in lieu of the fine.

With regard to the implements and appliances exclusively serviceable for the execution of an imitation or counterfeit, they are to be taken to pieces, altered, or rendered useless, according to their nature, provided no other arrangement is arrived at about them, as between the aggrieved party and the delinquent.

The fine goes to the poor-box of the place where the infringement was committed. The forfeited articles are to be destroyed, unless an arrangement is made between the condemned and the patentee for their remittal on account of the compensation awarded to the latter.

If the delinquent has made use of the knowledge of the discovery, invention, or improvement he has obtained in the service or by the confidence of the patentee, for the purpose of infringement, this is to be taken into consideration in passing sentence as an especially aggravating circumstance.

§ 40.

Cases calling for a modification of the preceding section.

If the aggrieved party does not wish to prosecute, or if it is merely a question of the first infringement of a patent, the specification of which is kept secret, the aggrieved party is only entitled to insist upon the discontinuance of further imitations or counterfeits, and the sale thereof, and to demand security that the trespasser's imitations or counterfeits, in case they are produced in the country, are neither used nor sold, nor again introduced abroad, in case they should have been imported thence for sale during the time the patent is in force.

§ 41.

In all disputes the discovery, invention, or improvement is only to be judged of in conformity with the specification appended to the petition for a patent. This specification, therefore, must in all cases serve as a basis for giving a decision where this depends on the contents of it, regardless of its being kept secret; and in so

doing no subsequent alterations or representation of the patented article, no matter of what nature, may be taken into account.

§ 42.

The Ministry of Trade and Commerce alone gives opinion on the question as to whether a granted patent is to be regarded as invalid or extinct (§ 29) on any legal grounds. It therefore specially decides on the question of the novelty of a patented discovery, invention, or improvement; as to whether it was only introduced from abroad, and was not suitable for a patent; and, finally, in disputes between two patentees about the question of the complete or partial identity of their patents.

Official interference between litigant patentees.

§ 43.

The examination into and punishment of the infringements specified in §§ 38 and 39 is the duty of the political jurisdictions, in whose district they have been committed, in accordance with the existing regulations for the procedure in cases of trade encroachments, unless other regulations are hereafter issued.

Right of appeal against political district jurisdiction.

Everyone is at liberty in such cases to appeal to the higher authorities against the enactments and judgments of the political district jurisdiction, if he imagines himself aggrieved thereby, and if an alteration of the first decision is decreed in consequence of this step he can further appeal to the Ministry of Trade. However, this appeal must be deposited in either case within 14 days at latest from the day of delivery of the decision which is appealed against.

If a sentence of punishment is appealed against, its execution is stayed pending the final decision. If, during the examination, it appears that the decision depends on a previous question, upon which only the civil courts can decide, the political authorities refer the parties to the competent civil courts, and they (the political authorities) can only arrive at their own decision in such a case after the legal verdict of the civil court has been submitted to them. Moreover, the valid decision of the political authorities, in virtue of which anyone has been found guilty of an infringement of the law of patents and sentenced to a punishment, serves the aggrieved party as a basis whereon to establish his claims to compensation before the civil judge.

When the execution of a sentence may be stayed.

§ 44.

The political authorities can appoint an inspection or scientific report to be made if sufficient reasons exist, and if by this or any other means the fact of a punishable infringement is authentically proved, they can direct the immediate confiscation or other suitable custody of the imitations of counterfeits of the patented article, and of all implements and appliances exclusively serviceable for producing them.

Confiscation or custody of counterfeits.

However, in so doing, care is always to be taken that no irreparable damage is inflicted upon the accused unless urgently necessary, and therefore, in case of need, the deposit of a suitable security by the aggrieved party for libel and damage is required.

§ 45.

If, during the examination, it appears that the decision depends on previous questions which rest with the Ministry of Trade and Commerce (§ 42), this decision is to

When judicial proceedings may be stayed.

be officially demanded, and the proceedings of the penal authorities stayed pending its receipt.

The confiscation which may already have been ordered, or the other provisional dispositions which may have been made, can, however, be maintained till the decision as to the continuance of the proceedings has been arrived at.

§ 46.

Cases within the competency of the civil courts.

Provided it is not a question of the infliction of a punishment for infringement of a patent, but only of the discontinuance of such infringement as mentioned in § 40, or if it is only a matter of decision as to the ownership of a patent, whether the dispute be about the priority of the discovery, invention, or improvement, or a matter of private right of the aggrieved party which has been referred by the Criminal Tribunals to the civil courts, these latter will examine into and decide upon them, and moreover, in those Crown lands in which the summary procedure in such matters is introduced, in accordance with the existing regulations for such cases.

§ 47.

When the confiscation or custody of imitations or infringements may be made by a civil judge.

If the existence of an infringement is authenticated, or is proved in consequence of an inspection or scientific report having been made, the civil judge can likewise appoint, at the request of the aggrieved party, the immediate confiscation or other suitable custody of the imitations or counterfeits of the patented article (§ 40) with due regard to the case prescribed in § 44, either unconditionally or against deposit of a suitable security for libel and damage.

