Seidell, A.
Vitamine-activated fuller's earth
Pub. Health Rep.; through *Am. J. Pharm.*, 94 (June, 1922), 440
Sievers and McIntyre
Non-inflammable solvent for extracting vegetable oils
Chem. Met. Eng.; through *Am. Drug.*, 70 (June 1922), 17
Smith, N. K.
Rapid assay of acetaldehyde
Bull. Bur. Bio. Tech.; through *J. Soc. Chem. Ind.*, 41 (May 15, 1922), 345A
Smith, W. B.
Soy bean oil
J. Ind. Eng. Chem., 14 (June 1922), 530
Spaeth, E.
Constitution of anhaline
Monatsh.; through *J. Soc. Chem. Ind.*, 41 (May 31, 1922), 390A
Spaeth, E., and Fuchs, K.
Synthesis of cotoin
Monatsh.; through *J. Soc. Chem. Ind.*, 41 (May 31, 1922), 390A
Spaeth, E., and Lang, W.
Synthesis of laudanine
Monatsh.; through *J. Soc. Chem. Ind.*, 41 (May 31, 1922), 390A
Spaeth, E., and Tschelnitz, E.
Constitution of ricinin
Monatsh.; through *J. Soc. Chem. Ind.*, 41 (May 31, 1922), 390A
Stekhoren, W. S.
Vehicle for benzyl benzoate
Red. Tid. Genuss.; through *Pharm. J.*, 108 (May 13, 1922), 410
Stich, C.
Preparation of aluminum oleate
Pharm. Zent., 63 (May 18, 1922), 261
Sundberg, T.
Sensitive cyanide test
Pharm. Zent., 63 (May 18, 1922), 266
Van der Haar, A. W.
Hederagenin
Ber.; through *J. Soc. Chem. Ind.*, 41 (May 31, 1922), 390A
Viehoever, A., and Capen, R. G.
New sources of santonin
Am. J. Pharm., 94 (June 1922), 446
Wadsworth, R. V.
Theobromine content of cocoa
Analyst; through *J. Soc. Chem. Ind.*, 41 (May 31, 1922), 388A
Wegner, M.
Spontaneous heating of soap powder
Chem. Umschau; through *Pharm. Ztg.*, 67 (May 31, 1922), 458
Willamen, J. J.
Preparation of inulin from artichoke tubers
J. Biol. Chem.; through *J. Soc. Chem. Ind.*, 41 (May 15, 1922), 339A
Zoller, H. F.
Determination of activators in rennin and pepsin preparations
Pract. Drug., 40 (June 1922), 34

CLINICAL AND DIAGNOSTIC METHODS.

Gattner and Schlesinger
Benzidin blood test
Dtsch. med. Wsch.; through *Pharm. Zent.*, 63 (May 25, 1922), 278
Nicloux, M., and Welter, G.
Micro-assay of urea in blood serum
Compt. rend. soc. Biol.; through *J. pharm. chim.*, 25 (April 16, 1922), 349
Utz, F.
Determination of chlorides in urine
Pharm. Zent., 63 (May 11, 1922), 251

MISCELLANEOUS.

Leclerc, H.
Protective bricks for X-ray work
Bull. Acad. Med. Paris; through *Pharm. J.*, 108 (May 13, 1922), 410
Elledge, H. V., and Wakefield, A. L.
Removal of stains from fabrics
Sci. Am. Monthly; through *Am. J. Pharm.*, 94 (May 1922), 348

COMMITTEE REPORTS

REPORT OF THE COMMITTEE ON PATENTS AND TRADE-MARKS.*

BY F. E. STEWART, CHAIRMAN.

Your committee is gratified to note that the industrial institutions related to the materia medica are at last waking up to the importance of patent and trade-marks reform. The same is true in regard to various institutions of scientific, semi-scientific and educational character. It is to be hoped that this interest will continue until the United States Patent Office becomes

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what the founders of the American Republic meant it should be, that is, a great bureau of archives having as its object "promotion of progress in science and useful arts."

The object of the Patent law, and the Patent Office as means for attaining that object, is well summarized in the following statement taken from Terril in his treatise on patent laws:

> The theory upon which these laws rest is that it is to the interest of the community that persons should be induced to devote their time, energies, and resources to original investigation for the furtherance of science, the arts, and manufactures. This was recognized from the earliest periods which can pretend to be described as civilized. It is to the advantage of the whole community that authors and inventors should be rewarded, and no measure of reward can be conceived more just and equitable and bearing a closer relation to the benefit conferred by the particular individual than to grant him the sole right to his writing or discovery for a limited period of time.

