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whether particular lands qualify.[16]

7. Grants of Timber and Materials

§ 234 Authority for and effect of grants

Research References

West's Key Number Digest, Public Lands ⚿93

Under various statutes, railroad companies have been given the right to take timber and materials from public lands.

Congress has from time to time made various grants to railroad companies of the right to take timber located on excluded mineral lands, and the determination of the effect of a grant of timber standing on lands granted a railroad is governed by federal law.[1] The achievement of the statutory purpose, to enable construction of the railroad, does not require that the grant of timber on mineral lands be construed as perpetual since the purpose would be satisfied by requiring the removal of timber to take place within a reasonable period of time.[2] When a reasonable time for taking timber has elapsed, the United States is entitled to have its title to the standing timber quieted.[3]

By the General Railroad Right-of-Way Act of 1875,[4] Congress granted to any railroad company "the right to take, from the public lands adjacent to the line of said road, materials, earth, stone, and timber necessary for the construction of said railroad."[5] The Act did not confine the use of the timber and material which could be taken from a proper place for the purpose of construction to any particular or definite portion of the road.[6]

The right to take materials was not limited to such as were necessary for the actual roadbed and tracks, but those structures which were necessary appurtenances of all railroads could fairly be regarded as parts or portions of the "railroad," the construction of which it was the purpose of Congress to aid.[7] The Act was not intended to furnish a general license to a railroad company to enter on any public land and to range to any extent thereon for timber and other materials for its road, but material could be taken only from lands which were "adjacent" to the right-of-way.[8]

I. PATENTS

Research References

A.L.R. Library

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands ⚿110 to 130, 135(1)

1. Nature, Necessity, and Validity of Patent

§ 235 Nature and definition of patent

Research References

West's Key Number Digest, Public Lands ⚿110

A "patent" may be defined as a government conveyance transferring title to portions of the

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[16]U.S.—Marvin M. Brandt Revocable Trust v. U.S., 134 S. Ct. 1257, 188 L. Ed. 2d 272 (2014).

[Section 234]

[1]U.S.—U.S. v. State Box Co., 219 F. Supp. 684 (N.D. Cal. 1963), judgment aff'd, 321 F.2d 640 (9th Cir. 1963).

[2]U.S.—State Box Co. v. U.S., 321 F.2d 640 (9th Cir. 1963).

[3]U.S.—State Box Co. v. U.S., 321 F.2d 640 (9th Cir. 1963).

[4]§ 227.

[5]U.S.—U.S. v. Denver & R.G. Ry. Co., 150 U.S. 1, 14 S. Ct. 11, 37 L. Ed. 975 (1893).

[6]U.S.—U.S. v. St. Anthony R. Co., 192 U.S. 524, 24 S. Ct. 333, 48 L. Ed. 548 (1904).

[7]U.S.—U.S. v. Great Northern Ry. Co., 32 F. Supp. 651 (D. Mont. 1940), judgment aff'd, 119 F.2d 821 (C.C.A. 9th Cir. 1941), judgment modified on other grounds, 315 U.S. 262, 62 S. Ct. 529, 86 L. Ed. 836 (1942).

[8]U.S.—U.S. v. St. Anthony R. Co., 192 U.S. 524, 24 S. Ct. 333, 48 L. Ed. 548 (1904).

public domain, passing fee simple title in the nature of a deed.

A "patent" is the conveyance by which the federal government passes its title to portions of the public domain[1] and is necessary to accomplish a transfer of ownership from the United States.[2] As a general rule, a federal land patent conveys fee simple ownership to the patentee[3] unless a property interest is specifically reserved in the patent or by a statute or regulation then in effect.[4] It is equivalent to fee simple ownership,[5] and serves in the same capacity as a deed.[6] It is the highest evidence of title, the most accredited type of conveyance, and the best and only perfect title.[7] A patent does not merely pass title, like a deed, but operates as an official declaration of title[8] and is conclusive of title,[9] but while not subject to collateral attack,[10] it is subject to limited direct remedies.[11]

Federal land patents are effected by enactments that constitute laws as well as contracts.[12]

Grant as patent.

A land grant is another name for a "patent,"[13] the terms "grant" and "patent" being regarded as synonymous.[14]

§ 236 Necessity of patent to vest title

Research References

West's Key Number Digest, Public Lands ⇐110

Ordinarily, the issuance of a patent is necessary to transfer title to public lands from the United States.

Ordinarily, congressional legislation contemplates retention of title by the United States until issuance of a patent

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[Section 235]

[1]U.S.—Swendig v. Washington Water Power Co., 265 U.S. 322, 44 S. Ct. 496, 68 L. Ed. 1036 (1924); U.S. v. Shumway, 199 F.3d 1093 (9th Cir. 1999); U.S. v. Fennell, 381 F. Supp. 2d 1300 (D.N.M. 2005).

Colo.—Hamilton v. Noble Energy, Inc., 220 P.3d 1010 (Colo. App. 2009).

Mich.—Glass v. Goeckel, 473 Mich. 667, 703 N.W.2d 58 (2005).

Utah—Gillmor v. Blue Ledge Corp., 2009 UT App 230, 217 P.3d 723 (Utah Ct. App. 2009).

[2]§ 236.

[3]U.S.—Hash v. U.S., 403 F.3d 1308 (Fed. Cir. 2005); U.S. v. Fennell, 381 F. Supp. 2d 1300 (D.N.M. 2005).

Cal.—Murphy v. Burch, 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289 (2009).

Ill.—Britt v. Federal Land Bank Ass'n of St. Louis, 153 Ill. App. 3d 605, 106 Ill. Dec. 81, 505 N.E.2d 387 (2d Dist. 1987).

Utah—Gillmor v. Blue Ledge Corp., 2009 UT App 230, 217 P.3d 723 (Utah Ct. App. 2009).

Patent secures fee simple title

Mont.—Hansard Mining, Inc. v. McLean, 2014 MT 199, 376 Mont. 48, 335 P.3d 711 (2014).

Grantee's rights fixed by patent

Colo.—Hamilton v. Noble Energy, Inc., 220 P.3d 1010 (Colo. App. 2009).

[4]U.S.—Hash v. U.S., 403 F.3d 1308 (Fed. Cir. 2005).

[5]U.S.—Van Zelst v. C.I.R., 100 F.3d 1259 (7th Cir. 1996); Rector v. Bank of New York Mellon, 2013 WL 7219647 (C.D. Cal. 2013); Cycenas v. Kutz, 2010 WL 4219926 (W.D. Wis. 2010).

[6]U.S.—In re Mauk, 56 B.R. 445 (Bankr. N.D. Ohio 1985).

Patent is deed of United States

Cal.—Gardner v. County of Sonoma, 29 Cal. 4th 990, 129 Cal. Rptr. 2d 869, 62 P.3d 103 (2003).

[7]§ 242.

[8]U.S.—U.S. v. Shumway, 199 F.3d 1093 (9th Cir. 1999); High Country Citizens Alliance v. Clarke, 454 F.3d 1177 (10th Cir. 2006).

[9]§ 250.

[10]§ 241.

[11]§§ 251 et seq.

[12]Cal.—Murphy v. Burch, 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289 (2009).

[13]Cal.—Murphy v. Burch, 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289 (2009).

[14]U.S.—Exxon Chemical Patents, Inc. v. Lubrizol Corp., 935 F.2d 1263 (Fed. Cir. 1991), as modified, 64 F.3d 1553 (Fed. Cir. 1995).

Cal.—Murphy v. Burch, 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289 (2009).

to the land.[1] Until public lands granted to an individual are patented, title remains in the United States.[2] Thus, as a general rule, issuance of a patent is necessary to divest the United States of legal title to any of the public lands and vest such title in another.[3] However, this rule is not without exceptions,[4] as in the case of transfer of title to a state,[5] and in some instances, congressional legislation constitutes a grant in praesenti, divesting the United States of all title, so that a patent issued thereafter operates merely as a deed of further assurance declaratory of a title passing as of the date of the original grant.[6]

Overlapping patents.

The survey and patenting of land conclusively establishes a patent holder's title only vis-à-vis the federal government, and not vis-à-vis adjoining landowners who claim land pursuant to an overlapping patent.[7]

§ 237 Status and rights before issuance of patent; equitable title

Research References

West's Key Number Digest, Public Lands ⚷110, 114(1)

When the right to a patent is perfected, the purchaser, entryman, or other claimant has full equitable title, the government holding the nominal legal title in trust for the purchaser, entryman, or other claimant.

The execution and delivery of a patent to a person entitled thereto are mere ministerial acts of the officers charged with that duty.[1] Thus, when the right to a patent becomes perfect, the full equitable title passes to the purchaser, entryman, or other claimant,[2] with all the benefits, immunities, and burdens of ownership,[3] and the government holds the naked legal title in trust for the purchaser, entryman, or other claimant.[4]

In general, when a qualified person has complied with all statutory requirements, a right to a patent accrues,[5] subject to the right of the proper agency to suspend or refuse the issuance of a patent in a proper case.[6] An entry or application for a patent which is contested or rejected by the Secretary of the Interior presents issues regarding the legal rights of the entryman under the public land laws, which the Secretary may not arbitrarily or

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[Section 236]

[1]Ariz.—Schell v. White, 80 Ariz. 156, 294 P.2d 385 (1956).

Mo.—Stonum v. Davis, 348 Mo. 267, 152 S.W.2d 1067 (1941).

[2]U.S.—Seldovia Native Ass'n, Inc. v. U.S., 35 Fed. Cl. 761 (1996), on reconsideration in part on other grounds, 36 Fed. Cl. 593 (1996) and aff'd, 144 F.3d 769 (Fed. Cir. 1998).

[3]U.S.—U.S. v. Fennell, 381 F. Supp. 2d 1300 (D.N.M. 2005).

Or.—McCarty v. Helbling, 73 Or. 356, 144 P. 499 (1914).

[4]U.S.—Pepper v. Scott, 53 F.2d 202 (C.C.A. 8th Cir. 1931).

La.—LeBleu v. Hanszen, 206 La. 53, 18 So. 2d 650 (1944).

[5]U.S.—Standard Oil Co. of California v. U.S., 107 F.2d 402 (C.C.A. 9th Cir. 1939).

[6]Mo.—Stonum v. Davis, 348 Mo. 267, 152 S.W.2d 1067 (1941).

[7]U.S.—Pueblo of Santa Ana v. Baca, 844 F.2d 708 (10th Cir. 1988).

[Section 237]

[1]§ 238.

[2]U.S.—Benson Min. & Smelting Co. v. Alta Min. & Smelting Co., 145 U.S. 428, 12 S. Ct. 877, 36 L. Ed. 762 (1892); Wirth v. Branson, 98 U.S. 118, 25 L. Ed. 86, 1878 WL 18359 (1878); Jachetta v. U.S., 94 Fed. Cl. 277 (2010).