Every such measure must, however, be justified by means of a complaint within eight days, in accordance with the provisions of the rules of court, as is the case with a prohibition; otherwise it would have to be set aside at once on application by the opponent, and due satisfaction given for libel and damage.

§ 48.

Previous judgments of the Ministry of Commerce to be produced during litigation.

If the decision of a complaint within the competence of the civil judge depends on previous questions as to which the judgment of the Ministry of Trade and Commerce is given, it is incumbent on the parties to obtain this judgment, and produce it in the course of the litigation.

§ 49.

Encroachments on trade rights of third parties.

Encroachments on the trade rights of third parties which the owner of a patent commits in the use thereof by exceeding the limits of his rights therein established, are to be punished by those authorities appointed to determine in infringements of trade-regulations in accordance with the special provisions existing in such cases. The circumstance of his having misused the patent for a trade encroachment is at the same time to be regarded as a specially aggravating circumstance.

§ 50.

Decision as to extent of infringement.

To what extent the party who unlawfully lays claim to the originality of the discovery, invention, or improvement of another in order to obtain a patent for it himself or by means of third parties, consequently becomes guilty of a fraud or other punishable act, is decided in conformity with the laws relating to punishment.

SECTION VIII.

Special Regulations in relation to Sole Patents granted before the present Law came into operation, and still valid.

§ 51.

In order to secure to the proprietors of patents still valid and issued on the basis of the ordinance of 31st March 1832, the advantage of a more extended operation of them, similar to those issued in accordance with the present law, they are granted the privilege of establishing their patent-rights in those Crown lands of the empire as well, in which the patent law of 31st March 1832 was not introduced, with the coming into operation of the present law; however, this extension of the patent to Crown lands, in which the ordinance of 31st March 1832 was not introduced, cannot be prejudicial to those parties, who have already really made use there of the patented discovery, invention, or improvement before the publication of this extension.

Extended privileges granted to patentees.

§ 52.

The actual attainment on the part of the proprietor of a patent issued according to the law of the year 1832 of the extended limits of it cannot, however, take place before he has sufficiently established his ownership of it at the highest political jurisdiction of the Crown land in which he desires to enter upon the enjoyment of the patent-rights, nor before the official publication of the patent has been made by the authorities there.

When the patentee is entitled to the enjoyment of his patent.

§ 53.

The extension of the limits of a patent is declared free of every additional payment of fees.

Extended privileges to be granted free.

§ 54.

All petitions for the extension of a patent issued in accordance with the law of 31st March 1832 are subject to the provisions of the present one, as soon as it has come into operation.

Petitions for extension of patents.

§ 55.

The infringements of and encroachments on a patent committed before the present law has come into operation are to be treated in those Crown lands in which the patent law of 31st March 1832 was in force, according to the provisions of it.

Infringements anterior to the present law where tried.

§ 56.

Immediately after it has come into operation, the present law is at once available generally, subject to the limitations for all matters described in the preceding paragraphs which arise out of previously granted patents, whether they relate to their use, duration, transfer, validity, or suspension, in the stead of the patent law of 31st March 1832, hitherto in force.

Availability of the present law and limitations relating thereto.

The registrations of patents granted or extended before the present law comes into operation remain, however, unaffected thereby.

Given at Our Capital and Residence of Vienna, on the 15th August in the year 1852, being the fourth of Our reign.

(Signed) FRANCIS JOSEPH.

(Countersigned) COUNT BUOL-SCHAUENSTEIN.

A. BAUMGARTNER.

By order of His Imperial and Royal Apostolic Majesty.

(Signed) RANSONNET.

PRIVILEGIUMS-GESUCH.

LÖBLICHE ODER HOCHLÖBLICHE.

(Hier ist die politische Kreis-, Comitats-, Delegations-behörde oder Statthalterei, an die man sich wendet, zu nennen.)

Ich (Wir) N. N. (Vor- und Zuname, Charakter, Wohnort des oder der Privilegienwerber) zeige (zeigen) hiermit geziemend an, eine neue Entdeckung (Erfindung, Verbesserung) gemacht zu haben, welche in der Wesenheit darin besteht, dass (hier hat die Darstellung derselben zu folgen).

Die genaue, nach der Vorschrift des § 12 des Allerhöchsten Patentess vom abgefasste Beschreibung wird in der Nebenlage beigegeben.

(Wenn der Privilegiumswerber die Geheimhaltung der Beschreibung wünscht, so hat er diess beizusetzen, und wenn Zeichnungen, Modelle, Muster, u. s. w. zugleich beigebracht werden, ist dieses mit genauer Angabe der Anzahl der Stücke anzusetzen.)

