REPORT OF P. P. A. COMMITTEE ON PATENTS AND TRADEMARKS.*

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Pharmacists throughout the country are interested in the U. S. P. and N. F. propaganda. They want physicians to prescribe U. S. P., and N. F. products in place of proprietary medicines. This motive is primarily a selfish one, and, secondarily altruistic. They want a return to good old times when doctors wrote extemporaneous prescriptions to be compounded by the druggist at fair profit. This is a selfish reason, but, as pharmacists, licensed by the state to practice pharmacy, they have a right to protest when business men without either education or license invade the pharmaceutical field and take their business away from them. They believe that the public would be better off under a system of extemporaneous prescriptions written by competent physicians and compounded by competent pharmacists than under a system of ready-made prescriptions compounded at wholesale by manufacturing houses. This is altruistic.

Now, if pharmacists were consistent in this matter, the U. S. P. and N. F. propaganda would be more successful. But to a large extent each pharmacist deals in ready-made preparations of his own, which he offers to the public for self-medication and thus not only prescribes without diagnosis, but competes unfairly with the doctor in treating the sick. Consistency is therefore the first thing necessary in cleaning up the propaganda and fitting it for successful use.

Opposed to the U. S. P. and N. F. propaganda are the manufacturers of "proprietary" medicines of all kinds, including so-called patent medicines advertised to the general public for self-medication, secret or semi-secret specialties advertised to the medical profession, and manufacturers of unofficial chemicals advertised in the medical journals.

There is another class of products the manufacturers of which favor the propaganda, provided some plan can be adopted whereby the introduction of new and useful chemic and pharmaceutic inventions can be inhibited from competition so that capital invested in the working and marketing of the same may be protected for limited times.

The patent law was devised for that very purpose. As pointed out in former reports, a patent is a contract between the inventor and the public, whereby the inventor receives a seventeen-year monopoly grant in exchange for the publication of his invention.

Progress is seriously hindered unless new products can be impartially discussed in medical societies and colleges and in the medical journals. Such discussion is impractical if the products are commercially controlled and monopolized by industrial manufacturers.

Most foreign countries will not grant patents for materia medica products, but limit the grants to new processes and machinery for manufacture. Germany has been one of the foreign countries taking that position, but an attempt is now

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being made to change the German patent law so that it may be in harmony with the United States patent law and thus enable the German manufacturing houses to secure the same protection in their own country which they have been enjoying in America.

The medical profession is opposed to the monopoly of materia medica products. A physician who obtains a patent for a materia medica product or a surgical instrument or a method of treating disease, is at once ostracized by the profession. Yet at the same time, physicians prescribe monopolized products and medical journals derive a large part of their income from the advertisements of their manufacturers. When the profession is criticised for its inconsistency, the excuse advanced is that pharmacy and manufacturing chemistry are branches of commerce and not professional in character. Consequently, while it is not ethical for a professional man engaged in the practice of medicine to patent his inventions because he must occupy a judicial position toward them which he cannot do, if he is interested in their sale, it is not expected that the pharmacists and manufacturers will occupy a judicial position toward materia medica products and their patenting by pharmacists and manufacturers is therefore allowable. This denies to the pharmacist the right to consider himself a professional man. According to the medical profession, pharmacy is not a profession, neither indeed can it be so long as the pharmacist is obtaining an income from the sale of drugs. Is the pharmacist willing to give up the professional ideal and be classed merely as a merchant or tradesman? He cannot be a professional man, except as a producer of materia medica products. If he produces those products in conformity with professional and scientific requirements, he has just as much right to claim to be a professional man as the physician who accepts fees for his services and is therefore to that extent engaged in a commercial vocation.

The question therefore is, can the pharmaceutical profession endorse the scheme for monopolizing materia medica products by commercial houses controlled by business men and conducted in opposition to professional and commercial requirements? The educational interests of pharmacy will answer in the negative. What has the pharmaceutical profession itself to say about it?