La.—Henry v. Radiscish, 86 So. 2d 635 (La. Ct. App. 2d Cir. 1956).

[3]Okla.—Johnson v. Johnson, 1919 OK 82, 72 Okla. 155, 179 P. 595 (1919).

[4]Fla.—City of Miami v. Sirocco Co., 137 Fla. 434, 188 So. 344 (1939).

La.—Henry v. Radiscish, 86 So. 2d 635 (La. Ct. App. 2d Cir. 1956).

[5]Nev.—Carson City v. Capital City Entertainment, Inc., 118 Nev. 415, 49 P.3d 632 (2002).

[6]U.S.—Hamel v. Nelson, 226 F. Supp. 96 (N.D. Cal. 1963).

capriciously ignore and which must be determined within the due process safeguards of the Administrative Procedure Act.[7]

Patent certificate and other instruments.

A patent certificate, final certificate of purchase, or receiver's final receipt in general protects the purchaser's right to an equitable and beneficial title to the land and shows, prima facie, that the purchaser is entitled to a patent.[8]

§ 238 Right to patent; issuance and requisites

Research References

West's Key Number Digest, Public Lands ⇨111 to 113, 114(5)

The issuance of a patent requires compliance with the applicable requirements; patents are issued and signed by the Secretary of the Interior in the name of the United States.

A person seeking a patent under the public laws must comply with all the requirements of the statute and the authoritative administrative regulations[1] and, on compliance and a showing of the right, is entitled to receive the patent.[2] There is no preference right to a patent in the absence of statute or regulation.[3]

By statute, all patents for public lands are issued and signed by the Secretary of the Interior in the name of the United States, and this authority may be delegated.[4] In addition, the Federal Land Policy and Management Act of 1976 provides for the Secretary of the Interior to issue all patents after any disposal of land authorized by the Act.[5] The execution and delivery of a patent to a person entitled thereto are mere ministerial acts of the officers charged with that duty.[6]

The effect of a patent in conveying legal title to public lands[7] occurs when a patent is executed,[8] on a decision of the proper officers that the grantee named therein is entitled to the land,[9] and recorded in the record book kept in the appropriate government office.[10] The delivery that is required when a deed is made by a private person is not necessary to give effect to

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[7]U.S.—Stewart v. Penny, 238 F. Supp. 821, 9 Fed. R. Serv. 2d 19A.1, Case 11 (D. Nev. 1965).

Vesting of rights

A patent applicant's rights did not vest upon the filing of the patent application but instead upon perfection of the application, which occurred after passage of the Sawtooth National Recreation Area Act, and thus, the Act's prohibition on issuance of future patents did not deprive the applicant of any cognizable property interest; delay was not attributable to purely ministerial and administrative functions of the Department of the Interior but resulted from the Department's legal challenge to the applicant's mill site requests.

U.S.—Swanson v. Babbitt, 3 F.3d 1348 (9th Cir. 1993).

[8]La.—Henry v. Radiscish, 86 So. 2d 635 (La. Ct. App. 2d Cir. 1956).

[Section 238]

[1]U.S.—Leonard v. Lennox, 181 F. 760 (C.C.A. 8th Cir. 1910).

[2]U.S.—Armstrong v. Udall, 435 F.2d 38 (9th Cir. 1970).

Vesting on compliance

Nev.—Carson City v. Capital City Entertainment, Inc., 118 Nev. 415, 49 P.3d 632 (2002).

[3]U.S.—Work v. Braffet, 276 U.S. 560, 48 S. Ct. 363, 72 L. Ed. 700 (1928).

[4]43 U.S.C.A. § 15.

[5]43 U.S.C.A. § 1718.

[6]U.S.—Leo Sheep Co. v. U.S., 570 F.2d 881 (10th Cir. 1977), judgment rev'd on other grounds, 440 U.S. 668, 99 S. Ct. 1403, 59 L. Ed. 2d 677 (1979).

Ariz.—Aztec Land & Cattle Co. v. Navajo Realty Co., 79 Ariz. 55, 283 P.2d 227 (1955).

Wash.—Anderson v. Olson, 77 Wash. 2d 240, 461 P.2d 343 (1969).

[7]§§ 235, 242.

[8]Mo.—Hammond v. Johnston, 93 Mo. 198, 6 S.W. 83 (1887), dismissed, 142 U.S. 73, 12 S. Ct. 141, 35 L. Ed. 941 (1891).

[9]U.S.—U. S. v. Schurz, 102 U.S. 378, 26 L. Ed. 167, 1880 WL 18901 (1880).

[10]Wyo.—Merrill v. Rocky Mountain Cattle Co., 26 Wyo. 219, 181 P. 964 (1919).

As to the validity of a patent, see § 239.

the granting clause of the patent.[11] However, it is the plain duty of the Secretary of the Interior to deliver the patent demanded when a party is clearly entitled to a patent as his or her property, and the land has ceased to be land of the government,[12] particularly when a patent has been executed and recorded, and in such case, its delivery may be compelled by an appropriate remedy.[13] The acceptance by the grantee is presumed from the efforts of the grantee to secure the favorable action of the appropriate agency, or from the grantee's demand for possession of the patent.[14]

Correction.

The Secretary of the Interior may correct specified patents or documents of conveyance where necessary to eliminate errors.[15]

Patent under color of title.

Under the Color of Title Act, the Secretary of the Interior may be required to issue a patent if certain conditions have been met.[16] While an interest in government property may not be acquired by adverse possession, long-term possessory claimants may, under the Act, follow statutory procedures to acquire a land patent from the government.[17]

§ 239 Validity of patent

Research References

West's Key Number Digest, Public Lands ⇐110, 113

Patents for land previously granted, reserved, or appropriated, or as to which the United States lacks title, are void; the issuance of a patent by one lacking the authority to do so is a nullity.

Patents for land previously granted, reserved, or appropriated are void.[1] A patent issued by the United States when it had nothing to convey at the time of issuance is void as the United States, like any other grantor, cannot transfer what it does not possess.[2]

A purported land patent drafted by a party in order to give that party rights in property is a legal nullity.[3] Thus, a land patent whereby individuals grant a patent to themselves is not sufficient, by itself, to create good title.[4] A declaration of land patent was void insofar as it purported to be a grant from the United States government and thus was a spurious cloud upon the title to property obtained by a federal land bank, as mortgagee, at a foreclosure sale; the record

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[11]Minn.—Rogers v. Clark Iron Co., 104 Minn. 198, 116 N.W. 739 (1908).

[12]U.S.—Armstrong v. Udall, 435 F.2d 38 (9th Cir. 1970).

[13]U.S.—U. S. v. Schurz, 102 U.S. 378, 26 L. Ed. 167, 1880 WL 18901 (1880).

[14]U.S.—U. S. v. Schurz, 102 U.S. 378, 26 L. Ed. 167, 1880 WL 18901 (1880).

[15]43 U.S.C.A. § 1746.

Lands not subject to homestead entry

The Secretary of the Interior has the authority to correct a land patent to include lands that were not subject to homestead entry by the original patentee.

U.S.—Foust v. Lujan, 942 F.2d 712 (10th Cir. 1991).

[16]43 U.S.C.A. §§ 1068 to 1068b.

[17]U.S.—Cavin v. U.S., 956 F.2d 1131 (Fed. Cir. 1992).

[Section 239]

[1]U.S.—U.S. v. State of Wash., 233 F.2d 811 (9th Cir. 1956).

[2]Utah—Gillmor v. Blue Ledge Corp., 2009 UT App 230, 217 P.3d 723 (Utah Ct. App. 2009).

[3]U.S.—Nixon v. Individual Head of St. Joseph Mortg. Co., Inc., 612 F. Supp. 253, 2 Fed. R. Serv. 3d 1011 (N.D. Ind. 1985), aff'd, 787 F.2d 595 (7th Cir. 1986); Leach v. Building and Safety Engineering Div., City of Pontiac, 993 F. Supp. 606 (E.D. Mich. 1998).

[4]U.S.—Hilgeford v. Peoples Bank, Portland, Ind., 607 F. Supp. 536, 2 Fed. R. Serv. 3d 356 (N.D. Ind. 1985), judgment aff'd, 776 F.2d 176, 3 Fed. R. Serv. 3d 1358 (7th Cir. 1985); Leach v. Building and Safety Engineering Div., City of Pontiac, 993 F. Supp. 606 (E.D. Mich. 1998).

was devoid of any evidence tending to establish that the Secretary of the Interior had given a mortgagor/farmer authority to issue a land patent.[5]

A patent is not invalidated by a misnomer of the county in which the land is situated.[6] However, a patent issued to a fictitious person cannot transfer title,[7] and at common law, a land patent to a deceased person is void.[8]

A patent was not void, even though it was issued "by virtue of" a congressional act which had been repealed before the patent was issued, since the application was made four months before the act was repealed, and subsequent legislation validated all patents not yet challenged.[9]

§ 240 Validity of patent—Presumptions and burden of proof

Research References

West's Key Number Digest, Public Lands ⇐113, 114(6)

There is a presumption in favor of the validity of a patent, and the burden of proof rests on one asserting the contrary.

Under the rule that public officers are presumed to do their duty, it is presumed that all preliminary steps necessary to the issuance of a patent have been taken[1] and that the patent was regularly issued,[2] is valid,[3] and passes legal title.[4] On the other hand, a presumption that the United States has parted with title to any part of the public domain is not favored.[5]

The presumption of validity may be rebutted by proof that the patent was issued without authority of law[6] or was obtained by fraud,[7] the burden of proof being on the person who seeks to impeach the patent.[8]

Properties in public trust.

Grants and patents which, as a matter of law, could convey nothing because the properties were already in the public trust are entitled to no presumption of validity.[9]

§ 241 Collateral attack

Research References

[5]U.S.—Federal Land Bank of Jackson v. Kennedy, 662 F. Supp. 787 (N.D. Miss. 1987).

[6]U.S.—Stringer v. Young's Lessee, 28 U.S. 320, 7 L. Ed. 693, 1830 WL 3882 (1830).

[7]U.S.—Moffat v. U.S., 112 U.S. 24, 5 S. Ct. 10, 28 L. Ed. 623 (1884).

[8]U.S.—Absentee Shawnee Tribe of Indians of Oklahoma v. State of Kan., 862 F.2d 1415 (10th Cir. 1988).

[9]Nev.—Carson City v. Capital City Entertainment, Inc., 118 Nev. 415, 49 P.3d 632 (2002).

[Section 240]

[1]U.S.—U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977).

Iowa—State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950).

Presumption absent facial invalidity

Kan.—Murray v. State, 226 Kan. 26, 596 P.2d 805 (1979).