Auf diese angezeigte und vorschriftsmässig beschriebene Entdeckung (Erfindung, Verbesserung), welche ich (wir) unterzeichneter (unterzeichnete) Privilegiumswerber nach bestem Wissen und Gewissen für privilegirbar und neu nach den Bestimmungen des gedachten Allerhöchsten Patentess, und folglich auf meine (unsere) Gefahr und Verantwortung zur Erlangung eines ausschliessenden Privilegiums gesetzmässig geeignet halte (halten), suche ich (suchen wir) hiermit um ein solches Privilegium auf die angezeigte Entdeckung (Erfindung, Verbesserung) in der Art wie sie in der beigegebenen, versiegelten Beschreibung dargestellt ist, unter den gesetzmässigen Clauseln und Bedingungen auf Jahr, an, zu welchem Ende die nach § 11 des gedachten Allerhöchsten Patentess entfallende Privilegiumstaxe mit Gulden Conventions-Münze vollständig von mir (uns) entrichtet und um die Ausfertigung des ämtlichen Certificates, zur Sicherung meiner (unserer) Prioritäts-Ansprüche gebeten wird.

(Ort, Jahr und Tag der Ausfertigung.)

(Unterschrift (ten).)

TRANSLATION

FORM of a PETITION for the GRANT of a PATENT.

Form of petition for the
grant of a patent.

Worshipful, or Most Worshipful

(The name of the political district, county, or delegational authority, or provincial Government, to whom application is made, is to be stated here.)

I (we), N. N. (Christian and Surname, business and residence of the applicant or applicants for the patent) herewith announce in due form, that I (we) have made a new discovery (invention, improvement), which in effect consists of (The representation of it has to follow here).

The accurate specification thereof, drawn up in accordance with the provision contained in § 12 of the Imperial ordinance of August 15, 1852, is enclosed herewith.

(If the applicant for a petition desires the specification to be kept secret, he must state this, and if drawings, models, patterns, &c. are appended at same time, the number of them must be accurately given.)

This discovery (invention, improvement), announced and described in due form, which I (we), the undersigned applicant (applicants) for a patent deem to be lawfully suitable for such, and to be new according to the provisions of the Imperial ordinance aforesaid to the best of my (our) knowledge, and consequently at my (our) own risk, and on my (our) own responsibility deem to be lawfully suitable for the obtainment of a sole patent, I (we) therefore apply herewith for such patent for the discovery (invention, improvement) announced, in the manner shown in the enclosed sealed specification, subject to the legal conditions and stipulations, for _____ years, for which purpose the tariff for the grant of a patent, payable in accordance with § 11 of the aforesaid Imperial ordinance, is hereby declared to be entirely paid by me (us) in the sum of _____ florins, and the issue of an official certificate in order to secure the priority of my (our) claims is therefore requested.

*(Place, and date of application.)**(Signature(s).)*

(Signed)

(Countersigned)
CHEVALIER VON TROGER
GOETZ GRÜNER, Feld-Marschal Lieutenant, and
Adjutant-General.

By Imperial Order
(Signed) _____

II.

PROTECTION OF PATTERNS AND MODELS.

INDEX.

SECTION		Paragraph
I.—General provisions	- - - - -	1—4
II.—Deposit of the patterns	- - - - -	5—9
III.—Invalidity of the registration, loss of the pattern right	- - - - -	10—11
IV.—Encroachments, infringements, and punishments	- - - - -	12—18
V.—Jurisdiction and procedure	- - - - -	19—26

Translated from the Imperial Law Repertory, for the Austrian Empire of 1858, LVIII., No. 237.

IMPERIAL ORDINANCE of 7th December 1858, valid for the whole Empire, promulgating a Law for the Protection of Patterns and Models for Industrial Products.

We, Francis Joseph I., by the Grace of God, Emperor of Austria, King of Hungary and Bohemia, &c., &c.:

In order adequately to protect native industry as regards new patterns and models applied in its productions, and thus to promote its development, We have, after consulting Our ministers and the deliberations of Our Reichsrath, promulgated the following law, and decree that the same shall come in force in the whole Empire on the 1st March 1859.

Our Minister of Commerce, Trade, and Public Works, and as regards the military frontier, Our Commander-in-Chief of the Army, are charged with the execution of this law.

Given at Our Capital and Residence of Vienna, the 7th December 1858, being the 11th year of Our reign.

Seal.

(Signed)
(Countersigned)

FRANCIS JOSEPH.
COUNT BUOL-SCHAUENSTEIN.
CHEVALIER VON TOGGENBURG.
COUNT GRÜNNE, Field-Marshal Lieutenant, and
Adjutant-General.

By Imperial Order.
(Signed) MARHERR.

LAW

FOR THE PROTECTION OF PATTERNS AND MODELS FOR INDUSTRIAL PRODUCTS.

I.—General Provisions.

§ 1.

By patterns and models is understood in this law every pattern referring to the shape of an industrial product suitable for application to such.

What constitutes a pattern.

What is said in the following about patterns applies with equal force to models.

§ 2.

Whoever has originally continued a pattern, either himself or by means of another person for his own account, is exclusively entitled to the use of it for industrial products for the time, and subject to the stipulations, enacted in this law.

Right of ownership to a pattern.

He can also transfer this right, either entirely or in part, to others.

He can never acquire the exclusive right (§ 10 *d.*) decreed in this law of patterns which any one has unlawfully secured for himself, whether it be at home or abroad.

§ 3.

