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Jurists!

You who the Oath to Serve Justice…

Do you Agree ?

Michel Dubois & Co

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 9th, 1886)*, the Universal Copyright Convention *(September 6th, 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.

This means that:

- **first**: Copyright is reserved to the natural person who is the identified creator of a work authentically literary and/or artistic, also known as a Work of the Mind. The word author *(from Latin auctor)* means: a person who is the prime cause, at the origin of something. Consequently, any third party creating a work all or in part identical to that of the true author, or inspired from this one ~ *a second work* ~, cognizant or not of the existence of the first, cannot legally claim authorship on that work. The meaning of the words "invent *(find)"* and "innovate *(introduce the novelty onto the market)"* differ. Likewise, the laws governing these words are distinct from those in copyright.

- **second**: any reproduction, whether intentional or unintentional, for whatever reason and by whatever means and/or method, of any excerpt ~ *known or unknown* ~ of this work for commercial purposes, is strictly forbidden without the prior written and signed authorisation of the author named below.

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Industrial predation: source of nationwide economic and social injustices and of international disorder

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, the existence of his enterprise might hang by a thread and his own 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 harmful declarations

Fortunately, several court rulings *(see the book: Copyright: The Key to Global Economic Growth! – Available over the Internet through Amazon, FNAC, etc…)* published in various nations *(including the United States of America, China, Canada and France)*, demonstrate that an inventor can lawfully create a literary and/or artistic Work in order to own the Intellectual Property of the description of his initial creation.

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.

*   *   *

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REMINDER FOR THE JURIST

The Patent Act is different from the Copyright Act

The Patent Act *(or of any other State-issued monopolistic title)* is legally part of industrial law. It strictly serves the material interests of developers, not the moral interests of creators. Utility *(or design)* patent in not an intellectual property. It is a commercial and industrial " **temporary title** " that is transferable and concessible. Its temporarily granted territorial monopoly is valid nationally and can be extended abroad *(for a fee)*. It is published eighteen months after the initial filing date of its application. The costs of extending it internationally, of paying its annuities and of defending it for **counterfeit** before " **Civil Law** " tribunals can only be assumed by an international industrialist.

> *"**Patent** or o**ther 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)*…"*

The Copyright Act is different. It results from the ownership ~ *i.e. intellectual property* ~ of a literary and/or artistic work which may also include the description of a **technical invention** or of an **original service**. It is precisely the texts and/or drawings making up this **" description "** that are covered by Copyright, whether the work is published or " unpublished ". Derived from the laws of nature, the " **ownership of the work** " is free, non-transferable, inalienable, perpetual and valid worldwide. Its non-observance is a violation of moral rights hence, constitutionally, of public order and therefore constitutes a **criminal offence**. This offence, called **plagiarism**, results from the illegal copy of all or part of the work for commercial purposes. In this case, the procedures under " **Criminal Law** " are at the State's costs. Criminal proceedings do not preclude legal action under Civil Law.

> *"**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 Creation Occurs Prior To a Utilitarian and/or Functional Invention

As per the **Law** governing Patents, to be patentable, an invention must be **new**. Patent is voidable by the production of proof of anteriorities, in particular literary and/or artistic anteriorities. The **drawings** and **texts** constituting the description of an invention are **anterior** to the invention, which is a product of the implementation of their application. Whether the invention is utilitarian or functional, copyright "*protects*" the **drawings** and **texts** embedded in its **description** *… According to International Conventions and national laws, Copyright forbids copying © the drawings and texts of all or part of a literary and/or artistic work for commercial purposes without the prior authorization of the Author. Any illegal copy of all or part of the drawings and texts constituting the **description** of an invention is **"plagiarism"**. Plagiarism is a **"crime"** punishable by imprisonment for theft of the author's literary and/or artistic property and for **"usurpation"** of his identity. An original literary and/or artistic work is the only **natural property** in the world. Given that it is unassignable, inalienable and imprescriptible, it is also global and perpetual.

* Available on Amazon, FNAC, etc., Michel Dubois' book, entitled *"Copyright: The Key to Global Economic Growth!"* or *"An Opportunity for S.M.E.s"*, reveals several international jurisprudences that corroborate the power of Copyright, as much with an illegal copy of the **description** of an invention or original service concept as with an official State-granted monopolistic title *(drawing, model or patent)*, particularly when it results from the property held on all or part of a literary and/or artistic work.