When not regular on face in form and substance

N.M.—Gonzales v. Gonzales, 116 N.M. 838, 1993-NMCA-159, 867 P.2d 1220 (Ct. App. 1993).

[2]Idaho—Clear Lake Power & Improvement Co. v. Chriswell, 31 Idaho 339, 173 P. 326 (1918).

[3]Ariz.—State v. Crawford, 13 Ariz. App. 225, 475 P.2d 515 (Div. 2 1970).

Kan.—Murray v. State, 226 Kan. 26, 596 P.2d 805 (1979).

[4]Iowa—State v. Nichols, 241 Iowa 952, 44 N.W.2d 49 (1950).

[5]U.S.—Pavell v. Berwick, 48 F. Supp. 246 (W.D. La. 1943).

[6]Ala.—Ledbetter v. Borland, 128 Ala. 418, 29 So. 579 (1901).

[7]Mo.—Gibson v. Chouteau, 39 Mo. 536, 1866 WL 80 (1866), dismissed, 75 U.S. 314, 19 L. Ed. 317, 1868 WL 11145 (1868) and judgment corrected, 45 Mo. 171, 1869 WL 133 (1869) and rev'd on other grounds, 80 U.S. 92, 20 L. Ed. 534, 1871 WL 14843 (1871).

Constructive fraud not shown

Wis.—Lakelands, Inc. v. Chippewa & Flambeau Improvement Co., 237 Wis. 326, 295 N.W. 919 (1941).

[8]Ariz.—State v. Crawford, 13 Ariz. App. 225, 475 P.2d 515 (Div. 2 1970).

[9]Miss.—Cinque Bambini Partnership v. State, 491 So. 2d 508 (Miss. 1986), judgment aff'd, 484

West's Key Number Digest, Public Lands ⚖117

A patent that is regular on its face and issued by the appropriate agency is not open to collateral attack, but a patent completely void may be the subject of a collateral attack.

A patent, regular on its face and issued by the appropriate agency for land which is within its jurisdiction and power of disposition, is not open to collateral attack[1] whether for fraud, error, or irregularity[2] or for mistake of fact or error of law.[3] The court cannot go behind the patent and look to antecedent proceedings on which the patent is founded.[4] The patentee can be deprived of patent rights only by direct proceedings[5] instituted by the government or by parties acting in its name[6] or by persons having superior title to that acquired through the government.[7]

A patent may be collaterally attacked and its operation as a conveyance defeated where the patent is void[8] as when the government lacked jurisdiction to dispose of the lands,[9] or the issuing officers acted without authority.[10] Also, a patent may be collaterally attacked when the title to land had passed from the United States before the claim on which the patent is based was initiated.[11]

2. Construction, Operation, and Effect of Patent

§ 242 Evidence of title and conveyance

Research References

West's Key Number Digest, Public Lands ⚖114(1)

A patent to United States lands is the highest evidence of title, accredited conveyance, or perfect title and carries the legal title in fee simple, divesting the government of all authority and control over the land.

A patent, once issued, is the highest ev-

U.S. 469, 108 S. Ct. 791, 98 L. Ed. 2d 877 (1988).

[Section 241]

[1]U.S.—Raypath, Inc. v. City of Anchorage, 544 F.2d 1019 (9th Cir. 1976).

Ariz.—Raestle v. Whitson, 119 Ariz. 524, 582 P.2d 170 (1978).

Nev.—Dredge Corp. v. Husite Co., 78 Nev. 69, 369 P.2d 676 (1962).

N.M.—Bustamante v. Sena, 1978-NMSC-067, 92 N.M. 72, 582 P.2d 1285 (1978).

[2]U.S.—Barnes v. Hodel, 819 F.2d 250 (9th Cir. 1987).

[3]Colo.—Anderson v. Woodward, 66 Colo. 135, 180 P. 296 (1919).

[4]N.M.—Gonzales v. Gonzales, 116 N.M. 838, 1993-NMCA-159, 867 P.2d 1220 (Ct. App. 1993).

[5]U.S.—Matthews v. Barker, 30 F. Supp. 464 (D. Idaho 1938).

Colo.—Ashley v. Hill, 150 Colo. 563, 375 P.2d 337 (1962).

Nev.—Dredge Corp. v. Husite Co., 78 Nev. 69, 369 P.2d 676 (1962).

Notice required

The patentee should have notice of such proceedings.

U.S.—Ayres v. U.S., 42 Ct. Cl. 385, 1907 WL 897 (1907).

[6]U.S.—Matthews v. Barker, 30 F. Supp. 464 (D. Idaho 1938).

[7]U.S.—Putnam v. Ickes, 78 F.2d 223 (App. D.C. 1935).

Or.—Skinner v. Silver, 158 Or. 81, 75 P.2d 21 (1938).

[8]Cal.—Huntington v. Donovan, 183 Cal. 746, 192 P. 543 (1920).

[9]U.S.—City of Los Angeles v. Borax Consolidated Limited, 74 F.2d 901 (C.C.A. 9th Cir. 1935), aff'd, 296 U.S. 10, 56 S. Ct. 23, 80 L. Ed. 9 (1935).

Cal.—Brown v. Luddy, 121 Cal. App. 494, 9 P.2d 326 (3d Dist. 1932).

Patent to foreign lands

A patent to Canadian lands is void and open to collateral attack.

U.S.—Pettibone v. Cook County, 31 F. Supp. 881 (D. Minn. 1940), judgment aff'd, 120 F.2d 850 (C.C.A. 8th Cir. 1941).

[10]U.S.—Pettibone v. Cook County, 31 F. Supp. 881 (D. Minn. 1940), judgment aff'd, 120 F.2d 850 (C.C.A. 8th Cir. 1941).

[11]Cal.—Huntington v. Donovan, 183 Cal. 746, 192 P. 543 (1920).

idence of title,[1] the most accredited type of conveyance,[2] and the best and only perfect title.[3] It is intended to quiet title to and secure the enjoyment of the land for the patentees and their successors.[4] A patent is a final determination of the existence of all facts necessary to entitle the patentee to the patent.[5] A patent issued for land that is a part of the public domain carries the legal title[6] in fee simple[7] and divests the government of all authority and control over the land.[8]

A patent does not convey the title to land when the description of the land is inserted after issuance and delivery of the patent,[9] nor is the patent evidence of title to land that was not subject to disposition by the United States.[10] Moreover, a land patent does not convey to the patentee any right to defeat subsequent transfers which the patentee, in the patentee's capacity as fee simple owner, may execute as the patentee has an unlimited power of alienation over the land.[11]

A patent issued to two or more persons creates presumptively a tenancy in common in the patentees.[12] A patent to the original grantee or the grantee's legal representatives embraces representatives by contract as well as by operation of law.[13]

Conflicting patents.

As between conflicting patents, the rule, in the absence of controlling equities, is that the earlier patent passes the title to the exclusion of the later.[14] However, in equity, a junior patent will prevail over an older one if the right on which it is based is prior.[15]

§ 243 Construction

Research References

[Section 242]

[1]U.S.—In re Mauk, 56 B.R. 445 (Bankr. N.D. Ohio 1985).

Alaska—File v. State, 593 P.2d 268 (Alaska 1979).

Ariz.—Raestle v. Whitson, 119 Ariz. 524, 582 P.2d 170 (1978).

Cal.—Murphy v. Burch, 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289 (2009).

S.D.—Brown v. Northern Hills Regional R.R. Authority, 2007 SD 49, 732 N.W.2d 732 (S.D. 2007).

[2]U.S.—U. S. v. Cherokee Nation, 200 Ct. Cl. 583, 474 F.2d 628 (1973).

[3]La.—King's Farm, Inc. v. Concordia Parish Police Jury, 709 So. 2d 953 (La. Ct. App. 3d Cir. 1998), writ denied, 724 So. 2d 748 (La. 1998).

[4]U.S.—Beres v. U.S., 64 Fed. Cl. 403 (2005).

[5]N.M.—Bustamante v. Sena, 1978-NMSC-067, 92 N.M. 72, 582 P.2d 1285 (1978).

Okla.—Weaver v. Koontz, 1956 OK 256, 301 P.2d 1009 (Okla. 1956).

[6]U.S.—U.S. v. Krause, 92 F. Supp. 756 (W.D. La. 1950).

Nev.—Dredge Corp. v. Husite Co., 78 Nev. 69, 369 P.2d 676 (1962).

Okla.—Weaver v. Koontz, 1956 OK 256, 301 P.2d 1009 (Okla. 1956).

Rights fixed by issuance

U.S.—U.S. v. Reimann, 504 F.2d 135 (10th Cir. 1974).

Colo.—Hamilton v. Noble Energy, Inc., 220 P.3d 1010 (Colo. App. 2009).

[7]§ 235.

[8]U.S.—U.S. v. Reimann, 504 F.2d 135 (10th Cir. 1974); Home on the Range v. AT&T Corp., 386 F. Supp. 2d 999 (S.D. Ind. 2005).

Colo.—Ashley v. Hill, 150 Colo. 563, 375 P.2d 337 (1962).

Fla.—Whaley v. Wotring, 225 So. 2d 177 (Fla. 1st DCA 1969).

No power to control disposed lands

U.S.—Moore v. Robbins, 96 U.S. 530, 24 L. Ed. 848, 1877 WL 18500 (1877).

[9]Ala.—Doe ex dem. Alabama State Land Co. v. McCullough, 155 Ala. 246, 46 So. 472 (1908).

[10]U.S.—Rice v. U.S., 348 F. Supp. 254 (D.N.D. 1972), judgment aff'd, 479 F.2d 58 (8th Cir. 1973).

Mo.—Reed v. Steward, 240 S.W. 206 (Mo. 1922).

[11]§ 246.

[12]N.D.—Stoll v. Gottbreht, 45 N.D. 158, 176 N.W. 932 (1920).

[13]Ala.—Reichert v. Jerome H. Sheip, Inc., 222 Ala. 133, 131 So. 229 (1930).

[14]U.S.—Adams v. C.A. Smith Timber Co., 273 F. 652 (C.C.A. 9th Cir. 1921).

[15]U.S.—Gleason v. White, 199 U.S. 54, 25 S. Ct. 782, 50 L. Ed. 87 (1905).

West's Key Number Digest, Public Lands ⇐114(1)

A patent to United States lands is subject to a narrow or strict construction against the grantee and in favor of the sovereign.

United States patents or grants are to be narrowly[1] or strictly construed[2] against the grantee[3] and in favor of the sovereign.[4] In interpreting a federal land patent, the court looks to the patent's specific language,[5] and since federal land patents are effected by enactments that constitute laws as well as contracts, the intent of Congress is a prominent consideration in their interpretation.[6] Nothing passes except what is conveyed in clear language, and if there are doubts, they are resolved in favor of the government;[7] nothing passes by implication under a patent.[8]

§ 244 Governing law before and after issuance

Research References

West's Key Number Digest, Public Lands ⇐114(1)

Property received through federal land patents is subject to state and local law.