An exclusive right to patterns which only consist in imitations of independent works of art is not recognised.

§ 4.

The exclusive right of use lasts for three years from the date of the registration of the pattern, and without distinction of it.

II.—Deposit of the Patterns.

§ 5.

Whoever wishes to secure for himself the exclusive right to the use of a pattern must deposit it at the office of the Chamber of Commerce and Trade in whose district he lives, or in which his establishment about to use the pattern is situate, before he introduces a product made in accordance with it.

Deposit of patterns.

The applicant is at liberty to hand in the pattern open, or in a sealed cover.

The functionary of the Chamber of Commerce, whose duty it is, enters the pattern or packet in the register of patterns under its current number.

A record is made of the deposit, which has to contain the name or the firm, and residence of the depositor, the day and hour of deposit, and the register number referring to it, and it must also be signed by the applicant.

The open pattern or sealed packet deposited is properly connected with the record by means of a tape fastened with a seal, and the number of the register is written on it, and officially signed.

The record is kept in the archives, and an official certificate, containing the same particulars, made out for the applicant.

If the applicant has handed in the pattern open and in duplicate, the above particulars are to be noted on the duplicate itself, and officially signed, and this is to be delivered to the applicant in lieu of the above-mentioned certificate.

Registration fee.

§ 6.

The registration fee is ten guildens for each pattern. This is paid into the treasury of the Chamber of Commerce.

Several patterns under one cover to pay separate fees.

§ 7.

Several patterns may be handed in under one cover; but in this case their number must be indicated upon it, and the fee paid for each separate pattern.

Every incorrect statement on the cover affecting this rate will be charged to the depositor in the threefold amount of the evaded fee.

Ownership belongs to applicant.

§ 8.

The applicant in whose name a pattern has been registered (the depositor) is considered the real proprietor of it, until the contrary is proved.

Regulation binding the owners of patterns and removal of the seals thereof.

§ 9.

The party entitled to protection must use the pattern for industrial products at home, and introduce the latter to trade within one year after the deposit has been made. During this time the patterns deposited under sealed cover will be kept in this condition. At the end of the first year the seals will be removed in the presence of two witnesses, a record made, and the inspection of the patterns allowed to every one, as was already the case at first with respect to those deposited open.

III.—*Invalidity of the Registration, Loss of the Pattern Right.*

When the registration is annulled and the pattern right forfeited.

§ 10.

The registration of a deposited pattern is void and without effect if one of the following facts are proved:—

- (a.) That industrial products made according to the deposited patterns were already in the trade, at home and abroad, before the date of the deposit:
- (b.) That the pattern has previously appeared in a printed publication:
- (c.) That it has been previously registered at home in the name of another person:
- (d.) That the depositor has unlawfully obtained the pattern (§ 2).

Loss of right to exclusive use of a pattern.

§ 11.

The right to the exclusive use of a pattern becomes extinct—

- (a.) If the depositor does not use the protected pattern in the Austrian Empire within one year after its deposit:
- (b.) If the depositor introduces into the Austrian Empire goods made abroad according to the pattern.

IV.—*Encroachments, Infringements, and Penalties.*

Encroachments, &c.

§ 12.

Every infringement on the pattern-right, be it by illegitimate transfer or imitation of a protected pattern, or by the sale of goods manufactured according thereto,

establishes the right of the aggrieved party to insist on the stoppage of the further use of the pattern, and the further sale of the goods in question. He can also demand that the implements and means exclusively or especially serviceable for producing an imitation be rendered useless for this purpose. Claims of the aggrieved party to compensation for damage sustained by the infringement of his pattern-right are to be estimated according to the Civil Law.

§ 13.

An imitation does not necessarily cease to be prohibited, because only the dimensions or the colours of the pattern have been changed.

When imitations do not cease to be infringements.

§ 14.

If the infringement has been knowingly perpetrated, a fine of fl. 25-500 is to be inflicted on the delinquent in addition to the punishment that may apply in such cases as provided against by the Penal Code.

Fines for infringement.

§ 15.

In case of a renewal of the offence, the punishment may be doubled. In case of a recent renewal of the offence, the punishment of a week to three months' arrest will be inflicted on the delinquent in addition to the fine.

Penalties attached to renewed infringements.

If the infringement of the pattern-right has been committed by a workman or *employé* of the aggrieved party, or otherwise by a breach of his confidence, this is to be taken into account in determining the punishment as a specially aggravating circumstance.

Infringement by employés, &c.

§ 16.

If the fine should prove seriously detrimental to the circumstances, or pursuit of means of subsistence of the delinquent or his relations, or should prevent his payment of the compensation arising out of the criminal act, it is to be altered to one day's arrest for each five guldens.

Imprisonment may be substituted for fines.

§ 17.

The magistrate can also decree that the judgment be published.

Publication of judgment.

§ 18.

The fines go to the poor-box of the place where the offence was committed.

Fines how applied.

V.—Jurisdiction and Procedure.

§ 19.