Your chairman has just returned from the annual meeting of the American Medical Association held in Minneapolis. He takes pleasure in reporting that the members of the Council on Pharmacy and Chemistry present were in harmony with those who object to product patents as applied to materia medica products. They favor process patents but believe with us that the products themselves should be open to competition, so that they may be impartially discussed in the medical journals, societies and colleges. It can hardly be expected that the medical press will accept contributions from persons engaged in materia medica commerce, especially when they relate to commercially controlled products. Such communications are classed by the journals as advertisements to be published in the advertising columns and paid for by the manufacturers. This is unfortunate as it deprives the medical profession of information from scientific men employed by the manufacturers, except in a roundabout way. It would be far better if such communications were received and submitted to impartial criticism by scientists engaged by competing houses, so that physicians

might be placed in a judicial position in regard to them. Furthermore, it would encourage the manufacturers to employ graduates from our medical and pharmaceutical colleges in their scientific departments and thus open the door for educated men posted in the various branches of materia medica science.

At least one house is thoroughly in harmony with the educational institutions engaged in teaching the pharmacologic arts. We refer to the H. K. Mulford Company, because we believe that the advanced position taken by that house should receive recognition. In a recent letter written in reply to one of the leading Minneapolis physicians, who wished data in regard to the adrenalin case to bring before the Association, the following paragraphs occur:

"We opposed the product patent for years because of its monopolistic tendencies. This case (adrenalin case) is a concrete example of what it is possible to do with the product patent in preventing products of similar nature being prepared, as also preventing all advance in science. We believe that the medical and pharmaceutical professions should demand a repeal of our patent law of the product patent clause when pertaining to medicinal substances.

"We have repeatedly brought this subject to the attention of medical and pharmaceutical bodies, and hope the time will come when the clause relating to the patenting of materia medica products in our patent laws will be repealed, or so modified as to prevent monopoly on the ground that it hinders progress in medical science and in the arts of pharmacy and drug therapeutics.

"We have consistently refrained from availing ourselves of patent protection for the new products discovered by our Research Department until very recently. Within the last month we have been granted a patent for a new synthetic chemical, which we found necessary to secure to not only protect our commercial interests, but to protect the medical and pharmaceutical professions from unfair monopoly. This product patent we are ready at any time to abrogate, provided we can obtain proper support from the medical and pharmaceutical professions in our protest against the abuse of the patent and trade-mark laws. We are ready at any time to cooperate with the professions as represented by their national organizations in an appeal to Congress for a modification of these laws having as its object the rectification of the several abuses to which we have called your attention."

The medical profession has for a long time recognized that capital invested in the publication of medical literature should be protected by copyright, and it is considered perfectly ethical for physicians to associate themselves with medical publishers as editors of medical journals or authors of medical books for the purpose of securing financial gain. Why then should not the medical profession endorse the patenting of materia medica products and the association of physicians, chemists, physiologists and other scientific men with commercial houses, for the proper introduction of new materia medica products. Let us briefly consider some of the reasons why they should endorse such a plan and also reasons for not doing so.

The Constitution of the United States gives Congress the power "to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." It is reasonable to suppose that the proper application of the patent law to materia medica inventions would promote progress in the science of medicine and in the useful arts of preparing materia medica products and applying them to the treatment of the sick.

A patent is a contract between the inventor and the government, representing the public at large. The consideration moving from the inventor is the production of a new and useful thing, and the giving to the public of a full knowledge thereof by means of a proper application for a patent, whereby the public is enabled to practice the invention when the patent expires.

The consideration moving from the government is the grant of an exclusive right of manufacture for a limited time (seventeen years) and this grant the government protects and enforces through its courts.

"The statute enacts that before any inventor or discoverer shall receive a patent for his invention or discovery, he shall make application therefor in writing to the Commissioner, and shall file in the Patent Office a written description of the same, and of the manner and process of making, constructing, compounding and using it in such full, clear, concise and exact terms as enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound and use the same."

What better plan for the advancement of science could possibly be conceived of than the plan of a patent law? The theory upon which the patent and copyright laws rest is, that it is to the advantage of the whole community that authors and inventors should be rewarded, and that no measure of reward can be conceived more just or 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.

Why then should the medical profession object to materia medica patent? There are two great reasons for this opposition. The first is the scheme for perpetuating the monopoly obtained by patents, by registering as a trademark the name of the patented article and thus controlling its sale indefinitely. To be sure, the Supreme Court of the United States in its decision in the Singer Sewing Machine case, declared this scheme to be contrary to law, but in spite of this fact, every case must be fought out on its merits, thus subjecting those who wish to take advantage of this decision, to expensive lawsuits. The trademark laws should be so modified as to avoid this difficulty.