Property received through federal land patents is subject to state and local regulations,[1] and patents are to be given effect according to the laws and regulations under which they were issued.[2] While the question as to whether title to land has passed from the United States must be determined by federal law,[3] and the acts of Congress control the force of patents, which cannot be varied in their effect by the omission of statutory provisions or the insertion of others,[4] when the United States has not in any way provided otherwise, the ordinary incidents attaching to a title traced to a patent may be deter-

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[Section 243]

[1]U.S.—Lyon v. Gila River Indian Community, 626 F.3d 1059, 77 Fed. R. Serv. 3d 1369 (9th Cir. 2010).

[2]Alaska—McCarrey v. Kaylor, 301 P.3d 559 (Alaska 2013).

N.Y.—DiCanio v. Incorporated Village of Nissequogue, 189 A.D.2d 223, 596 N.Y.S.2d 74 (2d Dep't 1993).

[3]Alaska—McCarrey v. Kaylor, 301 P.3d 559 (Alaska 2013).

N.Y.—DiCanio v. Incorporated Village of Nissequogue, 189 A.D.2d 223, 596 N.Y.S.2d 74 (2d Dep't 1993).

[4]U.S.—U.S. v. Union Pac. R. Co., 353 U.S. 112, 77 S. Ct. 685, 1 L. Ed. 2d 693 (1957); Lyon v. Gila River Indian Community, 626 F.3d 1059, 77 Fed. R. Serv. 3d 1369 (9th Cir. 2010); McFarland v. Kempthorne, 545 F.3d 1106 (9th Cir. 2008).

Alaska—McCarrey v. Kaylor, 301 P.3d 559 (Alaska 2013).

Nev.—City of Las Vegas v. Cliff Shadows Prof'l Plaza, 293 P.3d 860, 129 Nev. Adv. Op. No. 2 (Nev. 2013).

[5]Nev.—City of Las Vegas v. Cliff Shadows Prof'l Plaza, 293 P.3d 860, 129 Nev. Adv. Op. No. 2 (Nev. 2013).

Only listed exclusions apply

Utah—Gillmor v. Blue Ledge Corp., 2009 UT App 230, 217 P.3d 723 (Utah Ct. App. 2009).

[6]Cal.—Murphy v. Burch, 46 Cal. 4th 157, 92 Cal. Rptr. 3d 381, 205 P.3d 289 (2009).

[7]U.S.—U.S. v. Union Pac. R. Co., 353 U.S. 112, 77 S. Ct. 685, 1 L. Ed. 2d 693 (1957); Montara Water and Sanitary Dist. v. County of San Mateo, 598 F. Supp. 2d 1070 (N.D. Cal. 2009).

[8]U.S.—Lyon v. Gila River Indian Community, 626 F.3d 1059, 77 Fed. R. Serv. 3d 1369 (9th Cir. 2010); McFarland v. Kempthorne, 545 F.3d 1106 (9th Cir. 2008); Albrecht v. U.S., 831 F.2d 196 (10th Cir. 1987).

[Section 244]

[1]U.S.—Virgin v. County of San Luis Obispo, 201 F.3d 1141 (9th Cir. 2000).

[2]U.S.—Crow Tribe of Indians v. Peters, 835 F. Supp. 2d 985 (D. Mont. 2011).

[3]§ 42.

[4]Nev.—Tonopah & G. R. Co. v. Fellanbaum, 32 Nev. 278, 107 P. 882 (1910), aff'd, 35 Nev. 249, 129 P. 308 (1913).

mined according to local rules[5] provided such rules do not impair the efficacy of the grant or the use and enjoyment of the property.[6] In other words, after a conveyance by federal patent, the land is, generally, thereafter subject to state law.[7]

§ 245 Property and rights included

Research References

West's Key Number Digest, Public Lands ⇐114(3)

Ordinarily, the quantity of land granted must be ascertained from the description in the patent, and a patent generally conveys title to all lands within the established boundaries shown by an official survey to which it refers.

In general, the land granted must be ascertained from the description in the patent,[1] as construed in the light of the apparent intent of the government,[2] and grants only such property interests as the government, as the grantor, possesses.[3] The property explicitly conveyed in the patent is what passes under the patent,[4] and nothing passes by implication.[5] A patent without any reservations or exceptions passes to the patentee everything in anywise connected with the soil, forming any portion of its bed or fixed to its surface, to the extent that the government has ownership and power of disposal.[6] On the other hand, a patent reserving certain minerals grants all rights in the land which are not reserved.[7]

Usually, a patent conveys title to all the lands within the established boundaries shown by the official map of the government survey to which the patent has reference[8] and passes title of the United States to land not only as it was at the time of the survey but also as it was at the date of the patent.[9] Unsurveyed lands of the United States are not legally existing "public lands" for purposes of a patent and thus are not conveyed by a patent.[10]

A patent that refers to an official plat of

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[5]Okla.—Vickery v. Yahola Sand & Gravel Co., 1932 OK 510, 158 Okla. 120, 12 P.2d 881 (1932).

[6]U.S.—Brewer-Elliott Oil & Gas Co. v. U.S., 260 U.S. 77, 43 S. Ct. 60, 67 L. Ed. 140 (1922).

Okla.—Vickery v. Yahola Sand & Gravel Co., 1932 OK 510, 158 Okla. 120, 12 P.2d 881 (1932).

[7]U.S.—Oneida Indian Nation of N. Y. State v. Oneida County, New York, 414 U.S. 661, 94 S. Ct. 772, 39 L. Ed. 2d 73 (1974); Rector v. New York Bank of Mellon, 2014 WL 631955 (C.D. Cal. 2014).

Idaho—Idaho State Tax Com'n v. William, 2009 WL 9151116 (Idaho Ct. App. 2009).

Federal jurisdiction not implicated by land patent

U.S.—Landi v. Phelps, 740 F.2d 710 (9th Cir. 1984).

[Section 245]

[1]U.S.—Gazzam v. Phillips, 61 U.S. 372, 20 How. 372, 15 L. Ed. 958, 1857 WL 8552 (1857).

[2]U.S.—Ritter v. Morton, 513 F.2d 942 (9th Cir. 1975); Koch v. U.S., Dept. of Interior, 47 F.3d 1015 (10th Cir. 1995); Foust v. Lujan, 942 F.2d 712 (10th Cir. 1991).

[3]Ariz.—Siler v. Arizona Dept. of Real Estate, 193 Ariz. 374, 972 P.2d 1010 (Ct. App. Div. 1 1998).

Utah—Gillmor v. Blue Ledge Corp., 2009 UT App 230, 217 P.3d 723 (Utah Ct. App. 2009).

Nonexistent appurtenances not included

U.S.—McFarland v. Kempthorne, 545 F.3d 1106 (9th Cir. 2008).

[4]U.S.—Lyon v. Gila River Indian Community, 626 F.3d 1059, 77 Fed. R. Serv. 3d 1369 (9th Cir. 2010); McFarland v. Kempthorne, 545 F.3d 1106 (9th Cir. 2008).

Clear language of land description required

U.S.—Koch v. U.S., 846 F. Supp. 913 (D. Colo. 1994).

[5]§ 243.

[6]U.S.—Energy Transp. Systems, Inc. v. Union Pac. R. Co., 435 F. Supp. 313 (D. Wyo. 1977), judgment aff'd, 606 F.2d 934 (10th Cir. 1979).

As to reservations and exceptions, see § 248.

[7]U.S.—U.S. v. Union Oil Co. of California, 549 F.2d 1271, 40 A.L.R. Fed. 799 (9th Cir. 1977).

[8]U.S.—U. S. v. Walton, 266 F. Supp. 257 (D. Wyo. 1967), judgment aff'd, 415 F.2d 121 (10th Cir. 1969).

[9]U.S.—Flannigan v. Arkansas, 427 F. Supp. 2d 861 (E.D. Ark. 2006).

[10]U.S.—Flannigan v. Arkansas, 427 F. Supp. 2d 861 (E.D. Ark. 2006).

the survey incorporates the plat,[11] as well as the surveyor's field notes and descriptions.[12]

A patent to public land over which the United States has acquired an easement, but which does not reserve any easement, serves to convert possessory title to fee, and unencumbered fee title passes as to the entire claim; the right of the government to use the easement, insofar as it is based on the preexisting easement grant, ceases.[13] Thus, the subservient estate retained by the United States after a grant of a railroad right-of-way under particular congressional acts passes to a subsequent patentee.[14]

Lands bordering bodies of water.

Patents to lands bordering navigable waters, in the absence of special circumstances, convey title only to the high-water mark.[15] If patents referred to in an official plat show meander lines along or near a body of water, the patent is to be treated as part of the conveyance, and the patentee's title to land extends to the actual water line, but such rule does not apply where there was a significant departure from the proper location and the meander line sufficient to show gross mistake or fraud, and in such case, the meander line becomes a fixed boundary.[16]

§ 246 Sale, transfer, or assignment

Research References

West's Key Number Digest, Public Lands ⚿135(1)

After issuance of a patent, the patentee, as holder of the legal title, may sell or dispose of the land as the patentee chooses.

After a patent has issued to an entryman, the entryman/patentee has full legal title[1] and may sell, give away, or otherwise deal with the land in such manner as the patentee sees fit.[2] A patentee has an unlimited power of alienation over the land,[3] but a land patent does not convey to the patentee any right to defeat subsequent transfers which the patentee, in the patentee's capacity as fee simple owner, may execute.[4] A patent does not forever bar subsequent interests in the land.[5]

One who purchases from a patentee without knowledge or suspicion of wrong in the title is, strictly and technically, a bona fide purchaser and entitled to protec-

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[11]U.S.—Snake River Ranch v. U.S., 542 F.2d 555 (10th Cir. 1976).

Alaska—File v. State, 593 P.2d 268 (Alaska 1979).

Colo.—Spar Consol. Min. & Development Co. v. Miller, 193 Colo. 549, 568 P.2d 1159 (1977).

[12]U.S.—U.S. v. Reimann, 504 F.2d 135 (10th Cir. 1974).

Alaska—File v. State, 593 P.2d 268 (Alaska 1979).

Field notes not part of survey plat

Colo.—Spar Consol. Min. & Development Co. v. Miller, 193 Colo. 549, 568 P.2d 1159 (1977).

[13]U.S.—U.S. v. Wood, 466 F.2d 1385 (9th Cir. 1972).

[14]U.S.—Energy Transp. Systems, Inc. v. Union Pac. R. Co., 435 F. Supp. 313 (D. Wyo. 1977), judgment aff'd, 606 F.2d 934 (10th Cir. 1979).

