



USD Editions Ltd.

# Copyright: The Key to Global Economic Growth!

Michel Dubois & Co

An opportunity for S.M.E.s

A fortuity for the top job creators  
and those excluded from Intellectual Property

**Property on Works of the Mind  
Intellectual Creations and Concepts of any Type  
that may be covered in this work**

**A** – According to the Berne Convention (*September 9<sup>th</sup>, 1886*), the Universal Copyright Convention (*September 6<sup>th</sup>, 1952*) and national laws of countries that comply with the Universal Declaration of Human Rights, a literary and/or artistic work, namely a Work of the Mind, is the property of its author, solely because it was created. Such Intellectual Property is non-transferable, inalienable and imprescriptible; hence its perpetual character, therefore, universal. This property yields patrimonial, moral and derived rights, called Author's Rights or © Copyright. These rights are assignable or licensable, as elected by the author or his heirs, legatees or beneficiaries. These rights pertain to the production, reproduction, translation, adaptation, quotation, interpretation and implementation of all or part of the author's work in any shape or form, for commercial purposes.

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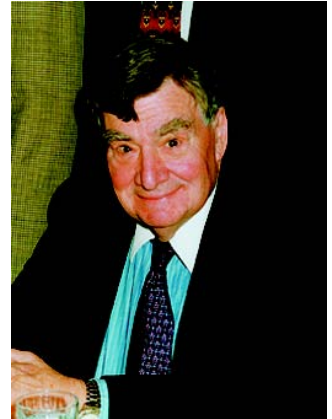
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*"Invention is a primary initiative  
of the human mind,  
that which distinguishes man  
from beast and allowed him,  
little by little, to attain dominion  
over the material world. ..."*

**Henri Bergson**

*"The Intellectual Passport CB certainly  
is the instrument of Intellectual Property  
in agreement with the Universal Declaration  
of Human Rights. " 1999.15.04*



**Pierre Salinger**  
**Spokesman for J.F. Kennedy**  
**President of the Ethics Committee**  
**of USD System Editions**

**Death Notification to readers:** Our much lamented friend, Pierre Salinger, has departed this life on October 16, 2004... On September 16, 1998, he accepted to create and head the Ethics Committee of our Consortium... May his successors assume their responsibilities with the same sense of devotion that was a hallmark of our late President.

## Open letter by the Author

*Lawmakers vote on laws to develop a harmonious society. "The Universal Declaration of Human Rights" is inspired by such an ideal objective. There is, therefore, nothing more logical than to expose abuse, mistakes and errors for the well-being of our society. It will then be necessary to forgive me if I sometimes chafe some institutions whose operations are converse to that initial objective. Officially, patent should stimulate creativity. Unfortunately, out of approximately eight million original emerging concepts per annum around the world, only some one hundred thousands are patented internationally from three million national patent filings.*

*Given this predicament, I feel compelled to publish what hinders the creativity of our inventors; these distinguished individuals who are the source of technical progress that will forge the quality of humankind's life during the 21<sup>st</sup> century. In reality, what I question in this book is how patent is used, not the title itself. Nonetheless, I could not offer this assessment if, after thirty years of research and experiences dedicated to Intellectual Property on international economic terrain, I had not discovered a remedy which efficiency was recognized by the French Court of Cassation.*

*In most cases, the inventor is an imaginative person who cannot fulfil his potential without being freed from the material constraints that, on the one hand, are foreign to his nature, and, on the other, are out of his financial means. Indeed, only industry titans, helped by their army of lawyers, can assume the costs incurred by the patent's international extension procedures and judiciary protection. Shall we stand idly by when the prospect of fairer conditions that would benefit global communities be instated?*

*Without altering the International Copyright Conventions, followed by almost every Nation on the planet under the **W.I.P.O.**'s authority\*, it is feasible to restore the inventor to his rightful legal place; or, sequentially, the first place, for the sake of anteriority. This position is within his financial reach since, before being an inventor, one who creates is literally a **creator** by merely concretizing his original idea on some physical medium. Akin to the Editing profession that consists in transcribing mere writings into literary works. It is the path that my team and I have chosen to procure the inventor ~ as the Author of a literary and artistic work ~ with natural intrinsic rights: **Copyright!***

*In order to achieve this goal, we developed a lawful technique that any entity or natural person and institution wishing to join our project can use. Particularly to that effect, we welcome the participation of patent agents, as well as industrial and Intellectual Property councils and their lawyers, in our endeavour to democratize access to Intellectual Property.*

\* **W.I.P.O.:** World Intellectual Property Organization (Member of the UN).



*"Share my enthusiasm! My greatest wealth is my team.  
I am talking about the individuals who have been working by my side with abnegation and professionalism in the sphere of international economic since 1983. They are the 21<sup>st</sup> century pioneers who inspired the creation of this work. As a result of our collective experience. I bear good news for **Inventors** and **Leaders** of **Small and Medium-sized Enterprises** who are excluded from international **Intellectual Property**. Notwithstanding my French activities where our concept saw the light of day, we have been working discretely in Canada, Australia, U.S.A., Central America and Singapore. Since the time has come to make public our endeavour, I invite anyone interested in democratizing access to Intellectual Property to join our USD International Editions Consortium\* in view of creating an economy honed on serving Humankind."*

**The author**

\* **U.S.D.** stands for **Universal Strategy Development** (in French: **Universel Stratégie Développement**)

## What Must be Kept in Mind

It is in the heart of SMEs that most Creators of original industrial (*inventions*) or service-oriented concepts are found. SMEs are not only the chief suppliers of innovations to major industries, but also the main creators of wealth and employment!

Since their innovations are directly coveted by international and national predators, the SME has become their favourite prey. With a temporary **title** such as the patent, the rights held by **titleholders** (*employees or collaborators*) and the SME that employs them, are first and foremost defended under Civil Law. Yet, similar to their staff, SMEs hardly ever have the means indispensable to sue their counterfeiters under Civil Law.

**A cruel injustice depriving their country from abundant wealth and employment!**

Faced with the insurmountable ordeal of this parody of Justice, SMEs have only one efficient means to secure the ownership of their employees' or collaborators' creations: Copyright! ... Why? Because it provides access to **Criminal Law** for free. It is the only strategy that allows an SME (*or a self-employed inventor*) to take legal action against its predator without access to a fortune.

Copyright results from the **Ownership** of each Creator's original work (*literary and/or artistic*), which is the only natural property that exists in the World. For this single reason, PLAGIARIZING his work is **THEFT** in the criminal sense of the word. Therefore, the copier, as a natural person, (*the president of the violating enterprise*) can be charged with property and identity theft, even vandalism if the work was debased.

It is with the police that the author and the SME can directly file a complaint, without incurring fees that they might not have been in the position to cover under Civil Law. See pages 87, 92, 95 and 96 hereinafter regarding the sections of the criminal code of various countries as well as the criminal provisions concerning copyright infringement.

Subsequently, when a Penal Ruling is rendered in their favour, the proof of theft having been established, the resulting sum received from penalties enables them to pursue with a Civil suit for damages. Even though proceedings can vary from one country to another, this chronological order ~ Penal Suit → Civil Suit ~ is applicable in nearly every Nation deemed lawful.

Given that their works seldom lead to industrial applications, most plagiarized authors are scarcely advised in this manner. It is quite different with our international editions consortium, which edits (*without publishing*) the works of creators of original concepts, of which the intrinsic literary and/or artistic descriptions *are a constitutive part* of industrial products and/or business services.

## Reminder:

Throughout the world, SMEs represent 95%\* of enterprises  
SMEs employ 60%\* of the private sector's workforce  
SMEs contribute 50%\* of the gross value added  
And yet, 2\* innovative SMEs out of 4\* declare bankruptcy  
within 3\* years of the date of their creation. Why?

**"Against the means and power of counterfeiters  
patent's protection is proportional  
to the commercial operator's financial standing!"**

\* \* \*

To ensure their safe national and international business  
development it is imperative  
that the inventor and the innovative SME have "**from the outset**":

- 1 - world ownership on their creations** (*upstream of their invention*);  
(Documents in sealed envelopes are valid at the national level and do not constitute a property.  
Likewise, a copyright registration number does not constitute a property unless it is related to a  
literary or artistic work.)
- 2 - the preservation of their “secured” secrets for as long as necessary** (*by  
preserving secrets, the non-publication of the book preserves intact the right to subsequently file for an  
additional title [patent or other] at the investor's cost*;
- 3 - an International Consortium (multidisciplinary) Business Forecast** (*and not  
a regular business plan that does not meet the needs of an investor*);
- 4 - a portfolio of contracts adapted to the commercial strategy included in  
their business forecast** (*contracts that do not result in litigations*);
- 5 - an effective deterrent against technical and commercial espionage**  
(*through the joint ownership of the work*);
- 6 - an affordable legal process to defend their rights** (*Criminal Offense*);
- 7 - a product and service that provide them with all of the above **at a price  
within their financial means!****

**That's precisely what is presented in this book!**

\* The figures are approximate and change from year to year

# Table of Contents

	<b>The essential needs of the inventor and SME</b>	<b>7</b>
<b>Chapter 1</b>	<b>Warning against industrial and commercial predation</b>	<b>11</b>
	1 – The misfortune of the world GPS inventor	13
	2 – Some of the consequences of misusing patent	17
	3 – The unknown victims of organized predation	19
	4 – Some very widespread examples of predation	
	5 – The excruciating path of an inventor seeking a patent	22
	6 – The 7 Intellectual Property Key Solutions	26
	7 – From Intellectual Property's outcasts to stimulating creativity	27
	8 – An equitable incentive for creativity	29
	9 – What constrains creativity? What stimulates it?	34
	10 – In what cases can the defence of Copyright* be jeopardized?	36
<b>Chapter 2</b>	<b>From organized predatory imposture to a new means of access to Intellectual Property</b>	<b>37</b>
	1 – What justifies the interest of the "IPCB" Volume	39
	2 – The actual Intellectual Property market	40
	3 – The monopolistic commercialization titles and Copyright*	41
	4 – Industrialization and inventors: an economic imbalance	41
	5 – A solution based on the foundations of Law	42
	6 – Conclusion	43
	7 – The solution to the inventor's difficulties	45
<b>Chapter 3</b>	<b>The Intellectual Passport CB Omnibus Volume (IPCB)</b>	<b>49</b>
	1 – Axiom Foundation: Creation → Invention → Innovation	51
	2 – Invaluable advice for the inventor	53
	3 – How to preserve an original idea before it becomes an invention?	55
	4 – Components of an <b>IPCB</b> Volume	57
	5 – The financial benefits procured by the <b>IPCB</b>	59
	6 – Using the <b>IPCB</b> against espionage	63
	7 – The ten main dangers of patent	64
	8 – The fourteen key <b>IPCB</b> advantages	65
	9 – Some major reasons for the <b>IPCB's</b> potential success	66
<b>Chapter 4</b>	<b>From anteriority of an unpublished Work of the Mind to suing plagiarists under Penal Law</b>	<b>67</b>



<b>Chapter 5</b>	<b>Secrecy: Does it hinder or help research and development?</b>	<b>75</b>
<b>Chapter 6</b>	<b>The universal rules of graphic art</b>	<b>79</b>
<b>Chapter 7</b>	<b>The rules of literary art</b> (according to the Greek and Latin roots)	<b>81</b>
<b>Chapter 8</b>	<b>The pitfalls of registered design</b>	<b>83</b>
	1 – According to the European laws	87
	2 – According to the laws of North America and their extension	88
<b>Chapter 9</b>	<b>"Expression of the idea" or "Expression of the work"? One must choose!</b>	<b>97</b>
<b>Chapter 10</b>	<b>What is the unity of art?</b>	<b>103</b>
<b>Chapter 11</b>	<b>An eco-friendly gesture: promoting grey matter!</b>	<b>105</b>
	Article 15.1 c of the Covenant on Economic Rights of the Universal Declaration of Human Rights	106
<b>Chapter 12</b>	<b>Industrial and commercial Copyright* and Jurisprudence</b>	<b>107</b>
	– Reminder: What is a jurisprudence?	109
	1 – The <b>IPCB</b> Volume: A legal support	109
	2 – Intellectual Passport CB: A private editing legal process	110
	3 – Several international legal precedents confirm that the IPCB Omnibus Volume is legally valid	110
	4 – Copyright* results from the natural property of a work	111
	5 – Copyright's power	112
<b>Chapter 13</b>	<b>Annexes: International Legal Precedents</b>	<b>113</b>
	Article 1: Victory for Intellectual Property in China	115
	Article 2: Software hackers sent to Chinese jail	117
	Article 3: Chinese provisions to protect I.P. rights	118
	Copyright claims for an industrial product triumph in the USA	122
	Prof. Luc Montagnier's Author's Rights invalidates Prof. Robert Gallo's US patent	125
	4 Canadian legal cases in favour of Copyright	127
	2 legal opinions from I.P. specialists in Canada	135
	World premiere: The Court of Cassation rules in favour of an <u>unpublished</u> volume against a title granted by a State-owned institute	137
	A patent is uninsurable	138
	A volume from the IPCB Omnibus meets the criteria of insurability	139
<b>Chapter 14</b>	<b>The economic IPCB mission</b>	<b>140</b>
<b>Chapter 15</b>	<b>A lawyer's objections</b>	<b>142</b>

*“Individual happiness must have  
collective results, failing which  
life becomes a predator’s dream”*

**Daniel Pennac** (*transl.*)

*"There is what one knows and there is what one ignores."*

André Gide

# **Warning Against Industrial and Commercial Predation**

## In brief

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### Telephone Antonio Meucci, the inventor recognized at last

The US House of Representatives has decided to credit an Italian-American, Antonio Meucci, with the invention of the telephone hitherto attributed to Scottish-born American Alexander Graham Bell. Meucci had installed a rudimentary telecommunication device between the basement of his home at Staten Island in New York, and his wife's bedroom on the first floor. He presented his invention in 1860 and in December 1871, he filed a provisional and paying patent claim, which he let expire in 1874 for lack of money. The utility patent on the telephone was issued, in 1876, to Alexander Graham Bell who worked in the same laboratory where Meucci had stocked his equipment. As early as 1887, the American authorities tried to invalidate the patent issued to Bell, in a lawsuit for fraud.

Article published in *Le Figaro (France)* on June 17, 2002

**Anecdote:** One Elisha Grey files a patent application two hours after Graham Bell had on the same invention. The two applicants took the matter to court. Finally, after three years of proceedings and litigation, the tribunal granted Bell the anteriority over Grey. This trial would never have occurred had the provisional patent application filed five years earlier by Antonio Meucci been recognized. Because he did not have the means to finance his patent application, Antonio Meucci was not recognized as the true inventor of the telephone. Things would have gone quite differently had he included his original design and invention in a literary and artistic work. Ironically, such a course of action would not have required any financial investment. One hundred and twenty-six years later, in an effort to right a wrong, the U.S. House of Representatives officially recognized Mr. Meucci as the author of his invention. **This once again proves the anteriority of a creative thought over invention.** Unfortunately, as in other court cases or disputes, true inventors, such as Augustin Le Prince, Charles Cros and Nicolas Tesla, lost all of their rights for lack of financial means, while Thomas Edison took credit after stealing their inventions. In the end, the patent application on the original telephone benefited only one person, namely Graham Bell, who, after copying Mr. Meucci's invention, purchased 900 patents and won 600 court cases in order to defend his two main patents... Food for thought.

# **1 - The World Inventor of the GPS, Frenchman Gérard A. de Villeroché, Lost All of his Rights After Spending a Fortune in Patents**

**Gérard A. de Villeroché:** Vice President and Founder of the Paris Inventors' Association (*PIA*). Vice President of the European Inventors' Association (*EIA*). Board of Directors Member of the French Inventors' Associations Federation (*FNAFI*). Member of the Executive Committee of the International Federation of Inventors' Association (*IFIA*).

An inventor with a creative genius, Mr. Gérard de Villeroché is the conceptual designer of an ingenious electronic navigation system for road vehicles, now known and used worldwide under the name "GPS". His path in the industrial sphere faithfully reveals the traps and risks to which self-employed inventors and SMEs are exposed, under the dictates of finance and industry. In 1982, inspired by the technology used by Californian companies for memory storage, Mr. de Villeroché conceived an integrated browsing system for automobiles. In 1984, this fifty-year old man had already filed a "basic patent" (*eleven member countries of the EPO*), which he then extended to the United States, Canada and, after ten years of administrative delays, to Japan.

Trained in the US as an economist prior to earning his stripes as a professional airline pilot, Mr. de Villeroché is, first and foremost, an autodidact, much like many creators of innovative software concepts. Aware of the technical and technological work required for the development of his concept, he received help from prestigious institutions, such as the Metz Faculty of Technology, the ENSEM of Nancy and the ESIEE of Marne-la-Vallée. During seven years, this brilliant collaboration enabled the creation of the basic software and prototypes on the Motorola 8080, as well as the 286 and 486 Intel, thus transforming the conceptual design into a true state-of-the-art map-supported instrument.

However, this academic effort failed to secure him any business partnership, let alone financial support. With the unwavering support of his family, Mr. de Villeroché became an impromptu entrepreneur and founded his own company, "GUIDETRONIC, to give himself a name and represent him with his contacts". Henceforth, he adorned his letterhead with the description of his "brainchild": "the Smart Guide, world standard for automobile navigation"; a standard become universal.

Although typical of an impecunious inventor intent on capturing a market, such a decision actually proved imprudent from which the subject of this story suffered. Unaware of the irrefutable benefits of secrecy prior to the launch of an innovative product or system, he availed his Smart Guide to vigilant industrial predators. In the meantime, while accolades and awards multiplied, he presented and displayed his product at symposiums organized by the ITS (*Intelligent Transport Systems*) in Paris, Berlin, Turin, Orlando, Seoul and, later, Kuala Lumpur.

Moreover, swept away by that true media frenzy, he participated in various inventors' exhibitions, receiving two gold medals along the way, all to the thunderous applause from technological and industrial leaders. Much like the excellent idea of seeking the competence of professors and students to concretize his Smart Guide, this seemingly enviable glory afforded no business prospect for Mr. de Villeroché. One after the other, banks and venture capital firms refused, "despite the recommendations made by the credible former president of Neiman". As a mere citizen facing the financial conditions of the car industry, he was compelled to conclude that at the innovation stage (*introduce a product or service on the market*), only an enterprise endowed with the means to commercialize throughout the world can receive the financial support that it can guarantee in advance.

Another problem - a major one – still confronted Mr. de Villeroché. A group composed of Philips, Renault, Sagem and TDF1 had just introduced the Eurêka Carminat program, infringing on his patented product. Outraged, he appealed to the Minister of Research, but his protests were not addressed. He began to understand that his claims, as an inventor in an SME, were unwelcome by the financial and industrial communities. Even though, and for good reason, his Smart Guide enjoyed universal admiration while providing him with "invaluable information", compounded by the enduring warm welcome from the INPI, one thing was clear: an inventor does not belong in the exclusive circle of major enterprises where profit alone matters. Obviously, his small enterprise had no leverage.

There ensued a long and painful series of setbacks with his contacts: in turn, Renault, Peugeot, Valeo, Neiman, Matra, Sagem, rebuked his persistence. Once, in 1992, he "nearly succeeded", alas the proposals made by one of Valeo's plants suddenly halted when the Manager of Thomson CSF declined any funding. Meanwhile, he suspected Thalès to counterfeit his patent. Afterward, the aforementioned Carminat program concluded successfully, at the cost of 300 MF (*technological development, advertising costs, patent extension, protection fees, etc.*), while Mr. de Villeroché's project languished for lack of resources.

Finally, in 1996, after selling two browsing devices to the Army and the Police, Mr. de Villeroché regretfully noticed that "the automobile market + consumer electronics was particularly difficult for an independent inventor". Unable to carry out his industrial objective, he changed course toward licensing commercial rights. Unfortunately, such a shift only brought mitigated success, in spite of a promising initial license agreement. Indeed, that same year (1996), Philips accepted to sign a world license to commercially exploit the Smart Guide (*as we have seen, that was the name he gave to what would eventually become the G.P.S.*).

Thanks to this providential agreement, he received at least license fee payments. The truth is that in this world, without Intellectual Property on a Work of the Mind and its resulting copyright\*, the lion's share goes to the developer, not the creator. Notwithstanding the foregoing, our inventor-licensor still listened in good faith to the explanations given by the unswerving supporters of patent. No matter, one had to accept reality, especially since, according to his advisers, "other licenses would follow". Alas, nothing more followed. Having first tried to close a commercial license with Peugeot and Citroën, he learned that Philips had sold its own license to Mannesman VDO. The latter soon stopped paying the contracted fees and then ~ *to crown it all* ~ it attacked his patent. Without any other alternative, Mr. de Villeroché initiated numerous court proceedings in order to defend his title and claim his due. At the end of that saga, he managed to have the validity of his European patent recognized, thereafter, received direct or indirect license fee payments (*a total of seventeen*). Sadly, this victory proved to be bitter: such a recognition ~ *even from a tribunal!* ~ did not prevent competitors ~ *especially in the USA and Japan* ~ from illicitly continuing to counterfeit the product.

The Nippon episode (*late 1990s – early 2000s*) only confirmed this deplorable state of affairs. Aided by industrial property experts well-acquainted with Japan, even a Japanese lawyer, Gérard de Villeroché visited Tokyo almost one hundred and forty times in order to negotiate a license contract. Unfortunately, even Coface's assistance and the invaluable support of the French Embassy could not change the verdict: never would the Mandarins of Japan's car industry lower themselves - *a question of honour!* - to deal with a company of lesser scale. Every effort was made to compel this unwelcomed guest to leave the Rising Sun coast. More or less forty fictitious anteriorities were presented against his product; for each, Mr. de Villeroché had to prove their invalidity during the civil suit. Following a perilous logic, he decided to attack his main counterfeiter, Toyota, before the High Court of Paris. After lengthy and costly proceedings, judgement was rendered: while recognizing the validity of the plaintiff's patent, the court rejected his counterfeit claim, estimating that the inventor had not proven the usage of his patent. Having filed for an appeal, he was forced to desist for lack of financial means.

This reveals one of patent's perverse effects: a temporary State-issued industrial title, not an Intellectual Property resulting from an original literary and/or artistic work, its effectiveness to prohibit counterfeits in Civil Law suits depends largely on its usage. In addition to patent's abusive criteria (*originality, technical or technological nature of the product, industrial application, etc.*), the titleholder must mandatorily convincingly prove that he actively exploits his title.

Indeed, this is one of the snares of this system - how can the inventor, self-employed or in an SME, find the time and the means to exploit his patent, when he must incessantly defend his title or sue his counterfeiters in court?

Perhaps the reader may begin to understand the multiple hazards facing millions of creators who, each year, enrich the existence of others, without becoming rich. At the dawn of the twenty-first century (2004), Mr. de Villeroché saw his last hope of success vanish after Michelin had offered him a contractual agreement (*steps initiated since 1986!*). A world license for the commercialization of a second-generation navigation device developed by the unrecognized author of the GPS that only brought the latter disappointment and defeat. Indeed, this contract with Via Michelin failed to attract one single manufacturer of the new PDA and PND technology. His patents having expired, without any resource save his courage and the support of his loved ones, Mr. de Villeroché persisted ~ *and still does* ~ in claiming from his competitors fees for the past production of approximately forty trademarks namely, Garmin, Tom, Magellan, Navman, Medion, Moi, etc.

Notwithstanding his setbacks, he tirelessly tries to address the abuses and injustices caused by the patent system. Seating at the head of inventors' organizations, it is with an open-mind, naturally setting him apart from most of his peers, that he favours an equitable solution.

\* \* \*

### **Gérard de Villeroché's misfortune is no exception**

Rarely does a patented inventor succeed when his invention carries a global scope. People believe the information conveyed by the media; namely, that a top quality invention promised a gigantic market will render the inventor considerably rich. **It is quite the contrary!**

***“The vanguard an invention, the more current interests are challenged, creating mounting stakes, thus equivalent dangers and the illusionary idea of protection.”***

In addition to Elisha Grey and Antonio Meucci (*robbed by Graham Bell*), Augustin Le Prince, Charles Cros, Nikola Tesla and countless others (*robbed by T. Edison and others*), there are other inventors who, very recently, had similar experiences, for inventions such as the 3G-key, the pollution-free household waste disposal through an energy-creating process, the energy preservation through photovoltaic panels, etc. Indeed, the robbery of their patent occurred in similar fashions. They received State-aid as long as they worked in R&D (*Research and Development*). Notwithstanding the fact that the State has a pre-emptive right on any patent, it is not only at the commercialization stage that this aid stops, but that predators organize the extirpation of the patented inventor.



## 2 – Some anti-SME consequences from misusing patent under the monopolistic and unequitable power of multinationals

**The patent title is not an intellectual "property"!** It is a "**contract**" (*for a fee*) between the presumed inventor (*applicant*) and the public, represented by the government. Like any contract, both parties are bound by rights and obligations, except for the fact that, unlike a business license between two private parties, the government does not guarantee that the title temporarily issued to the inventor is legally valid (*WGFG*)\*. According to the criteria for patentability provided by law, this deficiency is due to two facts: on the one hand, the *applicant* cannot prove that he is the author of the invention and, on the other, the government does not know if there are anteriorities not yet **listed** in the Intellectual Property catalogue that could counter the patent. In short, patent is comparable to a marriage contract in the western world, where neither spouse can prove to the other not being already married. This explains the need to thoroughly search for "**novelties**" which, though well beyond the financial scope of an SME, is considerably more secure than the usual search for "**anteriorities**" as a means to ensure that the *applicant's* patent claim is well-founded.

Supporting the abusive use of "**international**" patents \*\* ~ which legal protection and accessibility are exclusively reserved to the fortune of very large-scale industrialists ~ is an assenting collaboration ensuring the financial hegemony of multinationals over world economy. Their powerful lobbying, strictly for speculative reasons, enslaves rulers who cannot favour the individual development of SMEs, producers of new "patented" technologies, whose commercialization could reduce, for example, the use of fossil fuels, leading cause of greenhouse effects. Akin to the frightening experience of the GPS inventor, the same applies to any "patented" disrupting invention that would threaten the monopoly of a multinational, regardless of its realm. Several cases portray Law trampling Ethics, without which, Justice cannot be rendered, particularly in the field of fundamental scientific research. In such cases, with supporting evidence \*\*\* (*except for those not allowed to disclose secret agreements with their predator. See the page 35 below*), patent does not provide its titleholder with any protection unless he has the financial means and the capacity to successfully claim his due and obtain Justice.

\* \* \*

\* "**WGFG**": Patent is issued WGFG (Without Guaranty From the Government). In France, its equivalent acronym is SGDG (*Sans Garantie Du Gouvernement*).

\*\* **International**: any large-scale enterprise is inherently international. Filing strictly national patent claims can result in the hazardous consequence of publicly disclosing secrets to the global vigilance of predators.

\*\*\* **With supporting evidence**: we have evidence unknown to the media of this type of predatory deeds.

# MIDI RÉGION

Extinction des puits de pétrole au Koweït

## Il se fait souffler son invention !

Joseph Ferraye avait fait confiance à des associés. Ses brevets auraient été commercialisés à son insu. Il estime avoir perdu des milliards

Il s'appelle Joseph Ferraye. Ne cherchez pas, cet homme n'a jamais défrayé la chronique. Il n'a pas fait la "une" des journaux et a encore moins tenu la vedette d'une émission télévisée. Le cinquantenaire, il mène une vie paisible avec femme et enfants à Ville-neuve-Loubet, près de Nice. Le Libanais vit sur la Côte d'Azur depuis qu'il a fui avec sa petite famille l'enfer de Beyrouth. Mais en s'installant en France, il ne pensait pas être confronté à une nouvelle guerre, judiciaire cette fois. Si Joseph Ferraye reste un lustré inconnu, probablement plus pour longtemps, est parce qu'il s'est fait voler le secret de ses inventions permettant l'extinction des puits de pétrole en feu. Car c'est cet homme discret qui a conçu les fameuses techniques d'opposition à la pression, de blocage, de centrage et d'extinction appliquées au Koweït pour éteindre en un délai record plusieurs centaines de champs pétrolifères en flammes. Ses brevets déposés auprès du très officiel Institut National de la propriété Industrielle (INPI) attestent : ils ont été enregistrés sous les numéros PCT FR 2.0023 et PCT FR 92.00405 en avril et en mai 1991. A cette époque, les combats ont rage au Koweït et la télévision diffuse les images saisissantes de centaines de puits qui ont été incendiés, ce qui présente une perte considérable de pétrole s'écoulant dans les terres et jusque dans la mer. On explique qu'un

seul homme, Red Ader surnommé "le pompier du désert" peut venir au secours des autorités koweïtiennes pour juguler cette impressionnante hémorragie. Déjà à pied d'œuvre sur un site lunaire, cet expert ne cache pas qu'il faudra des années, comme la presse internationale s'en fait largement l'écho.

### Un système efficace

Devant sa petite lucarne, Joseph Ferraye assiste aux spectaculaires opérations supervisées par Red Ader qui se traduisent par des débris cuisants : l'emploi de la dynamite pour provoquer une explosion destinée en principe à étouffer l'incendie. S'avère vain. Car à cause d'une puissante pression qui se dégage des puits les plus importants, le feu est attisé encore plus violemment et les déflagrations provoquent des fissures sur le sol, ce qui enflamme la terre. Un désastre écologique et économique sans précédent.

Une situation qui ne laisse pas insensible Joseph Ferraye qui, dans sa propriété des Alpes-Maritimes fait travailler ses meninges. Et il trouve en quelques heures la solution radicale sous la forme d'une extinction en douceur. Connue pour avoir une âme d'inventeur, il met au point le système parfait pour enrayer non seulement la catastrophe, mais pour assurer également la remise en service rapide des puits.

Il s'agit d'installer un forage oblique atteignant la nappe de pétrole au-dessous du puits concerné et d'introduire des millions de m3 de matériaux lourds, plusieurs tonnes de béton notamment, comblant la nappe et obstruant l'orifice. Avec à la clé une efficacité sans faille, comme on a pu le vérifier au Koweït : « Mon système permet en effet, d'éteindre les incendies en une demi-heure et de permettre aux puits de fonctionner sans incident », explique-t-il, en nous montrant une série de documents.

« Souvenez-vous, tous les experts répétaient au début de la catastrophe qu'il faudrait cinq ans pour éteindre les 732 puits en feu. Et le "pompier du désert" avançait les mêmes prévisions. Or, quelques jours à peine après la fin de la guerre du Golfe et sans tapage médiatique, les puits ont été éteints et ont même été réutilisés immédiatement », raconte Joseph Ferraye. Et pour cause, selon lui : « Inconsciemment, c'est grâce à mon système utilisé avec succès au Koweït ».

Pour lui, la lecture de magazines américains et allemands qui décrivent dans les moindres détails la technique utilisée pour stopper ces gigantesques incendies au Koweït en constitue une preuve irréfutable. Des paragraphes entiers contenus dans ses brevets déposés à l'INPI sont reproduits dans ces hebdomadaires à grands tirages. Joseph Ferraye comprend, mais beaucoup trop tard, qu'il a été floué. Cet

inventeur de génie a trop parlé.

### Une société anonyme

Sur les recommandations du doyen de la faculté de sciences de Nice de l'époque qu'il contacte pour sortir de l'ombre grâce à son invention, Joseph Ferraye est aiguillé vers Etienne Tillié, un ingénieur ayant pignon sur rue dans la région niçoise qu'il contacte dès le mois de juin 1991. Un faux pas dans une euphorie bien compréhensible, comme il l'apprendra beaucoup plus tard à ses dépens.

Vivement trop bavard - ne livre-t-il pas le secret de sa technique inédite -, il est mis en confiance par Etienne Tillié lorsqu'il lui propose de créer une société anonyme pour commercialiser ses brevets. Le marché était, il est vrai, juteux : selon des calculs officiels, l'extinction des cent premiers puits devait être facturée 30 millions de dollars US par puits, soit 3 milliards de dollars ! Multipliés par cinq et faites le compte...

Alors, née le 5 juillet 1991, la SA CONIRA, la Compagnie Niçoise de Recherches Avancées, dont Ferraye détiendrait 50 % des actions. Parmi les six associés qui se partagent le reste des actions figurent Etienne Tillié, Christian Basano un agent immobilier de Nice et un certain François Roch Colonna qui se présente comme un comte Corse.

Les premiers contacts nous avec les autorités koweïtiennes sont concluants : les 8 et 15 juillet 1991, le général Mohamed Al Bader se déplace à Nice et s'entretient avec le procédé qui lui est longuement exposé organisé un séjour au Koweït. Mais en dernière minute, Joseph Ferraye ne fait pas partie du voyage.

