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PATENT - A Word That Rings Clearly

A brief history of the word and the property right

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The Business of Words

Patent law is truly a business of words. A patent application is prepared using words and (usually) drawings to describe how to make and use a given invention. A patent application contains a set of claims that describe the boundaries of the invention. The claims are written in a somewhat strange and formal language of their own[1]. This is due to the fact that the claims are the most read part of a patent application during both prosecution (proceedings within the patent office) and litigation (proceedings in court). Oftentimes claim interpretation, and the interpretation and definition of a single word, has tremendous bearing on both patentability[2] and enforcement[3]. So with all the focus on words, we often overlook the most basic word of all – ***Patent***. Where did this word come from, and how has it evolved over time?

Etymology

First, a definition of Etymology is in order. Etymology is not the study of word definitions, but rather, a study of the tracks laid down by a word as it travels through time and evolves. It is the study of the history and origins of words. The word "Patent" comes from the Latin language, like so many of our words do. In Latin, according to The New College Latin and English Dictionary, *Patens* means open, exposed or evident, and *Patentius* means more openly or more clearly. As this Latin word carried on into the English language, the term *Letters Patent* came to mean the open and public reading of a royal decree that granted exclusive rights.

History

England is home to the oldest continuous patent system in the world. In 1449 King Henry VI granted John of Utynam a 20 year monopoly to make stained glass with his new method. The crown issued to him Letters Patent, a document sealed with the King's Seal, to guarantee his monopoly. This was the first recorded patent in England. His patent was probably not the first patent ever issued, however. In Venice, glass makers received patents in the 1420's, and as early as 500 B.C., the Greek city of Sybaris (in what is now southern Italy) offered a one year patent for new refinements in luxury.

Of course, like most government systems, the patent system in early England became exploited and corrupt. Patents became a way to hide yet another tax from the Crown. Patents were also granted for things that were not in fact new, and the Crown also refused patents for

inventions that were considered unseemly, like Sir John Harington's flush toilet. His invention revolutionized modern dwellings, and yet his claim to fame is not with a patent, but with the use of his first name as a synonym for toilet. Patents were originally intended to strengthen England's economy by encouraging innovation, but were abused by Elizabeth I and later by James I. Public unrest eventually forced parliament to pass the Statute of Monopolies in 1624, repealing all past and future patents and monopolies except those that were for truly novel inventions. This was a turning point in patent law, and also in the transition of England from a feudal to a capitalist economy.

The earliest patent grants in what is now the United States came about in the Massachusetts Bay Colony in the 1640's. While the English Statute of Monopolies was never enforced on the American Colonies, it certainly shaped the thinking of pre-independence patent customs in the American Colonies.

The Early U.S. Patent Office

In the first several years of the United States (1776-1789), several states began adopting patent systems. Only South Carolina, however, set out a provision that granted inventors an exclusive period of 14 years. In 1790, the first U.S. Congress passed the Patent Act of 1790, a short act of seven sections. The first patent was issued under this act on July 31, 1790 to Samuel Hopkins of Vermont for a potash production technique. In 1793, this act was repealed and replaced by a slightly longer act, primarily written by Thomas Jefferson, who at the time was Secretary of State. This Act of 1793 was most noteworthy for its definition of what constitutes patentable subject matter, a definition that for the most part has remained unchanged even at the present time:

"Any new and useful art, machine, manufacture, or composition of matter and any new and useful improvement on any art, machine, manufacture, or composition of matter."

The 1793 Act required a short description to be filed with the application, and dealt with improvements to existing inventions and how they were treated under the law. Rights to patents under this Act were only granted to United States citizens. Over the years various Acts and Laws were passed that eventually became our current United States Patent system. The treatment of patents as an economic tool and a legal instrument has changed over the years, but our patent system is nearly as old as our country itself. In fact, Abraham Lincoln, the only U.S. president to obtain a patent, said "The patent system added the fuel of interest to the fire of genius."

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1. The Limited Monopoly April 2009. "Staking Your (Patent) Claims- Part I.
   The Limited Monopoly May 2009. "Staking Your (Patent) Claims- Part II.
   Reprints may be obtained at
   www.patenteducation.com/patentarticles.html
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2. The Limited Monopoly April 2008. "Patentability and Infringement- Two Separate Concepts.
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Note: This short article is intended only to provide cursory background information, and is not intended to be legal advice. No client relationship with the authors is in any way established by this article.

Photo Credit: Robert D. Gunderman, Jr. A picture of the bell at Hunt Hollow Ski Club. County Road 36. Naples, NY. The bell is more than 100 years old and came from the Wohlschlegel farmhouse, formerly on the property before it became a ski club in 1967.