[15]U.S.—Confederated Salish and Kootenai Tribes v. Namen, 380 F. Supp. 452 (D. Mont. 1974), judgment aff'd, 534 F.2d 1376 (9th Cir. 1976).

[16]U.S.—Albrecht v. U.S., 831 F.2d 196 (10th Cir. 1987).

[Section 246]

[1]§ 242.

[2]U.S.—Hartman v. Butterfield Lumber Co., 199 U.S. 335, 26 S. Ct. 63, 50 L. Ed. 217 (1905).

Alaska—Willis v. City of Valdez, 546 P.2d 570 (Alaska 1976).

[3]U.S.—U.S. v. Budd, 144 U.S. 154, 12 S. Ct. 575, 36 L. Ed. 384 (1892).

[4]U.S.—In re Mauk, 56 B.R. 445 (Bankr. N.D. Ohio 1985).

Subject to subsequent conveyances or interests

Colo.—Hamilton v. Noble Energy, Inc., 220 P.3d 1010 (Colo. App. 2009).

[5]U.S.—State of Wis. v. Glick, 782 F.2d 670 (7th Cir. 1986).

N.D.—Federal Land Bank of Saint Paul v. Gefroh, 390 N.W.2d 46 (N.D. 1986).

tion as such.[6]

Spouse as purchaser.

Where cancellation of a fraudulently obtained land patent is contested on the ground that the spouse of the patentee purchased the land without knowledge of the patentee's fraud, the courts will subject the transaction to close scrutiny.[7] The grantee spouse has the burden of establishing that the spouse was a bona fide purchaser; but when the evidence is sufficient to sustain the claim, the courts will protect the interests of the spouse as a bona fide purchaser even though the purchaser/spouse is not a United States citizen.[8]

§ 247 Sale, transfer, or assignment—Patent complete but not issued

Research References

West's Key Number Digest, Public Lands ⚿135(1)

A person who has done everything essential to entitle that person to the issuance of a patent for public land has complete equitable title which the person may convey, mortgage, or lease.

One who has done everything that is necessary in order to entitle that person to receive a patent for public land has, even before the patent is actually issued by the proper governmental agency, a complete equitable estate in the land,[1] which that person can sell and convey,[2] mortgage,[3] or lease.[4] A fortiori, a contract to convey land, made before the issuance of a patent but after final proof has been made and the land paid for, is not illegal.[5]

§ 248 Conditions, reservations, and exceptions

Research References

West's Key Number Digest, Public Lands ⚿114(4)

A patent is good and protects the patentee's possession even though it is subject to certain reservations, but it is superseded by issuance of a patent to, or confirmation of the claim of, a claimant whose rights fall within the terms of the reservation.

A patent containing a reservation of adverse claims or of claims under a certain act of Congress is good and protects the patentee's possession but is liable to be superseded by the issuance of a patent to, or the confirmation of the claim of, a claimant whose rights are within the reservation.[1]

A patentee takes title subject to exist-

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[6]U.S.—U.S. v. Peterson, 34 F.2d 245 (C.C.A. 10th Cir. 1929).

Idaho—Nixon v. Johnson, 90 Idaho 239, 409 P.2d 405 (1965).

[7]U.S.—U.S. v. Conklin, 54 F. Supp. 500 (D. Mont. 1944).

[8]U.S.—U.S. v. Conklin, 54 F. Supp. 500 (D. Mont. 1944).

[Section 247]

[1]§ 237.

[2]Neb.—Gregory v. Kenyon, 34 Neb. 640, 52 N.W. 685 (1892).

[3]Wyo.—Roberts v. Hudson, 25 Wyo. 505, 173 P. 786 (1918).

[4]Fla.—Walker v. Johnson, 53 Fla. 1076, 43 So. 771 (1907).

[5]Okla.—Brake v. Blain, 1915 OK 178, 49 Okla. 486, 153 P. 158 (1915).

[Section 248]

[1]U.S.—Dredge v. Forsyth, 67 U.S. 563, 17 L. Ed. 253, 1862 WL 6749 (1862).

Savings clause

Where a patent conveying land contains a general savings clause for valid existing rights, the patentee takes subject to those rights until they are properly adjudicated invalid and specifically cancelled.

Alaska—Tetlin Native Corp. v. State, 759 P.2d 528 (Alaska 1988).

ing easements,[2] reserved rights-of-way,[3] and water rights and reservoirs.[4] A reservation of any interest in lands by a federal statute is as effective as though expressly stated in the instrument through which title may be asserted.[5] However, a condition or exception inserted in a patent, which is not authorized by the statute, is void,[6] and where neither the statute directing the issuance of a patent nor a patent itself contains any word of limitation, condition, or restriction, a condition as to the purpose for which the land must be used will not be implied.[7]

In determining whether land patented from the United States is burdened by an implied servitude, the court looks to several factors, including congressional intent, the degree of necessity for an easement, whether consideration was given for the land, whether the claim is against the United States or against a simultaneous conveyee, and the terms of the patent itself.[8]

§ 249 Doctrine of relation back

Research References

West's Key Number Digest, Public Lands ⇐114(2)

In a proper case, a patent may relate back from the time of issuance to the time of inception of the patentee's claim to the land.

The doctrine of relation is applicable to public land transactions under a federal patent.[1] When necessary to give effect to the intent of the statute or to cut off intervening claimants, the patent is deemed to relate back to the time of the inception of the patentee's claim to the land.[2] When the doctrine applies, the last proceeding which consummates the conveyance of the public land is held to take effect by relation back as of the day when the first proceeding was had.[3] This relation back is also effective in favor of persons to whom the claimant has as-

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[2]U.S.—Southern Idaho Conference Ass'n of Seventh Day Adventists v. U. S., 418 F.2d 411 (9th Cir. 1969).

[3]U.S.—Bolack Minerals Co. v. Norton, 370 F. Supp. 2d 161 (D.D.C. 2005); Myers v. U. S., 180 Ct. Cl. 521, 378 F.2d 696 (1967).

Formal acceptance not required

Ariz.—City of Phoenix v. Kennedy, 138 Ariz. 406, 675 P.2d 293 (Ct. App. Div. 1 1983).

Order of Department of Interior

An order issued by the United States Department of the Interior, calling for 50-foot right-of-way easements on all government real property conveyances, established an easement of that width across property conveyed by the United States to a landowner after the date of the order even though the patent reserved a 33-foot right-of-way.

Alaska—Keener v. State, 889 P.2d 1063 (Alaska 1995).

[4]Ariz.—Wiltbank v. Lyman Water Co., 13 Ariz. App. 485, 477 P.2d 771 (Div. 1 1970).

[5]Ariz.—State v. Crawford, 7 Ariz. App. 551, 441 P.2d 586 (1968).

Oil shale reserved to United States

U.S.—Brennan v. Udall, 379 F.2d 803 (10th Cir. 1967).

Geothermal resources reserved to United States

U.S.—U.S. v. Union Oil Co. of California, 549 F.2d 1271, 40 A.L.R. Fed. 799 (9th Cir. 1977).

[6]U.S.—Roberts v. Southern Pac. Co., 186 F. 934 (C.C.S.D. Cal. 1911), aff'd, 219 F. 1022 (C.C.A. 9th Cir. 1915).

[7]Wash.—Granite Beach Holdings, LLC v. State ex rel. Dept. of Natural Resources, 103 Wash. App. 186, 11 P.3d 847 (Div. 1 2000).

No reservation from patent by right-of-way grant

U.S.—Beres v. U.S., 64 Fed. Cl. 403 (2005).

[8]U.S.—Koniag, Inc. v. Koncor Forest Resource, 39 F.3d 991 (9th Cir. 1994).

[Section 249]

[1]Mont.—Hansard Mining, Inc. v. McLean, 2014 MT 199, 376 Mont. 48, 335 P.3d 711 (2014).

[2]U.S.—State of Wyoming v. U.S., 255 U.S. 489, 41 S. Ct. 393, 65 L. Ed. 742 (1921).

Colo.—Board of County Com'rs of Cheyenne County v. Ritchey, 888 P.2d 298 (Colo. App. 1994).

Mont.—Hansard Mining, Inc. v. McLean, 2014 MT 199, 376 Mont. 48, 335 P.3d 711 (2014).

Wyo.—Walliker v. Escott, 608 P.2d 1272 (Wyo. 1980).

[3]Mont.—Hansard Mining, Inc. v. McLean,

signed or transferred rights in the land before the issuance of the patent.[4]

In applying the doctrine of relation back, the patent has been regarded, under the particular circumstances, as relating back to the date of the initiatory act,[5] such as the date of the entry,[6] to the date of a conveyance or deed,[7] to the first qualifying act which definitively located the boundaries of the claimed land so as to legitimately bar others from entering,[8] and to the inception of the equitable right upon which title is based.[9]

On the other hand, a title by relation extends no further backward than the inception of the equitable right.[10] A patent cannot cut off previously vested rights in the patented property,[11] and the doctrine of relation never carries a patent back to the date of any entry or claim other than that on which it is issued.[12]

The right to claim the benefit of the doctrine of relation may be lost by a claimant's want of due diligence.[13]

§ 250 Conclusiveness

Research References

West's Key Number Digest, Public Lands ⚿115, 116

Ordinarily, a patent is conclusive of the rights of the parties in a court of law.

While a patent is not subject to collateral attack,[1] and certain direct remedies are applicable with respect to patents,[2] when the appropriate agency has jurisdiction to dispose of the land, a patent therefor is both the judgment and a conveyance of the legal title to the land.[3] Unless it is void on its face,[4] a patent is conclusive in

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2014 MT 199, 376 Mont. 48, 335 P.3d 711 (2014).

[4]Ala.—Birmingham Coal & Iron Co. v. Doe ex dem. Arnett, 181 Ala. 621, 62 So. 26 (1913).

[5]Mont.—Hansard Mining, Inc. v. McLean, 2014 MT 199, 376 Mont. 48, 335 P.3d 711 (2014).

Date of inception of rights

Colo.—Board of County Com'rs of Cheyenne County v. Ritchey, 888 P.2d 298 (Colo. App. 1994).

[6]U.S.—James Barlow Family Ltd. Partnership v. David M. Munson, Inc., 132 F.3d 1316 (10th Cir. 1997).

Mont.—Hansard Mining, Inc. v. McLean, 2014 MT 199, 376 Mont. 48, 335 P.3d 711 (2014).

Wyo.—Kennedy Oil v. Lance Oil & Gas Company, Inc., 2006 WY 9, 126 P.3d 875 (Wyo. 2006).

[7]Mont.—Hansard Mining, Inc. v. McLean, 2014 MT 199, 376 Mont. 48, 335 P.3d 711 (2014).

[8]Colo.—Board of County Com'rs of Cheyenne County v. Ritchey, 888 P.2d 298 (Colo. App. 1994).