« Il en a été écarté par un ha-



Etienne Tillié, l'ingénieur niçois.

bile subterfuge », affirme Me René Blanchot, avocat au barreau de Marseille et conseil, avec Me Olivier Arnaud, de l'inventeur. « Etienne Tillié, Christian Basano et François Roch Colonna m'ont dissuadé de les accompagner, prétendant mon inexpérience à la négociation et me disant encore qu'ils étaient rompus plus que moi à la pratique des affaires pour convaincre nos interlocuteurs koweïtiens », se souvient Joseph Ferraye.

### Grâce à des revues

Ses trois associés séjournent à Koweït-City du 28 juillet au 13 août 1991 d'où ils lui expédient une carte postale mentionnant laconiquement "tout va bien jusqu'à maintenant". Joseph Ferraye y croit. Optimiste, il est satisfait par le déroulement des tractations. Mais il déchant vite.

A leur retour en France, ses associés lui annoncent que les négociations ont échoué. « Ils m'ont expliqué que les autorités koweïtiennes avaient déjà signé un contrat avec une autre société », explique Joseph Ferraye, qu'il convaincu par cet argu-

ment. Il s'interroge dès lors sur la durée du séjour. Pourquoi sont-ils restés quinze jours ? En ont-ils profité pour faire du tourisme ? C'est peu crédible à ses yeux. En découvrant, quelques mois plus tard, le procédé de ses inventions étalé sur plusieurs pages dans les magazines spécialisés américains et allemands, il n'y croit plus du tout. « C'est à ce moment-là que j'ai tout compris », dit-il.

Et de nous montrer la très sérieuse revue scientifique américaine World Oil du numéro de mai 1992 qui consacre un long reportage sur le sujet, citant le rapport d'un certain Larry Flak, un ingénieur de la Koweït Oil Company. « Les techniques décrites par cet ingénieur sont celles qui sont décrites dans mes brevets déposés à l'INPI », constate Joseph Ferraye. Pour lui, le doute n'est plus permis : c'est bel et bien son invention qui a été utilisée au Koweït par la société française Horwell. Comment a-t-elle réussi à se procurer ces techniques confidentielles ? D'où vient la fuite ? M. Ferraye et ses conseils ne manquent pas de s'interroger.

Evidemment, l'inventeur niçois a sa petite idée sur la question à la faveur d'un combat difficile qu'il mène depuis plus d'un an pour faire éclater la vérité. « Je soupçonne mes associés d'avoir négocié à mon insu mes brevets cédés à des techniciens français et américains lors de leur séjour au Koweït », avoue Joseph Ferraye. Ce que contestent farouchement ses associés. Selon eux, leur déplacement au Koweït n'était pas destiné à démarcher les brevets, ce qu'il ne pouvait pas ignorer au moment de leur départ dans ce pays.

Joseph Ferraye fait pleinement confiance à la justice. Sa plainte dans laquelle il a dénoncé les faits suit lentement, mais normalement son cours. Durant près de quatre heures mardi et pendant plus de deux heures hier après-midi, il a été longuement entendu par M. Espel, un juge d'instruction de Nice à qui la Chambre d'accusation de la Cour d'appel d'Albi-en-Provence a confié le dossier par un arrêt rendu le 3 juin dernier.

Joseph Ferraye s'arme de patience, car il est conscient qu'on ne gagne pas une guerre facilement.



### Nouvelle invention

En ayant l'univers sanglant de Beyrouth, l'industriel Joseph Ferraye a tout abandonné en juin 1983 : son usine, sa maison, ses amis et... ses inventions ! S'il est installé sur la Côte d'Azur, il ne reste pas inactif et retrouve sa passion, la mécanique, avec du la suite dans les idées : inventer des techniques sophistiquées pour les commercialiser. Comme en fait foi le brevet déposé à l'INPI, Joseph Ferraye a conçu une machine de sept tonnes qui permet l'extinction de lésés des tapis de bain afin de les rendre antidérapants. C'était quelques années avant de se pencher sur les systèmes révolutionnaires permettant d'éteindre les puits de pétrole en flammes. Nullement découragé par l'échec de ses brevets piratés, Joseph Ferraye a l'intention de récupérer. De nouvelles inventions, il travaille sur sa nouvelle invention.

The unfortunate story of an inventor, Joseph Ferraye who, after leaving war-stricken Lebanon and settling with his family near Nice, France, invents a new drilling well using an original technique that eliminates fire... After patenting his invention (1991), he discloses his ideas to third parties, who copy and commercialize his vanguard technique. He alleges that such illegal copy cost him billions of dollars in lost benefits.

### 3 – The unknown victims of organized predation

When their story is published, either by a journalist searching for scoops or through a public trial, it is possible to disclose predatory cases in which inventors, like Messrs. J. Ferraye and G. de Villeroché, were victims. Alas, these unfortunate individuals merely represent the tip of the iceberg of a predatory system of intellectual theft which, for one hundred and fifty years, has been perpetrated with impunity in our so-called democratic world. For its part, the hidden aspect of the problem is made up of the countless victims of the "**Technological Watch**", also known among specialists as: "**Business Intelligence**"<sup>1</sup>. This is akin to a contemporary "*inquisition*" made possible by the patent's data bank function, since its validity entails loss of secrecy. In most cases, as victims of this "*slaughter of the indigents*", inventors are constrained to comply with the worst confidentiality covenants imposed by ruthless predators.

This Technological Watch has played a vital role in the expansion of some multinationals whose otherwise research costs was none existent.

*These major enterprises made heavy use of this formula, initially as an exceptional source of inside information and communication, as well as outside vigilance and acquisitions, only to capture national markets and, finally, use it as a strategic weapon to conquer international markets. This Catalogue of Intellectual Property, technological showcase from the filing institutes, is one of the main sources of information for the vigilance strategy used efficiently by enterprises and consortiums alike. Large Japanese enterprises can spend from 1 to 2% of their revenues on this form of technological watch.*

Ill-fated SMEs and inventors facing, *to protect their patent, global networks of information, analysis and communication, selectively draining tens of thousands of technical, scientific, business, financial, sociological information, as well as private or political data.* Quick to reach their goal using **circumventing patents**, these networks leave the solitary patent exposed to all of the coveted thievery spread between its diffusion, approval and filing.

This technological watch, which requires diligent attention, establishes a type of reserved *realm* where only the specialist can wander. Wherefrom the obligation of the inventor to remunerate the services of an *open-minded, experienced and specialized interface*, a patent agent for instance, who allows access to that vision, without which major blunders, sometimes *irreparable*, can be made.

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<sup>1</sup> The texts *in italics* are from the book: "Literary property extended to invention" by Messrs. Michel Dubois and Dominique Daguet, which notably includes quotes from Mr. Georges Maire (*French expert in Intellectual Property with the I.N.P.I. ~ French acronym for National Industrial Property Institute*).

*The review of the patents deemed of interest is not limited to technical briefing, it also assesses the administrative and legal conditions on a per country basis, such as, agreements, claim limitations, disputes, annual fee payments or lapses, issued licenses, etc. The social... or private... position of the inventors, as well as their activities (other patents, publications, careers, etc.), can also be of interest. This watchful operation, genuine patent pursuit and essential steering element for the enterprise, must be planned, budgeted and managed as such: indeed, history has shown that this trapping has impassioned teams of detectives rendering a service at a high ratio of efficacy and cost. In this way, when a better product or process is identified on the market, from a competitor or its documentation, although it may represent a threat, it may also be an opportunity for the enterprise. When a patent is detected as an obstacle, even if it is valid, it is still vulnerable, circumventable or surmountable with a little ingenuity.*

There is another way to proceed. It consists in conducting a little research to detect a suitable idea, then, if the associated patent cannot majorly be improved, suffice it to produce an appreciable difference. Even if it is minimal, this change will be sufficient to devalorize the original patent so that it becomes useless. *Most Japanese patents are based on the “Kaizen method” (gradual improvement) and mostly, on “creative imitation”!* In order to achieve such tactics, an expert will use the entire technological arsenal provided by filing institutes, without refraining from combining any legal recourse, while being discrete on his offensive or defensive plans.

The battle against patents of others is most bitter between sector leaders:

*1) A vigilant attention can detect competing patents as soon as they are published and rapidly initiate the opposition proceeding. Even without rescinding the patent, this proceeding can delay its permanent issuance for several years (or until it becomes obsolete).*

*2) If the competitors’ patents are improvements from prior patents, they are dependent of the prior and as such, cannot be applied for legally without the consent of the original patent holder (until 1904, to defend its commercial empire, Bell Telephone bought 900 patents from potential competitors; many such patents were never used and thus expired). Such illegal delaying tactics are contrary to the judiciary, commercial and social purpose of patent. How can an ordinary citizen afford to take his case to court?*

*3) If one can assume the costs, rights must be enforced: winning an exemplary trial will establish a reputation and deter competitors (Bell Telephone took 600 suits to defend its two main patents, which were issued after stealing Antonio Meucci’s invention – see page 12).*

**This chapter can be concluded with the following question:** can an inventor or a S.M.E. afford (*finance–power–influence*) to legally protect its utility or design patent?

## 4 – Some widespread examples of predation

**Reminder:** Whenever he privately or publicly presents a recent invention ~ *particularly via media* ~ the inventor unduly risks being copied, without having the means to effectively defend himself against his copiers... **Why?**

- 1 – Because frequently, the inventor who seeks funding presents his invention without any Intellectual Property title, whether it be a patent on his invention or a copyright on his creation. In other words, he unwittingly tempts the covetousness of his **potential predators**.
- 2 – Because often, if he patents his invention, his limited resources only allow him to do so nationally. Yet, past the twelve months following the filing date on his national patent application, the filer loses his international extension priority. Thus, he cannot prevent anyone at home or abroad from copying his idea with total impunity.
- 3 – Because if, at the cost of considerable sacrifices, he manages to extend his patent to neighbouring countries, he still does not have the means to defend his title internationally in case of infringement. Indeed, it is not patent that protects since it must be legally protected!
- 4 – Because he is unaware that ~ given the author's natural property on his creation ~ plagiarism of a creative work (literary and/or artistic description of an invention) is considered a crime, allowing the despolied author to initiate free proceedings under Penal Law for theft. He is unaware that it is his only legal means at his disposal to counter-balance his odds against **potential predators**.

**Clarification:** Major industrialists and businesses are not necessarily predators. Only those befitting any of the cases outlined below are targeted in this chapter.

... To be read with a sense of humour!

**Type # 1 - The Opportunist:** This predator spies the invention on a televised program or at a trade show, fair, etc., or worse, on the market if the inventor has already begun commercializing his product/service through his SME. Sometime later, the inventor discovers his copier (*national or foreign*) against whom he will nearly never have the financial means necessary to defend his patent under Civil Law. Evidently, the premature exposure or commercialization of his invention will have served at nothing but initiate his potential **predators** to his innovation.

**Type # 2 - The Diligent:** This predator discovers the invention as a result of patent's mandatory publication by the Industrial Property Institute or the Intellectual Property Office 18 months after the filing date on the initial application. It is only later that the inventor will find out about his copier (*national or foreign*) against whom he will hardly ever have the financial means for his defence. Once more, his patent's mandatory publication serves no other purpose than to inform **potential predators** of his trade secrets.

**Type # 3 - The Trapper:** This predator sets a trap baited to lure his prey. His sizeable financial means serve as the bait, while the lure consists in gaining the inventor's trust so that he divulges his project. There are **two main types of such predators**:

- 1) **The deceitful.** He carefully preserves a pseudo-honesty by informing the inventor that he will not sign a non-disclosure covenant and/or that he is solely interested in an invention for which a patent application has been filed. Reassured ~ *provided he can produce a patent application* ~ the inventor unsuspectingly signs the non-disclosure covenant with the **predator**. Fully aware of his prey's precarious financial situation, the latter then shamelessly waits for the right moment to steal the invention.
- 2) **The oppressor.** Convinced of his omnipotence, he foregoes conventions. He signs anything to gain access to the information so that he may to perpetrate his misdeed without qualm.

**Result:** Whether he is of the deceitful or oppressor type, once he has misled the prey that he is interested in the invention and/or the related project, **the predator** finds any excuse not to pursue the matter. The trap snaps shut on the fortuneless prey. **The predator** can now use the information received with complete impunity.

**Type # 4 - The traitor:** This predator tells the inventor that he finds his invention so brilliant that he wishes to offer him a company. Moreover, he brings in other associates to strengthen the enterprise in terms of resources, skills, even recognition, etc. He lavishes praise and good attention on the inventor, making him a majority shareholder, or even manager/president of the company, in short, he gives him **full control**. Our predator justifies such generosity by his interest in the inventor's genius. He acts like a patron and declares publicly that he will support his *protégé* until the capture of the promised market. In exchange, the inventor unwittingly transfers his invention or patent to the company. All is well until financial investments become indispensable to purchase expensive equipment, hire high level executives, expand workshops or extend the patent internationally. At that necessary phase of the project's development, the **predator** invests in the company's capital stock, knowing full well that the inventor is unable to replicate. The majority of shares switches sides and the inventor loses the control that he believed possessing. If he refuses the **predator's** financing, he will inexorably have to file for insolvency, even bankruptcy. His project will then be recovered by the **predator** or an accomplice of his, including all of the enterprise's assets: invention, know-how, patent, etc.

**Type # 5 - The Conspirator:** Given his influential power amidst financial organizations (*public or private*), this **predator** procures to the inventor's SME with a loan sufficient for its technical and/or business development. Subsequently, he discretely blocks the innovation's market via complicit relationships in his malefic strategy. As head of his SME, the impecunious inventor must solely bear the burden of a debt that he is unable to settle... We can imagine the rest...

**Type # 6 - The Scoundrel:** Under the pretext of wishing to purchase the inventor's enterprise or simply invest in its capital, the **predator** confidentially learns the technical and commercial trade secrets... Again, we imagine the rest.

**Type # 7 - The Spy:** Obviously, there are other more or less subtler strategies that scarcely need to be elaborated in this excerpt; for instance, joint ventures, turncoats, espionage, etc. The most experienced **predators** are well versed in these disloyal schemes. Although surreptitiously perceived by the collective subconscious, these illegal practices do not sufficiently make the **Front Page** of the media to reveal their techniques, even if the targeted victims (*SMEs and inventors*) are the largest contributors to global socio-economic growth.

**... A light of understanding on the inventor's legendary paranoia!**

**Comments:** Unlike innocents displaying their inventions at public meetings, has anyone ever heard a **predator** divulge his cutting-edge inventions prior to their commercialization? Of course not! Moreover, to mislead competition, some of the wealthiest industrialists often resort to plethoric schemes, such as the "*circumvent patent*" <sup>(1)</sup>, "*nested patent*" <sup>(2)</sup>, "*lure patent*" <sup>(3)</sup>, etc., unfounded accusations based on false rumours\*, bogus lawsuits\*\*, endless lawsuits\*\*\*, etc. While patent is meant to serve the development of innovations toward economic growth and Law is supposed to serve Justice, in what ruthless world do honest people (*in SMEs*) struggle to survive intentional or unintentional predation\*\*\*\* used by some of the most powerful organizations?

(1) **Circumvent Patents:** are implemented by specialists who sufficiently and cleverly distort other people's patents in order to produce new patents that do not infringe the original. They are the direct consequence of patent's mandatory publication 18 months after the filing date of its application.

(2) **Nested Patents:** relate to inventions comprising several patents that, together, constitute the whole invention. In this case, patented inventions fit one into another. It is a genuine puzzle that cannot be understood without joining all of its parts. These patents can be the work of one or more inventors. Their technical and commercial exploitation can be held by one or several enterprises associated to the same project.

(3) **Lure Patents:** are decoys. Enterprises with sufficient means file patents on bogus projects in order to lead competitors astray. It is a strategic use of patent's mandatory publication, 18 months after the filing date of the application.

\* **Use of Rumours:** mostly useful to those who wish to avoid public trials that might backfire and negatively impact their covert interests. Alas, such insidious propaganda can affect well-intended people who do not possess the same dissemination means as their antagonists.

\*\* **Bogus Civil Suits:** occur between two accomplices feigning to fight over an imaginary dispute. Such proceedings can be used for money laundering purposes. For various reasons, these trials may at times involve inventors who must then publicly disclose some of their secrets. These trials also serve to mislead competitors on concealed alliances or other.

\*\*\* **Endless Civil Suits:** are those that draw the inventor (*or his SME*) in endless legal proceedings that he cannot afford to sustain to the end. The inventor may then lose his financial assets, sometimes even his honor, at the cost of ensued serious consequences to his private and public life.

\*\*\*\* **Intentional or unintentional predation:** at times "*unintentional*", because the legal and economic system (*as institutionalized in our most industrialized societies*) established often incites predation variants that are not necessarily sought by the heads of major enterprises.

## 5 - The infernal path of inventors seeking a patent

**1 - “*Invention* is the primary initiative of the human *mind*, that which distinguishes man from beast and gradually allowed him to attain material dominion over the world”** (Henri Bergson). Adherence to this inspiring principle implies that any policy hindering freedom to create eventually causes a cultural, commercial and social decline. Despite the considerable influence held by the commercialization and development of inventions on world evolution, their media coverage is generally presented in a mocking manner. If the function of the invention receives recognition and admiration, conversely, its inventor is typically suspected of extravagance or even mythomania (*see the Lépine Competition in Paris*). Such mocking allows the glorification of the most innovative companies, while downplaying the value of those without whom they would be without any new product to sell... Indeed, the meaning of an **inventor** should be defined here. Literally, he is the one who **finds**, not the one who creates. A practical sophism to deter the author of an original concept from the free acquisition of Author’s Rights (Copyright). By misleading the inventor to a monopolistic commercial title, for which he has no use, the legislation oddly confuses for an industrialist, as though the inventor and industrialist were the same person. **“As if the novelist would mandatorily be the editor and publisher of his book to be recognized as the author of his work”...**

If not for the purpose of exhausting his funds and disclose his secrets, what other reasons could there be for imposing to the inventor the patent’s complex, lengthy and costly procedure which financial load should solely be reserved to the developer (*industrialist*)? In reality, the author of an invention only needs, as the creative artist, that his Intellectual Property be recognized, as well as his secrecy preserved, as long as this one is not transferred via a cession or license to a major international company for an equitable payment. Given that utility and design patents cannot meet the inventor’s legitimate needs since these titles are onerous, national, extendable to the world, Without Government Guaranty and systematically disclosed, their media coverage, as the rest of the news, are designed to respond to the criteria of mass culture and entertainment. The result of this nonsensical approach is a disinformation process that correlates a false idea of “*protection*” to the issuance of a title that its holder must “protect” against copiers by means of his own purse. However, objective and didactic information also exists in the realm of Intellectual Property; it is unaffordable to SMEs (*several tens of thousands of dollars or euros every year, depending on its nature*); yet, it circulates amongst industry titans who regularly shamelessly disburse the cost of Technological Watch (*first means of Intellectual Property information and predation, also called Commercial Intelligence*), existence unbeknownst to most inventors, let alone its operations.



*“Flattery inevitably implies the right to blame.” Pierre C. de Beaumarchais*

The only form of “*protection*” that exists under Civil Law lies in the financial means available to the inventor to support his defence in court. This so-called *protection* is a deceiving model continuously repeated that, according to Coué’s method, produces a subliminal effect on the progressive false acceptance of this legal term. When filing his first patent application through a specialist, the inventor pays a sum of money, often beyond his means, while he does not know the anteriorities from opposable patent applications since they are not disclosed until eighteen months after their filing date by third parties. It even happens that, prior to the issuance of his patent, the inventor is forced to borrow numerous times the sum of his initial disbursement, in order to extend his rights to every country where his invention can be commercialized, so that he can secure his international extension priority that must be initiated before the thirteenth month after the filing date on his application. There are two main reasons why the inventor directly espouses a patent application: **1)** Government funding and tax credit are conditional upon filing a patent application; **2)** together with governments, most major private financiers invest only if the inventor or the enterprise files a patent application.

The salient effect of that tacit “Government/Finance” agreement lies in unveiling the inventor’s secrets to predators on the lookout; particularly once a “monopolistic title” (*patent*) is mandatorily published by the Intellectual (*or industrial*) Property Office or Institute eighteen months after its filing date, even before the issuance of a title. Indeed, the extension of a patent to the world may lapse over two to three years, if not more. Notwithstanding the foregoing, when a national patent is issued, a transparency delay ensues, allowing third parties several months to initiate an opposing proceedings, either based on anteriorities or on some falsities to delay its commercialization, even intending to render it ineffective. ***“The vanguard an invention, the more current interests are challenged, creating mounting stakes, thus equivalent dangers and the illusionary idea of protection.”*** Amongst all of the traps that the inventor must anticipate, one of the most innocuous concerns the patent annuity. Since the patent is the property of the State (*not of the inventor*), its monopolistic exploitation validity must be maintained on an annual basis by its holder for twenty years to the Intellectual (*industrial*) Offices (*or Institutes*), akin to a license holder paying annual fees to his licensor. Failure to pay merely one annuity invalidates the patent and the invention becomes available to anyone as public property. ***“In such a procedural system, it is not the inventor who is protected, but his copier.”*** The implementation of this swindle was made possible mostly by the subservience of those who continuously surrendered before the biased material interests over those moral... and we are disingenuously surprised that the gap between rich and poor increasingly widens.

By taking the time to comprehensively define the words in the procedures used for the application of Intellectual Property rights, mechanisms of an organized manoeuvre to the detriment of fair competition and research funding become apparent. Indeed, iniquitous texts from which an arbitrary line was traced between art, function and utility, as if there was a tangible and impenetrable demarcation that divided creation from invention and invention from innovation, as well as artwork from industry and industry from commerce. Selected laws from some countries, embedded in texts governing Copyright, were at times written against natural law, thus in contradiction to their other legal texts. Such contradictions result in an anachronism between the *upstream* “creation” and *downstream* “invention”, as well as a confusion in favour of industrial espionage that already cost in excess of one trillion dollars US in lost business opportunities around the globe per year... (*According to the ASIS ~ American Society for Industrial Security ~ in 1996*). It should be noted to justify lawyers\*, required to earn their living in Civil Law, that it is easier, less risky and more lucrative to defend conservative prudence on material assets than the servable effort from pioneers, without whom Humankind would surely have remained barbaric. When Law is at the disposal of private interests\*, how can it adequately serve Justice? Truthfully, there is no more dividing line between creation, invention and innovation than there is between the cosmos, gravitational law and falling bodies, nor, for that matter, seaming the embryo, foetus and child. It all pertains to Natural Law. Briefly summarized, those are the main reasons why, until now, Intellectual Property has been one of the most fertile realms in “**disinformation**”. It is important to address these points since, unlike subjects covered in the news headlines, what takes place in the world of *Economic Intelligence* is as unknown to the average inventor that it is to the general public.

At this stage of our text, we would like to specify that this chapter has two central objectives: **1)** Warn the inventor, in simple terms, about what to expect by directly choosing to apply for a patent; **2)** Prepare the reader for an Intellectual Property access system that will render citizens equal before the Law in such a manner that each person can finally enjoy the legitimate rights essential to materialize creative ideas, whether they be of a scientific, technical or technological nature, whether they relate to industry, services or arts. In the same way that it does not procure a property, neither does the patent provide his holder with a Business Forecast to assess the value of his project, nor contracts that will be required to concede a licence to a third party or cede commercial rights. All of these complements are pecuniarily assumed by the patent holder. In this respect, the patent leaves its holder “*usufruct*” (*holding a title without ownership – reversionary ownership*) before an industrial world ready to bereave from what he must divulge and against which he does not have to means to defend his rights.

\* Of course, lawyers who apply **Law** in order to serve Justice need not be concerned with this criticism of private interests.

The fact that the patent is not his property compels the inventor to ***attempt to commercialize*** it himself, even if he has a very slight chance of succeeding. Those who succeed in such conditions are exceptions. Alas, a solid economic and social system cannot be founded on exceptions. ***"Without necessarily being an erudite on the matter, it seems obvious that, amongst independent inventors and SMEs, those dissatisfied with the patent are far more numerous than those satisfied"***. To be really fair, the inventor must be recognized for what he is (*the author of an original concept creation*), not for what he was suggested to be via the patent (*potential developer of a commercializable product: an innovation*); a perilous predicament indeed since, "with exceptions", he is unable to develop internationally... If he persists on his path to commercialize the product of his creation himself, he is bound to needlessly become even more indebted. His inevitable failure for lack of cash flow will first result in disclosing to his copiers the project that they secretly coveted. ***"Countless examples of bankrupted inventors have followed that path: from filing a patent to filing for bankruptcy!"***

In summary, it means that ***the cost of a national patent*** (*Without Guaranty From the Government*) to which is added ***the cost of a Business Plan*** (*without any guaranty of funding*) and ***the cost of one or several contracts*** (*without guaranty of success*) represent an investment beyond the means of an average inventor. Notwithstanding the foregoing, yet another cost is compounded the previous, the enormous disbursement incurred of international law in case of counterfeit on the secrets that the inventor will have given to predators through patent's mandatory disclosure. What then was the purpose of all the risks taken by the patented inventor, if only to prematurely entice competition to his secrets and jeopardize his business in favour of vigilant opportunists?

**Reminder:** This chapter is not meant to unconditionally attack the patent. It responds to the legitimate questions that the head of any **S.M.E.** seeking an Intellectual Property must ask, by explaining the reasons why this monopolistic title does not meet the immediate needs of **inventors**.

\* \* \*

**Statement by the author:** *"I would not allow myself to write this highly critical work on the way patent is exploited, unless I had an effective alternative to offer based on copyright\*\*". It consists in establishing ownership of the "description" of an industrial invention or of a "service" that is "intrinsic" to a creative literary and/or artistic work.*

\*\* Contrary to **Copyright, which protects the Author**, patent is supposed to protect the invention, but does not protect the inventor who must protect his patent solely through legal proceedings, provided that he can afford the costs of civil litigations.

## 6 - The 7 Intellectual Property key solutions

### 1. Story of the Creators – 2. Description of their Property

### 3. Rights Ceded to their Enterprise - 4 - Preserving Secrets

### 5 - Innovative Strategies – 5. Effective Negotiations – 7. Simplified Justice

The Omnibus Volume, called “***Intellectual Passport C.B.***” (Copyright **B**usiness), was created at the end of 1997. Originally, in 1992, it was called “Bibliothèque des inventions” (*Inventions Library*). It was conceived in France in order to meet the legitimate needs of potential inventors, whether independent or in an SME... The purpose of this Omnibus Volume is to:

- Procure the **author** of an original concept (*become the creator of a literary and/or artistic work*) with the unassignable, inalienable and world (*even joint\**) property\*\* on his description (*texts and drawings*), as well as the history proving its ownership. The derived world copyright is valid for the author’s entire life and several decades after his passing.
- Provide him with a required International Business Forecast to negotiate the conditions for licensing the rights to reproduce © all or part of his work to third parties. He negotiates based on the commercial and/or industrial development of the potential invention and/or innovation resulting from putting into practice and launching the original concept embedded in its initial description.
- Supply him with an international contracts portfolio (*license, assignment, covenants, etc.*) that are specifically adapted to the Business Forecast strategy included in the volume. These contracts are essential to negotiate the transfer or licensing of the commercialization rights to third parties (*future partners or not*).
- Preserve (*as long as necessary*) his technical, technological, conceptual and business secrets embedded in the *unpublished* volume, as well as the eventual possibility to patent his potential invention. This strategy allows him to disclose all or part of his project to third parties who are interested in the innovation, since they sign with him a confidentiality and non-disclosure **covenant** (*included in the contracts portfolio*), based on ownership of the work (*specifically stipulated in the contract*) that ensures (trustfully) him a secure peace of mind.

**Important:** the founding principles of Copyright related to the property on the work embedded in a **volume** from the “***Intellectual Passport C.B.***” Omnibus Volume, aka **IPCB**, are guaranteed by the U.S.D. Editor. The use of the **IPCB volume** incites new offense and defence strategies under Penal Law, being swifter against copiers and less onerous than the standard Civil recourses. Result: assurance of a more equitable justice!

\* Comment: Except for the proof of anteriority granted to an applicant (*without necessarily being its author*), no sealed and time-stamped envelope (or equivalent, even copyright filing without a truly literary or artistic work) can procure the equivalent combination of property and products/services as the “***Intellectual Passport C.B.***” Omnibus Volume. \*\* See: **Unity of art** (page 103).

## 7 – From Intellectual Property’s Outcasts to the Stimulation of Creativity

*“Invention, according to Bergson, is a primary initiative of the human mind, that which distinguishes man from beast and progressively allowed him to attain dominion over the material world”...* The existence and worth of Nations is based on their creative and inventive ability which, depending on their eras, are either flourishing or stagnant.

**1 – Observation:** During the last four decades, the western world has witnessed the fall of major industrialists who, convinced of their invulnerability, fell into oblivion and dragged to despair those who had loyally served them. Then it was the turn of prestigious financial institutions. It leaves us now obligated to create, invent and innovate so as to reinstate the economy, better still, instil new paradigms honed on human evolution. Consequently, it is imperative to call upon imagination. To achieve that goal, there is no other alternative but to stimulate creativity. However, human beings are made in such a way that without the prospect of a fair reward, this stimulation is unlikely to take place.

It is precisely to stimulate creativity that Intellectual Property was conceived. That is why it is the official mandate of the **W.I.P.O.** (*World Intellectual Property Organization, member of the United Nations {UN}*).

Apparently to reassure us, we incessantly reminded that the number of monopolistic titles is increasing and that the patent agents market is saturated. This is true. However, what is left out is the fact that the percentage of this market is inversely proportional to the growing number of inventions, because, on the one hand, its use is exclusively reserved to the industry and, on the other, only major industrialists can afford it. Namely, industry titans which merely represent 10% of creators (*inventors + authors*) from any discipline.

### **Who, then, are those 90% excluded?**

- 1) Two thirds invent original service-oriented concepts that are not industrializable.
- 2) The remaining third notably includes:
  - In the (so-called) wealthy countries: those who have neither the means to internationally file nor to globally protect their rights; those who prefer (*without Intellectual Property*) to preserve secrecy; those deceived by theft of their patented inventions who have not been able to equitably defend them in court; and, as always, those who never think of preserving their rights in such conditions.
  - In developing countries: those for whom the cost of a patent (*or other title*) is nearly inaccessible.

## What are the consequences of such a segregation?

**2 – “Segregation”:** The word might be strong, even exaggerated! Yet, it perfectly conveys the hapless plight of self-employed inventors (*or in SME*), for as long as they neither have the means nor the stature necessary to obtain and defend in court a patent extended internationally. **“Segregation”** also imparts the discriminatory fate reserved to creators of original service-oriented concepts, since the Intellectual Property (*after all, articulated*) world has denied them a place.

Not only does the current system fail to respond to the potential market demand, but it also continues to widen the gap between rich and poor. After two centuries of quivers, following the enactment of the first national acts (1790, 1791) until the creation of international conventions (March 20<sup>th</sup>, 1883: *Paris Convention*), we are but at the beginning today of the true Intellectual Property market, which is countless times superior to the number of patents and other titles filed each year in the world.

It is by freeing inventors from material constraints ~ *impeding their access to Intellectual Property* ~ that it will be possible to stimulate the creative fertility of humankind. We must resolve issues related to demographics, education, pollution, health, nutrition, etc. Future wealth creation to share is at stake. Likewise, peace between countries... We are talking about our future!

Is it necessary to revolutionize business law and international trade conventions? No... Suffice only to take the texts written in the Universal Declaration of Human Rights from theory to practice. The responsibility of this beneficent task first rests with those appointed to uphold them, so that Intellectual Property may be effectively and permanently democratized. Namely, politicians and lawyers.

Anyone sharing my aforementioned point of view on the unfair fate reserved to authors of inventions or original concepts, as well as on the solution that we propose to free them from their cultural ghetto, can join us. We shall enthusiastically welcome him, especially from a lawyer proud to have sworn **“to serve justice”**.

\* \* \*

## **8 - "A fair incentive for creativity"**

### **Endless supply of economic progress for Justice and Peace**

**At the national level:** While **innovation** is recognized as a source of wealth and job creation, five fundamental questions are asked to our country (*so-called wealthy*):

- 1) How to give a real chance of success to our most imaginative and persevering inventors, and main initiators of wealth and job creation, or SMEs specialized in research and development?
- 2) How to halt the well-evidenced loss, leak or appropriation of their discoveries instigated by the organized predation of some multinationals, both national and foreign? (*Those paying the least taxes*).
- 3) How to efficiently revive our national economy and found a fruitful future, without a hopeful counterpart for a just reward to those for whom invention has hitherto been a source of disillusionment, spoliation, bankruptcy, divorce, endemic stress leading to nervous breakdowns, and even CVA and cancer... In short, a multitude of problems; therefore, injustice? All at the expense of family health, rampant social welfare costs; consequently, the overall economy.
- 4) How to support and reward service-oriented SMEs, creators of original concepts, when they are orphaned from current Intellectual Property procedures? Yet, they represent 70% of innovations!
- 5) Finally, how to profit from the billions invested annually in research and development by our (*so-called wealthy*) nation?

