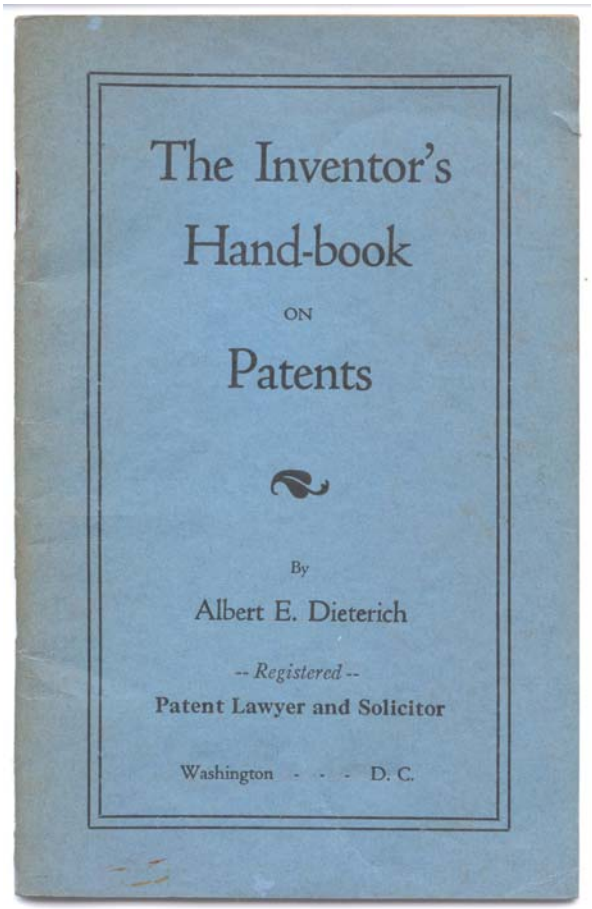
Selected text from a 1936 booklet titled ***"The Inventor's Hand-book on Patents"***
By Albert E. Dieterich, Registered Patent Lawyer and Solicitor



The Constitutional Provision.

With much foresight and wisdom the framers of the Constitution of the United States, in drawing up that wonderful "Code of Fundamental Laws," if it may be so called, included the "rock" upon which our patent system is founded. Congress is given the authority "to promote the progress of science and the useful arts, by securing for limited terms to authors and inventors the exclusive rights to their respective writings and discoveries."

A Patent Defined.

A patent is a grant in the name of the United States, giving the patentees, his heirs and assigns the *exclusive* right to his invention for a term of seventeen years from the date of grant. A patent does not of itself bring into existence any tangible thing. It does not create a right, but merely limits an existing one, for the purpose of rewarding the creator (the inventor) of the patented thing, thereby stimulating the production of new ideas to "promote the progress of science and the useful arts." The inventor is the creator ─ the producer or conceiver ─ of something never before known. The invention is his by right of discovery. He may hide it or he may work it secretly, and thus keep the benefits of the invention to himself. The public remains in ignorance. It has derived no advantage from the invention. This concealing of one's ideas retards the "progress of the useful arts." Obviously, in the absence of patent protection, the inventor, upon disclosing his discoveries to the public, would make the public sharers in the benefits of his invention and any one could then use the invention free from any tribute to him who, by his ingenuity, and often at great sacrifice, gave humanity a labor-saving device. In order to encourage the publication of the invention when made, Congress, under the Constitutional provision, has made laws whereby all persons (natural and artificial) are enjoined, as it were, from in any manner making use of the patented invention without the consent of the patentee for a limited period (seventeen years; in designs three and one-half, seven or fourteen years).

A patent grants three separate and distinct rights: namely, the exclusive right to make the patented thing; the exclusive right to sell the patented thing; the exclusive right to use the patented thing. Any and all of these rights may be exclusively exercised by the patentee, or he may license others to exercise any one or more of these rights, subject to those restrictions which he (the patentee) may place upon the same. In other words, the patentee may give one person the exclusive right to manufacture the patented thing; he may give another the exclusive right to sell the patented thing; he may grant unto another the exclusive right to use the patented thing; or he may give to another any two or all of said rights. His powers in relation to the patented invention are practically absolute. In fact, he need not himself put his invention into practice nor need he permit any one else to exercise the rights granted under the patent.

What Is Patentable.

Patents are granted to anyone who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement in the same. Patents are also granted for new and ornamental designs, for a manufacture, bust, statue, alto-relievo, bas-relief, and for new and ornamental designs for the printing of various fabrics; or any picture to be worked into any article of manufacture. One who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant, may obtain a patent therefor.

What Is Not Patentable.

A patent will not be granted on known things, nor on useless things, nor on things the production of which is well within the skill of an ordinary mechanic and not requiring the exercise of the inventive faculty. A patent will not be granted on a mere principle nor is the mere application of a known machine to a new use patentable, nor is the substitution of one material for another patentable, except in very rare cases.

What Is "Invention"?

Invention, as that act is recognized under the Patent Laws, may be defined as the double mental act of discerning the need of some machine, process or article of manufacture, or of discerning in existing machines, processes or articles, some deficiency (the overcoming of which is not obvious) and pointing out the means whereby such machine, process or article can be produced or the deficiency overcome.

Evidence of Conception.

An inventor should sign, date and have witnessed all sketches and written descriptions of his idea that he makes from time to time, and should preserve these sketches and descriptions as

evidence of conception of his invention.

