The Limited Monopoly™

Our Patent System - Balancing Wealth Creation With Benefits to Society

by John Hammond, PE and Robert Gunderman, PE

From the Blogosphere…

"No, the only way to protect IP is to never tell anyone about it." This was one of many answers offered in reply to a question posted on the *Mechanical Components Blog* on the CR4® website.[1] The blogger's question pertained to intellectual property, and how (or if) it can be protected. The topics of IP and patents come up occasionally on CR4®, and are the *raisons d'être* for many invention and patent law-related websites. Some of the additional commentary on this posting, as well as other patent-related posts on CR4® often contain a common theme. That theme is discomfort (or outright resentment) that one could obtain a monopoly for an "idea," and have the right to prevent others from using the "idea."

This notion is certainly not limited to a subset of the engineering community that posts on CR4®. We suspect that quite likely it is even more prevalent in society at large. As a case in point, even Pope Benedict XVI has weighed in on the topic, stating in his recent encyclical letter[2,3], "On the part of rich countries there is excessive zeal for protecting knowledge through an unduly rigid assertion of the right to intellectual property…" Although one cannot infer how His Holiness views patents specifically, his comment does address the "big picture," of which patents are a part.

The "deal" between inventors, companies, and society…

Article I, Section 8 of the United States Constitution states that "Congress shall have the Power... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective writings and discoveries." This clause of the Constitution is the basis for our patent system and patent statutes here in the United States. These statutes include 35 USC 112, which states in part that, "The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains… to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention."

Therein lies the crux of the benefit of the patent system to society, and a point either uncomprehended or ignored by some. A patent is not a one-sided deal that only benefits an inventor or a company that owns that patent. To the contrary, there is a major aspect of it that is in the public interest. A patent is a grant by the government of a limited monopoly. It is limited in time – here in the U.S., to 20 years from the filing date of the patent application. The monopoly is the right to exclude others from making, using, selling, or importing the invention into the U.S. during this 20 year period, i.e. it is a time-limited monopoly. That limited monopoly provides an incentive for individuals and companies to innovate and create wealth. For the duration of their patents, they enjoy a period of higher profits than they otherwise would have gained if they had no patent rights.

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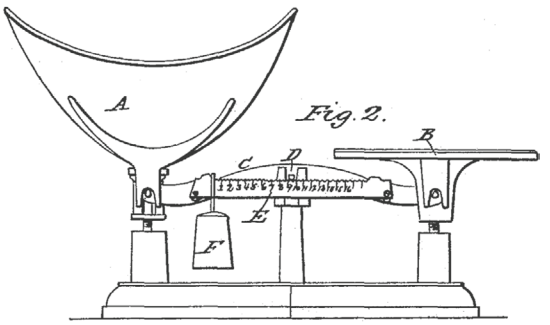
In consideration of the grant of this limited monopoly, the public gets a benefit in return. What is that benefit? Per 35 USC 112, in order to be granted the patent, the inventor must provide a clear, concise written description that teaches one of "ordinary skill in the art" how to make and use the invention,



T. FAIRBANKS.

Balance Scales.

No. 6,169.

Patented March 13, 1849.

including the best mode of doing so. At the end of the 20-year monopoly, therefore, the public is then free to practice the invention, and it has the complete and best "recipe" to do so prescribed in the patent. This two-way "deal" has resulted in our patent system being one of the largest searchable repositories of scientific and technical literature in the world.

Here is one hypothetical example of that benefit that we use in our patent courses[4]. Suppose we have an invention that we have partially conceived to address a problem, but we can't come up with the complete solution. The problem pertains to wind turbines. The blades of some wind turbines can make noise as they rotate – a whumping sound – and some people object to them on that basis. Suppose our invention is to make a wind turbine with a number of speakers mounted on the tower or nearby that can broadcast sound. The sound will be timed and directed such that it cancels out the blade noise. (Disclaimer – as noted above, this is a hypothetical example. We have no idea if it would actually work, nor if it has already been invented.) Suppose also that we have figured out how to mount and power the speakers, but we know little about noise cancellation technology. We can easily search the patent literature and find all sorts of useful teachings on the subject, and quite possibly can find and learn the key missing pieces that will enable us to complete our invention.

If the patents which contain those teachings have expired, we are free to practice them without paying a royalty to the patent owner; *or* if the portion of subject matter that we are practicing in our invention is not claimed in those patents, it is in the public domain, and we are likewise free to practice it without royalty. So therein lies another benefit to society - those enabling descriptions of inventions in the patent specifications beget more inventions, which in turn can improve quality of life and standards of living throughout society.

…is a good deal for all.

While we will no doubt continue to debate the details of our patent system, as well as the value of patents, there is no question that for over two centuries, it has been a "good deal" overall for all stakeholders here in the United States.

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1. http://cr4.globalspec.com/
2. Encyclical letter *Caritas in Veritae*, Section 22, June 29, 2009, http://tinyurl.com/nhvska
3. As cited 7/9/2009 in www.patentlyo.com/patent/2009/07/the-pope-on-patents.html
4. www.patenteducation.com

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