**At the international level:** Two fundamental questions arise to those who advocate a rebalance between (*so-called*) poor nations, developing nations and (*so-called*) wealthy nations:

- 1) Is there a potential means for concretely including (*so-called*) poor and developing nations to benefit from **innovations**, inexhaustible source of wealth and job creation?
- 2) Assuming that such a means exists, how must it be implemented? What hurdles must be overcome? What would be its chances of success?

**Would it be reasonable to believe that the utopian dream  
of a World Economy based on equity may finally see the light of day?**

**Assessment on a deteriorated economic situation:** Most of the (so-called) wealthy nations suffer a widespread pessimism, a demoralization amongst the majority of its youth, rampant unemployment, enflamed delinquency, frantic flight toward artificial paradises, reduced income, decreased or uncertain industrial production, growing insecurity, stagnated if not collapsed commerce; hence a global crisis on a large scale. As for developing nations, they are facing the most incredible economic hardships as the gap between (*so-called wealthy*) and (*so-called poor*) nations ever widens.

(*So-called*) wealthy nations are the most indebted on the planet and the others are unable to do likewise, namely, to become indebted for economic and social purposes.

**The alternative comes from a Knowledge Economy:** It is clear that, in (*so-called*) wealthy nations, the alternative to the irreversible allocation of manpower requires a new form of economy: **Knowledge Economy!** Developing nations and even (*so-called*) poor nations do not lack imagination. Is it not by always using “**Grey Matter**” that Humankind has arisen? The premises of this new form of economy were borne over two centuries ago via the enactment of the **Copyright** and the **Patent Acts** (*and other laws governing monopolistic titles*).

**The solution:** The addendum of Internet to the market globalization chorus comes at an opportune time to position **Intellectual Property** in its rightful place following a natural chronological order: **the first**. This should be the case during the 21<sup>st</sup> century, according to its evolution from the previous. **Namely** ~ akin to the wealth increase of the middle class by the popular access to the automobile in the 1930s ~ **by making Intellectual Property available to the great majority!**

**The path to evidence:** Indeed, it seems that democratizing access to Intellectual Property is one of the practical solutions that can be implemented now by the most precursory visionaries of our time, in order to organize a new type of economy preponderantly honed on serving Humankind... The recognition of ***creation as true origin*** of any type of original concept, industrial invention and innovative service, should be stamped as a rescue seal for society, to the same degree that its cultural future (economic and social) mainly depends on its creative affluence! It is the only legal and legitimate path to release everyone from material restraints.

This new formula is destined to play a more stimulating role in the continuous emergence of innovations that are primordial to scientific, technical and technological progress, whether they relate to industry, services or arts.



**The role of Intellectual Property Offices and Institutes:** *In accordance with the W.I.P.O. 's mission statement (World Intellectual Property Organization, member of the U.N.), under whose aegis they are united, Intellectual Property Offices and Institutes in every Nation hold as their 1<sup>st</sup> commitment to stimulate individual creativity (not inventiveness) and their respective national economic development. At the international level, they are ethically committed to create an economy devoted to the service of Humankind.*

\* \* \*

**Therefore, Intellectual Property Offices and Institutes must ensure:**

- 1° **the stimulation of creativity**, particularly according to Article 27 of the Universal Declaration of Human Rights, which states that: ***“Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”***

- 2° **that nothing hampers economic growth**, according to Article 17 of the Universal Declaration of Human Rights which states that: ***“Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.”***

**Golden Rule:** **“Do not hamper economic growth!”**: In order to remedy any initiative that might hamper economic growth, Intellectual Property Offices and Institutes have established a specific rule for its effective operation, whereby it is possible to issue a mandatory license by process of law to a third party, in the case that a patented inventor or his licensee would hinder either business and industry.

**Caution:** It may happen that a patented inventor is blamed in court for hindering business by not commercializing his patent, even though his inactivity solely results from obstacles intentionally contrived by astute predators in order to make him lose his rights (*see: Gérard de Villeroché's misfortune, page 13*).

\* \* \*

## 9 - Creativity, source of innovation

### What reduces creativity? What stimulates it?

**What reduces creativity:** When filing a patent application, the inventor is required to claim anteriorities. Why? Because patent law is different from that governing Copyright. Unrecognized as the initial creator, the applicant has no other solution but to use this risky formula, since he does not know the technological status for the 18 months preceding the filing date of his application. Additionally, there is the hazardous procedure of extending a patent to the world prior to the end of the twelfth month following the filing date of his application. He will then have to cover the costs involving the defence against the international extension oppositions, translations, annuities, etc. Indeed, a patent procures no other Right than prevent, via a legal process, third parties from exploiting the patented invention in the countries where it is filed. Given its hazardous filing, untimely publication and monopolies (*legal or de facto*) that it competes against and can destroy, the patent results in international litigations at prohibitive and unpredictable costs that not only prevent its insurability, but also exclude patent holders without sufficient means for its defence. Moreover, due to its compulsory disclosure at the end of 18 months, the patent is the cause of counterfeits, mostly unpunished, for the same impecunious reasons from its victims.

**Result:** Who, apart from industrial titans, can effectively use patent?

**What stimulates creativity:** Nothing is asked of the creator of a literary and/or artistic work but to comply with the rules of art in which he expresses himself. It is the only way that his creation can be considered a Work of the Mind resulting in copyright. The author is the world owner of his work solely from its creation. Each law governing Copyright *claims* to “*protect*” the expression of the work (*the container*), not the expression of the idea (*intangible*) nor its actualization (*the content*), only if the work describes an industrial invention or original service. Until now, the international legal community contented with this explanation to direct the author of a commercializable invention to a patent (*even industrial design and models*) and the artist to Copyright.

Today, following a **French jurisprudence** rendered at little cost by the **creator** of an “unpublished” literary and artistic work against a title issued by the **I.N.P.I.** (*France’s USPTO*), it was proven that, without the reproduction right © of all or part of the work (*the description of the invention*) for commercial purposes, no one can acquire an official title without establishing novelty. Moreover, the plagiarist was forbidden to continue commercializing the product resulting from plagiarism.

**Result:** In fact, this **Jurisprudence** forbids third parties to commercialize an invention (*the content*) without the author’s prior authorization to use its description (*the container*). Furthermore, this system also applies to original services.

**Comments:** 1) By not publishing his work, the author gives the industrialist (*assignee of the exploitation rights*) the option to file for a patent at his cost; 2) akin to a sealed envelope filed at an Intellectual (*or Industrial*) Property Office or Institute or anywhere else (*physical location or online through Internet*), a lab book or a sealed envelope kept at a notary's or a bailiff's office does not procure any property. Such deposits solely prove knowledge of the sealed envelope's content by the depositor who, furthermore, is not necessarily the author of the related description.

### Supporting Jurisprudences

As demonstrated by many court rulings (*pages 109 to 141*) published in various nations (*including the United States of America, China, Canada and France*), an inventor can lawfully create a literary and/or artistic Work in order to own an Intellectual Property. Consequently, it is perfectly possible to democratize access to Intellectual Property, add value to SMEs and achieve an economic rebalancing between the (*so-called*) wealthy nations, developing nations and (*so-called*) poor nations. This path would lead to an equitable economy based on social progress, Justice and Peace.

\* \* \*

\*\*\* **In addition to page 17:** Finding something new that renders obsolete a multinational's quasi-monopoly or the secret interest of a corrupt Government, or even of commercial and/or industrial predators, is the worst mishap that can happen to a scientist or an engineer (*whether he works in a university or in a private enterprise*), or even to an ordinary inventor who believes that he is "*protected*" by patent. In that case, the unfortunate inventor can expect the worst machinations (*worthy of a spy novel*), either to prevent him from commercializing his discovery, or to steal it by the vilest means. Under the threat of misleading disclosure that can violate his honor and/or his family, he is sometimes forced to sign a secret (*illegal*) agreement that will remain secret. Otherwise, his life might suddenly end under the pretext of a suicide or a mysterious disappearance. One must sometimes wait several decades for a few of these sordid stories to be published (*see the book: The Missing Reel*). The candid public must content itself with what the media know for the broadcast of news. Prior to suffering the aforementioned extreme solutions, certain intruders ~ *deemed to be too clever* ~ first are victims of rumors or defamations that often leave indelible records on an uncontrolled Internet swarming with unfounded, unfair and sometimes harmful declarations.

## 10 – How can Copyright's Defence be Jeopardized?

**In the nine following cases for instance:**

- 1 - a legal entity pretends to be the author of a literary and/or artistic work (*Work of the Mind*) that can only, legally, belong to a natural person\*; a legal entity that does not hold, through a license or an assignment, the rights to commercially exploit a Work of the Mind created by a natural person\*;
- 2 - an author\* (*natural person*) who, being his own editor, would thus create a conflict of interests;
- 3 - an error in defence, if it presents the author\* as an inventor\* rather than the creator\* of his work and sues the copier for counterfeit instead of plagiarism;
- 4 - a person\* without a Copyright (*or ISBN*) having produced a work that is neither literary nor artistic;
- 5 - a person\* with a Copyright (*or ISBN*) having produced a work that is neither literary nor artistic;
- 6 - a person\* without a Copyright (*or ISBN*) having produced a true literary and/or artistic work lacking creativity;
- 7 - a person\* with a Copyright (*or ISBN*) having produced a true literary and/or artistic work lacking creativity;
- 8 - a person\* with or without a Copyright (*or ISBN*) pretends to be the author \* of a work that he has not yet completed;
- 9 - a person\* with or without a Copyright (*or ISBN*) pretends that his true literary and/or artistic creative work grants him the same rights as a patent (*or other monopolistic title*).

\* One or several persons (*co-authors, co-creators, etc.*).

# **From Organized Predatory Imposture to a New Intellectual Property Access Mode**

*“Laws are the necessary relations arising  
from the nature of things.”*

**Montesquieu**

**Excerpt from The Spirit of Laws – Chap. 1**

*(from the French “De l'esprit des lois”, 1748)*

*“Individual happiness must have  
collective results, failing which  
life becomes a predator’s dream.”*

**Daniel Pennac** *(transl.)*

*Economic revival of industrialized countries  
and economic growth of developing countries  
occur through the democratized access to Intellectual Property*

*“As an introduction to all of the descriptive documents related to the work carried out by the team of USD System International Editions Consortium conceived in 1995, this chapter briefly summarizes the conjoined spectrum of arguments and countless effort laboured from the original concept, called *Franchise* in 1986, to its ultimate version in 1992 through the creation of an *Intellectual Passport* prototype, followed by the *Omnibus Volume: Intellectual Passport CB*, aka **IPCB**, in 1997.”*

## **1 – The foundational interest of a volume from the *Intellectual Passport C.B. Omnibus***

The patent, an industrial tool over two-centuries old, applicable to no more than one third of innovations, endows the inventor of an industrial process, in exchange for a plethora of applicable fees (*anteriority research ~ even novelty ~ international filing, recourses (in or out of court) against international extension oppositions, consulting and maintenance annuities*), with a scalable exploitation monopoly from national to international (*incurring fees out of reach for the majority of SMEs*). Depending on the nature of the invention, the size of the resulting project and the scope of the market to capture, the cost of this title can be very high, even unaffordable to the inventor and SME. In addition, filing a patent application at the Intellectual Property Offices or Institutes induces a premature disclosure that precariously exposes new technologies to international competitors.

To remedy these shortcomings, the author of this book and his team have developed a new Intellectual Property accessibility using Copyright. Originally introduced in collaboration with Mr. Dominique Daguet in 1993, this original concept is quick, global, far less onerous than an internationally-extended patent and far less perilous than filing for a design. Derived from the natural law inherent to a ***Work of the Mind***, the property on the work mainly procures the author of a literary and/or artistic creation with an exclusive right to produce and reproduce © the work, regardless of its means or form of expression, for the entire life of the author and several decades after his passing (*fifty to seventy years, depending on the country*). The first advantage of this approach lies in the right to produce and reproduce the work, for example, to fashion a mould\*, shape a part\* required to make the product from an invention (***the innovation***), provide its method of manufacturing to an industrialist\* or instructions to a consumer, a copier must illegally reproduce the texts and drawings embedded in the work.

\* **Comment:** in order to reproduce a utilitarian object in several copies, it must begin with **one**: the mould and/or instructions for assembly and/or fashioning without which the object could not be made. In that case, the description of the mould and/or instructions for the assembly and/or fashioning are the first intellectual properties of the creator, even before they may be defined as a property on the utilitarian object resulting from their application (*except for Canada pages 90 to 92*).

Before presenting in great detail this original method, the legal legislative procedures applied by most experts on Intellectual Property must be highlighted. They stand on traditional fallacy: the dissociation of Art from Function and aesthetics from usefulness. This arbitrary, hence unjustifiable, principle has led to an absurd dichotomy between two elements for over than two centuries, which undissociable unity (*due to their complementary binity*) is morally and logically unquestionable... From this ersatz postulate, it was decided that only the patent or registered model, providing its titleholder with an exploitation monopoly, was appropriate to the inventor's needs, while Copyright was reserved to artists. Yet, the same international law, without using a minimum of logic, proclaims as well that any anteriority, including literary or artistic works, is opposable to a subsequently filed patent application, even industrial designs, designs and models, as well as trademarks. Not only does the preponderance of the monopolistic system increase the ever growing gap between SMEs and multinationals, (*so-called*) wealthy nations and (*so-called*) poor nations, but by doing so, it gradually decreases the real potential of one of the most prominent markets, if not the most vital: **brainpower's inexhaustible market**; mankind's raw material and endless source of wealth and employment creation that are indispensable to the evolution of our civilization... We have barely reached today the inception of the true Intellectual Property market, which is, really **one hundred times** superior to the number of patents and other titles filed each year around the world. By making Intellectual Property accessible to everyone, as Copyright *is* granted to an artist, human creativity will at last be freed from material restraints, will play an increasingly stimulating role in the continuous emergence of innovations that are necessary to scientific, technical and technological progress, whether they relate to the industry, services or arts.

## 2 – The Actual Intellectual Property Market

The international Intellectual Property market is underdeveloped (**1% of concepts, patentable or not, are patented internationally** according to the data analysis provided by the World Intellectual Property Organization – W.I.P.O. - Geneva). The registration of a Copyright, resulting from an “**unpublished**” literary and artistic work, effected or not prior to a patent application or as an alternative to address a shortage of rights on unpatentable concepts (*e.g. for authors of original services*), opens a new market to all of the intervening parties specialized in identifying/validating the rights related to invention. There is no doubt about the vital importance of this new market.

Far from competing with patents and registered designs, the **IPCB** is going to attract a new clientele for law firms and an influx of business for patent professionals, if they realize its potential.



### 3 – The Monopolistic Commercialization Titles and Copyright

Experience has shown in the majority of cases, the patent and registered design, solely serving the interests of developers, do not respond to the legitimate aspirations of the author of an invention: ***the inventor***. The monopolistic commercialization titles must necessarily be extended by their holders to every country where the invention can be commercialized. Consequently, the international extension, its validation, as well as the defence of these titles in court require considerable financial means. To these costs must be added the mandatory disclosure of the title's content under such conditions that the publication of the inventor's secrets prematurely reveals the innovative technique and its resulting commercial project to potential competitors. That is also why many entrepreneurs prefer secrecy, even though the industrial secret is not an Intellectual Property - solely a commercial property.

In short, instead of granting the inventor his due, *a title that unquestionably establishes the author of the invention (natural person), assorted by associated rights*), patents and registered designs only procure the inventor with an exploitation monopoly, which can only be assumed by an entrepreneur with an international calibre. Conversely, Copyright *explicitly* results from the identification of the author to his creation, establishing his unquestionable intellectual paternity. Copyright, naturally derived from a global, non-transferable, inalienable, imprescriptible and permanent property of a literary and artistic work, is strictly linked to the expression of the author's work (*not his idea*), as it is embedded in his volume.

***By definition, Copyright procures the owner of a Work of the Mind with an exclusive right to produce and reproduce all or part of his work.***

### 4 – Industrialization and inventors: an economic imbalance

The industrialization growth has created, more than two centuries ago, proceedings that, by favouring the interest to the developer over the creator, has been abusively adapted to the profit of the industrial world. That is the reason why invention (*from Latin inventio, invenire: to find*) was classified by legislators and courts-of-law as mere ***finding*** of a technical or technological process for only industrial purposes and that the inventor has never had the means, until now, associated with his social position to effectively preserve the validity of his rights and to prove, in case of dire need, the origin of his creation.

Given this arbitrary policy, the notion of invention was, therefore, stripped from its natural origins (*creation*); consequently, it was subjected to a monopolistic commercialization title, namely, patent.

Under these circumstances, unable to prove his authorship, the inventor was constrained to follow the industrial and commercial path or use secrecy; as a consequence, the economic development of countless innovations was severely hindered and restrained. Eventually, inventors became subservient to the financial power of industrialists, who alone could assume the costs involved in globally commercializing an invention and maintain the monopolistic right before the tribunals. Under such a system, a plethora of inventions would inevitably remain undeveloped, while a growing number of original concepts were fraudulently copied without retribution.

## **5 – A New Solution based on Fundamental Law**

In order to counteract and overcome this deviated ethic, the author founded the *USD System Editions* that proposes to resort to a novelty prioritizing Natural Law and the founding principles behind the Work of the Mind property... Two decades of experience in the global economic environment enabled him and his team to create the *Intellectual Passport CB Omnibus Volume*, otherwise known as *IPCB* (a regrouping of the texts governed by Copyright, constitutions of democratic countries and international commerce), through which the inventor can now enjoy a world and permanent **property** on his innovative concept; an original idea concretized on a physical medium in the form of an unpublished literary and artistic work; *Work of the Mind* that procures him with an unquestionable Copyright at its creation; **creation** that is further established by a registration date at a State Institute.

To initiate this process, the inventor begins by filling an elaborate questionnaire, called *Conventional Identification and Valuation Dossier (C.I.V.D.)*. This document relates the essential elements of the inventor's life (*his childhood, education, the circumstances that led to the creation of his original concept, etc.*), as well as the description of his invention, including any related drawing. So that this work is produced according to literary and artistic rules, the inventor hires two transcribers: a professional writer (*the editor's ghost-writer, renamed "Interlitt" by the USD System Editions*) who executes the literary part of the work and a professional sketch artist who draws the art work. This volume is appended with supporting texts on the author's Intellectual Property, as well as the commercialization rights on his concept. The volume is registered at the Intellectual Property Office or Institute of the country where the inventor legally resides. As a dual purpose of providing a material proof of property and secret preservation, since this volume, as a rule, is unpublished, it is produced in four confidential copies. Indeed, in International Law, a Work of the Mind is its author's property solely because it was created.

*In addition of the secret that it preserves, the non-publication of the volume subsequently enables investors or industrialists, specifically authorized by the inventor to that effect, to patent the invention, if they wish.*

## 6 - Conclusion

As it was conceived, the **IPCB Omnibus Volume** allows to position each specialized intervening party, toward the accomplishment of a commercial project, in their respective field of expertise, from the onset of an original concept to its ultimate social purpose; implying the sequential order: **creation and/or conception – production (industrial or other) – distribution and/or commerce**. Thus, the **IPCB Omnibus Volume** was conceived based on a sociological initiative that reflects the activated chronological order by each element complementary to the economy: **creation** (*description of an original concept, which never existed prior to its concretization onto a physical medium*); **invention** (*application and implementation of the original concept description resulting in an innovate process*); **innovation** (*launch on the market the product or service resulting from the industrial and/or commercial development of the invention*). The application of such a natural sequence enables the creator (*author of an invention*) to continue creating, the industrialist to produce and the innovator to market, without any unnecessary interference and internal conflict. Each one earns a living according to his trade. In conducting business in such a manner, nothing should hinder the inventor's path toward his rightful and legal place, the first, that of author, because it is chronologically and morally his. Our optimism on this subject stems from the fact that no one can forever oppose the laws of nature. If, as legend has it, Galileo\* had been condemned to deny the evidence, his judges would still not have stopped the Earth's revolution around the Sun. Beyond being a global certificate of anteriority, each **Volume** from the **IPCB Omnibus** is assorted by a triennial plan, called "**International Consortium Business Forecast**" or **I.C.B.F.**, as well as related contracts, rendering his volume a true valorisation and negotiation tool with investors. Equitably priced for an SME, this **Omnibus** unlocks a huge and scarcely exploited market to inventors, conceptual designers, as well as their legal counsels<sup>2</sup>: **the true future Intellectual Property market**, premises of which, after two centuries of existence, are still barely known. (*Several Web sites specialized in funding inventions receive several hundreds if not thousands of requests every day*).

**An obstacle to business and industrial development:** it is at the switch from invention to innovation that institutional financing no longer works. Savvy predators take advantage of the situation to block the market. Subsequently, it will be the patented inventor who will be blamed for hindering the commerce and/or industry.

\* In 1983, according to Pope John-Paul II's publication, entitled "Galileo Galilei, 350 years of history", the Church had changed its position concerning Galileo as early as 1741, when Benedict XIV had the first edition of Galileo's complete work approved by the Holy Office. This decision proves that the Holy Office's decrees of 1616 and 1633 were disciplinary, not dogmatic.

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<sup>2</sup> One hundredth of the world potential is exploited each year through monopolistic titles extended internationally. From one twentieth to one fifth of the national potential in each State or Nation is exploited each year through national monopolistic titles.

*"Converse to Copyright protecting the Author,  
patent is supposed to protect the invention, not the inventor  
who must protect his patent solely through legal proceedings."*

**No money, no justice**

## **The Solution to the Inventor's Predicament** **Owning His Creation** **prior to optionally holding a temporary monopoly**

Any inventor has to right to be recognized as an author, hence, **owner** of his work, exactly as the writer or the artist; for the simple reason that his invention (*his finding: from the Latin inventio, invenire "to find"*) results from of a mental process, which **precedes** production and commercialization. Until now, prior to the creation of the *Intellectual Passport C.B. Omnibus Volume*, no Intellectual Property instrument had been conceived to **prove the authorship** of an invention.

An inventor ~ *whoever he may be and if his invention is patentable or not!* ~ connects ideas that, without him, would never have been linked in that unique manner. According to the criteria of the Berne and International Conventions on Copyright, this **combination** of ideas, once it is concretized onto a physical medium, is the author's true **Work of the Mind, hence his exclusive and world property.**

***As international conventions on Copyright and of the internal laws of Nations stipulate, only the application of such a procedure allows to distinguish everyone's ideas from concepts that solely belong to those who have formulated them.***

There is no more compelling proof of property than this one, nor eloquent anteriority. The manner in which a patent and registered design are used by society represents an injustice sustained by inventors today more than ever, who are granted with monopolistic exploitation rights, which **do not correspond to their needs**. Indeed, these rights are intrinsic to the author's initial property, derived from their creation; just as wine from grapes, since it is from the realization of their own **literary and/or artistic** that they achieve a **Work of the Mind**, as it is recognized by all of the legislations in effect. By going directly to an industrial exploitation title ~ *one that should only be granted to developers* – without first recognizing the **initial property** that covers the virtual form from which may be derived the exploitation, is reversing the natural chronological order – effect before the cause, commercialization before creation, or posterior before anterior... ***It would in direct contradiction with the legal Intellectual Property foundation: the preponderant anteriority principle.***

The countless obstacles traditionally faced by **inventors** to be recognized for what they really are ~ **authors, literally and legally** ~, not be forced as it is done via the patent to incite entrepreneurial qualifications that, in general, is not part of their competencies nor predilection, clearly show **that there is another way**, one that equitably opens a clear access to **literary and artistic property on the inventor's creation.**

Artists and writers enjoy **Copyright**. In this way, they can entrust the industrial exploitation of their work to corresponding developers or publishers and entrepreneurs, while remaining the owners of their work without the need to have their obvious rights – derived from their **initial property**, baptized **literary or artistic property** – recognized since they are naturally theirs... Thusly, authors are never constrained to become Editors, in other words, the developers of their work, contrary to what occurs for inventors with a utility or design patent, without prohibiting that eventual path.

### **Food for Thought...**

A dissertation on this crucial topic is not the purpose of this chapter. Nonetheless, seeing the number of unpatentable innovative ideas (*approximately 2/3*) that could incite the emergence of new enterprises, leaves a confounded reaction before the plethoric waste generated by current practices. For repudiation, until now, such ideas have always suffered a difficult, even impossible, defence against the attacks of disloyal competition, counterfeit or industrial espionage. Could it be that these ideas are neither worth recognition or means of defence? In as brief a summary as feasible on current practices, we unearth to what absurd extent this has reached.

***A novate and original idea rendered visible by its concretization onto a physical medium is then completely distinct from everyone's intangible ideas:*** nevertheless, it clearly needs to be recognized as preceding subsequent analogues, as well as any imitation and copy that may rapidly surge, so that the author of the novate concept may gather the components required for the defence of his property.

### **Must an inventor be “protected” or have the means to defend himself?**

Let us first understand that in order to protect an asset, it must be done using adequate weaponry, but it is by defending oneself with these weapons that the asset can really be **protected**.

Although **patent** has always been purported as the “protector” of inventions, can it qualify as a suitable weapon for such “protection”? Averring that it “protects” the invention is both an **untruth** and a **folly**. Why? Because it is **the inventor who needs to defend himself to be protected**, while **the invention must be recognized as a legitimate holding toward an effective defence**. It is this very recognition that constitute one of the adequate weapons; the other essentially pertaining to a garnished bank account.

Under Civil Law, protection is only possible if sufficient funds are available to defend the patent before competent jurisdictions. Akin to a driver's license, ***patent is a title issued by its owner (the State) to a person who is "assumed" to be the inventor.*** However, since nothing proves that the applicant is the author of the invention, the patent is issued ***Without Governmental Guarantee.*** The Patent is but a tool aimed at defending the only monopole of its exploitation, not the identification of the author.

### **Resilient Literary and Artistic Property**

One of the advantages of a ***literary and artistic property, finally extended to inventors,*** is its **tremendous versatility**. For instance, premature disclosure is not required: ***thus preventing one of the numerous Technological Watch traps,*** of which they are the primary target and victim. The ***Technological Watch,*** predator's tool of choice, rarely can serve the interests of **S.M.E.s**, even less so the isolated inventor or researcher. Instead, the initial property approach, adapted to each invention via the unpublished Intellectual Passport C.B. Omnibus Volume, allows the ***preservation of secrets for as long as necessary,*** without hindering economic progress... While the number of patents illegally sequestered as a result of this mandatory disclosure is past counting, this ***materialized secret,*** become a "non-transferable property" thus preserved from traditional disclosure, as long as it is ***intrinsic to an (unpublished) Work of the Mind,*** can only incite the reassured author who, freed from his fears and confident in the future, can promote the commercialization of his wealth-building concept, as much for his private interest as for the entire community. This innovative strategy additionally enables the ***radical dissociation between the inventor and the developer:*** in most cases, the inventor not qualified to commercialize his invention, can reach a contractual agreement with an experienced developer to that effect, without losing control over his project, while receiving the benefits that are rightly his.

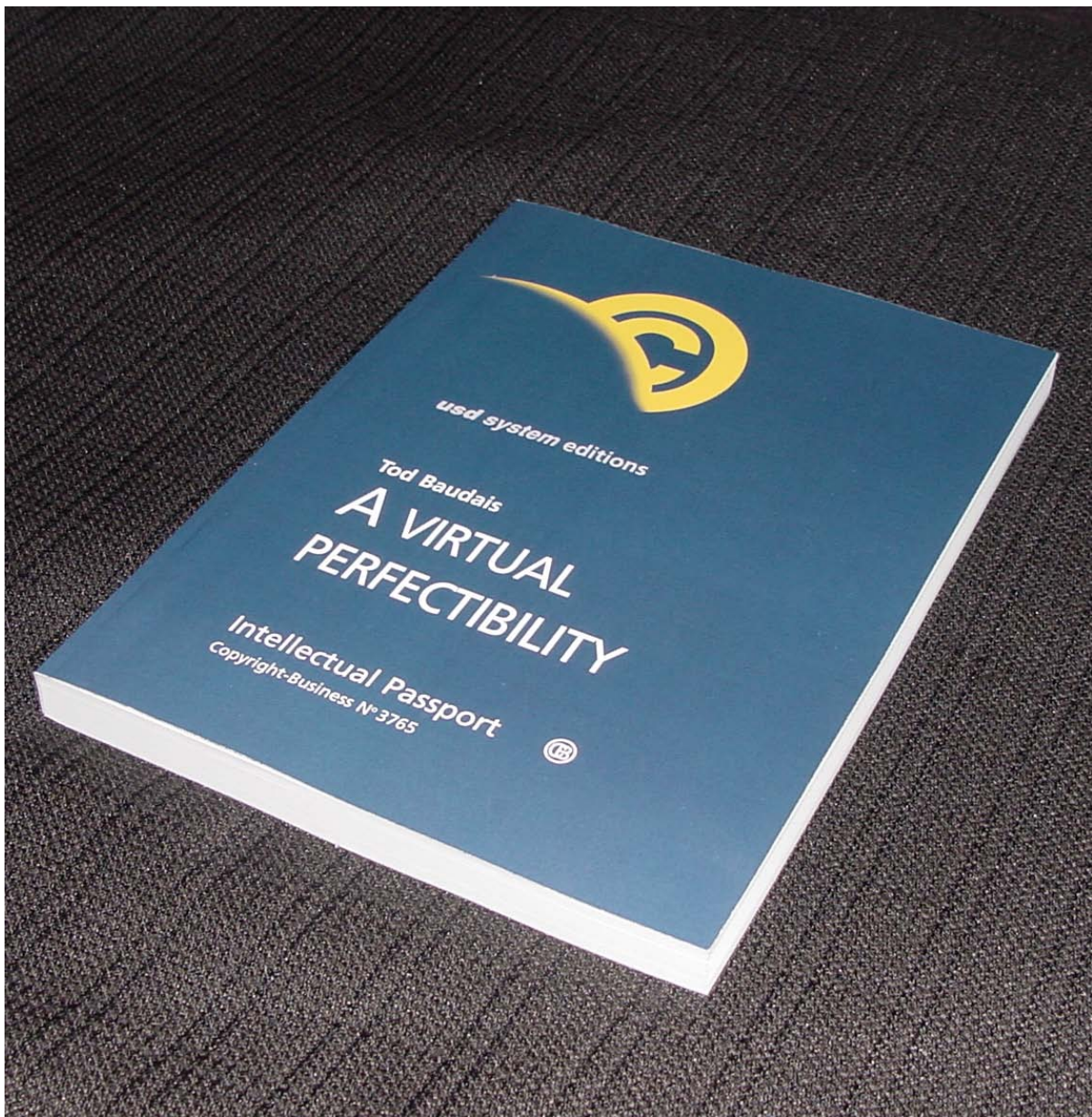
Even though the paths facing an ***author*** endowed with ***such a Volume*** are numerous, he should remember that his ***initial or original property*** must continually be validated (*as movement is demonstrated through walking*) by reinforcing it contractually. Nothing better than to have such legal tools that may prove very useful one day should he face proceedings in view of settling an involuntary subsequent filing or fraudulent copying. By rendering Intellectual Property accessible to everyone, akin to Copyright currently granted to creative artists, Humankind's creative juices can freely flow away from material constraints and play a stimulating role in the continued emergence of innovations that ensure scientific, technical and technological progress, whether related to industry, services or arts.

*“Societies are like men,  
they cannot grow without challenges.”*

**Jean-Jacques Servan-Schreiber**



# **The Intellectual Passport CB Omnibus Volume**



**A volume from the *Intellectual Passport C.B. Omnibus, IPCB*,  
is 7.5 inches wide x 10 inches high x 2/3 inch thick.  
It regroups three parts and on average, contains between 300 and 600 pages.**

## **The IPCB Volume was conceived according to this natural sequential order: Creation → Invention → Innovation**

As a result of analysing the International Conventions on Copyright, the rules of the **W.I.P.O.** (*World Intellectual Property Organization*) and **W.T.O.** (*World Trade Organization*), the **IPCB** was conceived using the salient principles of Law, Logic and Ethics governing Intellectual Property. It will have taken its creator and his associates three decades of global economic experience to accomplish this innovative product and extend its availability to the highest number of people possible.

The use of the **IPCB** serves the interests respective to each member of the business chain: “*Research ~ Creation ~ Finance ~ Development ~ Industry ~ Commerce, etc.*”, without causing interference or conflict... In this manner, each specialist has the opportunity to implement competencies in his respective field of expertise to the meld. The researcher creates and invents, the laboratory staff analyses and develops, the investor raises capital, the industrialist produces, the distributor sells, etc. His role can contribute to a general renewed vitality that can generate business and wealth for all parties (*law firms, accounting firms, patent agents, communication and marketing services, etc.*) who collaborate in the legal structure of enterprises, implementation of a business strategy and sale of new products.

