INNOVATION AND THE PATENT SYSTEM IN THE 80'S

BY

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I. INTRODUCTION

A. 1972

1. US SUPREME COURT (DEEPSOUTH PACKING CO. CASE) EMPHASIZED "THIS NATION'S HISTORICAL ANTIPATHY TO MONOPOLIES" AND CONSTRUED THE U.S. PATENT LAWS VERY NARROWLY.
2. NO INTEREST IN INNOVATION OR PATENT SYSTEM ON PART OF CONGRESS OR THE US GOVERNMENT.

B. 1980

1. US SUPREME COURT

A. DAWSON V. ROHM & HAAS, "THE POLICY OF FREE COMPETITION RUNS DEEP IN OUR LAW . . . BUT, THE POLICY OF STIMULATING INVENTION THAT UNDERLIES THE ENTIRE PATENT SYSTEM RUNS NO LESS DEEP."

B. CHAKRABARTY

IN RULING THAT MAN-MADE MICROORGANISMS CAN BE PATENTED, WROTE OF THE "POSITIVE EFFECT ON SOCIETY THROUGH THE INTRODUCTION OF NEW PRODUCTS AND PROCESSES," AND THE RESULTING "INCREASED EMPLOYMENT AND BETTER LIVES FOR OUR CITIZENS."

2. SIGNIFICANT INTEREST AND ACTIVITY IN INNOVATION AND THE PATENT SYSTEM ON PART OF CONGRESS AND THE US GOVERNMENT.

II. WHAT ARE PATENTS?

A. HISTORY

1. "LETTERS PATENT" IN MEDIEVAL TIMES WERE "OPEN" (UNSEALED) LETTERS WITH THE ROYAL SEAL AT THE BOTTOM OF THE LETTER AND THE LETTER WAS EXPOSED TO VIEW AS OPPOSED TO "LETTERS CLOSE" WHICH WERE FOLDED AND SEALED AND WERE USED FOR PRIVATE OR SECRET CORRESPONDENCE.

2. BASIS - US CONSTITUTION
ARTICLE I SECTION 8 - POWERS OF CONGRESS
COLLECT TAXES, COMMERCE CLAUSE, COIN MONEY, DECLARE WAR, PROVIDE ARMY & NAVY, SET UP D.C., ETC.
#8 "TO PROMOTE THE PROGRESS OF SCIENCE AND USEFUL ARTS BY SECURING FOR LIMITED TIMES TO AUTHORS AND INVENTORS THE EXCLUSIVE RIGHTS TO THEIR RESPECTIVE WRITINGS AND DISCOVERIES"

B. PRESENT

1. INVENTION -- SOMETHING THAT WAS NOT THERE BEFORE
2. INVENTOR RECEIVES PATENT IN RETURN FOR DISCLOSING THE INVENTION TO THE PUBLIC.

3. RIGHT TO EXCLUDE OTHERS

   NO RIGHT TO DO ANYTHING

   NOT MONOPOLY

   BELL TELEPHONE EXAMPLE

   EUROPEAN COPIER COMPANY EXAMPLE

4. U.S. AND FOREIGN -- NO EXTRATERRITORIAL RIGHTS

5. PATENT APPLICATION -- NO RIGHTS UNTIL ISSUED

6. PATENTS DISCLOSE INFORMATION AVAILABLE AT TIME OF FILING PATENT APPLICATION

   ISSUED PATENT USUALLY DOES NOT INCLUDE ACTUAL COMMERCIAL DETAILS WHICH ARE NEARLY ALWAYS DEVELOPED AFTER PATENT APPLICATION IS FILED AS PATENT APPLICATION SHOULD BE FILED IN U.S. PATENT AND TRADEMARK OFFICE AT AN EARLY STAGE OF DEVELOPMENT.

7. WHAT PATENTS COVER

   EDISON PATENT -- CARBON FILAMENT

   FERMI & SZILARD ATOMIC REACTOR PATENT

8. LIFE OF PATENT

   U.S. -- 17 YEARS

   FOREIGN -- MAINTENANCE TAXES

9. COSTS

10. WHY PATENTS?

   A. SECRECY VS. DISCLOSURE

   B. SOME PROTECTION OF R&D EXPENDITURES

   C. HELP SMALL COMPANY VS. BIG COMPANY.

      POLAROID

   D. USEFUL IN LICENSING AND JOINT VENTURE BUSINESS ARRANGEMEN

III. EVIDENCE OF LAGGING US INNOVATION

A. INCREASE IN US PATENTS ISSUED TO FOREIGNERS.

B. US GROSS NATIONAL PRODUCT GAINS LAGGING BEHIND JAPAN, GERMANY, AND OTHERS.

C. DECREASE IN U.S. PRODUCTIVITY

IV. RECENT ACTION BY US GOVERNMENT

A. DOMESTIC POLICY REVIEW

1. IN APRIL 1978, PRESIDENT CARTER INITIATED DPR ON HOW THE US GOVERNMENT COULD ENCOURAGE INNOVATION.
2. UNDER SECRETARY OF COMMERCE
3. 150 PEOPLE FROM NON-GOVERNMENT SECTOR WERE ORGANIZED IN A NUMBER OF COMMITTEES.
4. I WAS ON PATENT COMMITTEE.
5. A NUMBER OF RECOMMENDATIONS MADE TO PRESIDENT CARTER.
6. PRESIDENT CARTER SENT MESSAGE TO CONGRESS ON OCTOBER 31, 1979, WITH A NUMBER OF RECOMMENDATIONS.

B. CONGRESSIONAL ACTIVITY

1. MORE PATENT RELATED LEGISLATION PENDING THAN AT ANY OTHER TIME IN PAST 25 YEARS.
2. MUCH OF IT RECEIVING SERIOUS CONSIDERATION.
3. LEGISLATION WHICH HAS RECEIVED SUBSTANTIAL SUPPORT IN CONGRESS:

a. S.1477 -- ESTABLISH A U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT WHICH WOULD HANDLE ALL APPEALS IN PATENT INFRINGEMENT LITIGATION.
PASSED SENATE AND HOUSE SUBCOMMITTEE.

B. H.R. 6933

1. REEXAMINATION OF ISSUED US PATENTS BY US PATENT AND TRADEMARK OFFICE.PASSED SENATE AND HOUSE SUBCOMMITTEE
2. UNIFORM PATENT POLICY ON INVENTIONS MADE BY GOVERNMENT CONTRACTORS OR GOVERNMENT EMPLOYEES.
   LIMITED VERSION PASSED SENATE.
   BROADER VERSION PASSED HOUSE SUBCOMMITTEE.
3. ESTABLISHING FEES TO KEEP PATENTS IN EFFECT (MAINTENANCE FEES)
   PASSED HOUSE SUBCOMMITTEE.
4. IMPROVE FINANCIAL STRUCTURE OF USPTO.
   PASSED HOUSE SUBCOMMITTEE.
5. MAKE USPTO AN INDEPENDENT AGENCY SEPARATE FROM DEPARTMENT OF COMMERCE.