[9]U.S.—James Barlow Family Ltd. Partnership v. David M. Munson, Inc., 132 F.3d 1316 (10th Cir. 1997).

Mont.—Hansard Mining, Inc. v. McLean, 2014 MT 199, 376 Mont. 48, 335 P.3d 711 (2014).

Wyo.—Kennedy Oil v. Lance Oil & Gas Company, Inc., 2006 WY 9, 126 P.3d 875 (Wyo. 2006).

[10]U.S.—Hussman v. Durham, 165 U.S. 144, 17 S. Ct. 253, 41 L. Ed. 664 (1897).

[11]Cal.—People v. Dorr, 68 Cal. App. 2d 792, 157 P.2d 859 (4th Dist. 1945).

Only subsequent claims affected

Cal.—Ames v. Empire Star Mines Co., 17 Cal. 2d 213, 110 P.2d 13 (1941).

[12]Cal.—Peck v. Howard, 73 Cal. App. 2d 308, 167 P.2d 753 (2d Dist. 1946).

Prohibition as to antecedent proceedings

N.M.—Gonzales v. Gonzales, 116 N.M. 838, 1993-NMCA-159, 867 P.2d 1220 (Ct. App. 1993).

[13]U.S.—Evans v. Durango Land & Coal Co., 80 F. 433 (C.C.A. 8th Cir. 1897).

[Section 250]

[1]§ 241.

[2]§§ 251 et seq.

[3]U.S.—U.S. v. Krause, 92 F. Supp. 756 (W.D. La. 1950).

Nev.—Dredge Corp. v. Husite Co., 78 Nev. 69, 369 P.2d 676 (1962).

[4]U.S.—Nichols v. Rysavy, 809 F.2d 1317, 7 Fed. R. Serv. 3d 28 (8th Cir. 1987).

N.M.—Bustamante v. Sena, 1978-NMSC-067, 92 N.M. 72, 582 P.2d 1285 (1978).

Must be not regular on its face

N.M.—Gonzales v. Gonzales, 116 N.M. 838, 1993-NMCA-159, 867 P.2d 1220 (Ct. App. 1993).

a court of law[5] as against the government[6] and, with limited exceptions, is unassailable and not rebuttable.[7]

3. Actions and Remedies with Respect to Patents

a. Action to Attack, Impeach, or Set Aside Patent

(1) General Principles

§ 251 Equitable nature of remedy; required interest

Research References

West's Key Number Digest, Public Lands ⇐119 to 122, 124 to 127, 130

The remedy for erroneous issuance of a patent for public lands is a direct equitable proceeding to set the patent aside or subject it to the rights of the person equitably entitled to the land.

The remedy for the wrongful and erroneous issuance of a patent for public lands is by a direct equitable proceeding to set the patent aside or subject it to the rights of the person equitably entitled to the land.[1]

A patent conveying land that was a part of the public domain cannot be attacked or impeached by a person having no interest in the land.[2] The mere fact that the patentee was not entitled to the patent does not entitle an adverse claimant successfully to attack a patent unless such claimant shows that the claimant was entitled to receive a patent.[3] Judicial relief is not available to a private person who fails to exhaust the available administrative remedies.[4]

Bona fide purchaser.

Ordinarily, the government cannot repudiate a patent on the ground of fraud and recover the land as against an innocent purchaser for value from the patentee,[5] but a purchaser who knew at the time of the purchase that the land was erroneously patented as agricultural and that it was mineral land is not a bona fide purchaser.[6]

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[5]U.S.—De Guyer v. Banning, 167 U.S. 723, 17 S. Ct. 937, 42 L. Ed. 340 (1897); Pueblo of Santa Ana v. Baca, 844 F.2d 708 (10th Cir. 1988).

Nev.—Dredge Corp. v. Husite Co., 78 Nev. 69, 369 P.2d 676 (1962).

N.M.—Bustamante v. Sena, 1978-NMSC-067, 92 N.M. 72, 582 P.2d 1285 (1978).

[6]U.S.—Pueblo of Santa Ana v. Baca, 844 F.2d 708 (10th Cir. 1988); Grainger v. U. S., 197 Ct. Cl. 1018, 1972 WL 20796 (1972).

[7]U.S.—U.S. v. Shumway, 199 F.3d 1093 (9th Cir. 1999); High Country Citizens Alliance v. Clarke, 454 F.3d 1177 (10th Cir. 2006).

Administrative procedure act exceptions

U.S.—McIntyre v. U.S., 490 F. Supp. 830 (D. Alaska 1980).

Statute of limitations

Once the statute of limitations for challenging a patent expires, the patent becomes unassailable.

U.S.—Wollan v. U.S. Dept. of Interior, Bureau of Land Management, 997 F. Supp. 1397 (D. Colo. 1998).

[Section 251]

[1]U.S.—King v. McAndrews, 111 F. 860 (C.C.A. 8th Cir. 1901).

Ariz.—Smith v. Lassen, 5 Ariz. App. 60, 423 P.2d 136 (1967).

Rescission remedy within equitable powers

U.S.—McGuire v. Sadler, 337 F.2d 902 (5th Cir. 1964).

Direct proceedings required of homesteaders

U.S.—Lee v. U.S., 809 F.2d 1406 (9th Cir. 1987).

[2]U.S.—Izaak Walton League of America v. St. Clair, 55 F.R.D. 139 (D. Minn. 1972), judgment aff'd, 497 F.2d 849 (8th Cir. 1974).

[3]U.S.—Donnelly v. U.S., 850 F.2d 1313 (9th Cir. 1988); Kale v. U.S., 489 F.2d 449 (9th Cir. 1973).

[4]U.S.—Kale v. U.S., 489 F.2d 449 (9th Cir. 1973).

[5]U.S.—U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977); U.S. v. Demmon, 72 F. Supp. 336 (D. Mont. 1947).

[6]U.S.—Washington Securities Co. v. U.S., 234 U.S. 76, 34 S. Ct. 725, 58 L. Ed. 1220 (1914).

§ 252 Grounds for impeachment of patent

Research References

West's Key Number Digest, Public Lands ⚿119 to 122, 124 to 127, 130

A patent to public lands is open to impeachment on the ground that its issuance was procured by fraud, misrepresentation, or imposition or was the result of mistake.

A patent for public land may be attacked or impeached on the ground that its issuance was procured by fraud,[1] misrepresentation,[2] imposition,[3] inadvertence,[4] mistake,[5] error of law,[6] or action without authority of law.[7]

(2) *Cancellation or Annulment of Patent*

§ 253 Availability of remedy

Research References

West's Key Number Digest, Public Lands ⚿120(.5) to 120(22)

Generally, the government has the same remedy in equity to cancel or annul its patent for fraud or mistake as would be accorded to an individual in respect of a deed.

The United States has the same remedy in a court of equity to set aside or annul a patent for lands on the ground of fraud in procuring it or mistake in its issuance as an individual would have with respect to an individual's deed procured under similar circumstances.[1] Indeed, even though a patent is void and would be so pronounced in a court of law, the United States is entitled to maintain a suit in equity to have such void patent canceled.[2] The government must, however, show that it has such an interest in the relief sought as entitles it to move in the matter.[3]

The United States courts have jurisdiction to vacate a patent to lands in a proper case.[4] In entertaining suits for cancellation of land patents, the courts do not sit as mere reviewing officers of the issuing agency, but their jurisdiction extends to whether title should be set aside for fraud

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[Section 252]

[1]U.S.—Reed v. Morton, 480 F.2d 634, 25 A.L.R. Fed. 787 (9th Cir. 1973).

[2]U.S.—Brown v. U.S., 36 F.2d 161 (C.C.A. 10th Cir. 1929).

Misrepresentation of citizenship

U.S.—U.S. v. Conklin, 54 F. Supp. 500 (D. Mont. 1944).

[3]Or.—Sanford v. Sanford, 19 Or. 3, 13 P. 602 (1887), aff'd, 139 U.S. 642, 11 S. Ct. 666, 35 L. Ed. 290 (1891).

[4]U.S.—U. S. v. Price, 111 F.2d 206 (C.C.A. 10th Cir. 1940).

[5]U.S.—Southern Pac. R. Co. v. U.S., 51 F.2d 873 (C.C.A. 9th Cir. 1931).

[6]U.S.—Kerns v. Lee, 142 F. 985 (C.C.D. Or. 1906).

[7]U.S.—U.S. v. Missouri, K. & T. Ry. Co., 141 U.S. 358, 12 S. Ct. 13, 35 L. Ed. 766 (1891).

Prior sale to another person

U.S.—Hughes v. U.S., 71 U.S. 232, 18 L. Ed. 303, 1866 WL 9485 (1866).

Ineligibility for patent by noncompliance

U.S.—U.S. v. Perry, 45 F. 759 (C.C.D. Wash. 1891).

[Section 253]

[1]U.S.—U.S. v. San Jacinto Tin Co., 125 U.S. 273, 8 S. Ct. 850, 31 L. Ed. 747 (1888).

Action to cancel and regain title

U.S.—U. S. v. Price, 111 F.2d 206 (C.C.A. 10th Cir. 1940).

Action to vacate patent

U.S.—Southern Pac. R. Co. v. U.S., 51 F.2d 873 (C.C.A. 9th Cir. 1931).

Set-off available against United States

U.S.—U.S. v. Standard Oil Co. of California, 20 F. Supp. 427 (S.D. Cal. 1937).

[2]U.S.—U.S. v. Tichenor, 12 F. 415 (C.C.D. Or. 1882).

[3]Okla.—Lynch v. U. S., 1903 OK 83, 13 Okla. 142, 73 P. 1095 (1903).

[4]U.S.—Southern Pac. R. Co. v. U.S., 51 F.2d 873 (C.C.A. 9th Cir. 1931); Southern Pac. R. Co. v. U.S., 133 F. 651 (C.C.A. 9th Cir. 1904), aff'd, 200 U.S. 341, 26 S. Ct. 296, 50 L. Ed. 507 (1906).

Case not within jurisdiction of court

U.S.—Holland v. Hyde, 41 F. 897 (C.C.D. Or. 1890).

inducing issuance of the patents.[5]

Cancellation of certification or listing to state.

An improper certification or listing of land to a state may be canceled or set aside, at the suit of the United States, on the ground of fraud or mistake.[6] This rule is applied, even where the State has already transferred the title to private individuals.[7] The government has such a direct interest in the suit as will prevent its becoming barred by limitations or estoppel resulting from the negligence of government officers.[8]

§ 254 Equitable principles applied

Research References

West's Key Number Digest, Public Lands ⇐120(.5) to 120(22)

The government may seek the aid of a court to set aside a patent obtained by fraud under the general principles of equity.