As examples of the interest now being taken in the U. S. Patent Office the following report of the Commissioners of Patents in regard to the needs of that important branch of government service, and the action of the National Research Council in appointing a committee to investigate the Patent Office and the patent system, are interesting and significant.

REPORT OF THE COMMISSIONER OF PATENTS IN REGARD TO THE NEEDS OF THE U. S. PATENT OFFICE.

The following statistics regarding the business of the Patent Office were presented by Commissioner of Patents, R. F. Whitehead, in his report of the fiscal year ending June 30, 1920. He said:

> The gains over the previous fiscal year in applications for mechanical patents, registration of trade-marks, and in total applications were, respectively, 19,193, 6,149, and 27,283 in numbers and thirty percent, seventy-two percent, and thirty-six percent in proportionate increases. The gain in actual numbers far exceeded any previous increases of business in any one fiscal year, and this gain is larger than the total receipts of any calendar year in the history of the Office up to and including the year 1881.
>
> The patents granted and trade-marks, labels, prints registered during the year 1920 were as follows: Letters patent, 37,316; design patents, 2,102; reissue patents, 227; trade-marks, 6,984; labels, 622; prints, 158; a total of 47,409.
>
> The total receipts of money increased twenty-four percent and the net deficit for the fiscal year 1919 of $65,228.13 was turned into a net surplus of $179,135.96, making a relative net increase of $244,135.09 for the year.
>
> Any person conversant with the facts in relation to patent and trade-mark law administration cannot help being impressed with the significance of these figures. The question naturally arises whether under an interpretation and application of the patent and trade-mark laws given in this report, the Patent Office would be called upon to conduct this important department of the Government in such an expensive way.

NATIONAL RESEARCH COUNCIL APPOINTS A COMMITTEE TO INVESTIGATE THE UNITED STATES PATENT OFFICE AND THE PATENT SYSTEM.

Names of Committee: In 1917, the Commissioner of Patents, with the approval of the Secretary of the Interior, requested the National Research Council to appoint a committee to investigate the Patent Office and patent system, with a view to increasing its effectiveness and to consider what might be done to make the Patent Office more of a national institution and more vitally useful to the industrial life of the country. In due time, this special committee was appointed and it is worth bearing in mind that every one of them were men of large experience and also of national reputation in their special lines of activity. These were Dr. Wm. F. Durand, Dr. L. H. Baekeland and M. I. Pupin, scientists and inventors; Drs. R. A. Millikan and S. W. Stratton, scientists; Dr. Reid Hunt, physician and member of the Council on Pharmacy and Chemistry of the American Medical Association, and Professor of Pharmacology, Harvard University; and Messrs. F. P. Fish, Thomas Ewing and E. J. Prindle, patent lawyers. Mr. Ewing at one time served as Commissioner of Patents.

THE ASPIRIN CASE.

Much interest still centers in the "Aspirin Case." In the suit between the Bayer Company and the United Drug Company the former (plaintiffs) endeavored to prove that the word "aspirin" was used by them as a trade-mark to distinguish their brand of acetylsalicylic acid from other

brands of the same product, the product itself being known to the medical profession and the drug trade under its chemical name; the latter (defendants) claiming that the Bayer Company in their advertising used the name Aspirin as one of the names of the product itself—in fact, so used it in their advertising to the general public as to give the impression that aspirin was the most important if not the only proper name for purchaser to use in buying it—in other words, "aspirin" as advertised was presented to the public as a noun of the language, not the name of a brand. As it is an established principle of law that the name of an article of commerce cannot at one and the same time perform the office of a name for the product itself, and the name of a brand of the article, it is evident that the contention of the defendant had a good chance of being sustained. For the principle has been sustained again and again by U. S. Supreme Court decisions: it is the *way* a word is used that determines whether or not it is a trade-mark. It must be so used as to point out *manufacturer of the brand*, to distinguish it from other brands of the same article, not as the name of the article, or as synonym for the same.