* * *

Statement of Fact

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
utility patent's protection is proportional
to its title holder's or its 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!

* The figures are approximate and change from year to year

* * *

1 - The world inventor of the GPS, Frenchman Gérard A. de Villeroché, lost all of his rights after depleting his goods in utility patents and in fruitless court procedures

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 "**G.P.S.**". 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 Japan.

Trained in the US as an economist prior to earning his stripes as a professional airline pilot, Mr. de Villeroché, much like many creators of innovative software concepts, first and foremost is an autodidact. 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 from 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 that has become universal. Although typical of an impecunious inventor intent on capturing a market, such a decision actually proved imprudent and the subject of this story suffered accordingly. Unaware of the undeniable benefits of secrecy prior to the launch of an innovative product or system, he submitted his **Smart Guide** to industrial predators on the lookout for new ideas. 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* ~ awaited Mr. de Villeroché. A consortium 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, and even by the Government. Even though, and for good reason, his **Smart Guide** enjoyed universal admiration, his rights were still trampled.

After nine years of procedures and unjustified postponements by the courts, the EPO's Opposition Division arbitrarily *(according to the author)* ruled that the patent delivered by the Examining Division must be truncated. In short, his small enterprise, GUIDETRONIC, had no leverage against the industrial titans. It is a cruel irony that the impecunious inventor must, according to patent law, sue his counterfeitors, and not the other way around. **What kind of protection does patent provide, if the inventor must protect his patent?**

There ensued a long and painful series of setbacks with his contacts: in turn, Renault, Peugeot, Valeo, Neiman, Matra, Sagem, rebuked his persistence. Twice, in 1992, he "nearly succeeded": 1) alas, the proposals made by three of THOMSON-CSF's plants were delayed when one of Valeo's plants suddenly withdrew its support. 2) afterwards, the aforementioned Carminat program concluded successfully, at the cost of 300 MF *(technological development, advertising costs, patent extension, protection fees, etc.)*, while GUIDETRONIC's project languished for lack of resources. Finally, in 1996, after selling two **Smart Guide** browsing devices to the Army and the Police, Mr. de Villeroché regretfully noticed that *"the automobile market + consumer electronics + the general public represented insurmountable obstacles for an independent inventor in an SME"*. 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**, 12 years after the filing of the European patent.

Thanks to this providential agreement, he received at least license fee payments. The truth is that in this world, without Intellectual Property on a literary and/or artistic work *(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 therefore had to accept reality, especially since, according to his industrial property advisers, "other licenses would successfully follow". Actually, nothing more followed. Having first tried to enter into a commercial license agreement 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, and thus received direct or indirect license fee payments *(a total of seventeen)*. Sadly, this victory proved to be bitter, since 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 Nipponese episode *(late 1990s – early 2000s)* only confirmed this deplorable state of affairs. Aided by industrial property experts well-acquainted with Japan and by a Japanese lawyer, Gérard de Villeroché visited various cities, notably 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 smaller-scale company. Every effort was made to compel this unwelcome guest to leave the shores of the Rising Sun. More or less forty fictitious anteriorities were presented against his product; for each, Mr. de Villeroché ~ *and his lawyers* ~ had to prove their invalidity in civil courts. 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 through cartography. Which is false! ... One merely needs to know this simple fact: one cannot use a cartography of France in Japan, since the geodesic points cannot be transported. Having filed an appeal, he was forced to desist for lack of financial means. To make matters worse, Toyota's exoneration led the other fourteen Japanese companies to refrain from signing licenses, by a ruthless and cynical concensus. This reveals one of patent's perverse effects: a temporary State-issued industrial title, not an Intellectual Property resulting from an original creation, 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 and convincingly prove that he actively uses it for business purposes.

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 commercially use his patent, when he must constantly defend his title or take legal proceedings, both nationally and internationally, against his counterfeiters?