If he has made a model or a full-size machine, he should demonstrate the working thereof to a few trusted persons and have them write out and make affidavits to a summary of what they saw, giving the date, time and place where the demonstration was conducted and state whether or not the machine operated successfully.

Who May Apply For A Patent.

The actual inventor (or inventors), if living and sane, must make the application for patent. If the inventor is dead or insane, a personal representative of the inventor must make the application for patent. There is no restriction as to citizenship, sex or age of the inventor. Officers or employees of the Patent Office, however, during the period of their employment may *not* apply for patents.

When to Apply For A Patent.

In general an application for patent should be filed as soon as the inventor has completed his invention. That is to say, as soon as he has worked it out in his mind and has made sketches or a model of it by which he can disclose his invention to others intelligently. Delays are dangerous. The first to apply for a patent is presumed to be entitled to it and the burden of proving the contrary rests heavily upon a latter applicant. Furthermore, an allowable application for patent constitutes what is known as a "constructive reduction to practice." So far as the patent law is concerned it is the equivalent of making a full-size machine and testing it successfully. The reduction to practice is an essential item in determining priority of invention between rival applicants for patent for the same invention.

The application for patent must be filed in the U. S. Patent Office before the invention has been in public use or on sale for more than two years, or patented or described in any printed publication anywhere before his invention or discovery thereof, or more than two years prior to his application. If a foreign application is filed before the United States application is filed, the United States application must be filed either within one year from the date of filing of the earliest foreign application or, if filed later, the United States patent must issue before the foreign patent does. A United States application, filed by one who has first filed an application in a foreign country which by treaty, convention or law affords similar privileges to citizens of the United States, has the same effect as if filed in the United States on the date of the first foreign application, *provided* that the application is filed in the United States within twelve months (six months in design cases) of the filing date of the first foreign application. (International Convention.)

How to Apply For A Patent.

The first thing an inventor should do when he is ready to make application for patent is to procure the services of a *competent, registered patent attorney.* As the value of a patent depends largely on the care and skill with which the application is prepared and prosecuted, only an attorney of undoubted skill and integrity should be employed, and one who will give his *personal* service to the client.

In the author's opinion, patent practitioners may be divided into four general classes: the lawyer, the solicitor, the patent securer and the selling agent.

The patent lawyer is one who confines his practice principally to patent litigation, i. e., the prosecution of infringement suits and the like. He must be a member of the bar of the courts before which he practices, or at least he must be eligible to be admitted to practice. He should be well versed in the arts and sciences, as well as in the law, for the interpretation of a patent involves both.

The solicitor of patents makes a specialty of preparing applications and prosecuting them before the Patent Office Department. His practice is almost wholly departmental. He usually handles interference cases and makes validity and infringement reports. While it is not necessary for the solicitor to be a member of the bar of a court, he must be registered before the Patent Office. He, like the patent lawyer, should be well grounded in patent law and be thoroughly versed in mechanics and other branches of science. Some solicitors make a specialty of one or more lines of invention in which they are well versed. Most solicitors require all or nearly all of their fees to be paid in advance of the filing of the application.

The patent right securer, while often calling himself a solicitor or attorney, may be classed as one who makes a business of obtaining from the Patent Office those documents with red seal and blue ribbon, which they call patents. Since these agents are frequently ignorant of the patent laws and have little or no technical knowledge, the patents they secure may be termed "paper patents," as they are usually of such limited scope and are so poorly drawn up as to afford the patentee little or no protection. The patent right securer is primarily in the business of making money and as his fees are frequently contingent upon procuring a patent, he often accepts any claim the Patent Examiner will allow in order to get an allowance quickly so that his fees may become due. The "no patent, no pay" solicitors usually come under this classification.

The patent selling agent who claims to sell patents promiscuously is the "black sheep" in the fold. There are upwards of six hundred patents issued in the United States alone every week. Now, it is just as impossible for any person or concern to sell such patents at random, or even a small per cent of them, as it is for one to "lift one's self by one's boot straps." These concerns, in their circulars and offers, place fabulous valuations on patents – the "bait" to catch the "suckers." Practically the same letter and offer is sent to all patentees. If followed up it will be seen they all require an advance fee (usually stated to be for advertising, cuts and data relative to the invention) as a preliminary to the undertaking of the sale. The case is then pigeon-holed and that ends their service. It has been the author's experience that the inventor or patentee is, more frequently than the patent, "sold" by these patent sharks. The inventor, being fully conversant with his invention and the merits thereof, is better able, by presenting his patent to manufacturers and capitalists, to effect a sale of his patent rights. As a rule, it is safer to have no dealings with the patent seller or broker, so-called.

Government Fees. The government fees are as follows:
First or application fee - $30.00*
Second or final fee - $30.00*
For a three and a half year design patent - $10.00
For a seven-year design patent - $15.00
For a fourteen-year design patent - $30.00
On filing a re-issue application - $30.00
On *Ex parte* appeal to Board of Appeals - $15.00
An appeal to Board of Appeals in Interference - $25.00
*If over twenty claims, add $1 for each claim over twenty.

Attorney's Fees. The attorney's fees for preparing and prosecuting a patent application vary with each case and depend upon the nature of the case and the amount of time and services necessary to prepare and prosecute the case. A reputable attorney in Washington usually charges from $80 to $100 for a minimum or simple case.

(ABOVE TEXT FROM 1936 PAMPHLET)

Toy Money-Boxes Patented in U.S.A.