Unfortunately for all concerned, Judge Sanborn, who first presided when the case was tried, died, without rendering a decision, and Judge Hand, whose function it afterward became to decide the case, endeavored to distinguish between ways in which the Bayer Company used the word. He denied the United Drug Company the use of the word "aspirin" in so far as its manufacturing and wholesale operations go, but decided that the United Drug Company as retailers had the right to use the word aspirin as the name of the product when selling to the public at large. As stated by the *Bulletin of Pharmacy* (June 1921): "If the United Drug Company chooses to put up acetylsalicylic acid tablets in bottles of fifty for sale over the counter they can label such bottles 'Aspirin.' But if these same bottles are sold to other druggists or to wholesalers the company must wrap around the package another label identifying the product by its chemical name and must bill it under the chemical name, not as 'Aspirin.' Judge Hand's opinion* * *is a peculiar document, inasmuch as both parties to the suit seem to be losers." Paul Bakewell, an attorney, has written an opinion for the Monsanto Chemical Works, of St. Louis, Mo., in which he takes exception to many parts of the learned Court's decision. See *Pharmaceutical Era*, July 1921.

Several of these points may be briefly mentioned: First, the Court was influenced in the decision by the charge of unfair competition made by the plaintiff. The defendant, United Drug Company, marked its aspirin "genuine aspirin," and the court said that this "gave color to the supposition that its product had been made by the plaintiff," because the plaintiff, as owner of the recently expired patent, had been practically the sole manufacturer.

Second, referring to the brand of aspirin made by the Monsanto Chemical Works, of St. Louis, Mo., Mr. Bakewell, in his opinion of its status, said in his letter to said corporation: "However this element of unfair trade is altogether absent from your use of the name of 'aspirin.' You make and sell, under your own name, the identical drug, aspirin, which became public property from and after Feb. 27, 1907, on which last named date the Hoffman U. S. patent No. 644,047 expired, and after the Bayer Company and its predecessor in the business had enjoyed the exclusive monopoly under that patent for seventeen years and had made millions of dollars out of the enjoyment of that monopoly during that period; and you call your drug 'aspirin' because that is the name of that drug—the name by which it became known in pharmacy long before the U. S. patent for the same expired."

Third, Mr. Bakewell calls attention to the fact that the U. S. cancelled the registration of the word "aspirin" as a trade-mark. This fact is important in relation to the recent Act passed by Congress and known as "An Act to give effect to certain provisions of the convention for the protection of trade-marks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for the other purposes." It is important because it clearly brings out certain limitations in regard to the use of trade-marks and trade names, namely, that in spite of registration as a trade-mark, the registrant, by forcing his registered name into the common language as a noun, or one of the names of the thing advertised, by his own act, or negligence, loses it as a trade-mark. The registered word must be *used* as a trade-mark, namely, to point out the brand of the article and distinguish it from other brands of the same article. Unless the registered word is accompanied by a suitable name for describing the article by physicians in prescribing, and pharmacists in ordering supplies, the registered word is sure of adoption as the generic term. In that case the dictionaries will adopt the currently used name

as an appellative, as they have a perfect right to do. The name *aspirin* is an instance of this, as the following definition, taken from Webster's Collegiate Dictionary (third edition) will show:

"Aspirin, *n. Pharm.* A white crystalline compound of acetyl and salicylic acid used as a drug for the salicylic acid liberated from it in the intestines."

The fact that the word "Aspirin" was cancelled as a trade-mark brings to mind the provision in the law which gives the right to cancel trade-mark registration, and what that fact means in relation to the trade-mark problem.

Referring to this cancellation, Mr. Bakewell says: "Judge Hand in his opinion (p. 3) refers to the fact that on May 2, 1899, the predecessor of the Bayer Company registered the name aspirin' in the Patent Office, which registration (p. 5) was cancelled by the Patent Office in November 1918, under Sec. 13 of the Act of Congress of Feb. 20, 1905 (as amended), which statute provides for cancellation of trade-marks improperly or unlawfully registered in the U. S. Patent Office. But the learned judge does not refer to the following important proposition and facts, pointed out in my opinion to you of August 15, 1917, presumably because they were not in the record before him, or were not sufficiently urged in the briefs or oral arguments: Unless the one claiming under a registered trade-mark has the right at common law to the thing claimed as a trade-mark, he gets no rights by virtue of registration in the Patent Office."

"Registration in the U. S. Patent Office can in no way validate a trade-mark, when on settled principles of law, there can be no valid trade-mark in the name or thing registered."

Mr. Bakewell's commentary contains many citations from judicial decisions in support of his statements to which the readers of this report are respectful referred.

Fourth, Mr. Bakewell continues: "In the face of these decisions, what boots it that the predecessor of the Bayer Company did obtain a certificate of registration for the name 'aspirin' in the U. S. Patent Office May 2, 1899, as Judge Hand states in his opinion? No doubt Judge Hand did not know (at least his opinion does not refer to the fact) that, as pointed out in my said opinion to you of August 15, 1917, the *Patent Office was deceived in the matter of issuing that certificate.*" (Italics mine, F. E. S.) Mr. Bakewell goes on to explain how the deception, claimed by him to have occurred, was accomplished.

