

## 4. HEADS OF DISCUSSION.

The Conference agreed that the problem before them could most conveniently be discussed under the following heads :—

- A.—The present situation in regard to applications for patents in the British Empire.
- B.—The desirability of a British Empire patent.
- C.—The various schemes for such a patent which had been, or might be, suggested, and their practicability, having regard to the legislative and administrative difficulties.
- D.—If no acceptable scheme could be suggested, or in any case if time permitted, the possibility of any further action as regards uniformity of patent law and practice in the British Empire.

## A.—PRESENT SITUATION.

From data supplied to the Conference, and from information derived from the delegates themselves, the present situation may be summarized as follows :—

*Applications for Patents and Fees payable.*

At present, in order to obtain patent protection throughout the British Empire, separate applications must be made in the United Kingdom, in each of the self-governing dominions and India, and in all the colonies and protectorates. Omitting the Native States in India, certain protected territories in the Malay Peninsula, and some other small territories where it is not clear that any provision exists for the protection of inventions, the separate applications necessary would appear to number at least forty-six. On all such applications fees are payable, and the initial payments amount to £5 in the United Kingdom, to £32 in the self-governing dominions and India collectively, and to about £250 for all the colonies and protectorates. For the maintenance of the patents granted on such applications renewal fees are payable in the United Kingdom, and three of the self-governing dominions and in India, and also in the majority of the colonies and protectorates. These renewal fees amount to £126 in the United Kingdom, to £84 in the self-governing dominions and India collectively, and to approximately £1,000 for the colonies and protectorates. A complete list of the sums payable on application for and renewal of a patent, so far as such figures can be definitely ascertained, is given in Appendix B.

*Treatment of Applications.*

In the United Kingdom, the self-governing dominions, and India all specifications accompanying applications are subjected to examination for formalities, and also in respect of sufficiency of description and clearness and succinctness of claims. In many of the colonies and protectorates the power to make such examination is given by legislation, but appears to be rarely exercised, for reasons which will be explained in a later part of the report.

*Examination for Novelty.*

(i.) *United Kingdom.*—An investigation is made for the purpose of ascertaining whether the invention claimed has been wholly or in part claimed or described in any specification published before the date of application and left pursuant to any application for a patent made in the United Kingdom within the previous fifty years.

(ii.) *Self-governing Dominions and India.*—In all the self-governing dominions except the Union of South Africa and in India there is an examination for anticipation into all locally-granted patents; and, further, in some of the Dominions there is power to consider and cite any anticipation by publication or otherwise which would affect the novelty of the invention for which protection is sought. In New Zealand the examination authorized by law is at present somewhat limited by the existing resources of the office.

(iii.) *Colonies and Protectorates.*—There is substantially no examination for novelty, though in some cases powers to make such an investigation are given by the law.

*Opposition to Grant.*

(i.) *United Kingdom.*—Opposition is allowed, which can be based on various grounds, including the publication of the invention not only in prior specifications but also in any document previously published in the United Kingdom.

(ii.) *Self-governing Dominions and India.*—With the exception of Canada, provision is made for opposition based not only upon anticipation in specifications of patents previously granted in the dominion, but also in respect of prior user and publication within the dominion. In the Commonwealth of Australia, New Zealand, and India the opposition is decided by the head of the Patent Office, while in the Union of South Africa such cases are heard by the Court.

(iii.) *Colonies and Protectorates.*—While opposition is provided for by legislation in many of the colonies and protectorates, it is apparently seldom, if ever, utilized. In the majority of cases there is no effective machinery for opposition.

From this survey of the position as regards the application for and grant of patents throughout the Empire, the general position appeared to be by no means satisfactory. To obtain protection throughout the Empire requires numerous applications at considerable expense, and the fees for maintenance are very onerous in many of the colonies and protectorates. While the chief principles of patent law are substantially the same, there is considerable divergence of practice and procedure, and there is no certainty that an invention for which a patent has been secured in any part of His Majesty's dominions will necessarily receive the same protection in any other part of those dominions.