When the government seeks the aid of a court to set aside a patent obtained by fraud, the general principles of equity must be applied,[1] and in general, the patentee is entitled to protection to the same extent as the holder of a conveyance of title from an individual.[2]

[5]U.S.—U.S. v. Hays, 35 F.2d 948 (C.C.A. 10th Cir. 1929).

[6]U.S.—Williams v. U.S., 138 U.S. 514, 11 S. Ct. 457, 34 L. Ed. 1026 (1891).

[7]U.S.—U.S. v. Mullan, 10 F. 785 (C.C.D. Cal. 1882), aff'd, 118 U.S. 271, 6 S. Ct. 1041, 30 L. Ed. 170 (1886).

[8]U.S.—U.S. v. Winona & St. P.R. Co., 67 F. 969 (C.C.A. 8th Cir. 1895), aff'd, 165 U.S. 483, 17 S. Ct. 381, 41 L. Ed. 798 (1897).

[Section 254]

[1]U.S.—U.S. v. Standard Oil Co. of California, 21 F. Supp. 645 (S.D. Cal. 1937), decree aff'd by, 107 F.2d 402 (C.C.A. 9th Cir. 1939).

Equities as in suit between private parties

U.S.—U.S. v. Chicago, M. & St. P. Ry. Co., 116 F. 969 (C.C.A. 8th Cir. 1902), aff'd, 195 U.S. 524, 25 S. Ct. 113, 49 L. Ed. 306 (1904).

[2]U.S.—Stimson Land Co. v. Rawson, 62 F. 426 (C.C.D. Wash. 1894).

§ 255 Parties

Research References

West's Key Number Digest, Public Lands ⇐120(.5) to 120(22)

An action to cancel or set aside a patent must be brought by the United States, joining interested parties.

A suit to cancel a patent must be brought by the United States[1] or one standing in the shoes of the United States for the purposes of the action.[2] Except as provided by an act of Congress, no one but the attorney general, or someone authorized to use the attorney general's name, can initiate the proceeding.[3]

In a suit in equity to cancel a patent, every person having an interest in the land included in the patent is an indispensable party, and equity will not proceed until all such persons are brought before the court.[4] On the other hand, entrymen by whom the land was conveyed to defendants before patents issued are not necessary parties,[5] and one lacking any interest in the case and from whom no relief is demanded should not be made

[Section 255]

[1]U.S.—Staley v. Espenlaub, 36 F.2d 91 (D. Kan. 1929), aff'd, 43 F.2d 98 (C.C.A. 10th Cir. 1930).

State commissioner lacked standing

U.S.—Izaak Walton League of America v. St. Clair, 55 F.R.D. 139 (D. Minn. 1972), judgment aff'd, 497 F.2d 849 (8th Cir. 1974).

[2]U.S.—Wollan v. U.S. Dept. of Interior, Bureau of Land Management, 997 F. Supp. 1397 (D. Colo. 1998).

Utah—Gillmor v. Blue Ledge Corp., 2009 UT App 230, 217 P.3d 723 (Utah Ct. App. 2009).

[3]U.S.—U.S. v. Throckmorton, 98 U.S. 61, 25 L. Ed. 93, 1878 WL 18409 (1878).

[4]Okla.—Lynch v. U. S., 1903 OK 83, 13 Okla. 142, 73 P. 1095 (1903).

[5]U.S.—U.S. v. Clark, 129 F. 241 (C.C.D. Mont. 1904).

a party.[6]

Where lands have been improperly listed to a state and by it patented to private individuals, neither the State nor the persons equitably entitled to the land are necessary parties to a suit to set aside the listing to the State and the patents issued by the State.[7]

§ 256 Laches, limitations, and lapse of time

Research References

West's Key Number Digest, Public Lands ⚿120(9)

The United States may be barred by laches, limitations, and lapse of time from suing to cancel a land patent when it acts in a private capacity but not when it acts in a sovereign or public capacity.

Laches may be a good defense to an action to cancel a patent;[1] and the defenses of laches, limitations, and lapse of time may operate to preclude the government from maintaining a suit to cancel a patent when, in substance, it is acting for private individuals and not for enforcement of any public right.[2] On the other hand, when the government in suing for cancellation of a patent is acting in its sovereign or public capacity, such defenses are not available against it.[3]

Under the statute requiring suits by the United States to vacate and annul a land patent to be brought within a specified time after the issuance of the patent,[4] the purpose of which is to render patents and interests therein more secure and marketable,[5] a suit by the government is barred by lapse of time where the facts bring the case within the terms of the statute[6] but not otherwise.[7]

A suit brought by the United States to enforce one of the conditions in a patent, and to enjoin interference with an easement expressly reserved in the patent, is not a suit to vacate or annul within the statute and is not barred by limitations.[8]

The statute is applicable to cases involving patents procured by fraud, as well as to cases of mistaken issuance of a land patent to a patentee without actual or

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[6]U.S.—U.S. v. Pratt Coal & Coke Co., 18 F. 708 (C.C.N.D. Ala. 1883).

[7]U.S.—U.S. v. Curtner, 26 F. 296 (C.C.D. Cal. 1886).

[Section 256]

[1]U.S.—U.S. v. Smith, 14 F.2d 391 (C.C.A. 9th Cir. 1926).

[2]U.S.—U.S. v. Fletcher, 242 F. 818 (C.C.A. 8th Cir. 1917).

[3]U.S.—U.S. v. Carbon County Land Co., 46 F.2d 980 (C.C.A. 10th Cir. 1931), decree aff'd by, 284 U.S. 534, 52 S. Ct. 232, 76 L. Ed. 469 (1932).

[4]43 U.S.C.A. § 1166.

[5]U.S.—U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977).

[6]U.S.—Putnam v. Ickes, 78 F.2d 223 (App. D.C. 1935); U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977).

Utah—Gillmor v. Blue Ledge Corp., 2009 UT App 230, 217 P.3d 723 (Utah Ct. App. 2009).

Bar of third party in shoes of United States

U.S.—Wollan v. U.S. Dept. of Interior, Bureau of Land Management, 997 F. Supp. 1397 (D. Colo. 1998).

[7]U.S.—U.S. v. Carbon County Land Co., 46 F.2d 980 (C.C.A. 10th Cir. 1931), decree aff'd by, 284 U.S. 534, 52 S. Ct. 232, 76 L. Ed. 469 (1932).

Not action to vacate or annual patent

U.S.—Izaak Walton League of America v. St. Clair, 55 F.R.D. 139 (D. Minn. 1972), judgment aff'd, 497 F.2d 849 (8th Cir. 1974).

Not applicable absent public land

Utah—Gillmor v. Blue Ledge Corp., 2009 UT App 230, 217 P.3d 723 (Utah Ct. App. 2009).

Not applicable to right-of-way

Alaska—State v. Alaska Land Title Ass'n, 667 P.2d 714 (Alaska 1983).

Not applicable to road easement

Alaska—Keener v. State, 889 P.2d 1063 (Alaska 1995).

[8]U.S.—Southern Idaho Conference Ass'n of Seventh Day Adventists v. U. S., 418 F.2d 411 (9th Cir. 1969).

constructive notice of the mistake.[9]

§ 257 Burden and sufficiency of proof

Research References

West's Key Number Digest, Public Lands ⇐120(11) to 120(19)

Ordinarily, the burden rests on the government to prove fraud or other ground justifying cancellation of a land patent and to establish its case by clear and convincing evidence.

On a petition by the United States to annul a patent for fraud, general rules govern matters relating to proof.[1] The facts constituting fraud or mistake must be alleged and proved.[2]

Ordinarily, the burden of proving fraud or mistake is on the government when it attacks the patent.[3] Where the defense of bona fide purchaser is raised, the burden of proving it is on the party relying on the defense,[4] to do so by testimony other than the recitals of the deed to the purchaser from the patentee.[5]

Relief will be granted only when the allegations relied on are established by clear, unequivocal, and convincing evidence[6] and not on a bare preponderance of evidence, which leaves the issue in doubt.[7]

(3) *Establishment of Trust*

§ 258 Availability of remedy

Research References

West's Key Number Digest, Public Lands ⇐128

When a patent has been improperly issued to one not entitled to the patent, the patentee may be decreed to hold the title in trust for the rightful claimant.

When a patent has been improperly issued to a person not entitled to the patent, the patentee may be decreed to hold the legal title in trust for the person who entitled to the land,[1] and compelled to convey the land to such person.[2] On the other hand, when a patent is absolutely void, its holder cannot be adjudged to hold it in trust for the person entitled to the

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[9]U.S.—U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977).

[Section 257]

[1]U.S.—U.S. v. Standard Oil Co. of California, 20 F. Supp. 427 (S.D. Cal. 1937).

[2]U.S.—U.S. v. Barber Lumber Co., 172 F. 948 (C.C.D. Idaho 1909), aff'd, 194 F. 24 (C.C.A. 9th Cir. 1912).

[3]U.S.—U.S. v. Otley, 127 F.2d 988 (C.C.A. 9th Cir. 1942).

Burden shifting with evidence

U.S.—Moffat v. U.S., 112 U.S. 24, 5 S. Ct. 10, 28 L. Ed. 623 (1884).

[4]U.S.—U.S. v. Demmon, 72 F. Supp. 336 (D. Mont. 1947).

[5]U.S.—U.S. v. Bennett, 296 F. 409 (C.C.A. 8th Cir. 1923).

[6]U.S.—Johnson v. U.S., 51 F.2d 54 (C.C.A. 10th Cir. 1931).

Evidence insufficient to show fraud

U.S.—U.S. v. O'Donnell, 303 U.S. 501, 58 S. Ct. 708, 82 L. Ed. 980 (1938).

Evidence insufficient to show mistake

U.S.—U.S. v. Otley, 127 F.2d 988 (C.C.A. 9th Cir. 1942).

Evidence sufficient to show fraud

U.S.—Reed v. Morton, 480 F.2d 634, 25 A.L.R. Fed. 787 (9th Cir. 1973).

[7]U.S.—U S v. Paiz, 293 F. 755 (C.C.A. 8th Cir. 1923).

[Section 258]

[1]U.S.—U.S. v. New Orleans Pac. Ry. Co., 248 U.S. 507, 39 S. Ct. 175, 63 L. Ed. 388 (1919).

Ariz.—Raestle v. Whitson, 119 Ariz. 524, 582 P.2d 170 (1978).

Cal.—Crowder v. Lyle, 225 Cal. App. 2d 439, 37 Cal. Rptr. 343 (5th Dist. 1964).

Trust improperly impressed under circumstances

Utah—Mason v. Mason, 3 Utah 2d 222, 282 P.2d 317 (1955).