DESCRIPTIVE NAMES CANNOT BE TRADE-MARKS.

All of this supports the contention of your committee persistently and consistently maintained, year after year, that a descriptive name cannot be a trade-mark, and that even if the Patent Office permitted its registration as such, no property rights would be created thereby. It is, in fact, an axiom of law that a descriptive name cannot be a trade-mark. The name "salt" cannot be a trade-mark on salt, or "sugar" on sugar, or "aspirin" on aspirin. Names cannot be copyrighted. Circular No. 19, issued by the Librarian of Congress, clearly states that fact.

The inventing or coining of a name does not make it the property of the inventor. The act of inventing does not create property in the thing invented, neither does the inventor possess a natural right to exclude others from using it. The function of a trade-mark is to indicate the origin or ownership of the brand, not the ownership of the product itself. As already stated, certain manufacturers, patent lawyers, and people engaged in the advertising business, are endeavoring "by hook or by crook" to obtain legislation of such character as to give commercial control over coined or invented words, so that they may obtain thereby commercial control over the products marketed under such coined names. They are endeavoring to obtain international monopolies of advertised products by means of a "convention" in which the various countries are to be represented.

It also goes to show that, in case of chemical substances and medicines, or, in fact, in case of any article of commerce that cannot be readily identified by its physical appearance and other characteristics, the name of the substance itself, or of the compound if it be such, must be plainly marked on the label, so that the public may have an opportunity to distinguish in purchasing between the different brands on the market. By so doing the manufacturer provides a way for using a trade-mark, or trade name with some assurance that he can defend its use from would-be infringers. Take, for example, the words "Eagle Brand" on the label of condensed milk. It clearly indicates that no monopoly in the sale of condensed milk is claimed by the manufacturer. And it is quite possible that if the Bayer Company had labeled its make of the product, "Acetyl-Salicylic Acid—Aspirin Brand," they would have been sustained in the use of the word "Aspirin" in that connection after the expiration of their patent on "Acetyl-Salicylic Acid."

CONCLUSION.

As stated at the beginning of this report, the object of the patent law is to promote progress in science and useful arts. The United States Constitution points out the way to secure this object. Clause 8, of Sec. VIII, Art. I, upon which the patent law is founded, reads: "To promote progress in science and useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries."

The proprietary medicine system is the antithesis of this. It is a system for securing unlimited rights in the sale of patented and unpatented products by registering as trade-marks names intended for use as the current names of the products themselves, and thus to defeat the object of the patent law. Where, in the Constitution, is there a clause justifying such an interpretation and application of the principle underlying this so-called proprietary system. The principle is one of unlimited monopoly of inventions and alleged inventions by the ownership of their names. The fact that a patent is a *grant* by the Government representing the public at large giving to inventors of new and useful inventions 17 years' monopoly of their sales, clearly shows that the so-called proprietary system is an invasion of public rights.

The patent law, in its relations to materia medica science, and the arts of pharmacy and pharmaco-therapy, is intended to secure coördination and coöperation between the educational and industrial institutions related to this department of medical science and practice.

The term "products" refers to medicinal drugs, chemicals and preparations of the same. The term "educational institutions" refers to the professional societies, professional press, medical and pharmaceutical schools and colleges, hospitals and their clinics, dispensaries, and the medical and pharmaceutical professions at large in so far as they are engaged in research work and the publication of results for the benefit of science.

Is it the desire of the proprietary medicine trade to coöperate with these educational institutions for the furtherance of medical science and the arts of pharmacy and pharmaco-therapy? If so, the educational institutions ought for the sake of humanity throw open their doors to the proprietary trade and bid them welcome. If this is their desire they should be reminded that the meaning of the word coöperation in this connection includes the donation of their inventions and discoveries to science, and that coöperation between educational and industrial institutions is impossible under a system of commercial monopoly and the introduction of materia medica products by misleading advertising. Is it not true that, on the contrary, the proprietary medicine trade desires to exploit these educational institutions for commercial gain? If so, that means, in other words, the proprietary trade desires to convert the educational institutions into an advertising bureau for exploiting the sick and the teaching of error.

It has frequently been pointed out that coöperation between the educational and industrial institutions was characteristic of Germany before the great world war, and that the marvelous development and prosperity of that nation was largely due to that coöperation. How was such coöperation secured? Two potent factors account for it. Monopolies of medicines, foods and chemical substances were not permitted, and laws were passed and enforced against advertising in a misleading manner. This permitted the educational institutions of Germany to coöperate with the industrial institutions of that nation, in building up the sciences of chemistry and materia medica by coöperative research work in which the laboratories of the universities and commercial houses coöperated for that purpose.