The trial and decision as to infringements of the pattern-right, if they prove to be such in accordance with § 15, as well as the examination into and punishment of them, is the duty of the Political Administrative Jurisdictions of First Instance, in accordance with the existing regulations for the procedure and successive appeal in the case of trade encroachments and infringements.

Jurisdiction and procedure.

The Political Jurisdiction also decides as to the invalidity of the deposit or loss of pattern-right.

The decision with regard to the claims for compensation mentioned in § 12, and disputes regarding the ownership of a pattern, is given by the Civil Judge.

Previous questions referred to competent tribunals.

§ 20.

Should it occur in the course of the examination or inquiry that the result depends on a previous question upon which the Civil Courts have to decide, the Political Jurisdiction refer the parties to the competent tribunal, and can only give their own decision in such a case after legal sentence of the Civil Courts have been handed in.

Moreover, the legal sentence of the Political Jurisdiction, by which anyone has been found guilty of infringement of the pattern-right, serves the aggrieved party to establish his claims for compensation before the Civil Judge.

Prosecution for infringements to be instituted by the aggrieved parties.

§ 21.

A trial for punishment on account of the infringements specified in this law can only be instituted on the application of the aggrieved party, unless a criminal act has been committed, which is to be proceeded against *ex officio* according to the Penal Code, by the Criminal Courts.

But if he withdraws his application for punishment of the accused before the announcement of the authoritative decision, all punishment, as well as all further inquiry with that object in view, will be put an end to, without prejudice to his claims to compensation at Civil Law.

§ 22.

Disputed right to patterns to be decided by experts.

As often as it is a question of comparing two patterns in order to prove an infringement, the authorities are to obtain a report from unprejudiced experts. When drawing up a report, the parties to the dispute are to be present and their explanations and possible objections heard. A report can only be contested on account of doubts as against the experts, or on account of informalities.

If it is defective or vague, its rectification may be insisted upon.

Review of it is not allowed.

§ 23.

Privileges of courts of justice in respect to sealed patterns.

In all disputes, the Political Jurisdiction, as well as the Court, is entitled to demand the transmission of the deposited pattern by the Chamber of Commerce and Trade against a receipt. In case of its being necessary to open the cover of the pattern the depositor is to be summoned.

If he does not appear, two unprejudiced witnesses are to be present. A record is to be taken of the seals having been removed.

§ 24.

Privileges granted to aggrieved parties.

The aggrieved party is entitled to demand, even before the decision of his plaint, the confiscation or other custody of the products denoted by him as being manufactured by an infringement of his pattern-right, as well as the implements and appliances used for that purpose (§ 12). The Political Authorities are to order this to take effect immediately after production of the official certificate or dupli-

cate issued in accordance with § 5. It is, however, left to their discretion to demand beforehand security for abuse and injury to the accused. At the same time as the order is issued for confiscation or other custody, the authorities are to direct the pattern deposited with the Chamber of Commerce and Trade to be sent in, in accordance with § 23.

§ 25.

If it is found that an infringement of the pattern-right has taken place, the articles in question are to remain under official seal till the expiration of the term of protection, and arrangements are to be made for the care of same at the expense and risk of the delinquent, provided some other arrangement is not made between the parties concerned, or the suitable alteration of it effected under official supervision.

Custody of infringed patterns.

§ 26.

If the accused is proved innocent, and the plaint to have been made maliciously, the authorities may sentence the plaintiff to a fine not exceeding 300 florins, which goes to the local poor-box, without prejudice to the claim of the accuser to compensation.

Penalty inflicted on malicious plaintiffs.

III.

PROTECTION OF TRADE MARKS.

INDEX.

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„ III.—Encroachments, infringements, and punishments	- - - - -	15—22
„ IV.—Jurisdictions and procedure	- - - - -	23—26
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Translated from the Austrian Imperial Law Repertory of 1858, LVII., No. 230.

The protection of trade
marks, &c.

IMPERIAL ORDINANCE of 7th December 1858, valid for the whole
Empire, promulgating a Law for the Protection of Trade Marks
and other Signs.

We, Francis Joseph I., by the Grace of God, Emperor of Austria, King of
Hungary and Bohemia, &c., &c.:

After conferring with Our ministers and hearing Our imperial council with a
view to enact and institute the following law for the protection of trade marks
and other signs:

Hereby decree, that the same shall take effect throughout Our empire on and
after the 1st January 1859, in order to protect both the trading classes and the
public generally from the disadvantages which accrue to them from the abuse of
trade marks and other signs.

Our Minister for Commerce, Trade, and Public Works, and in so far as regards
the military frontier, Our Commander-in-Chief of the Army, are entrusted with
the execution of this law.

Given at Our Capital and Residence of Vienna, the 7th day of December, in the
year 1858, being the 11th of Our reign.

Seal.

(Signed)
(Countersigned)

FRANCIS JOSEPH.
COUNT BUOL-SCHAUENSTEIN.
CHEVALIER VON TOGGENBURG.
COUNT GRÜNNE, Field-Marshal Lieutenant, and
Adjutant-General.

By Imperial Order.
(Signed) MARHERR.