Echoing Article 27 of the Universal Declaration of Human Rights, the **IPCB** clearly recognizes the authors of scientific, artistic or literary works. Nevertheless of the foregoing, how are the laws governing patents formulated? For instance, the web site of the United States Patent and Trademark Office stipulates the following: “*Congress will have the power... to promote the progress of science and of useful art (AN\*: are there useless arts?), by granting authors and inventors the exclusive right to commercialize their works and discoveries...*” AN: Does it mean that works are for authors and discoveries apply to inventors? \* Author’s Note

### **1 – Basis of the axiom: Creation → Invention → Innovation**

**Creation** – etymologically to create, from the Latin *creare*: bring something new into existence. According to international conventions on copyright and related internal laws of Nations, the creator (*a natural person*) is ***the recognized author*** of an original idea concretized onto a physical medium according to the technical rules governing a recognized art. These are the conditions and criteria constituting a new artistic work, called a Work of the Mind. ***The Work of the Mind is a world and non-transferable property***. Resulting Copyright, however, are assignable or licensable. ***It is the establishment of the Work of the Mind that constitutes a literary or artistic creation.***

**Invention** – etymologically invent, from the Latin *inventio*, from *invenire* “find”: Finding something that existed in the absolute and/or in the collective mind, but that no one had previously discovered. According to the international conventions on patent and the internal laws of Nations, the inventor (*a natural person*) is one who finds an original technical or technological method or product that allows one to commercialize a conceptual design in a new way (*virtual form*). One is ***presumed to be the author*** of such a finding. It is the method or process (*the invention*) that is patentable. Consequently, patent, much like the registered design (*industrial design or design patent*), is a monopolistic commercialization title that can either be transferred or licensed.

***Invention results from finding a method and its subsequent development.***

**Between Creation and Invention** – As long as it is not registered in a National Patent Institute or Office, an original industrial design (*even model*) is considered by every treaty of Intellectual Property as a true artistic creation. Accordingly, by not registering his work for an industrial design (*or model*), its author preserves the Work of the Mind’s integrity having global anteriority over third parties. Such anteriority has incited countless international jurisprudences in favour of authors whose work had been copied, in part or fully, for commercial purposes.

By registering his work of art as a design or model, the author ***acquires a national industrial commercialization monopoly*** of a short duration (*five years renewable once*), extendable to abroad (*entailing considerable costs and loss of secret via mandatory disclosure*). If he ***divulges*** his work, the author ***loses*** all of the ***world exclusivity*** free benefits procured by the internal laws of Nations and the international conventions on Copyright. The author must use acumen to understand which of these two rights procure him with the best secure and sustainable guarantee in regards to his available financial resources and the scope of the commercial project inherent to its subsequent commercialization. This implies that the information given to him must be objectively presented.

**Innovation** – etymologically, to innovate, from the Latin *innovatio*: to introduce something new or hitherto unknown into a recognized system. According to the various international agreements on Intellectual Property, The World Trade Organization (***W.T.O.***) and the internal laws of Nations, the innovator is a person (*natural or entity*) who introduces an original concept or an innovative product (*industrialized or handmade*) on the market. ***Innovation is the introduction of this concept or product on the market.***

Some common sense is needed to understand the logic behind these definitions; that of respecting and applying the sequential and natural order of things. It means that the current moves from upstream to downstream, not the opposite; ***from anteriority to posteriority.***

Fortunately, as lies and errors are human, Nature always wins over incoherence, whatever the field involved, including Intellectual Property; this is why its pertaining law is uniquely based on proof of anteriority that the alleged inventor must eventually produce.

### **Sequential order of business through human activities**

**1 Conception** (*research, creation, invention and development, etc....*)... **1 creation**

**2 Production** (*fabrication, manufacturing and services, etc....*) ... **2 invention**

**3 Commerce** (*marketing, promotion, distribution and sales, etc....*)... **3 innovation**

## **2 – Some invaluable advice for the inventor seeking commercialization**

A title (*patent or registered design*) solely pertains to monopolistic commercialization, while an invention is naturally derived from an initial creative effort (*resulting in the original Intellectual Property*), without which it would not exist.

Logically, ***an inventor aware of the striving market capture, should never seek a commercial monopoly***, such as the one granted by utility or design patent. His position rarely responds to such a title's criteria necessary to successfully transfer or license his rights in favourable conditions. Submitted to the conditions of a strict timetable, the titleholder who fails to exploit his patented product quickly (directly or indirectly) risks to lose all or part of his monopolistic exploitation as early as the fourth year following his application date. To crown injustice, given patent's mandatory disclosure, the titleholder who cannot afford the international civil proceeding costs is left at the mercy of copiers' impunibly commercializing his invention.

**Comments:** In order to extend Copyright beyond the traditional realm of artistic creation by applying it to inventions (*industrial, handmade, commercial or service*), the inventor only needs to embed “**the description**” of his original concept in a literary and artistic work of which he is the unmistakable author. In this manner, he benefits from national laws and international conventions governing Copyright. Whence the importance of starting at the beginning by respecting the natural sequential order (***creation > invention > innovation***), even before any other undertaking. Once the IPCB established, the industrialist or investor (*contractual recipient of the project's exploitation*) can then, if so desired and for various strategic reasons, file for a patent (*or another title*) solely at his expense with the author's mandatory authorization (*in exchange for a fair financial compensation that will be easier to obtain due to the preserved secrets of the unpublished property*).

Notwithstanding this fundamental **unpublished work** characteristic, the possible publication of the **IPCB** as a literary and/or artistic work initiates strategies that a patent does not authorize. For instance, it might become necessary, using expansive publicity and media coverage, to impede unfair commercialization by a third party who stole the plans of the concept or invention even prior to the completion of the Volume. **Note the potential retroactive virtues of the IPCB.** Any innovative enterprise should then be founded by associates without first establishing, between the **natural person(s)** of the author(s)\* and the company's entity, a license or assignment of exploitation rights proving the original Intellectual Property issued from its commercialization.

It is the best method: 1) to prevent the hazards inherent to poor partnerships; 2) to preserve exploitation rights in case of termination of the enterprise's operations; 3) to prevent predators (*potential associates in the enterprise*) from illegally taking over the Copyright; 4) to multiply sources of income; in short, to minimize risks and win a lawsuit in court via a true **Intellectual Property** claim\*\*... Any other recourse based on **commercial property**\*\*\* does not allow for proof of anteriority!

**Very important reminder:** The **IPCB** does not replace a patent. This is clearly stipulated on the purchase order provided to the client by the USD System International Editions Consortium licensed Editor. Under the Consortium's Code of Ethics, its collaborators must comply with this rule, failing which their removal occurs\*\*\*\*. According to the sequential order "**Creation → Invention → Innovation**", the **IPCB** not only allows the author of an original and commercializable concept the official authentication of the property on his creation (*description of the concept*), but also positions this property before the invention itself so as to prove its anteriority. Notwithstanding this unquestionable advantage, without the inclusion of the **International Consortium Business Forecast (ICBF)** and its related contracts portfolio, the author might not reach a fair contractual agreement with an important investor who would be in a position to profitably and globally commercialize the innovation resulting from the application of the invention derived from its creation for its industrial and commercial implementation. It is the acquisition of this whole in particular, "**Property - Business Forecast - Contracts**", that explains the numerous product launches from authors who have adopted this new Intellectual Property approach. Let us remind to that effect that this strategy applies as much to original service concepts as industrial inventions.

\* Even if he is the director and alone in his company. He must distinguish between his natural person as author from the legal entity as his company. \*\* Intellectual Property results from a natural person's mind. \*\*\* The commercial property of a company; that is the ownership of the legal entity. \*\*\*\* Since the inception of the USD System Consortium, several people were removed for disrespect of the rules of Ethics.

### 3 - How to preserve an original idea before it becomes an invention?

**1 - Observation:** How often have we not heard from a more or less disillusioned person, “*This product (or this service), I invented it; someone took my idea and gave me nothing, while others are making millions for it!*” To be fair with the indigent or the head of a SME originator of an extraordinary invention or revolutionary concept, whose means are insufficient to defend it in court, there is but one legal solution: resorting to Copyright.

**2- Basic International Legal Principles:** An **original idea** is immaterial. Therefore, it belongs to nobody. According to the International Conventions on Author’s Rights © (*Copyright*) and internal laws of the member States of the **W.I.P.O. (World Intellectual Property Organization)**, to materialize his original idea, the author must **describe** it on a **physical medium**. For the resulting **description** to become the **world property** of its author, it must be intrinsic to an **original literary and/or artistic work**.

**3 - Anteriority is enforced by Law:** International Intellectual Property Conventions and their adhering States have founded rules and laws upon the **preponderant anteriority** principle. When the original description of an innovative concept is **intrinsic** to a literary and/or artistic creative work, the **creator**’s property can be legally established. This property is not limited to the creation of an artistic or industrial product. It is granted as much to the **creator** of an innovative service as it is for a product’s original composite\* or a concept’s original outline (*even if it contains questions*) or an original user guide related to a product (*supported by jurisprudences*) or a related service, etc.

**4 - What must be known:** Copyright does not prevent someone from producing at home (*privately*) the **original concept** described by the **creator** as part of a literary and/or artistic work. Copyright **forbids** third parties from **copying or producing for commercial purposes** all or part of the **original description** of a concept, a user guide, a product or a service, etc. (*intrinsic to a literary and/or artistic work*), **if this copy or production** is made **without the creator’s prior authorization**. If the copier persists in claiming the property, he commits a **plagiarism**. The same is true for the producer of a “fictitious creation” (*i.e. apocryphal*) if the legal creator has warned him about his potential crime. Given that the plagiarist illegally enjoys a third party’s property (*i.e. the author’s\*\* property on the creation*), he commits a theft (*an indictable offence*), coupled by an identity theft, even vandalism if he denatures the work.

**5 - Conclusion:** Most of the recorded jurisprudences throughout the world in favor of Copyright ~ *on plagiarism (voluntary or not) on all or part of the literary and/or artistic work describing an industrial product or a commercial service* ~ result from a judgment based on the aforementioned legal principles stipulated in 2 or 3 or 4.

\* **Original Composite:** It is a product made up of several components. The natural person or legal entity that commercializes a product (*notably in the medical or paramedical domain*) containing several components, must name them on its container (*box, bottle, etc.*) to ensure that this information remains public (*even for health purposes*). A copy, unauthorized by the author, of all or part of an original formula (*information and/or recommendations and/or user guide*) can fall under plagiarism, punishable under Copyright law, if its author has previously embedded his description in a literary and/or artistic work (*Jurisprudence page 129*).

\*\* **Author:** *n. (12<sup>th</sup> century, from Latin auctor “the beginner, former, or first mover of anything; hence, the efficient cause of a thing; a creator; an originator. Eternal King; thee, Author of all being. V. Cause, creator, initiate.*



## Let's move from theory to practice

**Summarizing:** What is explained on the previous page incites other common questions or more specifically, other ways to ask them, such as:

- Is there a solution to preserve someone's idea that has only been imagined as an original concept, not an invention?
- Is there a way for researchers in a company or university to produce an invention by being inspired from a **creator**'s original concept, without jeopardizing the latter from his concept, while preserving their rights on the invention?
- Is there a way for researchers in a company or university to obtain an Intellectual Property on the original concept of their idea while waiting to produce their invention, even patent it, if that is their goal?

**Reminder:** The patent culture (*embraced by most people*) is contrary to that of Copyright because the patent does not procure an Intellectual Property on an original concept. A Patent is a temporary title.

**The process:** Initially, there is an original idea that can as much emanate from the mind of an independent inventor as from that of a craftsman, a retailer or the head of an SME (*or other Quidam*). If the author of the original idea does not possess the necessary talent to produce the literary and/or artistic description of his concept, he must first materialize it using sketches and words. Having concretized his immaterial idea onto a physical medium, its author becomes the **creator** of an original concept. In order to gain access to his **ownership**, the **creator** can then resort to the services of a professional transcriber whose technicity will allow for the production of the work according to rules of art. This process, which is frequently used in literature and music, can be equally applied to the industry and commercial services. That is how it is possible to differentiate a literary and/or artistic description of an original concept (*generative of Copyright*) from a later derived invention, either by the subsequent **creator**'s work or by the intervention of a **third party** (*researcher or engineer in a company or university*).

**Conclusion:** The **creator** can thus resort to the service of a **third party** (*researcher, engineer, or other*) whose competence is sought to produce the invention from the description of his original concept. In that case, the **creator** must transmit to the **third party** the right to copy and use his creation's description via a confidentiality and nondisclosure agreement that reminds the **third party** of the anteriority of the **creator**'s **property** on the potential posteriority of the eventual invention. In this way, there can be no doubt on the anteriority of the **creator**'s initial **property**, consequently, on the legality of the Copyright granted to him. The invention (*and/or the innovative service*) stemming from the **creator**'s original concept can, thereafter, be added to the volume in which he has embedded his literary and/or artistic work. If the **creator** has resorted to the competence of a **third party** (*researcher, engineer or other Quidam*), he will have to mention this one in his work, so that such **third party** can also enjoy the Copyright inherent to the description of his invention (*and/or innovative service*). If the **third party** wishes to patent his invention, he can do so, on the condition sine qua non that the volume not be published.



## 4 – The Content of an IPCB Volume

The *IPCB* is composed of three distinct parts:

- **Part One** (200 to 400 pages, as the case may be): describes and expresses the historical account of how the author was inspired to imagine and conceive the virtual form of his creative idea. Framed by juridical, journalistic, commercial and philosophical texts, this historical account, a true autobiography of the author, respects the chronological sequence of events, as well as the specific name and involvement of each individual who witnessed the author's adventure. It is in this 1<sup>st</sup> literary and/or artistic section that the author describes his original concept (*industrial or service-oriented*), the “**description**” of which is binding against third parties according to Copyright Law.

- **Part Two** (60 to 120 pages, as the case may be): presents the market segment to capture and the resulting commercial project strategy. Synoptic charts assorted by several calculation and graphics pages provide a realistic forecast on the gross results over three years. Additionally, this Business Forecast assesses the collective and private interests of each future party intervening in the innovation's exploitation consortium (*research – development – manufacturing – marketing – distribution – financing – sales, etc....*). Each collaborator (*retailer – wholesaler – manufacturer – producer – distributor – marketing expert – importer – exporter – inventor, etc....*) will find his respective business volume and gross margin over three years, presented in three scenarios: the probable, the worst and the best... This synoptic vision of a consortium of independent developers does not appear in a traditional business plan for the simple fact that this one is designed for the financing of one company or a new product within the company. Furthermore, if the enterprise ~ *as is usually the case* ~ belongs to the inventor, the traditional business plan does not sufficiently take into account his lack of competencies, most of time incompatible with the international business or industrial development of his company. In any case, the inventor is under no obligation to implement his project as it is presented in the Business Forecast of the *IPCB*, even if this instrument has the added benefit to prove the length to which the inventor has gone when presenting his project to prospects, investors and financiers.

- **Part Three** (approximately one hundred pages): includes personalized international sample contracts supporting the overall commercial strategy used in the Forecast of Part Two, as planned by the author and his **Consultant**. Much like the Business Forecast, these sample contracts are not meant to constrain the client to their use. Rather, they were specifically conceived to apply a **distribution** of his rights; a formula that anticipates the cession or license of the author's rights to manufacturers, industrialists, any type of producer, distributors, financiers or a wide range of investors, who are interested by the project. The **Certificate of Guarantee** (*linked to the sample contracts*) given to the client (*author*) by the Editor with regards to its legal validity concludes this part of the volume.

## In Summary

### The UNPUBLISHED Volume was conceived in order:

- 1) **To establish** (*quickly and economically*) a world **certificate of anteriority** that officially links the original concept to its author and procures him with the only world property that he really needs.
- 2) **To estimate and valueate** (*quickly and economically*) **the financial potential** of the commercial and/or industrial **project** resulting from the subsequent commercialization of the author's original concept.
- 3) **To devise** (*quickly and economically*) **an original and effective commercial strategy** adapted to the launch and technical and commercial development of the innovation, taking into consideration the financial means required by the developers, while maintaining the Author's secrecy as long as necessary prior to the marketing phase.
- 4) **To implement** (*quickly and economically*) a new type of **solidarity contractual bonds**, indispensable to the formation of quality relationships between the author's original concept, holders of exploitation rights and financial investors.

### The Volume's Publication was foreseen for:

- 1) **Preventing and hindering** (*quickly and economically*) the illegitimate copiers' business of every type **in every Nation**.
- 2) **Addressing** (*quickly and economically*) **fraudulent copying** (*plagiarism*) of the author's creation, by putting, from its onset, the burden of proof on the copier. Implemented by the Editor, this strategy provides the victim with new defence avenues that are more effective than the traditional counterfeit proceedings.
- 3) **Promoting** (*quickly and economically*) **the commercialization of the author's original concept** (*derived service and/or product*) ~ **"the innovation"** ~ through the news and literary programs covered by the media for launching a book and the public event that it produces.

\* \* \*

## 5 - The Financial Advantages of Ownership Procured by the IPCB, Over the Title Granted by a Patent

### Introduction:

Converse to the patent, akin to a State-granted license, is none other than a temporary commercial title, transferrable and revocable, the **IPCB** procures the author of a patentable invention or service-oriented concept with a **true world property deed**; Copyright of which can be used as a sizeable collateral.

\* \* \*

### 1 - Explanation

A *creative* literary and/or artistic work is called a “*Work of the Mind*”. In law, it represents a *seizable personal property*, granting its owner with all of the usage rights, enjoyment and absolute disposal within the limits of the Law. **Careful!** A work of art that does not result from a creation is not a Work of the Mind procuring a property that can lead to Copyright. *Most legal texts confuse works of art and Works of the Mind...*

According to the internal laws of Nations, the Berne Convention and the Universal Copyright Convention, the moral right resulting from the creation of a Work of the Mind is non-transferable... According to the same laws and international conventions, the work’s exploitation right, *Copyright*, is *transferrable and/or licensable*.

**Caution!** The word “**Author**” does not necessarily label an artist or a writer; similarly, a good copier who does not create can still be a great artist.

*The economic worth of a Copyright is* relative, on the one hand, on the intrinsic direct or indirect commercialization value of the expression of the work (*notably through transfer and/or licensing of commercial rights*) and, on the other, on the size of its potential market.

As a result of these legal provisions, despite any transaction with third parties and given that the original concept was officially embedded in a creative literary and/or artistic work, the author of a Work of the Mind enjoys a permanent moral **ownership** on his creation. Moreover, he can negotiate the exploitation rights on all or part of his work with anyone suitably advantageous and competent, *with his creditors’ authorization*.

In case of plagiarism (*particularly when someone illegally reproduces in his own name all or part of the texts and/or drawings intrinsic to a third party's Work of the Mind for commercial purposes*), the author can enforce **his property** claim; hence his Copyright in court so that the latter my order:

- ***The seizure of the product***
- ***The termination of the illegal activity***
- ***The payment of financial compensation***

The author spoliated from the exclusive exploitation of his work; **therefore of the exclusive enjoyment of his ownership**, if necessary, can obtain a writ of seizure before judgment in order to stop the unauthorized commercialization of **his personal property**. Naturally, unless the author truly created his work, the alleged copier can have the seizure before judgment annulled by court order. Needless to say, Copyright that does not result from a Work of the Mind is not a seizable personal property that can be used as evidence in Court. This is further proof that, unlike access to a monopoly granted by a title, no one can sell access to a Copyright (*Author's Rights – not derived from a Work of the Mind*) without fraud. The author can only sell the medium used to create his work. Much like the birth of a child (*not requiring a search for anteriorities*), a mere declaration on the creation of the work suffices for the authorities to register the Copyright or ISBN number assigned to the author.

In case of a trial, when the inventor (*as author*) **owns** a literary and/or artistic creation, it is the copier who must prove that he did not plagiarize the work, not the author to corroborate the validity of his property. The contrary is occurs with a Patent, because the exploitation monopoly granted via the title does not prove that the **holder** is, indeed, the author of the invention.

Given the enormous distinction between ***“title holding”*** and ***“ownership”***, proving plagiarism on a Copyright *in* a court of law is faster and less expensive than proving infringement on a patent. ***Investors and financiers can benefit from this discrepancy***: indeed, it is far less **risky** to invest in an enterprise that holds commercial rights resulting from a **true world property** (*assorted by business forecasts and related international contracts*) than jeopardize the same sum in an enterprise merely holding a utility or design patent.

In the case of a patented company buy-back, it is not uncommon for the initial investors (*whose claims fall behind those of the tax office*) to decisively lose the intangible assets of the company, of which its patent is one of the most coveted commodity.

***It is not the case with an IPCB!*** Firstly, because a Work of the Mind can only be the property of a natural person or co-property of joint natural persons. If such is the case, and due to its ***non-transferable property***, the repurchaser of the bankrupt enterprise cannot directly take over this property since it is extrinsic to the company's intangible assets.

Since a Work of the Mind is a non-transferable property (*owned by one or more natural persons*) that is extrinsic to an enterprise (*legal entity*), the invention's exploitation, resulting from the original concept embedded in the work, mandatorily requires a contractual cession or temporary license the Copyright (*Author's Rights - rights pertaining to the commercialization of the property*). In the case of bankruptcy on the part of the company holding the Copyright, the contractual transfer or license must include specific measures that prevent third parties from acquiring these rights in such a situation.

The advantages are even more compelling when, based on the ***distribution of business rights*** principle (***Franchise***) embedded in the **IPCB**, the commercial network and the manufacturer are independent members of the same consortium.

The effectiveness of the ***"distribution of rights"*** is predominantly associated to the fact that the author of a Work of the Mind is as much the ***holder*** (*naturally*) of the expression of its content (*Copyright/Author's Rights*) as the ***owner*** of the container. As an extra cautionary measure, the author can also commit to sequester the first earnings generated from licensing or transferring his rights (*e.g. with a notary or in a lawyer's trust account, etc.*) for his creditors. Given that the sales generated by a transfer or license a Copyright contract can be far superior than the creation cost of an **IPCB**, the risk usually taken by the money lender is reduced.

In a network of enterprises established according to the distribution of rights rules, nothing prevents the financier from sitting on the board of directors of several companies within such a consortium. It is a prerogative that can further reduce his risks and easily retain control of the financial and commercial situation of the group. By adopting this tactic, aimed at ensuring the global success of the innovation, the financier secures his investment by allowing each enterprise of the consortium to benefit from his specific expertise.

## **The distribution of commercial rights procures other benefits:**

- 1) **Effective business strategy.** The nature of the innovation and each of the enterprises within the consortium (*commercial and/or industrial*) are only revealed after the actual launch of the product (*innovation*).
- 2) **Better use of competencies.** The stake of each enterprise within the consortium is limited to the professional liability proportional to its field of expertise.
- 3) **Simpler and less onerous defence.** The material resources for legal defence against copiers are jointly assumed, due to the original contractual bonds of solidarity and ethics between the enterprises of the consortium.
- 4) **Increased commercial and industrial exploitation momentum.** The default by one consortium contractor does not jeopardize in any way that of the whole. Their shared ethics and the clause of joint solidarity in their contracts lead them to join forces and share the same incentives to succeed.
- 5) **More competitive product sales price.** Assigning a specific right to each specialist eliminates the majority of the redundant service and sub-contracting fees between enterprises with complementary competencies. Whilst reducing financial risks, this strategy reduces the wastes inherent to traditional legal structures. Compliance with this crucial methodology procures a more affordable product to the client than a competitor with the same technology, while it guarantees each member of the consortium a superior percentage of benefits.

\* \* \*

Summary: in addition to the simplifications, as well as the cost, time and risk reductions that it bestows as much on the financial backers as on the inventor compared to a patent, the IPCB procures the creditors with all of the advantages of a property: *especially that of chattel mortgage* on the author's Copyright inherent to the property on the work.

\* \* \*

## 6 - Using the IPCB Against Unfair Competition and Industrial Espionage

The anachronism derived for the past two centuries from a confusion between upstream, “*the creation*”, and downstream, “*the invention*”, is one of the main causes of widespread industrial espionage.

*The lack of proof of anteriority proprietorship prior to the filing of a subsequent patent is certainly enough to encourage and justify industrial espionage as an effective professional operations standard, at the expense of fair competition and genuine research and development.*

If we add such methodical theft to the legal research services offered by the Technological Watch, made possible by the mandatory publication of patents and registered designs, a reasonable assessment on the global annual business loss incurred today would reach over one trillion dollars US.

Consequently, from the isolated inventor to the multinational (*unable to efficiently counter the harmful turncoat disclosures to competitors*) are all plagued by the same curse. Until now, they lacked one complementary component, as much to support secrecy as being positioned upstream from the issuance of a monopolistic exploitation title; a “**seizable personal property**”, procuring its author and co-author(s) with an immutable and indubitable proof of prior, non-transferrable and world property.

**Comment:** A joint literary and/or artistic property between the management of a company and its engineers empowers the entrepreneur against any one of the co-owners who would be tempted to illicitly divulge all or part of the secrets embedded in the volume (*and vice-versa*); in other words, in the property belonging to the community of co-owners.

The **IPCB** being a literary and/or artistic *seizable personal property*, the proof of the delinquent act is finally made possible by a merely producing an unquestionable evidence in Court. This **IPCB** application gives rise to a new dissuasion means to prevent unfair competition, illegal data transfers and industrial espionage.

\* \* \*

## 7 - The Ten Main Dangers of Patent

- 1 – Loss of secrecy** for the inventor (*technical and, consequently, commercial*) during patent's mandatory publication **18** months after the filing application date. AN: *This procedure often discloses the filer's secrets to competitors prior to the commercialization of the project. Paradoxically, this delay prevents the applicant from knowing the technologies for the 18 months preceding the filing date of his patent application, thus rendering the mandatory search for anteriorities almost useless. Moreover, a filing provides the personnel of the Intellectual Property Institute or Office with an untimely access to the secrets that the State can legally misappropriate via its pre-emptive right on any Patent application.*
- 2 – Random International Patent Extension.** AN: *Since a patent must be extended abroad at the latest at the end of the 12<sup>th</sup> month following the filing application date, the titleholder is pressured to resort to prioritize an extension to every country concerned within a too brief period, compounded by the risk of having his patent revoked and lose the entire sum spent to that effect. All of this because, at the time of the international extension of the applicant, the 18-month period prior to the publication of third parties' patents has not yet elapsed.*
- 3 – Almost Impossible Proof of Anteriority on the applicant's claims and of their non-disclosure by a foreign third party.** AN: *In light of the foregoing in 1 and 2, producing these two proofs at the time of filing is nothing short of miraculous!*
- 4 – Reminder that the Patented Invention Implies an Inventive Activity.**
- 5 – The full payment of validation annuities** in every country where the patent is filed, *during 20 years.* AN: *Failure to pay a single annuity results in the patent's revocation.*
- 6 – The Active Exploitation** of the product implemented in the patented invention... According to law, the patented inventor who unduly hampers manufacturing, use or sale of the product is deemed to abuse the rights granted by patent. AN: *This sanction is but logical when we consider that failure to commercialize the product inevitably leads to an **abuse of monopoly** that is detrimental to the economy... As a State-granted patent, a **monopoly** issues a provisional privilege temporarily subtracting an enterprise from the legal and unquestionable legal fair competition principle.*
- 7 – Ineffectiveness of Simplified Applications**, such as provisional patents, requests, etc.
- 8 – Patent's Inefficiency** due to increasingly shortened commercial life span of some innovations (*in the software industry, products may become obsolete prior to the patent's issuance*).
- 9 – Slow Administrative procedures** to manage Intellectual Property.
- 10 – Competition's Promptness** to counterfeit (*almost with impunity*) or short-circuiting the patented invention, due to modern means of communication, industrial espionage, patents' disclosure, etc.



## 8 - The Fourteen Top Advantages of the IPCB

- 1 – **Affordable**, compared to a national patent. It includes a Business Forecast and a portfolio of international contracts at no extra cost.
- 2 – **Fixed Price** (no annuity).
- 3 – **Permanent World Property** of the author, who enjoys a free Copyright for the duration of his life and several decades after his passing.
- 4 – **Unpublished for Preserving Secrecy**.
- 5 – **Proof of Authorship on the Work** (*through the written story, related testimonies and the initial creation date of the author's texts and drawings*).
- 6 – **Guarantee of its Legal Validity** by the USD System consortium.
- 7 – **Simpler and Quicker to complete than a patent**.
- 8 – **Revisions** to the invention or original concept without time restriction.
- 9 – **Personal Property Producible in Court**. It is the core support of the author's secrets.
- 10 – **Literary and Artistic Quality** that enables to sue a plagiarist under Criminal Law for theft and usurping the author's identity.
- 11 – **Comprised Business Forecast**; ideal to attract investors and set the amount of material damages suffered by the copied author, in case of a civil trial or out-of-court settlement.
- 12 – **Portfolio of International Contracts** adapted to the commercial strategy presented in the Business Forecast.
- 13 – **Co-authors**: the joint property of a literary or artistic work (*co-authors: employees and/or employers of the same enterprise*). As it may, none of the co-owners can exploit the innovation without the authorization of the others.
- 14 – **Copyright's World Exclusivity** for the production, reproduction and interpretation of a creative literary and/or artistic work, which can also be the "description" of an innovative concept. This description is the "**container**" of the invention; without its reproduction, the resulting innovation "**content**" is impossible to achieve. In this way, Copyright does not have to grant a monopoly ~ *unlike patent* ~ on the commercial exploitation of an invention in order to guarantee the author's world ownership of his rights.

## 9 - Several Major and Essential Rationales At the Base of the Potential and International Success of the IPCB

- 1 - **Interested Lawyers and Accountants:** With the “**unpublished**” IPCB, they can finally guide the inventor ~ *who did not have the means, until then, to extend a patent to the world, legally protect it or commercialize its resulting project around the world* ~ toward services responding to his needs that befit his purse.
- 2 - **Attentive Patent Agents, their Clients and Industrialists:** Due to its “**non-publication**”, the IPCB allows the author of the industrial invention “**description**”: 1) to contractually license his Copyright to a top industrialist wishing to patent the invention at his cost; 2) to support the patent by transforming anteriority claims into true Intellectual Properties (*literary and/or artistic*) opposable to third parties; 3) to offer patent agents a pool of new clients directly involved in liberalizing access to Intellectual Property. This new market represents a global potential of **several billion dollars in fees**.
- 3 - **Attracted Original Project Investors and their Clients:** Once more, the “**non-publication**” of the IPCB allows the author of original service “**description**” to contractually license his Copyright to an investor wishing to develop a secure commercial operation (*nationally and/or internationally*) through the Intellectual Property (*literary and/or artistic*) of the description that is opposable to third parties.
- 4 - **Interested Nations for the benefit of their respective national economy:** By stimulating its population’s creativity through the use of the affordable **unpublished IPCB**, its government will have a natural media “permanent source of wealth, employment and tax revenues”: **the brain power of its brightest citizens!** Moreover, by reducing the endemic risk of bankruptcies amongst S.M.E.s (*nearly systematic victims, until now, of predation*), there will be fewer divorces and nervous breakdowns, CVAs and cancers; all contributing to the exorbitant social security costs. As a consequence, a collateral renewal and enthusiasm for Creativity should occur.
- 5 - **Collective Interest by Nations to Recalibrate Global Economy:** Given its affordability for S.M.E.s around the world, the **unpublished IPCB** will stimulate the required human creativity to produce new wealth and increase employment, thus maintaining social justice and Peace, whether such innovations stem from industry, services or arts.

**From the Anteriority  
of an Unpublished  
Work of the Mind  
to Suing the Plagiarist  
Under Criminal Law**

*"Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."*

#### **Article 27 of the Universal Declaration of Human Rights**

*The texts implementing **Article 15.1 c of the Covenant on Economic Rights of the Universal Declaration of Human Rights** were passed in 2006. They urge Nations to acknowledge the inventor's right to enjoy moral and physical protection on his productions, including the obligation to ensure protection from counterfeit by third parties and to consult with associations. See page 106 the limitations registered in 2 of the introduction of the article 15.1 c.*

In order to handle the literary part of his **IPCB**, the USD System Editions supply the services of a consortium domestic *ghost-writer*, called “*Interlitt*”, to the inventor, who writes his story according to rules of art.

The ghost-writer is hired merely to ***transcribe*** the mental form of the author’s work; such is the practice among a fair number of published authors. Thus the **inventor-author** becomes owner of his work and titleholder of the expression of its content.

This free, perpetual and world property is non-transferable and inalienable, even though its derived rights (*Copyright – Author’s Rights*) are assignable or licensable.