Your committee has repeatedly pointed out the superiority of the German method of applying the patent system to the chemical and pharmaco-chemical industries over the system of the United States. Attention has been called to the fact that the proper interpretation and application of the U. S. patent law by the Patent Office and the Courts would accomplish the same purpose in America. If it were not so, then our patent law should be so amended as to make it suitable for the purpose intended.

Finally, it was the intent of the "Fathers of the U. S. Constitution," in providing for a patent law, that inventors should be rewarded, "and no measure of reward can be conceived more just and equitable and bearing a closer relation to the benefit conferred by the particular individual than to grant him the sole right to his discovery for a limited period of time."

Are medical, pharmacal, and pharmaco-chemical inventors being properly rewarded under the present interpretation and application of the U. S. patent law? This is a question of too much importance for detailed discussion in this report. But there is one point that should be brought

to your attention, and that is, progress in medical science, and in the arts of pharmacy, pharmaceutical chemistry and pharmaco-therapy, requires the fixing of responsibility for research work upon the individual or individuals who do the work. It is necessary that their names shall be known, and their protocols, duly signed, be presented to the professional societies and professional press for impartial discussion and verification. One measure of reward is "scientific credit," and the importance of scientific credit in this connection must be apparent to any person who will take the time to consider the far-reaching consequences which must result by refusing to give it.

REPORT OF COMMITTEE ON MODEL FOR A MODERN PHARMACY LAW.*

Your Committee held its last session in Philadelphia, during the month of December 1920. It there decided upon some corrections and changes in the tentative draft of a Model Law as heretofore submitted, and commissioned some of the members separately to re-draft a few of the Sections for subsequent consideration and final decision, regarding which there has been considerable correspondence within the Committee during the year. The draft of a Model Modern Pharmacy Law, as herewith submitted, is in keeping with the final decision of the Committee at its last session, but we ask that it be specially noted, that the final draft was not completed in time to first permit the separate, final consideration of the Committee members, in order that minor changes and corrections, as found necessary by the respective members, might first be made. It is therefore requested that the Association at this time receive this report and that publication be withheld until later to enable the several Committee members, after careful study, to determine whether any further corrections or minor changes be necessary with authority, on a vote of the Committee, to adopt such corrections or changes prior to publication. Assuming that this will be agreeable, we also recommend that this report be not taken up for final action until the next annual meeting of the Association in order that its publication will permit careful consideration prior to final discussion and final action at the next meeting.

We would separately call attention to the fact that two very important changes in tentative draft, heretofore submitted, have been made by order of a majority at the last session of the Committee. The tentative draft provided a partial formula disclosure for proprietary medicines and preparations, and a majority of the Committee for several reasons opposed this requirement and on that account it has been omitted. The tentative draft provided for a new method of naming Poisons and Potent Drugs, which upon final consideration was not approved by a majority of the Committee, and in its place the Schedule Enumeration, as used in a number of state laws, was adopted with an expression from the Committee, that this Association, and other interested associations and individuals, give separate and more exhaustive study to the subject of Poisons and their proper naming.

Before making a very brief epitome of the more important provisions which are contained in the draft herewith submitted, we believe it proper to say a few words about the work of the Committee, how it came to be taken up, and who coöperated therein: This work was commenced under the auspices of the Section on Education and Legislation after the meeting in Detroit, in 1914. The officers of the Section, acting under authority given them at that time, enlisted the coöperation of the several state associations and state boards of pharmacy, who with very few exceptions appointed representatives as Conference Committee members. A list of the Conference members, showing representation from forty-seven states and the District of Columbia, is attached hereto. There were two or three changes in the personnel of state representation, and these have been mentioned in earlier reports. After the Conference was created its members were solicited to make suggestions for desirable changes in their respective state pharmacy laws, and to offer new provisions to be contained in a Modern Law. There was a most hearty response and coöperation. The suggestions for change and improvement coming from all sections of the country, made it possible to compile an outline for a draft which appeared to be generally acceptable. This outline embodying the best thought from all sections, was then submitted to the Conference members for further suggestions and criticisms, and, wherever possible, for consideration and discussion by the several state associations and state boards. Added suggestions were made and where they appeared to be generally acceptable, they were adopted.

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* Presented at New Orleans meeting A. Ph. A., 1921.