LAW

FOR THE PROTECTION OF TRADE MARKS AND OTHER SIGNS.

I.—General Provisions.

§ 1.

By marks are understood in this law the special tokens which serve to distinguish between the products and goods of one manufacturer and those of another, destined for commerce (devices, ciphers, vignettes, and such like). Law in relation to the above.

§ 2.

If a manufacturer wishes to secure for himself the exclusive right to the use of a mark, he must have the same registered in accordance with the provisions of the following section. Marks to be registered

§ 3.

No exclusive right can be obtained for marks which consist of such tokens as are generally in use in the case of certain descriptions of goods in commercial intercourse, nor for those which merely consist of letters, words, or figures, nor for state or local armorial bearings. Exclusive right when refused.

§ 4.

The exclusive right to a trade mark only precludes the use of it by other manufacturers in respect to those descriptions of goods, to which belong the products or trade articles of commercial intercourse for which the protected trade mark is intended. Extent of privilege attached to a trade mark.

§ 5.

The mark belongs to the trade enterprise for which it is intended, becomes extinct with it, and changes proprietorship with it. Ownership of a trade mark.

In the latter case, however, the new proprietor must have the mark transferred to his name within three months, otherwise the right to the mark becomes extinct unless the trade is continued by the widow or a minor heir of the trade-proprietor or for account of the heir's or bankrupt's estate.

§ 6.

No one may arbitrarily appropriate the name, firm, arms, or the style of an establishment of another inland manufacturer or producer, in order to mark goods or products. Arbitrary appropriation of name, &c.

§ 7.

All that is said in this law with regard to the marking of goods, applies as well to the marks on the packages, receptacles, coverings, &c. Packages, &c. to be protected by marks, &c.

§ 8.

By the present law nothing is altered in the existing regulations, more especially in those relating to chasing, with regard to special marks decreed for certain goods.

II.—*Registration of the Marks.*

§ 9.

Registration of marks.

The Mark for which a manufacturer wishes to secure the exclusive right of use (§ 2), must be handed in in duplicate to the Chamber of Commerce or Trade in whose district the trade enterprise which intends making use of it is situate; one copy will be incorporated in the register of marks to be kept by the Chamber of Commerce or Trade, the other will be returned to the applicant with the receipt described in the following paragraph.

§ 10.

On each of the two copies the functionary appointed by the Chamber of Commerce and Trade has to note—

- (a.) The current number of the register ;
 - (b.) Day and hour of presentation ;
 - (c.) The name in which the mark is registered ;
 - (d.) Particulars of the trade enterprise for which it is intended ;
- sign this note and furnish it with the official seal.

§ 11.

Registration fee.

The registration fee is five guldens, which is paid in to the treasury of the Chamber of Commerce.

§ 12.

Right to and priority of claim of a trade mark.

The exclusive right to the use of a mark on the part of the depositor begins on the day and at the hour of presenting the mark at the Chamber of Commerce and Trade, and the priority of claim will be judged of accordingly, should the same mark have been deposited by several manufacturers at the same or at different Chambers of Commerce and Trade.

§ 13.

Transfer of right.

In order to transfer the right to a mark, in accordance with the tenor of § 5, the applicant must furnish proof of the acquisition of the same on the part of the trade enterprise in question.

The transfer is subject to the same fee as the prior registration.

§ 14.

Register of marks.

The registers of marks are to be open to every one's inspection at the Chambers of Commerce and Trade.

III.—*Encroachments, Infringements, and Penalties.*

§ 15.

Every infringement of the right to a mark, be it by the illegal appropriation or counterfeit of the same, or by the sale of goods unlawfully marked in such wise, establishes the right of the aggrieved party to insist upon the stoppage of the further use of the illegal mark, and the removal of the same from goods marked therewith, in so far as they are intended for sale. He can also demand that the implements and contrivances, exclusively or especially serviceable for producing counterfeits of the marks, shall be rendered useless.

Claims and penalties in respect to encroachments, &c.

Claims of the aggrieved party to compensation for damage sustained by the infringement of his right to the mark are to be estimated in accordance with the Civil Law.

§ 16.

A counterfeit exists when the marks in question are not to be distinguished without more than ordinary attention.

What constitutes a counterfeit.

§ 17.

The provisions contained in § 15 *apply in like manner* to those persons—

- (a.) Who fraudulently appropriate the name, firm, arms, or special style of the establishment of another inland manufacturer or producer in order to mark goods intended for sale.
- (b.) Who introduce products or trade articles, which are furnished with an unlawful mark of this kind.

Penalties when and to whom applied.

§ 18.

If the infringement (§ 15 and 17) has been knowingly perpetrated, a fine of fl. 25-500 is to be inflicted on the delinquent besides the punishment that may apply in such cases as are provided against by the Criminal Code.

§ 19.

In case of a renewal of the offence, the punishment may be doubled.

In case of a recent renewal of the offence, the punishment of a week to three months' arrest will be inflicted on the delinquent, in addition to the fine.

§ 20.