**Fundamental:** In addition to secrecy and strategy, it is *recommended* that the Author refrain from publishing his volume, especially since he can authorize a third party to subsequently file a patent or another title in his own name... The systematic publication of every work would gradually lead to the methodical extermination of any type of patent, whereas the goal of the “*USD System*” Editions is to strengthen these titles by encouraging the Author of an invention to entrust its development to someone financially capable of assuming its protection...

**Reminder:** The Copyright derived from a Work of the Mind does not procure its author with a monopoly on the manufacturing of the product resulting from his novate concept (*the innovation*). A monopoly which, generally, he has no use for: to obtain it, he would have to seek such a title. Then, he would be forced to assume, directly or indirectly, intrinsic entrepreneurial responsibilities, which, in most cases, are incompatible to his competencies, financial means and creative nature.

**What to do?** Incite an ideal marriage (*via assignment or licensing contract*) between the author of the concept endowed with an untransferrable property (*literary and/or artistic*) and the potential developer of the same concept. The latter can acquire, with the author’s authorization, hence without conflict, an exploitation tile (*patent, design or other*) based on his experience, competence, financial means and industrial and commercial criteria.

Even if they remain unpublished - for a valid cause -, confidentiality covenants must also include abiding proofs of anteriority from the author that may be used against contracting third parties. Failing which, this traditional method does not allow the so-called holder to claim rights on an alleged secret (*the IPCC is the seizable personal property previously lacking to support secrecy*). Likewise, internal law articles of most countries related to opposable anteriorities to the patentability of an invention include the production of prints, published or unpublished. (*E.g. Art. 34.1 of the Canadian Patent Act*).

## Reminder of Two Seemingly Contradictory Law Principles\*

**First Principle:** The Work of the Mind does not have to be published and disclosed in order to become an anteriority that can be used against third parties, since, solely because it was created; it is the natural property of its Author (*his personal prior possession*). ***This is why there is no such thing as a patent on a creation.***

**Second principle:** The patented invention must be published by the Filing Institute as the innovation must be disclosed by the innovator, before it can become an anteriority opposable to third parties. ***This stems from the fact that neither patent nor innovation provides a property, thus, there is no Copyright for the patented inventor or the innovator.***

**Prior to an invention, the Work of the Mind is of a creative nature  
Its resulting technical process is of an inventive nature**

### In the current Law:

1) ***It is the concretization of a Work of the Mind on some physical medium*** that constitutes for its author a universal and permanent proof of anteriority, opposable to third parties... More particularly, **opposable to third parties** over the world is the exclusive right of production, reproduction and interpretation of all or part of the work's expression (*texts, designs or videos for example*), for whatever commercial purpose, by any means possible (*e.g. IT*) and for any other purpose.

2) ***It is the publication of a monopolistic title*** (*patent, design patent/industrial design*) or the disclosure of an innovative concept that constitutes a proof of anteriority opposable to third parties for an inventor or innovator... **Oppposable to third parties** is, on the one hand, within a given country where the invention is filed, the industrial and/or commercial exploitation monopoly of the original process related to the title issued to the inventor, or, on the other, within a given country (ies) where the innovation is commercialized, the exploitation right on the innovation is used as anteriority only because of its initial disclosure by the innovator during his commercialization.

**Reminder:** by Law, as long as the third party filing a title or commercializing does not reproduce all or part of the designs and/or texts intrinsic to the work, the owner of a Work of the Mind can neither sue for **counterfeit** on the product which results from the universal application of his work, nor challenge the issuance of a related title (patent or other).

\* **The contradiction that seems to emanate from these two principles** originates from an ongoing attempt at trying to compare what cannot be compared, because ***creation and invention are of a different nature***. Likewise, the rights resulting from two distinct sources cannot stem from the same foundation. Invention (***the finding***) follows, thus is issued from creation, and creation (***Work of the Mind***) is derived from its Author's inspiration and originality.

**Prior to any other consideration, counterfeit is first related to the method of making (illegal confection), meaning imitative and falsified manufacturing.**

However, if the filing or commercializing third party **copies or reproduces unintentionally** the author's texts and/or designs without his express authorization, whether for the issuance of a title or to produce and/or market an innovation. Under these circumstances, the author can, **prior to any other consideration, begin proceedings for counterfeit on his copyright** (*resulting from plagiarism on his property*), meaning, for illegally copying all or part of his Work for commercial purposes. In such a case, **counterfeit, which is related to illegal reproduction (breach of copyright)** can also be eligible construed as an act of **unfair competition**. In compliance with the aforementioned assessment, **with respect to the creative nature of a given object as opposed to the inventive nature of another**, Walt Disney, Hergé, Warner Bros., Goscinny and Uderzo (*Asterix*), etc., have won countless trials on every continent... These victories represent an **international legal precedent** for the **IPBC**, thus globally validating the right beheld by authors of any invention for whom it was conceived.

### **Examples of Strategies and Proceedings Against a Copier**

As it was reiterated in this book, the confection of an invention (*as it is embedded in a literary and/or artistic work*) must restrain a tradesman who wants to exploit without official authorization, to illegally reproduce or interpret all or part of texts and/or designs intrinsic to the composition of the author's work (*the expression of an original idea*).

**Question: If an author is copied by a third party, how can he cease it or receive payment for a right to commercialize?**

**Answer:** He may act, for instance, in the same manner as Hergé's heirs to forbid the manufacturing (*without their authorization*) of original characters and devices created by the author, such as the prototype of Professor Calculus' "shark-shaped submarine" in the "*Red Rackham Treasure*" (*created in 1948*), without their express authorization. The latter case was ruled in favour of Hergé's heirs in 1997.

As explained in the prologue, had Walt Disney, upon creating his first famous characters, filed for a patent or registered design (*according to the criteria of these titles*) in order to produce his renown mouse and other items; in three **mobile or immobile** dimensions, and in several million copies, **utilitarian or not**, his commercial rights would have expired over fifty years ago and today's Disneyland and Disneyworld would have never been born.

We do not count anymore the number of cases won by Walt Disney Studios and *the ensuing jurisprudences*, against those who have tried to reproduce the characters and items from the artistic creations of this famous artist.

In this case, solely Copyright© can be called upon to the owner's defence, since these original characters or original items are several decades old, whereas the duration of the patent is expressed limited to twenty years, while that of the model or registered design lasts between ten to fifteen years, depending on the internal laws of each country.

Even in matters purely industrial, some European jurisprudences have rendered judgments in favour of Copyright. It may be useful to point out that cases from the Court of Cassation of Paris, for instance, stipulated that “*artistic protection extends even to industrial designs or models that are not artistic in nature* (crim. March 30 1938 - judgments of 25/2/57, 8/12/59, 16/3/62, 21/1/76, 16/1/87, etc.). In order to benefit from these dispositions, *a work of art* must result from a *creative act*, thus satisfying the criteria defining the Work of the Mind.

Caution! We purposely remind that most legal texts were written in such a way as to maintain a confusion between a work of art (*uncreative*) and a Work of the Mind (*creative in nature*).

\* \* \*



## Introducing Imposture as a Crime

Even though it seems that the word *plagiarism* has been arbitrarily parted from the usual list of crimes for various allegations; nevertheless, it seems essential for a robbed or copied author begins by proving the plagiarist's wrongful intent. Prior to any other consideration, this strategy must compel a judge to appreciate the violation to the author's property. Indeed, if infringement is officially recognized as the illegal use of someone else's Copyright (*a title*), the notion of plagiarism implies a ***theft or plunder of a private property***, in the sense expressed by the constitution and laws of all democratic countries, as well as in Article 17 of the Universal Declaration of Human Rights, which stipulates that, "*No one shall be arbitrarily deprived of his property*".

The subtle nuance between plagiarism and infringement is often missed... Infringement on a patent occurs when someone makes, uses or sells an invention described in a patent (*or uses/sells an invention functionally equivalent to the one described in a patent*) without the patent holder's permission. Copyright infringement implies the unauthorized use of a copyrighted work other than fair use. Both imply imitation for fraudulent purposes. Infringement occurs when someone signs all or part of the copied or reproduced work in the name of the true author, while a plagiarist signs with his own name; therefore, constituting a form of imposture, which is considered by some dictionaries a ***serious crime***...

This report evidences the preponderant logic of considering ***theft and imposture*** through plagiarism as a more serious crime than ***fraudulent commercial exploitation*** via counterfeit. Comparingly, a jurist who follows traditional Civil Law proceedings to defend a spoiled author only reaches moral damages, even if expensive for the victim, is slightly punishable by law. Clearly, this legal recourse is ineffective for a major offender, while if imposture is used, the inventor can have access to sufficient tools to reach justice at a lesser cost... For instance, those inherent to **Penal Law**... To achieve this goal, the inventor must be endowed with what a monopolistic title has always negated him with: the **property** on his creation.

### ***What is Law intended to serve, if not Justice?***

If, against common sense, pleading infringement on Copyright to defend the plagiarized on his legitimate property, now seemed to be the only choice, it has now become paramount to produce before a Judge the components (*considering the laws in Penal Code and the terms embedded in the constitution of each country on Intellectual Property Law*) that restore plagiarism in its rightful place, that of theft, assorted by imposture for identity usurpation... Moreover, if the offender has modified some parts of the work to make it appear as a different creation, he can also be guilty of vandalism for denaturing the work.

Since **theft**, **impersonation** and **vandalism** are **criminal offenses**, the plagiarized author can directly file a complaint with the police, against the natural person of the head of the enterprise that commercializes the object of the plagiarism.

Such means are not provided by a monopolistic exploitation title (*patent or other*). Once counterfeited, it is the ***holder of a patent who must prove to the courts*** that he is the author of the patented concept... Everyone knows how much time and money these proceedings require, as well as the results achieved... With the property on the work, it is the ***copier ~ indictable as a thief (impostor. even vandal) ~ who must carry the burden of proof***. To achieve that goal, he must prove in court that he did not plagiarize or unintentionally reproduced the texts and/or designs constituting the concept of the author as embedded in his Work... the creation of such a work guaranteeing to the creator (*true inventor*), the authenticity of his authorship.

**Advice:** prior to pressing criminal charges, the author might try to reach an out-of-court settlement with the plagiarist. However, if the latter refuses any amicable settlement and persists in denying the evidence, the author may eventually publish his volume in order to publicly expose his copier. In that case, the **IPCB** procures the author with all of the proofs needed to not only organize his case, but also his defence if the plagiarist sues him for libel.

### **The author denounces his thief by publishing his IPCB:**

- his autobiography, which he signs as a writer, contains facts, documents, a precise chronology and various quotations, along with the names of those who, directly or indirectly, contributed or not to the development of the creative concept. Such an account provides crucial evidence, and even irrefutable proof against the copier. Indeed, his only defence against the author would then be defamation, provided that the latter had filled his work with a series of easily-proven lies... Otherwise, if the copier cannot prove that the author's text is defamatory, the judgment rendered will be based on the veracity and accuracy of his texts.

This judgement, truth revealing, can, thereafter, support the author's restoration of his rights.

Example of an extreme case: **The publication of “J'ACCUSE” by Emile Zola in the Dreyfus case.** After being both found guilty and demoted in 1894, Alfred Dreyfus was granted a pardon in 1899 before being rehabilitated in 1906; it is the French army, supported by the government that lost its case.

**It only goes to show that no adversary is truly invincible!**

# **Secrecy**

## **A Hindrance or Help To Research and Development?**



*Industriels.  
Si vous n'êtes pas à l'affût des dernières  
innovations de la concurrence,  
vous êtes dépassés.*

## **3617 INFO BREVET. LE MOYEN LE PLUS RAPIDE DE SE FAIRE UNE IDÉE SUR CELLES DES AUTRES.**

Nouvelles publications, brevets délivrés, brevets déchus, oppositions..., 3617 Info Brevet permet d'accéder immédiatement à l'actualité des brevets français et européens des trois derniers mois et ce, dans tous les domaines d'activités. 3617 Info Brevet est réactualisé chaque semaine.



**Advertisement encouraging Technological Watch  
published in the early 90s by  
the French National Institute of Industrial Property -  
Not addressed to inventors!**

## Can Secrecy Hinder Research and Development?

- a) What systems are currently used to preserve secrecy?  
What rights do they provide? ... What are their limits?
- b) Do such systems differ from the one embedded in the **IPCB**?

**Answers:** It seems that **secrecy** does not hinder investments in research and development; quite the contrary. It is a matter of common knowledge that all laboratories, institutes and engineering services, etc. use **secrecy** on a daily basis as a primary means of ensuring safety, prior to the subsequent filing of a patent application (*or another title*) and take an innovation's market by surprise.

**1** – Before a **patent**, any important research on a discovery requires an incubation period with the highest level of confidentiality... Why? Because prior to filing a patent application, researchers from any discipline must, as a legitimate prudence, protect their findings by placing its description in a sealed envelope at a notary's or bailiff's office, or in any State-owned organization that can guarantee its non-disclosure.

Given that any proof of anteriority is opposable to the subsequent issuance of a patent (*or other title*) to a third party, these findings can, therefore, constitute such anteriorities. Nevertheless, even if this is the case, such anteriorities are not Intellectual Properties apt to block a third party from subsequent producing and commercializing the same invention.

**2** – With a **patent**: this title includes a period of **secrecy** as well. Indeed, the eighteen months following the filing date of its application. During that period, it is impossible for third parties (*new applicants*) to verify anteriorities (*related to other parties' previous patent applications*) that could later prevent them from being granted a patent on the same invention.

This period, added to that of the sealed envelopes, allows secrets to be preserved for several years, without any objection, either from the industrial or the institutional realm... Given the foregoing, a patent application requiring enormous investments can be lost forever.

**3 – With the Intellectual Passport CB Omnibus: the volume** procures several additional advantages than those of a sealed envelope. Complementing the **technical secret**, is the author's **undisclosed** personalized **market research**, its related **business strategy**, as well as technical and business **instructions**. The **proofs of anteriorities** inherent to the author's story are embedded therein, along with **formally connecting the author to his creation**.

Moreover, its literary and artistic nature allows the author to establish ownership on his work. Meaning that it is the only true Intellectual Property that exists in the world: non-transferable and inalienable property of a Work of the Mind (*much like a driver's license, a patent is a State-granted title, not a property*).

**Copyright** results solely from such a property. It is valid throughout the world for the author's entire life plus 50 or 70 years after his passing (*depending on the legislation of each country*). It is assignable and licensable, as well as opposable to third parties who perforce must copy © all or part of the **description embedded in the work** so as to produce and commercialize the innovation resulting in its production and sale.

The Legal principle pertaining to the property on the work embedded in a volume from the **Intellectual Passport CB Omnibus** is guaranteed by the USD System Editor. Finally, in exchange for minimal additional fees, it is modifiable at will (*without any time limit*) so that subsequent changes can be inserted.

**Comments:** Major manufacturers resort to secrecy. For example, tire manufacturers that do not wish to disclose the components used for their rubber. Even if governments issue patents, they keep any national defence matter under the seal of secrecy. What do spies seek? The latest discoveries; namely, the description of an invention. What does the USD System Editions offer? An unpublished volume that, in addition to the description of an invention or an original service, procures its author with a world property opposable to third parties.

\* \* \*

# The Universal Rules of Graphic Art

In the industrial and/or commercial realms, according to the international conventions on copyright and the internal laws of Nations, it is the representation of something (*concrete or abstract*) created (*according to the rules and techniques of art*) using graphic means (*with or without colours*), that constitute an artistic creative work apt to procure its author with a duly deserved property. In accordance with the aforementioned conventions and laws, a graphic work generating Copyright meets at least four basic criteria: drawing - perspective - originality - style.

**1 – The rules of graphic art:** In the sphere of industrial endeavours, graphic art is a form of human expression requiring the mastery of the art of *drawing* and *perspective* in order to represent the external and/or internal shape of a body or object (*coloured or not*). Any Nation having joined the World Intellectual Property Organization has adopted the involvement of *drawing* and *perspective* as essential elements in the creation of a graphic work representing a body or an object.

**Drawing and perspective constitute the rules of graphic art...**

**2 – The techniques of graphic art:** In every sphere of activity, a graphic artist can only claim authorship on his work if the concept that he represents is *original*; meaning, to the creation of the new idea that he expresses... In other words, to the concretization of his original idea onto some physical medium... The artistic quality is based on the artist's *style*. Such a style can either be analogous to a particular art school, or foment a new style to become a school. In any case, there is no art form without a respective technique...

**Originality and style constitute the techniques of graphic art...**

**3 – Work of the Mind:** In every domain, it is the application of these *rules* and *techniques* that constitute a *Work of the Mind*. Why “the Mind”? Because the work emanates from the mind of the one creating. This expressed explains the reason why only a natural person can be its author. In accordance with the internal laws of Nations and the International Conventions on Copyright, a Work of the Mind is, by nature, the property of its author. It is the only *Property* that the author can rightfully own. Is from this natural property that are issued the right to produce, reproduce and interpret such a work ~ *akin to parental filiation* ~ that the internal laws of Nations and the International Conventions have called: Copyright.

**4 – Copyright:** To benefit from *holding* a *Copyright*, as well as its commercial and tax provisions, the graphic artist must first be a true *Author*. His graphic work must be *creative*, whence its indispensable originality. Moreover, he must create his work applying his own *artistic quality*, or from his style. Caution! A plagiarist is an artist who does not create! Indeed, a work of art notion is insufficient to grant a Copyright.

It is the marriage of creation to style that creates a Work of the Mind, according to the rules of art put on a physical medium, which in turn, generates the author's property from which results the Copyright title.

**5 – Result:** Respect of these rules and techniques, inherent to graphic art, is what distinguishes an author's truly original work from a scrawler's scribble without a Copyright. There lies the difference between a talented author and an incompetent. This is why Copyright is granted to some but not others.

**6 – Example:** It is precisely due to his authorship on a graphic creation, *a Work of the Mind*, that Pierre Aguesse won his case in 1<sup>st</sup> instance, Appeal, Revision of Appeal and France's Supreme Court (*Cour de Cassation*).

Consequently, because of the anteriority of its *undisclosed* Work of the Mind, Pierre Aguesse prevailed over the design subsequently registered by an uninformed third party at a National Institute (*I.N.P.I., France*). This State-controlled Institute had issued to that person (*unknowing plagiarist\**) a design patent on the same concept. Because the work had previously been created in compliance with the rules and techniques of art to become a Work of the Mind, and that this classification is the untransferable property of its author “*by virtue of its creation*”, the successive judges (*1<sup>st</sup> instance, Appeal, Revision of Appeal and Supreme Court*) had no other choice than to recognize the preponderance of copyright over a subsequent temporary monopolistic exploitation title. It would have resulted in the same with a patent. **Lack of novelty!** Indeed, any previous Intellectual Property is opposable to the subsequent patent filing (or other title) by a third party. This trial represented a victory for a **creator** over a so-called **inventor**. During the trial, Pierre Aguesse was never introduced as inventor, only as a creator! In addition to the revocation of the model “title” of the plagiarist, the judgement also forbade him to make and sell the product resulting in plagiarism. Only one naming mistake could have been fatal by producing, at its onset, a confusion between Copyright Law and Patent Law.

**7 – Conclusion:** In whatever country respecting graphic art, its internal laws ~ *in compliance with the International Conventions on Copyright* ~ are founded on the criteria constituting property on a Work of the Mind, generator of Copyright. These international principles are the same in every country, regardless of the legal system in force. Indeed, beyond politics and economics, the global recognition and preservation of our cultural heritage is at stake.

*“The more respect is bestowed to the rules and techniques of art, the better the author can express his original thoughts; in turn, his expression can be understood more clearly, thus favouring a higher sense of justice.”*



## The Rules of Literary Art according to Greek and Latin Roots

*“The questions asked on this subject almost always stem from ignorance.”*

**Literary Art:** According to the languages originating from the Indo-European (*Sanskrit, Greek and Latin*), a literary work that generates Copyright inevitably meets five basic inflectional criteria:

1. Vocabulary
2. Grammar (*syntax, semantics*)
3. Spelling - 4. – Originality - 5. Style.

**1 – The rules of language:** inflectional by nature, they are governed by a *grammar* assorted with specific *spelling* \*\*.

**Grammar and spelling\* constitute the rules of a language**

**2 – The techniques of a language:** The writer’s authorship depends on the *originality* of his work; in other words, the creation of the new idea that he expresses, or by concretizing it onto some physical medium... The artistic quality of the work emanates also from the writer’s *style*. Such a style can either be analogous to a particular writing school, or foment a new style to become a school. In any case, there is no art form without a respective technique...

**Originality and style constitute the techniques of a language**

**3 – Work of the Mind:** It is the application of these *rules* and *techniques* that constitute a *Work of the Mind*. Why “the Mind”? Because the work emanates from the mind of the one creating. This expressly explains the reason why only a natural person can be its author. In accordance with the internal laws of Nations and the International Conventions on Copyright, a Work of the Mind is, by nature, the property of its author. It is the only *Property* that the author can rightfully own. Is from this natural property that are issued the right to produce, reproduce and interpret such a work ~ *akin to parental filiation* ~ that the internal laws of Nations and the International Conventions have called: Copyright.

**4 – Copyright:** To benefit from *holding* a *Copyright*, as well as its commercial and tax provisions, the writer must first be a true *Author*. His literary work must be *creative*, whence its indispensable originality. Moreover, he must create his work applying his own *artistic quality*, or from his style. Caution! A plagiarist can be a writing artist! Indeed, a work of art notion is insufficient to grant a Copyright.

**5 – Result:** Respect of the rules and techniques inherent to the art of writing is what distinguishes the author of a creative literary work from the writer of any text without a Copyright, or poetry from the minutes of a meeting or a quotation draft, etc. There lies the difference between a true author and an ordinary writer, or *even* a mere scribbler.

This is why Copyright is granted to some but not others.

**6 – Example:** It is precisely due to his authorship on a literary and artistic creation, *a Work of the Mind*, that Pierre Aguesse won his case in 1<sup>st</sup> instance, Appeal, Revision of Appeal and France’s Supreme Court (*Cour de Cassation*).

By contrast, L’Oréal recently lost its appeal before the same ‘*Cour de Cassation*’ precisely because it failed to respect the stylistic techniques inherent to a language. The judges ruled that the non-literary technical description of a technique used to produce a fragrance cannot, **as such**, be considered as a Work of the Mind, namely, a creative literary and/or artistic work resulting in Copyright.

In this case, L’Oréal made two fatal mistakes:

- First, it thought that the writer of an isolated technical description was entitled to Copyright. Worse, that a legal entity could directly claim Copyright.

- Second, it thought that Copyright was opposable to third parties in the same way as with a patent. Copyright forbids third parties from producing, reproducing and/or interpreting all or part of a work for commercial (*artistic or business*) purposes. While utility and design patents (*industrial design*) forbid third parties from commercializing the product, process or method described therein.

**7 – Conclusion:** Whatever the continent, country, State, even Province involved in literary art, its internal laws ~ *in compliance with the International Conventions on Copyright* ~ are founded on the criteria constituting property on a Work of the Mind, generator of Copyright. These international principles are the same in every country, regardless of the legal system in force. Indeed, beyond politics and economics, the global recognition and preservation of our cultural heritage is at stake.

*“The more precise a language is, the better the author can express his original thoughts; in turn, his expression can be understood more clearly, thus favouring a higher sense of justice in a lawful Nation.”*

# **Registered Design Traps**

**Design Patents  
Industrial Designs  
Designs & Models**

*Popular statements are often used as a deceitful  
means of propaganda by those who wish to  
impose an idea. Easy to assimilate,  
such statements seem, to the most credulous,  
to be unquestionable facts for which  
any demonstration is naturally useless.*

## Registered Design Traps

**Comment:** The internal laws of Nations and the International Conventions on Copyright acknowledge that:

- 1) Any original graphic creation is first and foremost a work of art;
- 2) Any creative artistic work is the natural property of its author;
- 3) Ownership of such a work is non-transferable, inalienable and imprescriptible;
- 4) Copyright naturally results from the property on the work;
- 5) Copyright is comparable to a world exclusivity title;
- 6) Copyright is valid for the author's lifetime and several decades after his passing;
- 7) After the author's passing, his rights are held by his heirs and/or his legatees and/or his beneficiaries.

**Question:** Given the author's natural property on his work and the resulting Copyright, why should he file an additional application, payable country per country, mandatorily published (*loss of secrecy*), and which monopoly granted by the title is only valid for five years, renewable once?

**Answer:** From an ethical perspective, nothing justifies the filing of such a title, since Law is supposed to serve Justice that Copyright respects.

**Question:** In whose interest have countries enacted laws on registered designs (*and models*), since such designs are already covered by Copyright?

**Answer:** It is in the sole interest of multinationals. A design registration (*description of a utilitarian and/or functional object*) is a State-granted title, procuring any predator with the latitude to misappropriate it without risking civil proceedings (*lengthy and costly*) that the author or his SME can almost never afford to the end. It is thus to organize a methodical segregation aimed at authors based on their lack of funding that filings and registrations of designs (*or models*) were conceived. Under the pretexts that only industrial titans have the financial means and scope required to internationally extend and defend a title, every effort was put toward preventing the author from equitably negotiating exploitation rights transfers related to his creation with his potential predator (*see: pages 13 to 22*).

**Conclusion:** The reader of this publication will discover through the following pages proposed strategies to the author for avoiding the disadvantages of registered designs (*or models*), and opening a path accessible to him for the development of his project.

## FOREWORD

Filing an application for a design patent (*U.S.*), an industrial design (*Great-Britain and Canada*) or an industrial model (*Latin Europe*) instead of a utility patent may prove to be a fatal mistake... Discerning the difference is crucial, since by applying for a design patent (*or its equivalent*) instead of a utility patent, the inventor irrevocably offers his technique to the public.

Therefore, this chapter is of paramount importance. Indeed, it allows us to identify linguistic deviations, insidiously introduced within the formulation of legal texts, which emphasize arbitrary principles at the expense of ethics. For over two centuries, due to their inherent vagueness and incoherence, they have led to the most contradictory rulings on every continent.

It is at the heart of this juridical labyrinth inherent to the law on design patents (*industrial designs and models*) that resides, **by extension**, the weakness of patent\* and the strength of Copyright, naturally derived from a Work of the Mind.

Notwithstanding the lures and abuses that have continuously resulted from this confusion and incoherence, the ethical foundations upon which lies Copyright has remained unscathed... Still, some traps must be thwarted to establish a judicial Intellectual Property.

It is to that end that we are driven to achieve this endeavour. Not only to discover what lies behind the legal gibberish, but also, above all, guide the inventor who is unaware of the subtleties of semasiology (*study of the meaning of words*).

Passionately, it is using an investigator's discernment that we have tackled this fascinating subject. To that effect, we deemed appropriate to compare the European and American legal systems (*including a few specific details concerning Great-Britain, given the English language and the liberal views of British politics*), in such a manner that our assessment leads to a well-founded opinion in the international arena.

\* By opting unknowingly for a design patent, the inventor, who is not an expert on semantics, must rely on the interpretation of legal texts that obviously deflect Copyright ... No doubt that it is at the heart of such texts that reside patent's Achilles' Heel. Indeed, by their formulation, they seem to skillfully conceal the ethical and logical foundations of Intellectual Property Law. It is particularly in these texts, where every means were taken to deny authors their legitimate rights, that the arbitrary is most blatant.

## 1 - According to European Laws (except Great Britain):

Study based on the Dalloz Précis: Industrial Property Law

3<sup>rd</sup> edition 1990 – ISBN 2-247-01139 X

Designs and models, two words omnipresent in the universe of inventors and industrialists. The European laws stipulate that *“designs and models can juridically be transacted as titles in a number of ways: in the first place, be assigned; then, be licensed”*.

By definition; therefore, just like a patent, they are titles similar to monopolistic industrial exploitation rights: *“The rules on Copyright, enacted by the 11 March, 1957 Act, are applied in compliance with the rules of artistic unity \*. Such rules, **by their tendency to overprotect the author**, are nevertheless ill-adapted to industrial designs and models...”*.

**The Berne Convention, Art. 2:** *“It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified category of works shall not be protected unless they have been fixed in some material form.”*

**Once more, what is the word “...protect...” doing in this sentence?**

It might have been simpler to write: *“It shall, however, be a matter for legislation in the countries of the Union to prescribe literary and artistic works, out of which one or more category of works shall not be valid unless they have been fixed in some material form.”*

Laws **L 111-1** to **L 217-3** of the French Intellectual Property Code are firm on this point. Otherwise, **Asterix** Park can close down. And **Casterman**, Hergé’s publisher, would have reason to worry. . Sections **335-1** to **335-9** of Book III, Title III, Chapter V of the French Intellectual Property Code confirm the criminal provisions of this point of Law.

**Criminal prosecutions for plagiarism:** Pursuant to section 311(1) of the Criminal Code of the French Republic, the criminal provisions of sections 335-1 to 335-9 of Book III, Title III, Chapter V of the French Intellectual Property Code. A list of criminal provisions from various countries regarding plagiarism is included on page 94 hereinafter.

\* See the rule of the unity of the art page 103.

## 2 - According to the Laws of North America and their International Extension

Study based on the Canadian and American texts published by the C.I.P.O.  
and by the U.S. Patent and Trademark Office, Washington D.C.

In comparison with European laws, what is first striking upon reading North American laws, is the absence of the "Industrial Model" amongst monopolistic titles... Americans refer to "*industrial design and models*" as "*design patent*", literally a patent on a design...

In English, industrial property implies ownership of a factory, while commercial property seems to mean ownership of a shop, a store or any place of business other than a factory.

Under these circumstances, it is not surprising that in Canada and the United Kingdom, industrial models and designs should be restricted to the term "***industrial design***", while United States should define them (*European industrial designs or models*) solely as "***design patents***". Only through a process of inference, occurrence, extension, or hypothesis, can the underlying notion of industrial model within the legal texts related to such matter be found. In anticipation, a drawing in two dimensions (*according to the rules of art*) represents in three dimensions the same object as the European model.

What is industrial design in North America and, through global extension, in all of the Nations rallied to the same legal evolution?

According to the Canadian **Intellectual Property Office (CIPO)**, for example: "*An industrial design is the shape, pattern or ornamentation applied to a useful article that is mass-produced.... it may be made by hand, tool or machine ~ Copyright is legal protection for an artistic endeavour ~ An artistic work is protected under the Copyright Act automatically, but a design is protected under the Industrial Design Act only if it is registered*".

The principle is the same in the United States where a patent on a design (design patent) must be filed.

\* \* \*



## Copyright or Author's Rights?

**Reminder:** US Copyright Act § 102 b) (US Code, Title 17): *“In no case does copyright protection for an original work of authorship **extend** \* to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work”.*

\* **extend** does not mean loss of copyright on the work. It merely establishes its limit.

**Confusion:** calling “*Author's Rights*”: “*Copyright*”.

These two terms do not have the same literal meaning; nonetheless, according to International Copyright Conventions, they are supposed to express the same rights for a same natural person: **the author**. Indeed, without the **author**, the law governing Copyright would not make sense... In a bilingual country like Canada, its citizens are governed by the same Law, whether it is written in English or French.

In French, “*droit d’auteur*” refers to the author as a natural person, while in English “Copyright” makes no obvious reference to a person even if Authors’ Rights are a part of Copyright Law. Notwithstanding the lack of accuracy in defining the word “Copyright” to grasp its full meaning, it is common knowledge that wherever he lives, an Anglophone author ~ *composer, playwright, film writer, etc.* ~ globally enjoys the same Author’s Rights, moral, derived and patrimonial, than his francophone colleagues, for his lifetime and several decades after his passing (*50 to 70 years, depending on the particular legislations of a country*). We are referring to Author’s Rights, not merely the right to copy.

**Criminal prosecutions for plagiarism:** pursuant to sections 42, 43 and 44 of the Criminal Remedies with regards to Copyright (R.S.C. (1985) ch.C-42) and of section 322(1) of the Criminal Code of Canada (R.S.C. (1985) ch.C-46). A list of the criminal provisions from various countries regarding plagiarism is included on page 96 hereinafter.

\* \* \*

## THE CANADIAN LAW'S AMBIGUITY ON DESIGNS AND OBJECTS

### LAW IS SUPPOSED TO SERVE JUSTICE

**1 – Article 64.1 of the Copyright Act of Canada: 64 (1)** *In this section and section 64.1, “Article” means anything that is made by hand, tool or machine; “design” means features of shape, configuration, pattern or ornament and any combination of those features that, in a finished article, appeal to and are judged solely by the eye; .* **Reply:** it appears to be a design representing an isolated object. Akin to **Salvador Dali’s** “melting watches”; it cannot be the design of an object intrinsic to a work of art, from which the indivisibility of its totality guarantees the artist’s world Copyright... **64.1 (1) continued:** *“useful article” means an article that has a utilitarian function and includes a model of any such article;* **Reply:** by the mere fact that the work is indivisible, any design representing an object intrinsic to a work of art has no other function than that of its support on a medium... **64.1 (1) continued:** *“utilitarian function”, in respect of an article, means a function other than merely serving as a substrate or carrier for artistic or literary matter.* **Reply:** whether the object drawn in two dimensions can be functional or not in three dimensions, the reproduction of its design for commercial purposes still requires the **authority of any person who owns the copyright**, according to Article **64.(2)** of the current Canadian law. The mandatory authorization from the titleholder of the Copyright stipulated in the Canadian law is the absolute proof of its validity. **Conclusion:** Akin to world-famous artists, some objects drawn by **Hergé** in one book of the Tintin and Milou series has already set a legal precedent to that effect. The same applies to Walt Disney, etc.