The second objection is that the patent law is not being applied to materia medica products in such manner as to secure its benefits to the public. The law requires that an invention to be patented must be *new and useful.* Patents are often granted for materia medica products which do not in fact comply with these requirements. A materia medica product may be new from a chemical point of view and yet not be useful from a therapeutic point of view. Therapeutic verdicts can only be obtained by the cooperative investigation of many competent observers extended over years of time and conducted under such differences of environment and conditions as will eliminate errors due to the personal equation. How, then, can it be determined beforehand that a new materia medica product is therapeutically useful? How can it be determined by a few clinical reports obtained from physicians who have not been trained to be competent observers? How can it be determined at all until the product has been submitted to comprehensive pharmacologic and clinical research? It was evident that these questions must be satisfactorily answered before the medical profession can consistently endorse the patenting of materia medica products.

The patent law requires a written description of the invention, and of the manner and process of making, constructing, compounding and using it. How can the inventor of a new chemical product comply with the requirements in regard to the using of a new product as a therapeutic agent? The medical profession objects to the teaching of therapeutics by commercial houses. In this

objection, the profession is abundantly supported by the deplorable conditions existing in the materia medica supply business. We refer particularly to the methods employed by the manufacturers of new materia medica products in their advertising. The publication of accurate information obtained from competent observers after it has been submitted to the censorship of unbiased authorities is to be commended. But the publication of unsupported testimony and hearsay evidence and its circulation to the medical profession by commercial houses is a serious menace to medical science and also to the practice of pharmacy and therapeutics.

This objection may be obviated by the legislation already passed and in process of advocacy before state legislatures on the subject of advertising. The Sherley Bill has already become a national law for the control of interstate commerce so far as advertising is concerned. Bills are being presented to all of the states in the Union having as their object the regulation of advertising. These bills are supported by the advertising fraternity itself. What is known as the "Printer's Ink Bill" is being used as a type for this legislation. Now, if it is found practicable to enforce laws making it a misdemeanor to publish misleading advertising, one of the most serious objections to the patenting of materia medica products will be removed.

It is probable that if these objections can be obviated and the patenting of materia medica products placed on a basis permitting the teaching of accurate information concerning them, the same to be under the control of the medical profession, the profession will endorse the patent system as applied to the newer materia medica.

One of the most important occurrences relating to the application of the patent law transpiring during the present year was the decision of the Supreme Court of the United States in the case of the Bauer Chemical Co. against James O'Donnell. The Bauer Chemical Co., as is well known, are the American owners of Sanatogen, and James O'Donnell is a cut-rate druggist of Washington City. Sanatogen is covered by letters patent issued by the United States Government, and, acting under their supposed rights under our patent laws, the Bauer Chemical Co. fixed the price at which Sanatogen should be sold, and placed on the packages thereof a notice to the retailer that the article was patented, and warning him that "any sale at a less price than that so fixed will constitute an infringement of our patent No. 601,995, under which Sanatogen is manufactured; and all persons so selling or using packages or contents will be liable to injunction and damages." The further notice was given "that a purchase is an acceptance of this condition, all rights reverting to the undersigned in the event of violation." O'Donnell, having purchased Sanatogen from certain wholesale druggists, disregarded this notice and sold at retail original packages of the same, which bore the aforesaid notice, at less than the price fixed and appearing thereon. Persisting in this practice, the Bauer Chemical Co. brought suit against him for infringement. The Supreme Court, reversing the decisions of several inferior United States Courts, held that there was no infringement of the patent rights of the Bauer Chemical Co.; and for the first time this important question has been definitely determined by the court of last resort.

The inventor has a perfect right to fix the price of his product, but after he has sold it, his control ceases and the purchaser can resell at any price he may desire. The same applies to the so-called trademark preparation. This was also decided by the Supreme Court in the case of Miles Medical Co. vs. Park & Sons. The decision was rendered in 1910. Justice Hughes said:

"The complainant relies upon the ownership of its secret process and its rights are to be determined accordingly. Anyone may use it who fairly, by analysis and experiment, discovers it. But the complainant is entitled to be protected against invasion of its rights in the process by fraud or by breach of trust or contract."

