

# IOWA LAW BULLETIN

Published four times a year by the faculty and students of the College of Law of the State University of Iowa. Issued January, March, May, and November.

## BOARD OF EDITORS

Faculty of the College of Law, *ex officio*

*Editor-in-Charge*, HERBERT F. GOODRICH

### *Student Editors*

J. CLARENCE EICHHORN  
G. STEWART HOLMES  
CLYDE E. JONES  
RALPH N. LYNCH  
JAMES E. MCCARTHY

MARC H. MULLANY  
GEORGE C. MURRAY  
H. STANLEY NEWELL  
FRED O. PARRISH  
ROSS E. WHITE

**THE RIGHT OF THE PATENTEE TO CONTROL THE USE OR PRICE OF A PATENTED ARTICLE UPON RESALE.**—The Supreme Court of the United States, in the case of the *Motion Picture Patents Co. v. Universal Film Co.*,<sup>1</sup> rendered an important decision bearing on the rights of the patentee to restrict the use of his invention or device in the hands of the purchaser. The court held that the “exclusive right to make, use and vend” must be limited to the invention described in the patent, and that the owner of the patent, upon sale of his invention or device, may not extend the scope of his patent by requiring a vendee to use with the machine particular accessories, as for example, accessories of the licensor’s own make.

An analysis of the nature of the right conferred by the patent statute<sup>2</sup> shows that the patentee does not, by virtue of the Act, acquire the right to make use or vend the patented article, these being merely common law rights and existing in any owner of personal chattels. The only addition to these rights which is granted by the patent law is the power to exclude all other persons from making, using or vending the invention or discovery.<sup>3</sup> Contracts which maintain this right to exclude others from these privileges are valid.<sup>4</sup> The grant of this exclusive right does not mean that it must be exercised; the article may be wholly withdrawn from the market,<sup>5</sup> or the patentee may license one to make, another to use,<sup>6</sup>

<sup>1</sup> 37 Sup. Ct. Rep. 416.

<sup>2</sup> U. S. Comp. Stat. 1901, §4884, gives the patentee the exclusive right to make use and vend his invention or discovery.

<sup>3</sup> *Bloomer v. McQuewan*, 14 How. (U. S.) 539.

<sup>4</sup> *Bement v. National Harrow Co.*, 186 U. S. 70.

<sup>5</sup> “The Paper Bag Case” (*Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405).

<sup>6</sup> *Rubber Wheel & Tire Co. v. Milwaukee Rubber Works Co.*, 154 Fed. 358.