**Article 64.1 (1) continued – Marginal note: Non-infringement: re certain designs (2)** *" Where copyright subsists in a design applied to a useful article or in an artistic work from which the design is derived and, by or under the authority of any person who owns the copyright in Canada or who owns the copyright elsewhere, (a) the article is reproduced in a quantity of more than fifty, or (b) where the article is a plate, engraving or cast, the article is used for producing more than fifty useful articles, it shall not thereafter be an infringement of the copyright or the moral rights for anyone (c) to reproduce the design of the article or a design not differing substantially from the design of the article by (i) making the article, or (ii) making a drawing or other reproduction in any material form of the article, or (d) to do with an article, drawing or reproduction that is made as described in paragraph (c) anything that the owner of the copyright has the sole right to do with the de- sign or artistic work in which the copyright subsists."*

**Reply: 1) What characterizes a useful article?** The useful article stipulated in Article **64.1 (1)** must be identically reproducible in several copies from a board, an engraving or a cast. If it is not identically reproducible, one can therefore not possibly make several copies thereof from a board, an engraving or a cast.

**What kind of article can be classified as not useful?** *A priori*, an article that cannot be identically reproduced. Example: a prosthesis is not a useful article; it is a "**device**" adjusted to each individual's specific morphology and anatomy. Is not *a priori* useful: a set of parts constituting a mechanism, an appliance or a machine. **Note**: Whether or not an object is useful, according to Article 64.1 (1), no one has the right to reproduce an original drawing or the object resulting therefrom "without the titleholder's authorization". By stipulating the need for the titleholder's "explicit" **authorization**, the Law tacitly acknowledges the Author's sovereign ownership of his work, in contradiction of the aforementioned principles of non-violation of Copyright. **3) When negotiating an international contract**, parties can select a legal system other than that of Canada. **4) When the work is unpublished**, it is through a confidentiality and non-disclosure covenant that a third party gains access to the secrets contained therein, by forcing the third party to acknowledge the author's property in the contract's preamble. Such a contract allows the author to negotiate more equitably a cession or license with an interested party, who, subsequent to a mutual agreement, can opt to file a monopolistic title. **5) Moreover, according to the principle, "contract is Law"**, feasible agreements between contractors can be reached, akin to Coca Cola or Walt Disney, which grants license rights under the seal of **Secrecy** or **Copyright**.

**2 - Article 64.1 (1) continued** - *Exception (3) Subsection (2) does not apply in respect of the copyright or the moral rights in an artistic work in so far as the work is used as or for (a) a graphic or photographic representation that is applied to the face of an article; (b) a trade-mark or a representation thereof or a label; (c) material that has a woven or knitted pattern or that is suitable for piece goods or surface coverings or for making wearing apparel; (d) an architectural work that is a building or a model of a building; (e) a representation of a real or fictitious being, event or place that is applied to an article as a feature of shape, configuration, pattern or ornament; (f) articles that are sold as a set, unless more than fifty sets are made; or (g) such other work or article as may be prescribed by regulation (AN\*: re reply no. 1) hereinabove); (4) Subsections (2) and (3) apply only in respect of designs created after the coming into force of this subsection, and section 64 of this Act and the Industrial Design Act, as they read immediately before the coming into force of this subsection, as well as the rules made under them, continue to apply in respect of designs created before that coming into force. R.S., 1985, c. C-42, s. 64; R.S., 1985, c. 10 (4th Supp.), s. 11; 1993, c. 44, s. 68; 1997, c. 24, s. 39. \*Author's message (suggestion).*

**3 - Article 64.1 (1) of the Copyright Act of Canada: Marginal note – Non-infringement: characteristics of useful articles** *"The following acts do not constitute an infringement of the copyright or moral rights in a work: a) applying to a useful article features that are dictated solely by a utilitarian function of the article. **Answer**: this is not about a work of art, but strictly a useful object and a utilitarian function.*

*b) by reference **solely** to a useful article, making a drawing or other reproduction in any material form of any features of the article that are dictated solely by a utilitarian function of the article etc.". **Answer:** This restriction is normal, since **creation** ~ of the texts and drawings making up the description of the useful object ~ in **2** dimensions must precede the making of the related object in **3** dimensions, in order that there may be an unquestionable prior artistic **creation** covered by Copyright. **64.1 (1) continued:** (c) doing with a useful article having only features described in paragraph (a), or with a drawing or reproduction made as described in paragraph (b), anything that the owner of the copyright has the sole right to do with the work. **Reply:** since the law in question concerns **exclusively** the titleholder of a Copyright, there fatally is copyright violation by a third party who performs such a deed. **64.1 (1) continued:** (d) using any method or principle of manufacture or construction. **Reply:** provided one does not plagiarize the text that makes up the principle or method required to create the work.*

**4 - Article 64.1 (2) allows one to avoid Article 64.1 (1):** *Nothing in subsection (1) affects (a) the copyright, or (b) the moral rights, if any, in any sound recording, cinematograph film or other contrivance by means of which a work may be mechanically reproduced or performed. R.S., 1985, c. 10 (4th Supp.), s. 11; 1997, c. 24, s. 40. **Reply:** by having an (audio-visual) video made of his work, the author enjoys the provisions of article **64.1 (2)** which free him from article **64.1 (1)**'s constraints.*

**5 - Article 64.2 (1)** *This Act does not apply, and shall be deemed never to have applied, to any topography or to any design, however expressed, that is intended to generate all or part of a topography.*

**6- Article 64.2 (2)** *For greater certainty, the incorporation of a computer program into an integrated circuit product or the incorporation of a work into such a computer program may constitute an infringement of the copyright or moral rights in a work.*

**7 - Article 64.2 (3)** *In this section, "topography" and "integrated circuit product" have the same meaning as in the Integrated Circuit Topography Act. 1990, c. 37, s. 33.*

**8 - Criminal prosecutions for plagiarism:** pursuant to sections 42, 43 and 44 of the Criminal Remedies with regards to Copyright (R.S.C. (1985) ch.C-42) and of section 322(1) of the Criminal Code of Canada (R.S.C. (1985) ch.C-46). A list of the criminal provisions from various countries regarding plagiarism is included on page 96 hereinafter.

**US COPYRIGHT ACT § 102 B) (US CODE TITLE 17)**  
**RESULTING FROM THE US SUPREME COURT'S JUDGEMENT RENDERED IN**  
**1879: RE SELDEN VS. BAKER**

01 U.S. 99, 11 Otto 99, 1879 WL 16689 (U.S.Ohio), 25 L.Ed. 841

The Selden vs. Baker case is as simple as a cooking recipe. When this cooking recipe is published, the author of the book's intent is to impart his recipes to the public so that the latter can use them. Certainly not the contrary, as it is precisely the purpose of publishing a book! In this case, there is no secret to safeguard. Nevertheless, Copyright forbids third parties from copying recipes for commercial purposes, on condition sine qua non that they are original. The Selden vs. Baker case is contrary to the preservation of secrets that would apply, for example, to a scriptwriter upon presenting his script, based on an original theme, to a film producer under the seal of a non-disclosure and confidentiality agreement. In this case, the script is not published, thus forcing everyone to keep it secret for as long as the scriptwriter needs.

Selden published a book in 1859 (under the law of 1831) in which he describes a bookkeeping method, not proven to be original. Then, after publishing improvements on his method, he had his Copyright registered by the American authorities during 1860 and 1861... Much like a recipe, this book was published in order to allow the public to use this method, not to preserve its secrecy. Otherwise, he would not have published it! Consequently, there was no secret to preserve in his work.

In the following years, Baker publicly used the method published by Selden... Once he found out, Selden, by virtue of his Copyright, wanted to prevent Baker from using his method.

The legal suit was pleaded before the Superior Court, then, in Appellate Division, to finally arrive before the U.S. Supreme Court. The latter rendered its verdict according to the Copyright Law then in force, thus rendering the jurisprudence; the subject of this study.

In order to justify its judgment, the Supreme Court referred to several similar cases, including the following two; to wit, for example:

- 1) in order to prevent anyone from making and selling a medication, a utility patent is needed, since Copyright only forbids one to copy the description of the invention but does not forbid its fabrication and sale;
- 2) an original method published for mathematical science is meant for public use; this is the reason why the work is published. Copyright is not meant to prohibit usage.

Basing its judgment on the aforementioned jurisprudence, the U.S. Supreme Court declared that using the method, which Selden voluntarily published, did not violate his Copyright. Selden's request was, therefore, considered inapplicable and the Court allowed Baker to continue using his method, which, by now, had become public knowledge.

That being said, two comments must be made and two questions answered.

**The two comments:**

- 1) In its judgment, the U.S. Supreme Court merely explained that Copyright did not extend to \* the use of a method that he had published. \* “ ... did not extend to...” in compliance with **US Copyright Act § 102 b) (US Code, Title 17)**, which clearly states that, *"In no case does copyright protection for an original work of authorship **extend** \* to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work"*. **Author's Note:** In its judgment, the U.S. Supreme Court does not say that not extending Copyright to the use of Selden's method annuls the Copyright on its description, which is the author's work... *“cannot be **extended**”* does not mean loss of Copyright on the work. **It merely establishes the limit.**
- 2) If any method whatsoever is written for the mere sake of explaining it, namely, extrinsic to a literary or artistic work, chances are slim that it would meet the founding criteria of such a work; consequently, that it be copyrightable.

**- The two questions:**

- 1) Was Selden's method written in such a way that it unquestionably qualified as a literary work (*hence entitled to copyright*)?
- 2) Was Selden's method truly original?

**Last comment:** The powerful lobbies of American film enterprises, Walt Disney in the lead, arranged for the **US Copyright Act § 102 b) (US Code, Title 17)** not to be applicable to sound recordings, movies or **other physical media** (*AN: a video*), by means of which the work can be mechanically reproduced, represented or performed. **Conclusion:** by having an (audio-visual) video of his work made, the author enjoys the conditions provided by the Law to safeguard Copyright.

## Let Us Compare the Selden vs. Baker Case to the Use of the IPCB Volume

Firstly: according to the US Copyright Law, the internal laws of Nations, the two International Copyright Conventions (*Universal and Berne Conventions*) and the WIPO (*World Intellectual Property Organization*), which acts under the UN authority, a literary or artistic work is the property of its author solely because he created it. Not because of its publication! ...

Secondly: much like a new original and unknown script for a film, the **IPCB** is not published. It was conceived according to the fiscal law-governing secret (*e.g. Coca Cola, Michelin, etc.*) as applied to a resulting creative unpublished literary and/or artistic work. **Namely, confidential!** ...

Thirdly: as a novel, the **IPCB** texts are written in compliance with literary rules, and, akin to an industrial design, with respective artistic rules regarding its drawings. **Such work is undoubtedly entitled to copyright!**

Fourthly: Given that the **IPCB** is not published, such as in the case of a scriptwriter, the author of the description (*potential inventor*) can present it to investors with a non-disclosure and confidentiality agreement (*reinforced by the ownership of the work*) binding the signing parties to keep the secret contained therein. No one can transmit such a description (*covered by Copyright*) to his production and business partners or employees in order to have this concept/invention commercialized, without making one or several copies of such a description. **Such copies are forbidden by Copyright!**

### Conclusions

**1** - As the owner of his work, the author of an original concept is the creator of its description but not an inventor... At the time of creating the concept, nothing proves that it can eventually become an invention. Its property allows the author to be granted by authorities a Copyright number, of which he becomes titleholder.

**2** - Copyright covers the embedded description of the original concept materialized (*a literary and/or artistic work*), not its use.

**3** - In a court proceeding for illegal copying, the author of a concept should never be introduced as an “inventor”, but always as a “creator”, even if the trial takes place after the creation of the concept (*at the marketing phase*). The victim, therefore, must plead plagiarism (*and even unfaithful competition or industrial espionage, depending on the case*), not counterfeit.

**4 – Criminal prosecutions for plagiarism:** Pursuant to Section 2319 of the United States Criminal Code (*U.S. Code: Title 18*), of the criminal provisions of Section 506(a) (1) of the Copyright Law of the United States (*U.S. Code: Title 17* ). A list of the criminal provision from various countries regarding plagiarism is included on page 96 hereinafter.

## **Criminal Procedures concerning the protection of property in Europe**

### **England or United Kingdom**

Pursuant to Sections 1(1) and (2) of the Theft Act 1968, of the criminal provisions of Section 107 (1) (a) to (e) of the Copyright, Designs and Patent Act 1988

### **Germany**

Pursuant to Articles 242 and 243 of the Criminal Code of Germany, of the criminal provisions of Subsection 2, Articles 106 to 108a of the German Copyright Act

### **Italy**

Pursuant to Section 624 of the Criminal Code of Italy, of the criminal provisions of Article 171 of the Italian Copyright Statute

### **Spain**

Pursuant to Section 270 of the Criminal Code of Spain, of the criminal provisions of Article 143 of the Intellectual Property Act of Spain

**Remark:** since the Criminal Code of the other European countries concerning the protection of property is similar to the Criminal Code of the French Republic and of the five countries mentioned above, the authorities of the USD System International Consortium of Editions makes them available to the reader. Moreover, the European Criminal Legal system unites the countries of the Community on the same legal principles respecting property rights.

\* \* \*

## **Criminal Procedures concerning the protection of property on other continents**

### **Australia**

Pursuant to Section 131.1 et seq. of the Criminal Code 1995, of the criminal provisions of Sections 38 and 132AC of the Copyright Act 1968

### **Singapore**

Pursuant to Section 378 of the Singapore Penal Code, of the criminal provisions of Section 136.1 of the Singapore Copyright Act

**Remark:** in addition to the United States of America (page 89) and Canada (page 92), every country in the world that adhered to the UN's Charter provides the same criminal remedies for property theft.



**“Expression of the Idea”  
or  
“Expression of the Work”?**

**One must choose!**

16	3	2	13
5	10	11	8
9	6	7	12
4	15	14	1



This magic square was known by German painter Albrecht Dürer, who included it in his engraving *Melencolia*. It is combined in such a way that, whether one adds them horizontally, vertically or diagonally, the sum of the numbers is 34, and likewise, if one adds the numbers in each of the four central squares or in the four squares at the angles. There are a great number of possibilities of finding the number 34 in Dürer's square. For example, starting clockwise from each corner, one can add the number in each of the subsequent square. Finding all the possibilities takes time. Dürer also manages to display the date of his work (1514) in the two bottom central squares.



In 1514, Albrecht Dürer included his magical square (*top left*) in the upper right corner of his engraving. His magical square is intrinsic to the work, of which the expression contains the idea originating therefrom. There can be no expression of an idea unless it has been concretized in all or part of the work containing it. Given its date of creation, the work is in the public domain. If it were the work of a modern painter, no one would have the right to reproduce all or part of it without his authorization, on account of **the unity of art** (*page 103*). An idea that has not been concretized onto some physical medium is no one's property.

# “Expression of the idea” or “Expression of the work”?

## One must choose!

**1. A lack of foresight:** numerous lawyers (*so-called experts in Intellectual Property*) pretend that, in the case of a novel, the theme of the story would not be covered by Copyright, merely the way that it is told. In doing so, they give the term “**expression of idea**” a specifically reduced meaning, not realizing the contradictions inherent to that interpretation.

Are plot and style not two inseparable components of an original work?

**2. In reality:** when an author submits an undisclosed original story (*script or libretto on a new theme, that never existed before*) to a third party, along with a non-disclosure covenant related to the work and signed by both parties (*author and third party*), the latter has no right to steal the original theme of the story by changing the characters’ names, the period when it takes place, etc. Otherwise, non-disclosure covenants written by lawyers would be a sham and there would be no true screenwriter.

Scripts could be stolen without any risk to the thieves, and screenwriters’ name appearing in the film’s credits would most likely be that of impostors. As a result thereof, neither films nor, for that matter, any other form of audio-visual presentation would enjoy Copyright’s benefits.

Logically, if such incoherence were true, **anyone stating** that only the manner of telling a story is covered by Copyright would automatically:

- put every screenwriter in the film industry (*including audio-visual works in general*) out of work;

- eliminate Copyright’s benefits for every writer, novelist, journalist, poet, playwright, graphic designer and cartoonist, painter, sculptor, photographer, composer, etc., whose work is represented on film, video, and the like. As long as Copyright is in force, the “remake” of a movie requires the original script writer’s authorization;

- eliminate a considerable clientele for lawyers, representing writers, artists and authors of software, whose work is plagiarized.

**3. One question is asked:** who could seriously say that, by “expression of idea”, the theme of a story would not be covered by Copyright, only the way of telling it?

The screenwriter (*theme*) and the dialogue writer (*words*) are not necessarily the same person. One should not confuse “expression of an idea” and “expression of a work”. Indeed, this might legally restrict the meaning of Copyright.

Unpublished works raise another issue: in order to illegally copy them, third parties are forced to systematically resort to a plethora of illegal schemes that do not exist in patent, to wit:

- espionage, illegal transfer of data, etc. (*criminal offences*), disclosing the description of industrial inventions or original service-oriented concepts to competitors;
- vandalism (*a criminal offence*), when the thief distorts the work by changing some of its parts (*features, words, etc.*).

Such commercial intelligence systems cannot be used efficiently without prior knowledge of confidential creative products/services. Maintaining secrecy can therefore be advantageous to an author, since it hampers illegal copying; predatory competitors may even lose interest in uncovering such creations and anxiously seek opportunities elsewhere. As a reminder, when an artistic creation ~ *plan, sketch, graphic design (original drawing of any form), sculpture, photograph, geographic map, etc.* ~ is an integral part of a literary work (*libretto, script, novel, etc.*), it is also covered by Copyright, simply because it is intrinsic to the work. The two are inseparable. This is called: “**the principle of unity of art**” (*page 103*). The same applies to a literary creation ~ *libretto, script, novel, conference, software program, data base, internet site, instructions for use, etc.* ~ that is part and parcel of an artistic work.

### **The Idea is unfailingly linked to the work!**

As such, original characters and objects from literary and/or artistic works, created in two dimensions (*comic strips*), such as Superman, Batman, Tintin (*see Professor Tournesol/Calculus's shark-shaped submarine*) enjoy the same legal benefits as Walt Disney's creations: it is forbidden for third parties to reproduce them (*in two or three dimensions*) without the author's or his heirs' or legatees'/devisees' express authorization. Therefore, no one can produce, reproduce or interpret an original story without being previously authorized by the author of the texts and drawings; “*as a unity*”, such texts and/or drawings make up the expression of the work hence ~ *logically* ~ of the idea embedded therein. The idea is an integral part of the “**expression of the work**”, not the other way around. The same rule applies for the reproduction and interpretation of paintings (*e.g. Salvador Dali's “The Persistence of Memory”*).

Notwithstanding the foregoing, the Supreme Court of Canada \* also ruled that if instructions for use are included in a work covered by Copyright, a third party, unauthorized by the author, cannot commercialize (*in three dimensions*) the object resulting from such a work.

## Conclusions

1. If one combines the notion of “*Expression*” (*description*) with the notion of “*Idea*” (*purely imaginary concept*), or, “**the expression of an idea**”, the following definition becomes apparent: **description of a purely imaginary concept**.

According to this formulation, the notion of “*Work*” does not exist, even though without a work the idea cannot be described. Furthermore, this nomenclature “*expression of an idea*” fails to include the notion of “*literary or artistic*”. Some people might think that by merely omitting the word “*work*”, without which the idea cannot be concretized, an arbitrary elimination of copyright on the idea imbedded in the text and/or drawing can occur.

Nevertheless, it is precisely because of the link between “*work*” and “*idea*” that the original story of a script ~ *just like his way of describing it* ~ belongs to its author.

2. If the notion of “*Expression*” (*description*) is combined to the notion of “*Work*” (*literary or artistic production*), or “**Expression of a work**”, the following definition can be reached: **literary or artistic description of a purely imaginary concept**.

In that case, there no longer is any doubt that the idea imbedded in a work and the resulting copyright, quite logically and clearly depend on the originality of a story’s theme, as much as on the way in which it is described. Being at the core of the work, these two forms of originality are intrinsically linked one to the other.

3. What is true for the author of a creative literary or artistic work is also true for the author of an industrial or service-oriented original concept who embeds his creations in an **IPCB**, according to the rules of literature and graphic art.

\* Supreme Court of Canada: Paul Trudel vs. Clairol Inc. of Canada (1975) 2 SCR 236

In agreement with Articles 17 and 27 of the Universal Declaration of Human Rights and the internal laws of truly democratic Nations, that any proof of anteriority constitutes for the author of a Work of the Mind, a right opposable to the issuance or validity of a monopolistic exploitation title granted by the State to one or several persons. This proof of anteriority is even stronger when, in addition to being **a seizable private property**, it is intrinsic to a non-transferable, inalienable, universal and perpetual **property, namely, a Work of the Mind that no one can arbitrarily deny its author.**

### **Technically speaking:**

**What is a literary Work?** According to International Conventions on Copyright and the internal laws of Nations, it is exclusively the specific use of words (*belonging to no one*) intrinsic to an original story written in an aesthetic style and with good grammar (*according to the rules of art*), constituting a literary creation apt to procure its author with a rightful ownership (*see the following page*).

**What is an artistic Work?** In regard to drawings and according to the same laws and conventions, it is exclusively the specific use of features and colours (*belonging to no one*) intrinsic to the graphic description of an original concept (*according to the rules of art*), constituting a literary creation apt to procure its author with a rightful ownership.

In both cases, the technical aspect of an invention (*whether industrial, hand-made or service-oriented*) that is part and parcel of a literary and/or graphic creation, provides its author with the ownership of a **Work of the Mind**. Logically, any other criterion is purely arbitrary.

***The Unity of Art, function and utility is similar to the organic constitution of a body.***

\* \* \*

# The Unity of Art

## A Creative Literary or Artistic Work is Not a Puzzle, Wherefrom Some Parts Could be Subtracted from the Rest

**Reminder:** Under the Constitutional Law of any supposedly democratic Nation, “No one shall be arbitrarily deprived of his property”. (*Article 17 of the Universal Declaration of Human Rights*).

According to International Conventions and the internal Laws of Nations governing Copyright, an original literary or artistic work, aka Work of the Mind, is its author’s property, **simply because he created it**.

It is the only free, non-transferable, inalienable and perpetual property recognized by the 193 member States of the U.N. (*See WIPO*). For its part, the resulting Copyright is transferable or licensable for the author’s lifetime and several decades after his passing.

Akin paternity and maternity naturally issued from procreation, this property ~ *naturally issued from the process of creating a literary or artistic work* ~ is de facto legal and does not need to be published.

Similar to unity of the progeniture’s body, the Work of the Mind is indivisible.

Severing part of such a work is tantamount to amputating it thus, distort its unity through vandalism.

Given its indivisibility, each part of a Work of the Mind is naturally inseparable from the entire work. This is what we call: **Unity of art**.

***“In any Lawful Nation, no judgement can validly abolish the principle of unity of art without distorting the foundations of an original literary and/or artistic work, aka Work of the Mind.”***

\* \* \*

***“Patent or other official monopolistic titles**  
do not prohibit third parties from copying the description (texts and drawings)  
of the invention, but it prohibits them from exploiting it (monopoly)...”*

***“Copyright** prohibits third parties from copying the description  
of the invention or of the original concept (texts and drawings)  
for commercial purposes; namely, to exploit it (exclusivity).”*



# A Truly Ecological Gesture

## Promoting Humankind's Grey Matter

### From an economic perspective:

Today, prestigious creations are included in the USD System International Consortium of Editions' world innovation bank. The fields covered by such creations are wide-ranging: high technology ~ *especially dealing with pollution problems* ~ and new energies, as well as medicine, para-medical products/services, pharmaceuticals, technical products and various types of services.

The *Intellectual Passport CB* Omnibus Volume, with its **ICBF** (*original business forecast*) and its related **Portfolio of Contracts**, procures the author of any innovative concept (*patentable or unpatentable*) with the hitherto missing instrument allowing him to directly enjoy a world property on his creation and negotiate serenely with potential investors: namely, prior to having the invention per se commercialized by an entrepreneur who has the means (*if he deems it useful and with full support from the inventor*) to file an international patent and legally defend it.

### From a legal perspective:

Leading lawyers in Intellectual Property fully support the principle of preponderant anteriority. In this regard, some of the most renowned European experts in this field who met him after reading his works, never challenged Michel Dubois' statements. Notably: in 1992, **Mr. Antoine Braun** (*leading specialist from Brussels in designs and models – European version of a design patent*); in 1994, **Professor Albert Chavannes** (*author of the Dalloz Synopsis of Intellectual Property, former President of the Committee for the Drafting of the French Criminal Code*); in 1994, **Mr. Jean Foyer** (*Dean of the Academy of Sciences in Paris, former Keeper of the Seals under General de Gaulle, former President of the Committee for the Drafting of the French Civil Code*). More recently, in the case won in first instance and in Appeal at Lyon (27/05/04) by Pierre Aguesse (*holder of an earlier version of the Intellectual Passport*), against the company Jeantet and Jacques Brisson (*titleholder of a model – European equivalent of a design patent - registered at the INPI*), one of the latter's lawyers, **Mr. Jacques Azéma** (*leading expert in Intellectual Property*), never challenged the legal validity of the anteriority of the author's unpublished literary and artistic work on an official title subsequently registered by a third party. (*Judgement by the Court of Cassation – France's Supreme Court, on July 4<sup>th</sup>, 2006: 05/4797 DCI*).

### **From a philosophical perspective:**

Mankind's raw matter is brain power. Human works, inherent to every factor of growth, must lead to a simplified version of the procedures involved in the application of law, allowing universal access to Intellectual Property (*Article 27 of the Universal Declaration of Human Rights*). Procuring every author of invention or concept with a free access to the ownership of his initial creation is fair and necessary for private, as well as for collective interests. The *Intellectual Passport C.B.* implies changes that result from the application of new legal proceedings; such changes reflect a more open-minded attitude that is conducive to a **“healthier intellectual environment”**. Thanks to this new mentality, individuals will be able to join forces with pioneers in every field of activity; together, they can at last implement a new business world that respects the cultural conditions of the twenty-first century...

### **On a political level:**

The texts implementing *Article 15.1 c of the Covenant on Economic Rights of the Universal Declaration of Human Rights* were passed in 2006. They urge Nations to acknowledge the inventor's right to enjoy moral and physical protection on his productions, including the obligation to ensure protection from counterfeit by third parties and to consult with associations. See below the limitations registered in 2 of the introduction of the article 15.1 c.

In contrast to human rights, intellectual property rights are generally of a temporary nature, and can be revoked, licensed or assigned to someone else. While under most intellectual property systems, intellectual property rights, often with the exception of moral rights, may be allocated, limited in time and scope, traded, amended and even forfeited, human rights are timeless expressions of fundamental entitlements of the human person. Whereas the human right to benefit from the *protection of the moral and material interests resulting from one's scientific, literary and artistic productions safeguards the personal link between authors and their creations* and between peoples, communities, or other groups and their collective cultural heritage, as well as their basic material interests which are necessary to enable authors to enjoy an adequate standard of living, intellectual property regimes primarily protect business and corporate interests and investments. Moreover, the scope of protection of the moral and material interests of the author provided for by article 15, paragraph 1 (c), does not necessarily coincide with what is referred to as intellectual property rights under national legislation or international agreements.

\* \* \*

# **Copyright and Jurisprudence in the Industry and Commerce**

**The Intellectual Passport C.B.  
A Legally Private Editing Process**

*"Something is not just because it is a law;  
But it must be a law because it is just."*

**Montesquieu - The Spirit of Laws**  
(Translated from "De l'esprit des lois" (1748))

*"Useless laws weaken useful laws."*

**Montesquieu - The Spirit of Laws**  
(Translated from "De l'esprit des lois" (1748))

## Reminder

**What is jurisprudence?** According to current definition, it is the collection of rules imposed by authority. Such authority results from the judgments of various tribunals in a given country or in several countries that share the same legal system (*e.g. the nations governed by Common Law*).

Jurisprudence inevitably results from a court ruling... This requires a contradictory debate presented before the court by opposing parties. One must therefore appear in court, and follow the often lengthy and costly rules of procedure, all of which can sometimes violate one's privacy. Notwithstanding the related costs and inconveniences, in order to have as effective a legal precedent as possible in the field of Intellectual Property, it is desirable that it be permanent. Such permanence results first of all from international recognition. Nearly all the Nations of the world have created their Intellectual (*industrial*) Property Office or Institute under the aegis of the **World Intellectual Property Organization** (*Member of the U.N.*), aka **W.I.P.O.**. Whatever its legal status, a Nation that becomes a member of the **W.I.P.O.** adheres to its basic principles of Intellectual Property. The same applies, for example, to the **W.T.O.** (*World Trade Organization*). This is why the **W.I.P.O.** can be asked to arbitrate in a legal conflict between two Nations. The result of this observation is that for a legal precedent to achieve international recognition, it must comply with the basic principles of Intellectual Property, according to the **W.I.P.O.**'s criteria.

### 1 - The volume: a legal support for the description of an invention or a service

*What is the distinction between an invention and the medium through which its description is made?*

The medium currently chosen is not an Intellectual Property title issued by the government. It is called "*Intellectual Passport C.B.*".

"*Intellectual Passport C.B.*" designates an Omnibus of unpublished volumes in which the **USD System** Editions allows authors of original concepts to embed their creations. Therefore, the Omnibus Volume is a medium comparable to an administrative document in which the inventor embeds the description of his invention upon filing a patent claim. When the inventor is granted such a monopolistic title, the administrative document issued to him is called: Utility (*or Design*) Patent. When the patent is used in a court, it cannot, as an administrative document, be questioned by the judgement. Only the patented invention can be questioned. The same applies to the description of an invention embedded in a volume. The annulment of the description's originality by court ruling can, under no circumstance, change the nature of the medium chosen by the so-called author to describe his invention. Consequently, whenever a judgement annuls the originality of an invention's description embedded in a volume from the *Intellectual Passport C.B.* Omnibus, neither the medium (*the volume*), nor the omnibus' reputation is at stake.

## 2 - Intellectual Passport C.B., a legally private editing process \*

Editing is **USD System** Editions' exclusive profession. Neither their management nor their representatives charge any legal fee. The **operating process** (I.C.B.F.) that they commercialize solely serves to make *Intellectual Passport C.B.* Omnibus Volumes. In order to guarantee the **legality** of their professional activities, they refer strictly to the International Copyright Conventions and Articles 17 and 27 of the Universal Declaration of Human Rights. By its use, such an **operating process** (I.C.B.F.) allows the creator of an original concept (*industrial or non-industrial*) to become the owner of his unpublished literary and/or artistic description. This way of operating is legal only because it is based on the aforementioned Conventions and Declaration to which virtually all Nations adhered. Some Intellectual Property agents (*e.g. CPI in France*) at times have ~ at their discretion ~ made similar use of Copyright. The difference between the **USD System** Editions is that such agents used it on an ad-hoc basis, without editing a book and without systematically adding to it a business forecast and sample interactive contracts. The **USD System** Editions chose the volume in order to implement this **operating process**. They could have chosen among various others, *e.g. video*. With a few exceptions, that would not have legally changed anything for the author of an invention's description. However, given the current costs of digital printing, this medium makes the **operating process** affordable to the greatest number of people. By combining **secrecy** with Copyright (*combining the original concept with an unpublished seizable personal property*), this **operating process** is instrumental in liberalizing (*democratizing*) access to Intellectual Property and it also offers new defence strategies which utility patent cannot allow.

## 3 - Several international legal precedents confirm the validity of the Intellectual Passport CB Omnibus Volume \*\*

A French inventor who in 1994 included the description of his invention in an "earlier version of the *Intellectual Passport*" had a title granted in 1997 by the **I.N.P.I.** (France's USPTO) revoked (*Cassation - July 4, 2006, Ref: 05/4797 DCI*). Moreover, many court cases won by third parties in various countries for Copyright violation also set legal precedents of the same principle. For example, one may mention in this regard: successful claims by Walt Disney Studios, Hergé and other creators, judgements rendered by the Supreme Court of Canada, by the Court of Appeal of the Federal Circuit of the United States' Courts, harsh sentences recently carried out in China as well as the Court of Cassation's judgements rendered from 1938 to 2006, etc.\*\* The fact that the *Intellectual Passport CB* was neither used nor mentioned in these judgements does not lessen their validity as supporting case law. The **USD System** Editions apply the **W.I.P.O.**'s basic criteria of literary and artistic property; the legal precedents rendered by the highest international Courts therefore apply in favour of an author of an original concept (*industrial or non-industrial*) who has his unpublished volume edited as part of the *Intellectual Passport CB* Omnibus.