If the fine should prove seriously detrimental to the circumstances or pursuit of means of subsistence of the delinquent or his relations, or should prevent his payment of the compensation arising out of the culpable act, it is to be altered to one day's arrest for each five guildens.

§ 21.

The magistrate can also decree that the judgment be published.

§ 22.

The fines go to the poor box of the place where the offence was committed.

IV.—*Jurisdiction and Procedure.*

§ 23.

The trial and decision as to infringements (§ 15 and 17), as well as the examination into and punishment of them, as denoted in § 18 and 19, is the duty of the Political Administrative Jurisdictions of First Instance, in accordance with the existing regulations for the procedure and successive appeal in the case of trade encroachments and infringements.

The Political Jurisdiction also decides the disputes which arise about the right to the mark, its priority and transfer, and the question as to the identity of several marks.

But as regards the claims for compensation mentioned in § 15, the decision is given by the Civil Judge.

§ 24.

A trial for punishment on account of the infringements specified in this law can only be instituted on the application of the injured party, unless a culpable act has been committed which is to be proceeded against *ex officio*, according to the Penal Code, by the Criminal Courts.

But if he withdraws his application for punishment of the accused before the announcement of the authoritative decision, all punishment as well as all further inquiry with that object in view will be put an end to, without prejudice to his claims to compensation, at Civil Law.

Jurisdiction and procedure.

§ 25.

As often as it is a question of comparing two marks in order to prove an infringement, the authorities are to obtain a report from unprejudiced experts.

When drawing up a report, the parties to the dispute are to be present, and their explanations and possible objections to be heard.

A report can only be contested on account of doubts as against the experts, or on account of informalities. If it is defective or vague, its rectification may be insisted upon.

Review of it is not allowed.

§ 26.

The aggrieved party is entitled to demand, even before the decision of his plaint, the confiscation or other custody of the goods and implements used for counterfeiting, mentioned as being in contravention of this law.

The Political Jurisdiction are to order this to take effect immediately after production of the sample of the mark issued and authenticated in accordance with § 10.

It is, however, left to their discretion, to demand a temporary security for abuse and injury to the accused.

V.—*Temporary Provisions.*

§ 27.

Those manufacturers also, who already use a mark, can acquire the exclusive right to use it only according to the provisions of this law.

Additional provisions relating to trade marks.

§ 28.

To this end they are allowed till the end of the month of June 1859, with the effect that, by the registration of the mark within this term anyone's right remains secured of establishing the priority of the mark used before the publication of this law against any one else who may have been beforehand with him in registering the same mark, but has not really used it previously.

§ 29.

But if several have used the same mark prior to the coming into operation of this law, that one amongst those who have had it registered within the term appointed in § 28 acquires the exclusive right to it who proves that he has used it before the others.

The Political Jurisdiction are to decide a dispute about it on the basis of the proofs furnished to them concerning the prior commencement of the use of the mark hitherto, after hearing the contending parties.

In this the contents of the registers of marks (sign-rolls, &c.) are determinative in those parts of the country where they were already kept under public authentication before the promulgation of this law, provided no scruples exist.

But if none of the disputants can adduce proof of a longer use than the others of such mark, it will be decided by lot.

§ 30.

A claim to priority cannot be established with respect to marks which are only handed in for registration after the 30th June 1859, from the fact of their having been used before the publication of this law.

ART. III.

The Ministers of Commerce and Agriculture are charged with the execution of the law.

(Signed) FRANCIS JOSEPH
ARCHDUCHE RÄINER

For the Imperial and Royal Ministry for Commerce
and Agriculture.

BARON VON HATTHAGEN

By Imperial order

BARON VON RASBOWSKY

Schönbrunn,
23rd May 1859.

SUPPLEMENT TO THE AUSTRIAN PATENT LAWS.

I.

Law of the 23rd March 1865 respecting the alteration of §§ 4 and 6 of the Law of 7th December 1858 for the Protection of Patterns and Models for Industrial Products.

(Imperial Law Repertory, XI. No. 35.)

With the assent of both Houses of the Reichsrath, I decree as follows :—

ART. I.

§§ 4 and 6 of the Law of the 7th December 1858 (Imperial Law Repertory, No. 137) for the protection of patterns and models for industrial products are hereby abrogated.

ART. II.

The following §§ are substituted in their place :—

§ 4.

“The exclusive right for using a patent is to last only three years at most from the date of registration of the pattern. It is optional to the applicant to choose within specified time the number of years for which he requires protection.

“The time once applied for and granted will not be extended.

§ 6.

“A fee has to be paid for each registration of a pattern, which fee is to be paid to the Treasury of the Chamber of Commerce.

“This tax amounts to fifty kreuzers, Austrian currency (one shilling), for each year for which the protection of the pattern has been granted.”

ART. III.

The Ministries of Commerce and Agriculture are charged with the execution of the law.

(Signed) FRANCIS JOSEPH.
ARCHDUKE RAINER.

For the Imperial and Royal Ministry for Commerce
and Agriculture,
BARON VON KALCHBERG.

Schönbrunn,
23rd May 1865.

By Imperial order,
BARON VON RANSONNET.