[2]Mont.—Reagan v. Boyd, 59 Mont. 453, 197 P. 832 (1921).

land.[3] Equity will not recognize a resulting trust in favor of one who is not authorized to acquire title to the lands from the government,[4] such as one who, in order to evade the law, enters in the name of another, land which the entryman cannot legally enter in the entryman's own name.[5]

A resulting trust will not arise in a grant of land from the State when no consideration is paid for the land[6] or in favor of one who has paid no part of the consideration to the government.[7] Also, a resulting trust will not arise in favor of a person who, in fraud of a regulation or law, obtains for the person's own benefit the names of a number of persons to be inserted in the grant as nominal patentees[8] as when, in violation of a statute, one party files on a claim, and another puts up the money necessary to file on the land and obtain the patent and does part of the work on the claim under an agreement to divide the property after the patent is obtained.[9]

When the government sues a patentee to impress a trust on the land because of the patentee's fraud, the patentee may not properly set up as a defense a different title acquired from another.[10]

Jurisdiction.

The state courts have jurisdiction of suits for equitable relief by persons entitled to public lands which have been improperly patented to others.[11]

Laches and limitations.

The right to equitable relief against a patentee may be lost by laches and acquiescence in the ruling of the agency involved in the issuance of patents[12] even where the United States sues for the benefit of a private individual.[13] The federal statute of limitations in respect of the vacation or annulment of patents in suits by the United States[14] does not apply in a suit for the declaration of a trust.[15]

§ 259 Pleading and proof

Research References

West's Key Number Digest, Public Lands ⇐128

A petition that seeks to hold a patentee as trustee on the ground of fraud must be definite and precise.

A petition or complaint which seeks to hold a patentee as trustee on the ground of fraud must be definite and precise, showing that the United States has parted with its title and that such title has become vested in the individual against whom it is sought to enforce the supposed equities.[1] It must aver and prove every fact necessary to make out a perfect case and establish actual ownership by an eq-

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[3]Nev.—Rose v. Richmond Min. Co., 17 Nev. 25, 27 P. 1105 (1882), aff'd, 114 U.S. 576, 5 S. Ct. 1055, 29 L. Ed. 273 (1885).

[4]Cal.—Brannock v. Monroe, 65 Cal. 491, 4 P. 488 (1884).

[5]Miss.—Alsworth v. Cordtz, 31 Miss. 32, 1856 WL 2574 (1856).

[6]N.Y.—Jackson ex dem. Williams v. Miller, 6 Wend. 228, 1830 WL 3077 (N.Y. 1830).

[7]Ill.—Greene v. Cook, 29 Ill. 186, 1862 WL 3396 (1862).

Pa.—Carson v. Potter, 18 Pa. 457, 1852 WL 5793 (1852).

[8]N.Y.—Jackson ex dem. Williams v. Miller, 6 Wend. 228, 1830 WL 3077 (N.Y. 1830).

[9]Colo.—Genth v. Gardner, 85 Colo. 52, 273 P. 644 (1928).

[10]U.S.—State of Utah v. U.S., 284 U.S. 534, 52 S. Ct. 232, 76 L. Ed. 469 (1932).

[11]Cal.—Crowder v. Lyle, 225 Cal. App. 2d 439, 37 Cal. Rptr. 343 (5th Dist. 1964).

[12]U.S.—Holt v. Murphy, 207 U.S. 407, 28 S. Ct. 212, 52 L. Ed. 271 (1908).

[13]U.S.—U.S. v. New Orleans Pac. Ry. Co., 248 U.S. 507, 39 S. Ct. 175, 63 L. Ed. 388 (1919).

[14]§ 256.

[15]U.S.—Izaak Walton League of America v. St. Clair, 497 F.2d 849 (8th Cir. 1974).

[Section 259]

[1]N.D.—Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

uitable title superior to the legal title.[2] When the complaint relies on fraud, it must also be alleged and proved that the fraud affected the decision in the agency involved in the issuance of the patent.[3]

The defense of bona fide purchaser is an affirmative defense which must be set up by answer and sustained by proof.[4]

The claimant has the burden of proving that the claimant, and not the patentee, was entitled to the patent.[5]

On the review of administrative proceedings, the court may not admit evidence which was not presented to the Secretary of the Interior in proceedings before the Secretary.[6]

The claimant must establish superior rights and the invalidity of the patent by clear and convincing evidence,[7] and if the claimant's evidence fails to establish a superior equity, the legal title evidenced by the patent must prevail.[8]

b. Remedies in Other Particular Actions

§ 260 Damages or value for fraud or mistake

Research References

West's Key Number Digest, Public Lands ⚿118 to 124

The United States may maintain an action for damages or the value of the property when the issuance of a patent was induced by fraud or mistake.

When acquisition of a patent was induced by fraud or mistake, the United States may maintain an appropriate action, to recover damages for the fraud or the value of the lands obtained, whether because of the fraud of the entryman or patentee.[1] This rule applies even though it appeared on the face of the false proof made by the entryman that the entryman was not entitled to a patent.[2] A state official does not have any derivative right to sue, in the name of the United States, to recover the value of public lands described in patents procured through fraud.[3] In case of mistaken issuance of a patent, the value of the property may not be recovered from the estate of the original patentee, who did not act fraudulently or with actual or constructive notice of any mistake involved in the issuance of the patent.[4]

Application and effect of statute of limitations.

Statutory provisions limiting the time in which suits to cancel a patent must be brought[5] do not apply to actions by the United States to recover the value of lands

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[2]N.D.—Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

[3]U.S.—Durango Land & Coal Co. v. Evans, 80 F. 425 (C.C.A. 8th Cir. 1897).

N.D.—Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

[4]U.S.—Great Northern Ry. Co. v. Hower, 236 U.S. 702, 35 S. Ct. 465, 59 L. Ed. 798 (1915).

[5]Cal.—Kendall v. Bunnell, 56 Cal. App. 112, 205 P. 78 (2d Dist. 1922).

N.D.—Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

[6]Utah—Mason v. Mason, 3 Utah 2d 222, 282 P.2d 317 (1955).

[7]Mont.—Graham v. Great Falls Water Power & Town-Site Co., 30 Mont. 393, 76 P. 808 (1904).

[8]U.S.—Simmons v. Ogle, 105 U.S. 271, 26 L. Ed. 1087, 1881 WL 19863 (1881).

N.D.—Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

[Section 260]

[1]U.S.—U.S. v. Oregon Lumber Co., 260 U.S. 290, 43 S. Ct. 100, 67 L. Ed. 261 (1922).

[2]U.S.—Jones v. U.S., 258 U.S. 40, 42 S. Ct. 218, 66 L. Ed. 453 (1922).

[3]U.S.—Izaak Walton League of America v. St. Clair, 55 F.R.D. 139 (D. Minn. 1972), judgment aff'd, 497 F.2d 849 (8th Cir. 1974).

[4]U.S.—U.S. v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977).

[5]§ 256.

fraudulently obtained.[6]

§ 261 Quieting title

Research References

West's Key Number Digest, Public Lands ⇐129

In a proper case, either a claimant or a patentee may sue to quiet title, including cases in which the United States claims an interest in the property.

The Quiet Title Act may apply to an action to adjudicate a disputed title to real property in which the United States claims an interest,[1] including actions predicated on United States land patents,[2] subject to an exception retaining United States sovereign immunity for actions pertaining to Indian lands.[3] Under the Act, a plaintiff challenging the validity of government patents to a third party must first establish that the plaintiff is entitled to the disputed lands.[4]

A person may be entitled to relief in the form of quieting title to land, as against the patentee, and enjoining the patentee from asserting title.[5] Likewise, in a proper case, the patentee may bring an action to quiet the patentee's title.[6]

Laches; limitations.

The right to maintain a suit to quiet title to lands held or claimed under patent from the government may be barred by limitations[7] or laches.[8] Limitations may not apply to a quiet title action under state law even though the action involves a federal patent.[9]

J. ENTRYMAN'S CONVEYANCES OR CONTRACTS WITHOUT PATENT

Research References

A.L.R. Library

A.L.R. Index, Public Lands and Property

West's A.L.R. Digest, Public Lands ⇐135 to 141

1. Entryman's Right to Sell,

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[6]U.S.—U.S. v. Whited & Wheless, 246 U.S. 552, 38 S. Ct. 367, 62 L. Ed. 879 (1918); Izaak Walton League of America v. St. Clair, 55 F.R.D. 139 (D. Minn. 1972), judgment aff'd, 497 F.2d 849 (8th Cir. 1974).

[Section 261]

[1]28 U.S.C.A. § 2409a.

[2]U.S.—Leisnoi, Inc. v. U.S., 267 F.3d 1019 (9th Cir. 2001); Barnes v. Babbitt, 329 F. Supp. 2d 1141 (D. Ariz. 2004).

United States is indispensable party

U.S.—Donnelly v. U.S., 850 F.2d 1313 (9th Cir. 1988).

No jurisdiction when United States disclaimed interest

U.S.—Lee v. U.S., 629 F. Supp. 721 (D. Alaska 1985).

[3]U.S.—Mesa Grande Band of Mission Indians v. Salazar, 657 F. Supp. 2d 1169 (S.D. Cal. 2009).

[4]U.S.—Donnelly v. U.S., 850 F.2d 1313 (9th Cir. 1988); Lee v. U.S., 809 F.2d 1406 (9th Cir. 1987).

[5]U.S.—Duluth & I. R. R. Co. v. Roy, 173 U.S. 587, 19 S. Ct. 549, 43 L. Ed. 820 (1899).

[6]Colo.—Towles v. Meador, 84 Colo. 547, 272 P. 625 (1928).

N.D.—Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

Action under Federal Taylor Grazing Act

Nev.—Dredge Corp. v. Peccole, 96 Nev. 392, 609 P.2d 1235 (1980).

[7]Ark.—Donnelly v. U.S., 850 F.2d 1313 (9th Cir. 1988); Crooks v. Placid Oil Co., 166 F. Supp. 2d 1104 (W.D. La. 2001), aff'd, 48 Fed. Appx. 916 (5th Cir. 2002); Ashley v. Rector, 20 Ark. 359, 1859 WL 123 (1859), aff'd, 73 U.S. 142, 18 L. Ed. 733, 1867 WL 11193 (1867).

Limitations considered under Federal Quiet Title Act

U.S.—Leisnoi, Inc. v. U.S., 267 F.3d 1019 (9th Cir. 2001); Lee v. U.S., 809 F.2d 1406 (9th Cir. 1987); Mesa Grande Band of Mission Indians v. Salazar, 657 F. Supp. 2d 1169 (S.D. Cal. 2009).

[8]Cal.—Livermore v. Beal, 18 Cal. App. 2d 535, 64 P.2d 987 (3d Dist. 1937).

Estoppel by laches not applicable

N.D.—Park Dist. of City of Bismarck v. Bertsch, 152 N.W.2d 401 (N.D. 1967).

[9]Utah—Gillmor v. Blue Ledge Corp., 2009 UT App 230, 217 P.3d 723 (Utah Ct. App. 2009).