\* The **USD System** Editions operate from a legal perspective solely in compliance with the Editors' code of ethics and Law. It is independent of legal agencies. \*\* References are available.

In order to help the author plagiarized by a third party, the **USD System** Editions also provides an original process to investigate and negotiate with the plagiarist, called *Strategic Passport CB*. Its implementation more often than not leads the two parties to find a common ground and reach an out-of-court settlement in their respective lawyers' presence. Speed and low cost are the benefits of this formula.

**While the inventor seeks Efficiency,  
Discretion is the copier's aim.**

**At trial:** during the operating process, the author's lawyer has been able to prepare all the evidence required to make his court case!

#### **4 - The Creator's Copyright results from the natural property on his work**

Much like filiation between parents and children occurs sequentially through procreation, copyright results from the natural creation of a work by its Author... Unlike utility or design patent, no preliminary test is required to claim copyright. The author declares his "**Work of the Mind**" in the same way as the parents declare the birth of their child... Why? Because the creator is the biological author of his work while the procreators are the biological authors of their progeny. The literary and/or artistic work is consubstantial to its author, whether or not such work is declared... Registering a child's birth in administrative records does not confer parenthood on the procreators; nature does that. The same applies to literary or artistic works, since it is not a Copyright © or an ISBN (*at the National Library*) registration that makes its creator the author of his work, it is Nature! Copyright © and ISBN registrations are merely administrative procedures attesting the existence of an author's **Work of the Mind**, thus providing unquestionable proof of its registration date.

Several jurists keep up the illusion that by merely registering a copyright number without a true literary or artistic work, one can validly claim copyright. Such a statement is tantamount to sheer ignorance, if not fraud or breach of trust. A text devoid of literary quality cannot result in copyright. That type of skullduggery has been going on for a long time; it is used by so-called Copyright merchants who insist that registration of an original idea ~ *an administrative act* ~ automatically results in Copyright that can be used against third parties. Copyright results solely from the property on a work.

Its registration is not very expensive; thus false copyright is a lucrative business due to the number of victims. Any well informed person knows about this form of fraud, notably on Internet. If such fraudulent procedures were sufficient to obtain true Intellectual Property, why would high technology enterprises, pharmaceutical laboratories and other industrial giants continue to spend colossal amounts on patents? That last remark demonstrates how important it is for the **USD System** Editions to transcribe the author's biography in accordance with the technical criteria of literary art. It is the only way for them to guarantee clients that they truly own their work.

## Copyright's power! ...

**Our strategy which consists in provoking the copier by warning him of the risks he takes under Criminal Law is confirmed by Mr. Alan Amron's lawsuit against the multinational 3M**

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New battle around the Post-it | Made

16-03-11 22:20

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### New battle around the Post-it



France-Presse Agency NEW YORK

The American industrial conglomerate 3M, which popularized the Post-it, is sued by an American who claims its paternity.

Alan Amron, 67, has just referred a matter to a Fort Lauderdale court and claims at least 400 million dollars for damages, according to court documents viewed on Friday by the AFP.

In his complaint, Mr. Amron, a prolific inventor – according to his Twitter account, he holds 39 patents that are recognized in the United States – claims that he invented the Post-it in 1973. At that time, he would have called it “ Press-on Memo ”.

But 3M has always pointed out that the post-it, one of its best-known products, was developed in 1974 by its scientists Arthur Fry – facing charges in the complaint – and Spencer Silver. It began commercializing it in 1977 but it was in 1980 that sales of this small removable self-adhesive sheet of paper really took off

In 2015, sales for 3M's everyday consumer product division that markets the post-it rose to 4.4 billion dollars, down by 2.2 %.

Mr. Amron challenges 3M's version and had already brought an action against the group for "**copyright infringement**" in 1997. The two parties reached an agreement the terms of which remain confidential.

In his new legal action, Alan Amron points out that it was agreed that neither he nor 3M would claim paternity of the Post-it in the future. According to him, the conglomerate breached that clause.

Consequently, he requests a trial but the judge recommends mediation and has given both parties until the end of the year to find a common ground.

3M is based at Saint Paul, Minnesota, and is part of the 30 **blue-chip stocks listed** on **the** famous Dow Jones Industrial Average (DJIA) on Wall Street.

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**Note:** Published recently in the Canadian daily " La Presse ", this article demonstrates that warning the boss (i.e. the plagiarist) of the enterprise guilty of illegal copy that criminal charges ~ *for literary and/or artistic property theft* ~ could potentially be taken against him personally, is the right strategy. The stronger the copier, the more such charges can reflect badly on the boss's character, the more his enterprise's public image is threatened, hence the greater the chances are that the victim reaches an out of court settlement. This is what has just happened to him. It seems that the amount obtained by the victim, during the out of court settlement, enables him to initiate proceedings before the civil courts.



# **Annex**

**International Jurisprudences  
available to the reader**

## **Information**

Amongst the thousands of international cases rendered in favour of Copyright © since its enactment (*United States Code, Cassation, Royal Assent, etc.*), some judgements clearly established the Force of Law of creative literary or artistic works in the industry and in business. Some of these cases have been indexed hereunder in this brief document.

These last pages constitute copies of diverse articles and documents that were not printed with the same typographical fonts as the rest of this work. We apologize to our reader for the poorer visual quality of the Annex pages as a result of their insertion in this chapter.

# Victory of Intellectual Property Copyright In China Microsoft Case August 22-2009

Several articles, please read on

## Article #1

[http://www2.chinadaily.com.cn/china/2009-1/04/content\\_7363400.htm#](http://www2.chinadaily.com.cn/china/2009-1/04/content_7363400.htm#)

### Microsoft case shows China's resolve in IPR protection



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BEIJING -- Legal experts said on Saturday that this week's conviction of 11 people who were involved in an organized piracy ring involving Microsoft showed China's resolve in global Intellectual Property rights (IPR) protection.

**Related readings:**  
• MS software pirates sent to prison

The Futian Court in the southern city of Shenzhen on Wednesday sentenced 11 people who violated Chinese criminal and copyright laws to make pirated Microsoft software and distribute copies to Australia, Canada, Germany, the United States and other countries.



File photo of counterfeit cd's and DVDs about to be destroyed by police in Beijing. China gave its harshest sentence yet to domestic copyright violators when the mastermind behind an 11-man Chinese gang counterfeiting Microsoft software got a punishment of six-and-a-half years imprisonment and a fine of 1.5 million yuan (\$220,000). [Agencies]

The three principal offenders face stiff sentences of six and a-half years, five years and three and a-half years respectively, the stiffest sentences from Chinese courts for IPR infringement.

Li Shunde, a law scholar who heads the Chinese Academy of Social Sciences Intellectual Property Research Center, told Xinhua on Saturday: "This [case] shows China's sincerity in implementing Intellectual Property law enforcement."

In an official statement from its Redmond, Washington headquarters in the United States shortly after the sentencing, Microsoft said it "greatly appreciates" the work done in China in "taking strong enforcement action against global software counterfeiting syndicate."

"Thanks to the actions of the Chinese government, we have seen a significant improvement in the environment for Intellectual Property rights in China," Fengming Liu, vice president of Microsoft Greater China Region, said in the statement.

According to the court, ringleaders Wang Wenhua, Zhang Da'an and Che Tingfeng organized a group to use sophisticated facilities to replicate Windows XP Professional, Windows XP and Office 2003 as well as holograms of Microsoft's Certificate of Authenticity. They sold fake software products not only in the Chinese mainland, but also in the Hong Kong Special Administrative Region and other countries, via online distribution.

**Related readings:**

- MS software pirates sent to prison
- Software piracy is the biggest threat
- Steps to protect IPR

Wang Jun, an IPR scholar at the Shanghai-based Fudan University, said, "Our eyes shone as we heard the verdicts. I and my fellow researchers sensed that China meant business this time," Wang said. "However, as the verdicts were meted out at a local district court and Shenzhen took the lead in doing many things, further observation is needed to determine whether the case will be a 'milestone' for the country's Intellectual Property law enforcement."

Wang Quan'an, the press office director of the Shenzhen Intermediate People's Court, told Xinhua that "We only meted out verdicts according to facts and proof" but refused to give further comments.

With concerted efforts of China's Public Security organs and the U.S. Federal Bureau of Investigation, transnational law enforcement staff in July 2007 cracked down on the Microsoft counterfeiting syndicate and arrested Wang, Zhang, Che and the other perpetrators.

China's Criminal Law states that especially grave violations of copyright, involving 2,500 or more copies, warrant imprisonment of three to seven years. Suspects in similar cases could face up to five years in prison in the United States.

According to the Futian Court, the principal offenders made more than 2,500 copies.

Wang, Zhang and Che plead guilty but have already appealed. A final verdict is estimated to take at least four months, a law expert said.

Microsoft claimed that the 11 people were part of a network responsible for manufacturing and distributing an estimated 2 billion U.S. dollars worth of high-quality counterfeit Microsoft software.

The court did not accept Microsoft's calculations. Its verdict, in line with Chinese law, totals the actual income from illegal activities and the value of counterfeits fixed by Chinese law enforcement officials.

"China has, all along, been earnestly enforcing laws on Intellectual Property protection," Li said.

He attributed "heavier penalties imposed on intellectual protection infringement in recent years" to the seemingly-stiffer verdicts in the case.

**A judicial explanation that took effect in 2007 lowered the threshold for especially grave copyright violations prescribed in the 2004 edition from copying 5,000 or more to 2,500 or more pirates. Fudan University's Wang said 2,500 pirated CDs might be just a month's sales for a street vendor.**

Despite repeated complaints of being a primary target of piracy, Microsoft aroused controversy in China by launching in October a tracking and warning campaign against unauthorized Windows XP users in China.

The online test tool, Windows Genuine Advantage (WGA), would send constant reminders to users and "black screen" their desktop background after 60 minutes if WGA could not authenticate their copy of Windows.

A Beijing-based lawyer, Dong Zhengwei, told Chinese law enforcement that Microsoft's test tool was a form of trespassing on private property such as personal computers.

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## Article #2

[http://www2.chinadaily.com.cn/cndy/2009-01/02/content\\_7360066.htm](http://www2.chinadaily.com.cn/cndy/2009-01/02/content_7360066.htm)

### MS software pirates sent to prison

By Cui Xiaohuo (China Daily)

Updated: 2009-01-02 07:25



Comments()



Print



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China gave its harshest sentence yet to domestic copyright violators when the mastermind behind an 11-man Chinese gang counterfeiting Microsoft software got a **punishment of six-and-a-half years imprisonment** and a fine of 1.5 million yuan (\$220,000).

A local court in Guangdong's Shenzhen, one of the nation's top IT industrial hubs, sentenced the 10 other members of the group on Wednesday to **imprisonments between one-and-a-half years and five years**.

Those 10 men also received a collective fine of more than 1.5 million yuan.

The head of the gang, Wang Mouhua (alias), made 1.5 million software discs and published 60,000 bogus discs on the global market. The group made an estimated \$2 billion.

Their counterfeit software was discovered in 36 countries, such as Canada and Brazil, priced between \$12 and \$65, only about one-tenth of the genuine price. It was also found in 11 different languages.

Their production techniques were so advanced that the bogus software not only contained legitimate computer code written by Microsoft for programs such as Windows XP, Vista and Microsoft Office, but also had touches of the criminals' own coding as well.

That was apparently added to mimic security programs and fool users into believing the product was authentic.

Prosecutors said the group put up online ads and bargained with global buyers through emails.

In July 2007, **25 members of the syndicate were arrested by Chinese authorities** after a joint investigation by the US Federal Bureau of Investigation and China's Public Security Bureau.

The harsh punishment demonstrates **China's toughening measures on copyright violators and helps** China improve its image as a country that is relatively lenient on such matters, said the US-based software giant.

Much of the bogus software was detected by the controversial Windows Genuine Advantage program, which turns a user's screen black if installed software fails a validation test, Microsoft said.

**Promotion of genuine software and a crackdown on piracy has contributed to the drop of China's rate of piracy among individual users from 78 percent in 2006 to 69 percent in 2007.**

(China Daily 01/02/2009 page3)

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## Article #3

[http://www2.chinadaily.com.cn/china/2007-12/11/content\\_6313509.htm](http://www2.chinadaily.com.cn/china/2007-12/11/content_6313509.htm)

CHINA / National

### Steps to protect IPR

(Xinhua)

Updated: 2007-12-11 15:21

**The harsh  
punishment  
demonstrates  
China's  
toughening  
measures  
on copyright  
violators.**

**BEIJING** - China has enacted new programs to protect Intellectual Property rights (IPR) since the 17th Sino-US Joint Commission on Commerce and Trade in 2006. Below are some of these steps:

-- China is working on national strategic IPR protection guidelines and more than 20 departments already have detailed medium- and long-term plans.

-- Action Plans on IPR Protection were drafted in 2006 and 2007, laying out 438 specific tasks involving legislation, law enforcement, special drives, international cooperation and public education. The 162 plans for 2006 were finished and 80 percent of the 276 measures for 2007 have been completed to date.

-- As part of a crackdown on pirated software, the government ordered municipal and local authorities to buy computers with pre-installed legitimate software and required all domestic and imported computers to be sold with legitimate software pre-installed. Sales of legitimate software in China have benefited as a result.

Microsoft, for instance, projected in April a 20-percent rise for the year's sales in China due to a combination of government anti-piracy efforts and new products. And China's software industry registered a 23.1 percent rise in sales from 390 billion yuan (52.77 billion US dollars) in 2005 to 480 billion yuan in 2006.

-- In 2007, China's Supreme Court issued new judicial interpretations, which lowered the threshold for prosecution of those making or selling counterfeit products. An interpretation issued in April stipulates that anyone who manufactures 500 or more counterfeit copies (discs) of computer software, music, movies, TV series or other audio-video products can be prosecuted and imprisoned for up to seven years.

-- Special courts for IPR cases were established across the country, including 172 courts of appeal and 140 collegial panels. The Office of the National Working Group for IPR Protection set up a national service network in 50 cities to handle IPR complaints.

-- The government has rolled out advocacy campaigns to raise public awareness of IPR laws, particularly among local officials and corporate officials.

-- China has consistently worked against piracy, destroying pirated books and DVDs, cracking down on peddlers selling counterfeit products and raiding factories churning out fakes. Law enforcement agencies confiscated 49 million illegal books, periodicals and audio-visual products in the first four months of this year during a crackdown on pornographic and illegal publications.

-- Statistics from the Supreme Court indicate that Chinese courts handled 769 IPR cases in 2006 and prosecuted 1,212 offenders, up 52.2 percent and 62.21 percent, respectively, from 2005.

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\* \* \*

**Apple must pay on copyright: Chinese court**  
December 28, 2012 9:16PM



**A CHINESE court has ordered Apple Inc to pay 1.03 million yuan (\$A159,740) to eight Chinese writers and two companies who say unlicensed copies of their work were distributed through Apple's online store.**

**The Beijing No. 2 Intermediate People's Court** ruled on Thursday that Apple violated the writers' copyrights by allowing applications containing their work to be distributed through its App Store, according to an official who answered the phone at the court and said he was the judge in the case. He refused to give his name, as is common among Chinese officials. The award was less than the 12 million yuan (\$A1.84 million) sought by the authors,

The case grouped together eight lawsuits filed by them and their publishers. An Apple spokeswoman, Carolyn Wu, said the company's managers "take copyright infringement complaints very seriously". She declined to say whether the company would appeal. Unlicensed copying of books, music, software and other products is widespread in China despite repeated government promises to stamp out violations. Apple's agreement with application developers requires them to confirm they have obtained rights to material distributed through the company's App Store.

"We're always updating our service to better assist content owners in protecting their rights," Wu said. The Chinese writers said they saw applications containing unlicensed versions of their books last year. In November, a court ordered Apple to pay 520,000 yuan to the Encyclopedia of China Publishing House for copyright infringement in a separate case. Apple is appealing, according to the official Xinhua News Agency.

In the latest case, the Beijing court awarded 605,000 yuan to one company and 21,500 yuan to the second, according to the court official. The biggest individual judgment went to writer Han Ailian, who was awarded 186,000 yuan.

\* \* \*



**RELATED ATTORNEYS Mark Walters**  
**Frommer Lawrence & Haug Attorney Mark P. Walters Gains**  
**One of the Largest Awards Ever for Indirect Profits in a**  
**Copyright Matter for Lucky Break**

SEATTLE – (April 9, 2010) – Plastic Thanksgiving turkey wishbones selling for \$.99 each really turned out to be worth \$1.7 million to a Seattle company.

The Ninth Circuit Court of Appeals on Wednesday affirmed an award of \$1.7 million to Lucky Break Wishbone Corporation over retailer Sears, Roebuck and Co. and advertising giant Young & Rubicam, Inc. The decision was seen as a victory for U.S.-based Intellectual Property rights and small business competing in a global environment.

The copyright case concerned the plastic turkey bones used in a Thanksgiving promotion for Sears and was argued for Lucky Break by Frommer Lawrence & Haug attorney, Mark P. Walters.

Lucky Break first filed its suit in March 2006, alleging that in June 2005, Young & Rubicam approached Lucky Break to express interest in distributing their wishbones as part of a Thanksgiving promotion for Sears. Lucky Break provided a sample of the product – a plastic wishbone able to break like a real wishbone – and prepared to manufacture one million wishbones, but no deal was reached.

Lucky Break later determined that Sears had hired a company called Apex Products LLC to produce the wishbones in China for the Sears 2005 WISH BIG campaign, which Lucky Break said were “substantially similar or virtually identical” to its copyrighted product, which is proudly made in the USA. Sears and Young & Rubicam maintained that the wishbone used in their promotion was an imitation of a real turkey bone, rather than any competing plastic wishbone.

The matter was brought to trial in July 2008, where a jury in the district court ruled that Sears had infringed Lucky Break Wishbone Corp.'s copyright on their wishbone design. The jury also ruled that both Sears and Young & Rubicam had infringed Lucky Break's copyrighted product warning statement. Key testimony was provided by an expert in avian osteology, or bird bones, who testified that Lucky Break's product differs substantially from actual turkey bones.

Specifically, seven different artistic features of design make Lucky Break's wishbone unique.

As a result, the osteologist argued, Sears' plastic wishbone could not have been copied from nature and instead must have been copied based on Lucky Break's product. The district court agreed with the osteologist's determination.

The court denied Sears' appeal over the initial ruling, resulting in one of the largest-ever awards for indirect profits from an infringing advertisement or promotion. \$1.5 million was awarded as indirect profit.

The decision, overseen by Judge Thomas S. Zilly and Circuit Judges William Fletcher, Arthur Alarcon and Johnnie Rawlinson, comes after a lengthy appeal process beginning in 2008. Sears challenged the initial ruling of the U.S. District Court for the Western District of Washington on several counts, including whether Lucky Break's wishbone was protectable under the Copyright Act and whether Sears in fact infringed Lucky Break's copyright. In this week's ruling, the Ninth Circuit Court of Appeals denied each of Sears' challenges in support of Lucky Break's initial award.

The wishbones were invented and are marketed by Seattle businessman, Ken Ahroni, President of Lucky Break. "The Ninth Circuit's decision reaffirms the validity of Lucky Break's claims and originality in product design," said attorney Walters. "As business becomes more globalized, it will be critical that U.S. courts uphold Intellectual Property rights in a manner that continues to encourage innovation and creativity. This case is an excellent example of the principle in action," he added.



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## **Judge Upholds \$1.7M Sears Fine In Wishbone Case**

**By Liz McKenzie**

Law 360, New York (October 29, 2008) -- A federal judge dismissed a motion for judgment as a matter of law on Tuesday, reaffirming a \$1.7 million jury verdict against Sears Roebuck & Co. in a copyright case over plastic turkey bones used in a Thanksgiving promotion for Sears.

A jury in the U.S. District Court for the Western District of Washington ruled July 9 that Sears and advertising agency Young & Rubicam had infringed Lucky Break Wishbone Corp.'s copyright, and ordered the companies to pay \$200,000 in actual damages and \$1.5 million in profits attributable to infringement.

Sears and Young & Rubicam filed a motion for judgment of law later that month, asking the judge to review the verdict and damages based on the facts of the case. The defendants said the jury verdict was decided "completely contrary to the great weight of the evidence." "No reasonable jury could have found in favour of Plaintiff Lucky Break Wishbone Corporation ("Lucky Break") on this claim, or could have found the damages awarded by the jury," the defendants said in the motion.

The defendants also requested a remittitur of the jury's damages that would lower the fines against Sears and Young & Rubicam. However, Judge Thomas S. Zilly dismissed the motions and entered the jury verdict as the final judgment on Oct. 28. "The Court will not substitute its computations or otherwise disturb the jury's verdict, which is supported by substantial evidence and is not grossly excessive in light of the record in this case," Judge Zilly wrote.

Lucky Break's suit, filed in March 2006, alleged that in June 2005, Young & Rubicam expressed interest in distributing Lucky Break's wishbones as part of a Thanksgiving promotion for Sears. Lucky Break provided a sample of its product – a plastic wishbone designed to break like a real turkey bone – but no deal was reached.

Instead, Young & Rubicam hired a company called Apex Products LLC to produce one million plastic wishbones, which Lucky Break said were "substantially similar or virtually identical" to its copyrighted product, for the Sears campaign.

Sears and Young & Rubicam maintained that the wishbone used in their promotion was an imitation of a real turkey bone, not any competing plastic wishbone. "Any originality inherent in a replica of a wishbone was invested so by nature, by a supreme being, or by the turkey itself," the companies wrote in a legal filing. "By any account, however, it was not done by Lucky Break." However, key testimony in the five-day trial came from experts in avian osteology – that is, bird bones – who testified that Lucky Break's product differs substantially from actual turkey bones in several important ways. As a result, the experts said, the plastic wishbone used in the Sears promotion could not have been copied from nature and must have been copied from Lucky Break's product. Sears said in a statement that it is disappointed in the verdict and is "exploring our post-trial options." Lucky Break owner Ken Ahroni told the Seattle Times after the verdict that Sears "got caught with their hands in the cookie jar this time.

They kept claiming independent creation and never presented any evidence." Sears' "Wish Big Wishbone" promotion, which ran in 2005, distributed the plastic wishbones to shoppers who made a purchase at Sears on Nov. 19. If they returned to the store within the following four days, they could redeem their wishbones for \$10 off their next purchase of \$100 or more. Lucky Break advertises its product as a "revolutionary advance in plastic wishbone technology." Its tagline is, "Tired of fighting over the turkey wishbone? Now, finally, there are enough to go around." The wishbones retail for \$4 for a four-pack and \$196 for 400. They were sold in 1,000 stores in 2006, and are now sold in about half that number, a fact Ahroni attributed to Sears' infringement. The copyright at issue is U.S. Copyright Registration Number VA 1,325,348.

**Darby & Darby PC represented Lucky Break in this matter.**

**Davis & Gilbert LLP and Yarmuth Wilsdon Calfo PLLC represented Sears. Perkins Coie represented Young & Rubicam. The case is Lucky Break Wishbone Corp. v. Sears Roebuck and Co et al., case number 06-cv-00312, in the U.S. District Court for the Western District of Washington.**

\* \* \*

**For Immediate Release**

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**DARBY & DARBY WINS \$1.7 MILLION VERDICT FOR LUCKY BREAK WISHBONE CORP. IN COPYRIGHT INFRINGEMENT CASE AGAINST SEARS AND Y&R**

**SEATTLE – July 10, 2008** – Seattle attorneys David Tellekson and Mark Walters of Intellectual Property law firm Darby & Darby recently won a \$1.7 million verdict in actual damages and profits for their client, Lucky Break Wishbone Corporation of Seattle against Sears, Roebuck and Co. and Young & Rubicam (Y&R). A Seattle jury in the District Court for the Western District of Washington returned a verdict of copyright infringement on two copyright registrations, finding that Sears used Lucky Break's wishbone design without permission in a national advertising campaign before Thanksgiving 2005. Both Sears and Y&R were found liable for infringing Lucky Break's registered product warning.

Developed by Y&R under the theme "Wish Big," Sears gave away more than 1,000,000 infringing plastic wishbones with a discount coupon, and more than 39,000,000 images of the copyrighted work were distributed on the front cover of newspaper circulars promoting the campaign.

Ken Ahroni is president of Lucky Break ([www.LuckyBreakWishbone.com](http://www.LuckyBreakWishbone.com)), the leading manufacturer of a novelty wishbone, designed to break like a real turkey wishbone. The wishbones are made in Auburn, Wash., and distributed world-wide.

**Darby & Darby P.C.** is a full-service Intellectual Property firm focusing on patents, copyrights, trademarks and false advertising for more than 110 years. As one of the oldest and largest Intellectual Property firms in the United States, with over 100 professionals, Darby & Darby has long been important in pioneering and precedent-setting IP matters. The firm has offices in New York, Seattle, Washington, D.C., Florida and Frankfurt, Germany.

## **Professor Luc Montagnier's case: International copyright vs. a US patent**

The public must know that this story gives a fairer idea on the power of copyright over the patent. The story originates in 1981, as doctors from Atlanta describe a hitherto unknown and deadly disease, which attacked homosexuals, drug addicts, hemophiliacs and people who had had blood transfusions.

In January 1983, Professor Luc Montagnier's team, from the Pasteur Institute, Paris, isolated the virus in question on a patient. They called this "retrovirus" LAV... On the other side of the water, Professor Robert Gallo believed that the disease resulted from a retrovirus from the already known family called HTLV.

Both teams exchanged samples of the virus. Meanwhile, the French scientist filed for a patent in the USA in order to protect his invention and collect significant royalties over the world. His claim remained unanswered.

Thereafter, Robert Gallo claimed that he discovered the AIDS virus and called it HTLV III. Unlike his French counterpart, Gallo's invention was granted a patent (*Comment: how odd!*). The Pasteur Institute decided to take the matter to court. As a copyright holder on his published discovery, Professor Montagnier (*Comment: text published in 1983*), proved his antecedence, thus had Professor Gallo's subsequently filed patent invalidated (*Comment: \* the invalidation being de facto, it was not necessary to have it confirmed by a judgment*).

Finally, the matter was settled (*Comment: secretly*) in 1987 and Professor Montagnier could claim royalties... Clearly, Professor Montagnier's invention was secured internationally (*comment: without denying the evidence*), since his copyright established his unquestionable Intellectual Property.

This famous case, once again, proves that published works can legally prevent a third party from using a subsequently filed patent.

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### **Synopsis of a decision rendered by the Court of Appeal of the United States' Federal Circuit of Courts, in favour of the University of Colorado on November 19, 1999, bearing number 97-1468, 98-1113**

In the aforementioned case, the Court of Appeal of the United States' Federal circuit of Courts examines several points concerning the illegal use of innovative concept concerning a new formula for prenatal multivitamin food supplement, posterior to the publication made by a team of professors of the University of Colorado on identical topics.

This ruling is very important in that it shows how the Intellectual Passport C.B. unquestionably is the best strategy when one wants to develop and market a patentable original idea.

The invention allegedly had been discovered by several professors of the University of Colorado. Unbeknown to them, the multinational AMERICAN CYANAMID COMPANY (& Leon Ellensbogen), deposited a patent on the original process for which they claimed authorship.

Alleging that the multinational had improperly taken advantage of their work, the professors asked the court to grant them compensation plus interests. Moreover, they also requested to be included among the patent holders of their invention.

The Court determined that the recourse of the professors' were founded to take legal action by virtue of the laws of the State of Colorado in order to obtain compensation for the unauthorized (i.e. illegal) misappropriation of their invention.

Thus the judges of the Court of Appeal ordered the case to be heard by the Superior Court of first instance.

From a more technical point of view, the Court of Appeal also ruled that, having used, in its patent claim, part of an article written and published by the professors, the multinational was liable of plagiarism (illegal infraction by virtue of the Copyright Act). The Court of Appeal also ruled that, in certain cases, the author could obtain damages and interests.

However, the Court determined that the professors did not prove that they wanted to earn profits by marketing their invention, thereby limiting their prejudice and therefore the amount of damages granted by the Court.

The Intellectual Passport clears the way for its owner to claim all damages that a copier of his concept or product could cause. Indeed, it is clear from the figures included in the business planning section of the Passport that the inventor wishes to gain profits by marketing his invention. Furthermore, the Passport establishes the inventor's inalienable and universal property on his concept and/or product, and the Court can only grant full damages if such property and therefore its resulting right, fully proven, are infringed.

According to the Court of Appeal in the present case, the Professors can nevertheless claim a limited Copyright infringement because the Patent copies verbatim extracts from their article. The Court also granted the professors to add their names to the List of patent holders of the invention. The Intellectual Passport C.B. broadens considerably this recourse by allowing the inventors to enjoy full copyrights on a natural, universal and inalienable Intellectual Property. Such recourse is therefore applicable on a worldwide basis, thus allowing the inventor to seek redress in any country where his invention is patented or simply copied illegally.

Had the professors been aware of the Intellectual Passport C.B., and had they used it, the first instance Court would have been able to render a simple and unequivocal ruling. It would have granted damages and interests proportionate to the prejudice suffered by the professors, without any need for a further hearing.

**Jacques Duchastel, Attorney**  
Member of the Montreal Bar Association

## Four Examples of Canadian Legal Precedents on Copyright

Judgments by the Supreme Court of Canada on the following cases:

- 1 - Massie & Renwick Ltd. against Underwriters' Survey Bureau Ltd. (1940) SCR 218
- 2 - Paul Trudel against Clairol Inc. of Canada (1975) 2 SCR 236
- 3 - Apple Computer Inc. against Mackintosh Computer Ltd. (1990) 2 RCS 209
- 4 - Euro-Excellence Inc. against Kraft Canada Inc. (2007) 3 RCS 31, 2007 CSC 37

*Michel Dubois' Introduction: These four legal precedents were researched, presented and commented by a notable Montreal Patent Agents firm. The copy of these documents is outlined below. Although these four cases do not cover the totality of all of the defence and offense possibilities afforded by Copyright, they are sufficiently clear to appreciate its benefits.*

*The four jurisprudences presented in this excerpt partly confirms the judicial merits of the unpublished Intellectual Passport CB Omnibus Volume in the informative documents published by the USD System International Editions Consortium.*

### I - Massie & Renwick Ltd. against Underwriters' Survey Bureau Ltd. (1940) SCR 218 \*

An association of insurance companies against Ontario and Quebec Fire implemented a building risk assessment system since 1900. To that effect, it created: evaluation rules, a manual, rates, evaluation cards and management plans. All of these elements are recognized as Copyright. The discussion of this case is based on the property of these rights in a complex context involving members of an association who created an incorporated office for precise goals with partial property transfers.

#### Patent's Agent Conclusion:

Copyright is a complementary tool that is sought at the time of the work's creation. One must remember that any document, form, manual, plan, organization chart and decision tree can, one day, prove to be useful, 50 years after the passing of the author (Article 6 of the Law governing Copyright).

*Translated from French text for USD System.*

\* Quotation: each of the **Patent Agent's conclusions** included in the present document, pages 14 to 20, was taken from Montreal (Canada) lawyer Benoît Côté's mail, dated December 21st, 2009.