SUPPLEMENT TO THE AUSTRIAN PATENT LAWS.

II.

Law of the 15th June 1865, valid for the whole Empire, respecting the admission of Foreigners to the privileges of protection of Trade Marks in Austria.

(Imperial Law Repertory, XV. No. 45.)

With the assent of both Houses of the Reichsrath, I decree as follows:—

ART. I.

The provisions of the law of the 7th December, 1858 (Imperial Law Repertory, No. 230), for the protection of trade marks and other signs may be extended to the trade marks and signs of tradesmen of foreign countries under the condition of reciprocity. The tradesmen of the respective States, in order to be granted the privilege of protection of their trade marks and other signs, must have them registered with a Chamber of Commerce and Trade of the Empire, and in all other respects observe the provisions of the Law of the 7th December, 1858.

ART. II.

The Ministry of Commerce and Agriculture is charged with the concurrence of the Ministry of Foreign Affairs, with the execution of this law.

(Signed)

FRANCIS JOSEPH.

ARCHDUKE RAINER.

ALEXANDER COUNT MENSENDORFF-POUILLY,

Field-Marshal Lieutenant.

For the Imperial and Royal Ministry of Commerce,

(Signed)

KALCHBERG.

Vienna,

15th June, 1865.

By Imperial order,

(Signed)

CHEVALIER VON SCHWIDER.

SUPPLEMENT TO THE AUSTRIAN PATENT LAWS.

III.

INSTRUCTIONS TO BE FOLLOWED ON APPLICATION FOR A PATENT.

Owing to the altered conditions of Public Law, and on the basis of the agreement arrived at between the Royal Hungarian and the Imperial and Royal Ministries for Agriculture and Commerce, relative to the treatment of matters having reference to patents for inventions, sanctioned by His Imperial and Royal Apostolic Majesty by Decree of June 5th of the present year (1867), the Ministry for Agriculture and Commerce herewith bring the following rules under general notice:—

1. Every patentee has henceforth to furnish **two similar copies of the specification of the patent as well as of the drawings and patterns thereunto pertaining**, of which one copy will be kept in the Patent Archives of the Royal Hungarian Ministry for Agriculture, Industry, and Commerce, and the other in the Central Patent Archives of the Imperial and Royal Ministry for Agriculture and Commerce.

In cases where, on account of the incompleteness of the original specification, the production of supplementary specifications is indispensable, these, together with the drawings and patterns, must also be presented in two similar copies of each.

2. The patents will be granted as heretofore, to be valid for the whole extent of the Empire, but **EVERY PATENTEE WILL HENCEFORTH RECEIVE TWO PATENTS**, one from the Royal Hungarian Ministry of Agriculture, Industry, and Commerce, which will be valid for the kingdom of Hungary and Transylvania, the other from the Imperial and Royal Ministry of Agriculture and Commerce, which will be valid for the other Crown Lands.

3. The concession for extension or transfer of patents granted prior to the 10th March, 1867, will be confirmed on the record of the patent by both Ministries.

The confirmation of such concessions as refer to patents granted after the 10th of March, 1867, will be made by the respective Ministries on the two patents mentioned in sec. 2; accordingly both documents must in each case be annexed to applications for the extension or transfer of patents.

The duty on patents remains unaltered.

Vienna, 8th June, 1867.

The Imperial and Royal Ministry for
Agriculture and Commerce.

SUPPLEMENT TO THE AUSTRIAN PATENT LAWS.

IV.

NOTIFICATION of the IMPERIAL and ROYAL MINISTRY of COMMERCE,
dated November the 14th, 1871, and published in the Vienna
Gazette of the 22nd of November 1871, in respect of the proof to
be furnished of the use of Patents within the Empire.

In order to prevent the abuse of Austrian Patents which foreigners often commit by not exercising their privilege within the Austro-Hungarian Monarchy, as provided by the Laws on Patents, and merely introducing into the Austro-Hungarian States patented articles produced abroad, a certain time is allowed to the foreign applicant for patents to exercise his privilege within the Empire and to furnish the necessary proofs thereon, at the expiration of which time, if he has not done so, the Patent, in accordance with § 29, 2a. of the Patent Law of August the 15th, 1852, will be declared void on account of its not having been used.

As it, however, frequently occurs that these periods are entirely ignored by the owners of the patents or their authorised representatives, it is herewith decreed for general information that in future in all cases where neither the proof is furnished within the period appointed that the patent was worked at the proper time within the Empire, nor a sufficiently established application for extension of time handed in, the notification that the patent in question has become void on account of its not having been availed of will at once be issued with the concurrence of the Royal Hungarian Ministry for Agriculture, Industry, and Commerce, in conformity with § 29, 2a. of the Patent Law of 15th August, 1852, and without giving any further notice respecting it.

The same steps will be taken, although the proofs of the timely use of the patent may have been given within the delay specified, should it transpire from the inquiries made that the article of the patent in question has not been produced within the Austro-Hungarian Monarchy, but has only been imported from abroad.

The Imperial Royal Ministry
of Commerce.

Vienna, 14th November, 1871.