In other words, the fact that the plaintiff happened to have a monopoly in the manufacture of its preparations did not give it a right to such monopoly, as would be the case with goods protected by patent. The learned justice said that while the manufacturer of a patented article was entitled to certain privileges in return for the invention he had made, which would become public property at the expiration of his grant, the manufacturer of goods under a secret process was entitled to no such consideration. He also said "agreements are combinations between dealers, having for their sole purpose the destruction of competition and the fixing of prices, are injurious to the public interest and void." In the recent decision of the Supreme Court, this principle has been applied to patented articles, so that now it is illegal for manufacturers to attempt to dictate prices, either for patented or unpatented materia medica products.

There is nothing in this decision nor in that of the Dr. Miles Medical Company, which preceded and foreshadowed it, to prevent a manufacturer from selling his wares through agents exclusively, upon whom he still has the right to impose any conditions that he desires, and these conditions the agents must observe upon pain of revocation of their agency. But the agency must be a bona fide one and not mere subterfuge to get around the law.

In conclusion, your committee begs to call attention to the fact that if the same amount of attention were paid by the pharmaceutical profession to the proper application of the patent and trademark laws, to the materia medica supply business, as has been given to maintaining prices for nostrums, we would not at the present time be called upon to solve the perplexing problems now imposed upon us by the existence of conditions which would never have occurred if we had been true to the principles taught us by our colleges of pharmacy. Pharmacy is a branch of medical science and practice and the pharmacists should cooperate with the doctor in the practice of the pharmacologic arts. There can be no two medical professions, one parading under the name of pharmacy. It is the function of the doctor to treat the sick, that of the pharmacist to prepare the medicine. Whether or not medicine is prepared wholesale by great manufacting houses is of secondary importance to the greater question in regard to who is to control medical and pharmacal practice. These arts should be under the joint control of the medical and pharmaceutical professions. Their practice should be confined exclusively to educated and licensed physicians and pharmacists, each working in their respective fields, and the patent and trademark laws should be so applied as to harmonize with the medical and pharmacal laws and not used for protecting a commercial business carried on in unfair compe-

tion with licensed practitioners by business men ignorant alike of medicine and pharmacy, and not willing to comply with professional, scientific requirements.

Following the reading of the above report, J. W. England presented the following, which was unanimously adopted:

"WHEREAS, The U. S. Patent Laws permit inventors to patent, not only *processes* of manufacture, but also the *products* of processes *as such,* so that it is impossible for any other inventors, inventing new and original processes for products already product-patented, to market the products, and

"WHEREAS, The result of this procedure has been to permit foreign manufacturers to both process-patent and product-patent medicinal chemical compounds, estop American invention and exploit the American market by demanding higher prices for such products than those exacted in the countries of production, therefore, be it

"*Resolved,* That the Pennsylvania Pharmaceutical Association in annual meeting assembled hereby petition the Congress of the United States to enact such legislation as will give the President of the United States or the U. S. Commissioner of Patents authority *to suspend a product-patent if it can be shown that the product patented can be made by a process of manufacture that is entirely new and original,* and

"*Resolved,* That the Secretary of this Association be directed to send a copy of these resolutions to the President of the United States and the U. S. Congress in session now assembled."

NEW PROOF OF THE PANCREATIC ORIGIN OF DIABETES.

The evidence now seems conclusive that diabetes is a result of a pancreatic fault, and while it is admitted that this may not be the sole disorder in every case, it is the most prominent factor in the majority of cases, and present in every case.

Weichselbaum, after years of study and the examination of the pancreas in 183 cases of diabetes, states that "in every one of this series" he found distinct and characteristic lesions in the islets of Langerhans, while in a larger series of control cases, representing many different diseases, no corresponding changes were found. He suggests that the reason some of these lesions have been overlooked by others is that in hydropic degeneration, if the tissues have not been properly prepared and preserved, these lesions are easily overlooked.

The internal secretion of the islands of Langerhans of the pancreas has been designated by Starling as "the anti-diabetic hormone," by others as "the pancreas co-ferment," "the internal secretion of the pancreas," and as "the pancreas hormone."

A new demonstration that diabetes is due to absence of the internal secretion of the pancreas, and may be corrected by addition of this secretion, to diabetic blood has recently been made by Knowlton & Starling—*The Metabolist.*