*Comment: The opinion of the Canadian Patent Agents firm, in support of this jurisprudence, proves the interest that any creator of a service concept and inventor of an industrial product has to proceed with the edition of his creation before any other legal or commercial endeavour.*

II. Paul Trudel vs. Clairol Inc. of Canada (1975) – 2 S.C.R. 236

*“Respondent manufactures and sells a haircoloring called “Miss Clairol Hair Color Bath”. It maintains for this preparation two separate markets: one for personal use at home, the other for professional use in beauty salons or hairdressing schools. The product is identical in both cases; the difference lies in the distribution, packaging and pricing. The product for home use is sold to wholesalers who resell it to various dealers who sell it at retail. The product for professional use is sold to wholesalers with the understanding that they will only sell it to hairdressers or other professionals in the trade, who use it in the course of their professional operations. It is sold at a price substantially less than that of the product for personal use and the “directions” for use packed with each bottle intended for personal use are not packed with each bottle for professional use. However, there is on every bottle a warning concerning the possibility of skin irritation or loss of sight that could result from using this product unless certain precautions are taken.*

*Respondent sells the product for professional use only to wholesalers who agree to sign an undertaking whereby they promise to sell the preparation only to professionals who use it only in their establishments. Appellant, who is the owner of seven hairdressing establishments, sells this product at retail. As he is not a wholesaler authorized by respondent to sell this product, he has never signed the undertaking. Appellant appeals to this Court from a judgment of the Superior Court, affirmed by the Court of Appeal, which granted an injunction prohibiting him from continuing to sell this product.*

*Held: The appeal should be dismissed.*

*Per Martland, Ritchie, Spence, Pigeon and Laskin JJ.: Appellant, by inducing party to a breach of the contract between respondent and each of its agents, committed a delict for which he is liable, because it is an act of dishonesty to be associated knowingly with a breach of contract. He was aware of respondent’s policy and instructions concerning the sale of its product. He had an obligation not to prejudice respondent by favouring even indirectly a breach of an undertaking which was justified by a significant interest and which was validly assumed. Appellant has been unable to cite anything contrary to these principles of jurisprudence and case law on which the trial judge and the Court of Appeal have mainly relied in reaching their conclusions. Furthermore, in the record of the present case there are none of the elements required to conclude that the contracts between respondent and its distributors are invalid. “*

*Comment: The opinion of the Canadian Patent Agents firm, in support of this jurisprudence, proves the interest that any creator of a service concept and inventor of an industrial product has to proceed with the edition of his creation before any other legal or commercial endeavour.*



In their motives for judgment, the judges specify:

*“... respondent’s counsel stressed that the packaging of every bottle intended for sale to the general public contains not only the necessary instructions for the suggested test to detect an allergy or hypersensitivity, but also directions on how to obtain the desired color and satisfactory results. These directions were said to be protected by copyright and, consequently, there would be an infringement in delivering copies, which were not supplied by respondent. According to a recent judgment of the Supreme Court of Ontario in Godfrey Etc. Ltd. v. Coles Book Stores Ltd., the holder of a copyright may make use of it to prohibit a Canadian bookseller from selling an inexpensive edition published in the United States. This is of quite substantial interest since, for one of the works, the regular price of the only authorized Canadian edition is \$8, while the inexpensive edition distributed in the United States sells for 99 cents. Can a manufacturer make use of copyright on the directions for use of his product so as to subject its sale to all the rights provided in the Copyright Act (R.S.C., c. C-30)?”*

**Patent Agent’s Conclusion\*:**

Although the heart of this trial is a civil matter surrounded by a private contract, it is interesting to note that a mere directions for use can hold its importance. An instructions guide is covered by Copyright.

On the one hand, the complete unauthorized reproduction is a violation of Copyright and could be used to prevent the reproduction of a product or service accompanied by this instructions guide.

On the other hand, a partial or incomplete reproduction of the instructions guide could endanger the public or would not achieve the expected results.

A skillful application of Copyright for directions for use or an instructions guide can constitute a supplementary protection tool, while remembering the relative fragility of this right.

\* Translated from French text for USD System.

***Comment: The opinion of the Canadian Patent Agents firm, in support of this jurisprudence, proves the interest that any author of a service concept and/or an industrializable invention has to describe the instructions for his creation... Which is not pertinent in a Patent... With an unpublished volume of the Intellectual Passport CB omnibus, we further the process since the author must embed therein three instruction manuals:***

- 1 – The instructions for the producer or the manufacturer;***
- 2 – The commercial instructions for the sale of the innovation;***
- 3 – The client’s user guide for the product that he has purchased.***

***This method impedes the commercialization of a similar product by a competitor who may have copied the author’s creation.***

### III. Apple Computer Inc. vs. MacKintosh Computers Ltd (1990) – 2 S.C.R. 209

The respondent (Apple Computer Inc.) is the titleholder of a Copyright filed for two programs of the Apple II+ Computer exploitation program that it manufactures. These programs were first written in Assembly language, then converted to hexadecimal code. Finally, the programs were burned on an electronic microchip. Aided by a read-only memory programming method, the appellants (MacKintosh Computers Ltd.) copied the programs burned on the microchip of the respondent (Apple).

The respondent (Apple) won a violation action on its Copyright. The first instance judge carefully examined the experts' complex and contradictory testimonies and concluded that the programs embedded into the microchips had to be considered as software, rather than data. She concluded that the circuits of the electronic microchip were both a translation and an exact reproduction of the program written in Assembly language, therefore, would be treated as Copyright, according to par. 3(1) of the *Copyright Law*. The Federal Appeal Court rejected the appeal made by the appellants. This appeal aims at determining if a computer program, whose written source may fall under Copyright, continues to be protected when it is reproduced on the circuits of an electronic microchip. \*

**Held:** The appeal should be dismissed.

*The Court states: "The individualized nature of a computer program was emphasized at trial by experts for both the appellants and the respondent. The trial judge observed that Professor Forbes J. Burkowski, who testified on behalf of the appellants, compared the possibility of two programmers creating identical programs without copying to the likelihood of a monkey sitting at a typewriter producing a Shakespearean sonnet."*

*"The appellants admitted that the written assembly language versions of the programs are copyrightable and that the respondent owns the copyright in these programs. However, they argued that since they had copied only the silicon chip, and not the assembly program, they had not infringed the respondent's copyright."*

*Finally, the Court states: "I agree with MacGuigan J. that the silicon chip should be viewed as a static object encoded with written instructions rather than as constituting a dynamic interchange of electrical impulses. It follows that the program embodied in the silicon chip is properly subject to protection by copyright and the unauthorized copying of that program constitutes a violation of copyright."*

**Patent Agent's Conclusion:** Software is covered by Copyright. It is instructive to note that the debate to determine if the microchip is covered or not highlights the real issues:

Or we consider the work as “*static objects that are accompanied by written instructions*” and Copyright applies, but is limited to static work. Or we consider the work as a “*process*” and the Copyright does not apply.

If Copyright applies, it is thus limited to the static work, without considering the consequences of a process in which the work could be implicated.

\* The two first paragraphs and Conclusion were translated from the French text for USD System

***Comments: Indeed, Copyright does not cover the realization of an original process... It specifically covers its description (texts and drawings).***

***Note: without the legal possession of the description (texts and drawings), through assigned rights or licensing, it is impossible for a third party to put in practice (implementation and/or production) an original process... Why? Because without transmitting the description (texts and drawings) via copies (that must be sent from office to office, office to workshop and workshop to workshop), it is impossible to achieve it. Moreover, it is precisely this right to copy © the description (texts and drawings) that is covered by the Author's Rights (Copyright).***

***Given that the author's work is his worldwide property by its mere creation:***

- ***that it is from this property that results Author's Rights over the world;***
- ***that the Intellectual Passport CB is an unpublished omnibus volume.....***

***it is thus unfeasible for third parties to be acquainted with the description (texts and drawings) other than by illegal means that, over and above plagiarism, are related to unfair competition and commercial and/or industrial espionage.***

***In this way, it is easy to understand and appreciate the arsenal of rights at the author's disposal (having embedded his work in an unpublished Intellectual Passport CB Omnibus volume); a powerful arsenal to which imposture\* and vandalism\* can possibly be added to the copier's crimes.***

\* \* \*

\* **Imposture:** due to the fact that plagiarism consists in fraudulently impersonating the natural person of the author.

\* **Vandalism:** in the case when the copier denatures all or part of the work.

**Note:** henceforth and to our knowledge, it seems that imposture and vandalism have not yet been pleaded in such situations. This lack does not, in any way, impede a despoiled author of his rights to this recourse in case of necessity.

\* \* \*

**IV. Euro-Excellence Inc. C. Kraft Canada Inc., (2007) – 3 S.C.R. 21 2007 CSC 37**

Kraft Canada Inc., called KCI, is the sole Canadian distributor of the Côte d'Or and Toblerone chocolate bars manufactured by its Kraft Foods Schweiz parent companies, called KFS, and Kraft Foods Belgium, called KFB.

Euro-Excellence Inc., called Euro, imported and distributed Côte d'Or and Toblerone chocolate bars that it had purchased in Europe at KFS and KFB.\*

*“In 2002, in order to allow KCI to mount the present case, KFB registered three Côte d'Or logos in Canada as copyrighted artistic works and granted KCI an exclusive licence in the works as used in association with confectionary products. KFS did the same with two Toblerone logos.*

*KCI then called upon Euro to cease and desist distribution of any product to which the copyrighted works were affixed. When Euro refused, KCI brought an action against Euro alleging that it had engaged in secondary infringement under s. 27(2) of the Copyright Act by importing copies of KFS and KFB's copyrighted works into Canada for sale or distribution. KCI does not rely on its rights as a trademark holder.*

*At trial, KCI was awarded \$300,000 in damages and Euro was restrained from selling, distributing, exposing or offering for sale any copies of the copyrighted logos. It was also ordered to render the product non-infringing. KCI's motion for reconsideration was refused.*

*The Federal Court of Appeal refused an appeal on the merits, but referred the matter of damages back to the trial judge. On hearing further submissions, the trial judge confirmed his original award.”*

Euro requests an appeal to the Supreme Court of Canada; appeal is welcome (accepted).

The court confirms that the logos are legitimately copyrightable. The majority reaches a decision on the appeal by simply applying Article 27(2)e of the Copyright Act that stipulates:

*“(2) It is an infringement of copyright for any person to  
(e) import into Canada for the purpose of doing anything referred to in paragraphs (a) to (c), a copy of a work, sound recording or fixation of a performer's performance or of a communication signal that the person knows or should have known infringes copyright or would infringe copyright if it had been made in Canada by the person who made it.”*

-----

The court concludes that there was no infringement because it is the copyright owner who produced the logos in question. *“Because a copyright owner cannot be liable to its exclusive licensee for infringement, there is no hypothetical infringement and thus no violation of s.27(2) (e) in this case by Euro-Excellence.”*

Judge Fish adds: *“Without so deciding, I express grave doubt whether the law governing the protection of Intellectual Property rights in Canada can be transformed in this way into an instrument of trade control not contemplated by the Copyright Act.”*

According to JJ Bastarache, LeBel and Carron: *“The Copyright Act ought to be interpreted with an eye to the internal coherence of its own scheme and consistently with the Trademarks Act. Trade mark law protects market share in commercial goods, whereas copyright protects the economic gains resulting from an exercise of skill and judgment. The law of copyright should not be used to protect market share if that requires contorting it outside its normal sphere of operation where the economic interest at stake is only tangentially related to the copyrighted work.”*

The same judges add: *“Section 27(2) is meant to protect authors from the unauthorized appropriation of the gains of their authorship, but this protection does not extend to include any and all economic gains claimed by an author or copyright owner. If the work in question is merely incidental to another consumer good, and it is that consumer good which is being sold or distributed, or dealt with by way of trade, s.27(2) cannot be invoked.”*

#### **Patent Agent's Conclusion:\***

Copyright on forms (paper documents), print formats or computer screen images would, indeed, cover the works themselves, but would not protect the totality of the gains generated by an eventual user as an unlicensed holder.

In other words, you sell a service aimed at sustainably increasing the sales of your client, the essential, your chocolate. Forms or other images are ways, accessories, your packaging.

\* The two first paragraphs of this case and Conclusion were translated from the French text for USD System. \* End of Montreal (Canada) lawyer Benoît Côté's conclusions, taken from his aforementioned mail.

***Comments: Indeed, the law governing trademark differs from Copyright. Furthermore, the wording of K.C.I.'s (distributor of the Copyright holder) complaint was poorly designed since it apparently pertained to a distribution exclusivity breach (possibly assorted by unfair competition), not a Copyright violation... However, according to the legal precedent won by Paul Trudel (page 3), it seems that by accompanying the product (chocolate) with operating instructions on the packaging for the consumer, the judgment that followed could have substantially differed... It is still interesting to note that judges confirm, once more, the protection offered by Copyright in regards to economic gains resulting from the creator's talent.***

## Conclusions

*These four precedents are significant for Copyright as they confirm its importance in terms of commercial exploitation of a product or service. They unequivocally demonstrate the extraordinary power of this right, provided that it is used wisely. As seen, the loss of a Copyright trial is mostly caused by people's ignorance who confound it with Patent Law, industrial design and trademark.*

*Each of the four precedents is derived from a particular case, confirming that a thorough knowledge of the Copyright foundation is required for its suitable defence. In an infringement lawsuit on a Patent, industrial design or trademark, there is rarely as much legal confusion as is found in one on plagiarism.*

*To that effect, when legally confronted to Copyright, for or against, it is not uncommon for most people to refer to Patent or Industrial Design Law. Especially when it concerns anteriority and disclosure... They all refer to "Intellectual Property", although this popularized name regroups as much temporary exploitation titles (Patents, industrial designs, trademarks) as literary and artistic works, indeed, the only true properties.*

*I would like to recall that the design of a commercial logo (brand) is first and foremost a work of art. It is illegal to file a logo (brand) conjoined to a trademark on a work of art representing the same as a previously created logo (brand). It is also for this reason that it is requested from whomever resorts to an unpublished Intellectual Passport CB Omnibus Volume to produce, as much as is feasible, such a work to dress the creation of his industrializable concept or service.*

*Notwithstanding the conclusion from the judges on each of the four aforementioned precedents in this document, it would seem that the multidisciplinary International Consortium Business Forecast (ICBF) and the related contract portfolio (an integral part of the unpublished volume) are also imbedded in the literary work covered by Copyright.*

*The entire design of the unpublished Intellectual Passport CB Omnibus Volume is founded on the Copyright with the full spectrum of its possibilities... In case of plagiarism, if the author recurs to the intervention of a Jurist chosen by the USD System International Editions Consortium, he will be spared the frequent legal errors that I denounce above... It is specifically for the fundamental reason that, unlike the Patent and industrial design, the Intellectual Passport CB is delivered to the client with a "guarantee" on the judicial quality that it procures him with.*

M. D. June 11, 2010

**McININCH MacDOUGALL**

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Re: Passeport Intellectuel C.B.

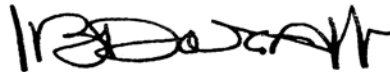
Dear Mr. Dubois,

Further to our discussions I have had the opportunity to review the various explanatory documentation which you have forwarded to me concerning the Passeport Intellectuel C.B. which is to be distributed by USD System.

The Passeport Intellectuel C.B. is a valid and innovative alternative to the traditional route of intellectual property rights registration and which I shall recommend to my present and future clients.

Yours truly,

McININCH MacDOUGALL



John B. MacDougall

JBM/lc

**Attorney John MacDougall's letter of opinion  
in favour of the *Intellectual Passport CB***

# Opinion Letter

**From:** Bernard Colas

**Date:** November 12th, 2010

**Subject:** Intellectual Passport CB

The Intellectual Passport has the considerable advantage of identifying the author and holder of a creation, of putting it on paper, and of showing its commercial potential, user guides, etc.

This document benefits from copyright's international protection in the member countries of the international treaties and as long as it remains confidential, the trade secrets contained therein are protected in numerous countries by the trade secrets law and unfair competition law. Subject to each national law's specific particularities, its holder will normally be able to prevent any unauthorized reproduction of graphic representations and literary descriptions included in the passport, as well as the use of the literary descriptions in order to make and commercialize a product or service.

In the case of infringement of his rights, the holder of such a right can use the civil recourses and criminal charges included in the Copyright Law. Such recourses should also exist in each member country of the WTO.

As long as they remain confidential, the trade secrets included in the Intellectual Passport enjoy the legal protection of trade secrets and, in some cases, of unfair competition.

Once the passport is disclosed in the sense of patent law, it could be invoked – on condition that the criteria for anteriority are respected – to establish anteriority and prevent the granting of a patent, the essential elements of which have previously been disclosed.

Finally, previous to any assignment of the intellectual property rights on the Intellectual Passport and on the creation that it describes, one should verify the chain of titles in order to ensure that the authors are sole holders thereof and that the assignment act covers not only the copyright, but also the other intellectual property rights.

**Bernard Colas**

**Excerpts from attorney Bernard Colas' letter  
of opinion in favour of the *Intellectual Passport CB***



## World premiere

### Court ruling in favour of a prototype in an unpublished *Intellectual Passport CB*

In 1994, a French “**creator**” (i.e. *an inventor who became a creator through a Work of the Mind*) included an original and aesthetic container in an **unpublished** literary and artistic work (*prototype of the Intellectual Passport CB*) entitled “*Change the city*” (*Librairie bleue editions – library of inventions N° 2221 – Troyes – France*). In early 1997, namely one year after this innovative product had first been introduced into the market, a third party decided to copy and market it. Unaware of the existence of the **creator’s** literary and artistic work ~ *and doubtless influenced by his legal counsels* ~ the **so-called inventor** registered a “*model*” (a *European form of design patent*) on this container on July 31<sup>st</sup>, 1997. Since no previous monopolistic title had ever been registered on this product at the “*INPI*” (*French equivalent of the U.S. Patent and Trademark Office*), the **so-called inventor** thought that he could safely claim monopolistic rights on this aesthetic container... By the end of the year 2000, claiming that he was the true inventor, the counterfeiter/plagiarist initiated legal proceedings against the chains of stores that were exploiting the product included in the **creator’s** work: Slymag Super U, System U’s Eastern Regional Head Office and Alliance Development Innovation. At first, the **creator** tried, but in vain, to reach an out-of-court settlement with the **so-called inventor**. In December 2001, he asked Michel Dubois to help solve this matter. As editor and expert in Intellectual Property, Mr. Dubois then started a correspondence with the **so-called inventor’s** legal counsels. This correspondence was based on a strategy aimed at obtaining a settlement or a prompt and favourable court ruling.

Having learned that the **creator** was legally the author ~ *hence the owner* ~ of the aesthetic containers, the **so-called inventor** asked one of Europe’s leading expert on Intellectual Property, Mr. Jacques Azéma (*professor at Lyons, France*), to confirm the authenticity of the **creator’s** literary and artistic work which the latter had deposited at his lawyer’s office in Paris. Upon complying with this request, Mr. Azéma confirmed without hesitation that this **creative** work represented a legally valid anteriority that could be used against the **so-called inventor’s** subsequently filed title.

Disgruntled, our **so-called inventor** then brought the matter before the Tribunal of Commerce of Lyon. On September 30<sup>th</sup>, 2003, after a single hearing and a six-month delay, the court ruled in favour of the **creator’s** copyright and dismissed the **so-called inventor’s** suit on the grounds that his “*model*” (bearing INPI N° 974631) **lacked novelty**. Undeterred, the **so-called inventor** appealed the judgment. On April 1<sup>st</sup>, 2004, the case was heard by the Court of Appeal of Lyon; less than two months later, the appellate court upheld the verdict (**Court of Appeal of Lyon, May 27<sup>th</sup>, 2004 – R.G. 03/06633**) and thus confirmed the judgment rendered 7 months earlier by the Tribunal of Commerce. The Cassation Court (*France’s Supreme Court*) (**Conclusion on July 4, 2006 – N/Ref : 05/4797 DCI**) confirmed the ruling by the Lyon Court of Appeal (**Conclusion on May 27 – R.G. 03/06633**) Justice was well served, at an affordable cost: one year of correspondence between Michel Dubois and the plagiarist’s legal counsels, ten months for the ruling by the Tribunal of Commerce and seven months for the ruling by the Court of Appeal (*in each court, there was but one hearing*). This should encourage inventors and owners of small or medium-sized enterprises, few of whom have the means, time and competence required winning a counterfeit suit.

## **Why is utility patent so difficult to insure?**

### **Conference on growth, prosperity and patents, given by Dr. E. Martin, CEO of M.CAM**

At a conference at Aalborg, Denmark, dated October 28, 2002, hosted by Danish E. U. Presidency, Dr. E. Martin, CEO of M.CAM, explains why patent in its present state is uninsurable. Excerpts from the web site [www.dkpto.dk](http://www.dkpto.dk) are included herein. Insurance giants such as Lloyds of London, Chubb, AIG, etc. concur with the speaker.

Patent cannot be insured unless risk mitigation is present. This would allow capital efficiency. At present, patent is uninsurable because it is likely to be invalidated according to PCT definition. One must restore confidence in patents; SME's, individuals, legitimate corporations and the public are disenfranchised by tactics of economic intimidation rather than innovation.

Volume of disclosures: International focus on number, not quality of patents (*viewed as litigation "insurance"*), has increased volume of work at patent offices beyond production capacity.

#### **Patently obvious problems**

Globalization of information makes search for anteriorities impossible. Patent data and non-patent literature measured in terabytes make human review impossible without the aid of machine intelligence. Moreover, Examiners are unable to comply with MPEP and equivalents in EP, JP, and global offices (*Absence of Gold Standard*).

There is no established consensus on:

- what is truly patentable
- what constitutes adequate examination

Similarly, there is no process for monitoring concurrent innovation.

#### **Results of these problems:**

##### **I – Patents are often more liability than asset.**

- indeed, owners must not only defend but justify validity;
- Small to medium-sized entities decreasing patenting activity

##### **II – Statutory validity of patent is even challenged.**

- The odds of court finding invalidity and even inequitable conduct rising at an alarming rate.

##### **III – Business, Government, Banking and Equity markets cannot place confidence in patent rights due to the high probability of successful challenge.**

Essential requirements for underwriting:

Clarity of title or ownership of interest.

Patent quality is at all time low with high levels of redundancy and with examination failures at all offices.

Too often, patent does not convey a complete title due to redundancy, dependency or fraud. It can therefore not be considered as an asset.

43 % of patents are not unique; 38 % are dependent on patent or properties owned by third parties.

##### **The "Value" Problem:**

**Discounted Cash Flow**      Fails to consider dependencies on properties held by others; highly unstable

**Real Options"**      Patents contain adverse rights, not affirmative

**Patent enforcement and transaction insurance**      Policies failed to adequately account for counter-claims of invalidity

Insurer loss ratios > 200% of premiums

**Infringement defence**      Adverse selection (*undisclosed risks and highly litigious predisposition*)

**Conclusion: The patent does not seem insurable**  
**Is a volume from the Intellectual Passport CB Omnibus insurable?**

**Following page →**

**The Nations that signed:** 1) the World Intellectual Property Organisation (WIPO)'s 1997 copyright \* treaty ~ including the European Community and the United States of America ~; 2) one of the two international copyright conventions; 3) the World Trade Organisation... as well as the Nations that respect Articles 17 and 27 of the Universal Declaration of Human Rights; all agree on the following points:

- the specific criteria which determine copyright resulting from a (*creative*) Work of the Mind;
- the basic quasi-worldwide right to own a **natural property**... No search for anteriorities is required to establish such property, since, according to the aforementioned organisations:

*" an author is the owner of a Work of the Mind by virtue of having creating it. "*

### **Benefits:**

#### **I – Copyright represents a true asset, since it results from a property.**

- " **Copyright \*** " is a title resulting naturally from the non-transferable property of a Work of the Mind. Consequently, this transferable title (*made up of patrimonial and moral rights*) is free of charge. Holders of copyright do not have to prove the validity of their rights... Only in cases where evidence proves that an author's work had previously been created by a third party, will the former legally lose all claim to copyright on such a work, since he cannot be considered as the true creator.
- There is no shortage of copyright registrations.

#### **II – Copyright's *statutory* validity has never been questioned.**

- Legal actions for plagiarism, counterfeit and unfair competition won by Walt Disney Inc., among many famous creators, as well as by various authors of intellectual creations in the realms of science, industry and business, and notably a court case won by an inventor who purchased an Intellectual Passport CB (*1<sup>st</sup> instance ~ Lyons' tribunal of commerce, N° 01J03824, dated September 30<sup>th</sup>, 2003 ~, Court of Appeal of Lyons ~ rendered May 27<sup>th</sup>, 2004 – R.G. 03/06633 – and Court of Cassation [France's Supreme Court] ~ July 4<sup>th</sup>, 2006 - N/Ref: 05/4797 DCI-*), have confirmed copyright's world-wide validity, while condemning plagiarists. Anteriority claims by patent holders (*utility/design patents or any similar title*) have therefore lost much credibility.

#### **III – The business community, Governments, Banks and trade market can safely rely on copyright since it greatly reduces risks of litigation and unfavourable judgments.**

The Intellectual Passport CB is insurable, notably because:

- It provides a clear title resulting from a true property; thus it is a personal asset that can be used in a court of law; furthermore, it unquestionably identifies the author of the concept and resulting invention.
- Its legal validity is unquestionable and recognised worldwide.
- Given its non-publication, risks of fraud are kept to a minimum.
- It seldom requires patents or **property** held by third parties.
- Its business forecast (ICBF) allows the author to commercialise his invention internationally after having assessed its market; moreover, the editor of the Intellectual Passport CB is a third party with no vested interests.

### **The Intellectual Passport CB's value:**

**Discounted Cash Flow** is reliable and stable.

**"Real Options"**: Given its non-publication, the Intellectual Passport CB provides rights that prevent litigation.

#### **Copyright enforcement and transaction insurance**

- Policies adequately account for counter-claims of invalidity
- In percentage of premiums, insurer loss ratio is reasonable.

**Plagiarism defence:** *Adverse selection (minimized risks and litigious predisposition).*

\* **Copyright.** The true creator's, hence initial, lawful right. From Latin "auctor". He who augments, who founds, a person who is the **prime cause, at the origin** of something"

**According to insurance's criteria,  
it seems that the Intellectual Passport CB Omnibus Volume is insurable**

**Moreover, the USD System International Editions Consortium  
guarantees the legal validity of the Intellectual Passport CB Omnibus Volume!**

## Economic objective of the Intellectual Passport (CB or IND) Omnibus Volume

The **Intellectual Passport** (*CB or IND*) is the name of an unpublished Omnibus volume that encompasses a collection of literary and artistic books resulting from implementing an original codified system, and serve commercial and social purposes. Its preparation process therefore employs an original operating code called "Conventional Identification and Valuation Dossier" (**C.I.V.D**) which identifies the work with its author, and with the valuation of the commercial project (s) relating thereto. Furthermore, this original operating code is ethical (*respectful of the Universal Declaration of Human Rights*), and its application obligates practitioners to adhere to the chronological order of the natural law: "**CREATION → INVENTION → INNOVATION.**" Just as the author of an original idea first conceives it in its virtual form to its implementation on a material medium or:

**1<sup>st</sup>**, is the **Creation** (*producing the description of the original concept that establishes its anteriority internationally*)

**2<sup>nd</sup>**, the **invention** (*technical applications of the original concept*)

**3<sup>rd</sup>**, the **innovation** (*technical production and commercialization of the original concept*).

This procedure restores to moral prejudice its rightful legal primacy over material prejudice, based on the mere fact that **work of the mind** (*unpublished*) is original in nature, its ownership is characteristically inalienable (*non-transferable*), and enforceable against the subsequent filing of monopolistic industrial or commercial exploitation titles (*patent or other State issued title, as shown in ruling of July 4th, 2006 issued by the Supreme court of the Republic of France– Ref number: 05/4797 DCI*). The aforementioned chronological principal is legitimate in all Nations/States having adhered to either one of the two international conventions on copyright (*Berne and Universal*) and/ or having adhered to **WIPO** (*the World Intellectual Property Organization*), and /or the **U.N.'s** (*United Nations*). Charter of human rights. Produced using the **C.I.V.D. code**, each volume of the **Intellectual Passport** (*CB or IND*) Omnibus provides to author of the original concept (*described in the book*) **the proof** of his/her literary property (*texts*) and/ or artistic property (*drawings*) that no one has the right to reproduce for commercial purposes without their express authorization. It is as much for the security of the author as for that of his/her licensees or assignees that the **C.I.V.D. code is formulated, by design**, to obligatorily attribute exploitation rights to each of them individually, based on their highest performing specialization.

Completing a volume of **the Intellectual Passport** (*CB or IND*) **Omnibus**, therefore, aims to open to the author of an original concept (*patentable or not*) the possibility to negotiate **equitably** with third parties, of international stature, the transmission of exploitation rights of his creation, by being freed of the financial burdens related thereto (*administrative, industrial, commercial*) which, with some exceptions, are incompatible with his socio-economic conditions and professional competence.

The contractual solidarity which unites the author to his assignees and / or its licensees (*embedded in the aforementioned process of individualized attribution of exploitation rights*) produce the alliance that is necessary for economic and social development of the project, and provide the author with the essential means of legal defence internationally \*. (*bottom of the following page*)

Utilizing the **Intellectual Passport** (*CB or IND*) **Omnibus Volume** liberates international access to Intellectual Property rights, such that it should strengthen the economic growth of all nations without discriminatory consequence for the poorest. If the invention or the methodology resulting from the application of the author's original concept is commercialized (*by him or by a third party*) prior to producing the book, it is possible to establish his authorship rights (*copyright*).

Furthermore, the non-publication of a volume from this original omnibus opens to the assignee the option, through contractual authorization from the author, to file a patent (*or any other monopolistic title*) for the invention in the author's name. Namely, the charges and responsibility are exclusively assumed by the assignee. It is always preferable that the volume be done first.

**The Intellectual Passport** (*CB or IND*) omnibus volume, expressly dedicated to the creators of original marketable concepts, is called to play a stimulating role in the continuous emergence of innovations that are necessary for scientific, technical and technological progress, whether they relate to industry, services or arts.



**Michel Dubois**

**\* Recommendation:**

The USD System International Editions Consortium encourages an author (*of a literary and/or artistic work*) who has been plagiarized to begin his defence by filing a Report with the police under Penal Law. Due to the natural **property** of the work, its plagiarism is a **theft** (*in the criminal sense of the word*), accompanied by the theft of the author's identity by the plagiarist and even sometimes, vandalism, if the work was denatured. Later, if the Penal Judgment was rendered in favour of the plagiarized author, this one can initiate a civil suit to estimate the material damages. This strategy may differ according to the Law governing each Nation. However, the Law governing most Nations (*called of Law*) respects this principle.

**Example:** In Canada, the Ali and 124558 Canada Inc. case against Guardian Insurance Company and Royal Insurance Company (1999 CanLII, 13177 – Qc C.A.).

## The lawyer's objections to the content of the present work

Notwithstanding the legal precedents identified in the present work validating Copyright on an industrial product and, in spite of the legal opinion from lawyers who support the same principle; should other lawyers, following different principles, still deem it necessary to contradict any part of this document, they can do so hereinafter **by committing their professional accountability**. They must write their objections on the dotted lines below, followed by their signature and address, phone number and email address. *(Given the business issues related to the marketing of innovations that the objections of detractors may raise, we do not need the recurring verbal criticism that some of their peers use solely in order to propagate unfounded rumors).*

### Additional page for the lawyer's notes on this document

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**Lawyer's Full Name**

**Signature**

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Should the lawyer require more space than this page allows,  
he may use additional pages to write his answer.

**Very important!**

**In order to publicly certify his opinion, each lawyer must go to the tab  
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**The Consortium undertakes to leave on its Site for one year  
the objections that each lawyer will have accepted to publish  
Michel Dubois reserves the right to publish his answers to the lawyers  
if he deems it necessary**

*“Intellectual property is the oil of the 21<sup>st</sup> century. Look at the richest men a hundred years ago: they all made their money extracting natural resources or moving them around.*

*All today’s richest men have made their money out of intellectual property.”*

**Mark Getty**

*(Grandson of the world-famous American billionaire J. Paul Getty)  
from the Economist, March 4<sup>th</sup>, 2000.*

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**Pierre Salinger and Michel Dubois  
15 April 1999, Montreal  
At the inauguration of the Intellectual Passport CB**

This **Book** is primarily addressed to those impassioned for justice and hope for the future because it provides expansive perspectives for the development of an economy increasingly honed on serving Humanity.

**Inventors** and **conceptors** from any discipline will find “**solutions**” suited to their focal problems: preservation of their secrets, receipt of their direct and international Intellectual Property, as well as cost-effective defense of their rights in the most secure conditions.

This volume provides **entrepreneurs** and **businessmen** (from *handicraftsmen to multinational executives*) with “**original methods**” that stimulate motivation and prevent conflicts, thus encouraging a spirit of harmony amongst the various members of a business venture. Also included in this work are new means of maintaining confidentiality, as well as decreasing unfair competition and industrial espionage.

**Lawyers, accountants** and **business consultants** will find various “**efficient strategies**” to market original products/services and defend originators’ rights. As a result, these strategies allow them to capture an emerging market in full expansion of more than eight million people.

**Patent agents** will find “**solutions**” to three longstanding concerns:

- 1 – officially establishing the authorship of the concept to the author of the specifications,
- 2 – ascertaining, beyond any doubt, the author’s creation as his initial property,
- 3 – preserving the secrecy of such a property and its resulting business strategy for as long as necessary: that is, until the author has assigned commercial rights to a third party that can afford, as the case may be, the filing, maintenance and legal costs of an international monopolistic title (e.g. *patent*).

**Investors** and **financiers** will discover “**vanguard formulas**” to reap from an incredible pool of opportunities; formulas yielding optimally secure conditions for closing dynamic agreements with creators who, freed from their secular suspicions, can trustingly develop partnerships with enterprise leaders.

As a consequence, **Nations** will exhibit an “**accrued interest**” in developing their economy, notably through **new tax revenues** easily generated by the “**access democratization to Intellectual Property**”, since brainpower is the primary and inexhaustible source of innovations, inducing jobs and wealth creation, whether they pertain to industry, services or arts.

The Editor