Doubtless the reader begins to understand the many dangers facing millions of creators who, each year, are taken advantage of by unscrupulous predators. At the dawn of the twenty-first century *(2004)*, Mr. de Villeroché saw his last hope of success vanish after Michelin offered him a contractual agreement *(steps initiated since 1986!)*. Such a world license to commercialize a second-generation browsing device ~ *developed by the unrecognized author of the* ***GPS*** ~ only brought the latter disappointment and defeat. Indeed, this contract with Michelin failed to attract a 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 persists* ~ in claiming fees from his competitors for the past production of approximately forty trademarks, notably Garmin, Tom, Magellan, Navman, Medion, Moi, etc.

Notwithstanding his setbacks, he tirelessly tries to address the abuses and injustices caused by the utility patent system. Seating at the head of inventors' organizations, it is with an open-mindness that sets him apart from most of his peers, that he resolutely strives to find a legal and 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 more 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, 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 at the commercialization stage that this aid stops, and predators set about to rob patented inventors.***

2 – Misrepresentation of patent: source of confusion, injustices and subversions

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.

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 some 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 3 before)*, 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 (W**ithout **G**uaranty **F**rom the **G**overnment). In France, its equivalent acronym is **SGDG** *(**S**ans **G**arantie **D**u **G**ouvernement).*

**** 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.**

English translation

In brief

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.

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. La cinquantaine, il mène une vie paisible avec femme et enfants à Villeneuve-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 illustre inconnu, probablement plus pour longtemps, c'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 fameux systèmes d'opposition à la pression, de blocage, de centrage et d'extinction appliqués 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 92.0023 et PCT FR 92.00405 en avril et en mai 1991.

A cette époque, les combats font rage au Koweït et la télévision diffuse les images saisissantes de centaines de puits qui ont été incendiés, ce qui représente 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 échecs 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 méninges. Et il trouve en quelques heures la solution radicale sous la forme d'une extinction en douceur. Connu 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 : *« Incontestablement, 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.

Visiblement 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 ête facturée 30 millions de dollars US par puits, soit 3 milliards de dollars ! Multipliez par cinq et faites le compte...

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

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

Etienne Tillié, l'ingénieur niçois.

« Il en a été écarté par un habile subterfuge » affirme Me René Blanchot, avocat au barreau de Marseille et conseil, avec Me Olivier Arnaubec, de l'inventeur. *« Etienne Tillié, Christian Basano et François Roch Colonna m'ont dissuadé de les accompagner, prétextant mon ineptitude 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 déchante vite.

A leur retour en France, ses associés lui annoncent que les négocations ont échoué. *« Ils m'ont expliqué que les autorités koweïtiennes avaient déjà signé un contrat avec une autre société »* explique Joseph Ferraye, guère convaincu par cet argument. 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 Compagny. *« Les techniques décortiquées 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'Aix-en-Provence a confié le dossier par un arrêt rendu le 3 juin dernier.

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

Nouvelle invention

En fuyant l'univers sanglant de Beyrouth, l'industriel Joseph Ferraye a tout abandonné en juin 1983 : son usine, sa maison, ses amis et... ses inventions !
Sitôt installé sur la Côte d'Azur, il ne reste pas inactif et retrouve sa passion, la mécanique, avec de 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'enduction de latex des tapis de bain afin de les rendre anti-dérapants. C'était quelques années avant de se pencher sur les systèmes révolutionnaires permettant d'éteindre les puits de pétrole en flammes. Nullement déconcerté par l'affaire de ses brevets piratés, Joseph Ferraye a l'intention de récidiver. Depuis ces derniers mois, 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 - Technological watch: Source of 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[1]"**. 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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[1] 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 14).*

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

<u>Reminder</u>: 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 <u>free</u> 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**.

<u>Clarification</u>: 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!

<u>Type # 1 - The Opportunist</u>: This predator espies 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 serve at nothing but initiate his potential **predators** to his innovation.

<u>Type # 2 - The Diligent</u>: 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…

<u>Type # 6 - The Scoundrel</u>: 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.

<u>Type # 7 - The Spy</u>: 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 **<u>Front Page</u>** 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!

<u>Comments</u>: 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"* (1), *"nested patent"* (2), *"lure patent"* (3), 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 "<u>unintentional</u>", 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.

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innovations de la concurrence,
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5 - An " **unpublished** " literary and/or artistic work invalidates a patent

Copyright Law *(related to plagiarism and counterfeit)* differs from the Law governing temporary State-granted titles *(solely relevant to counterfeit)* primarily because the **Creator** of a literary and/or artistic work does not have to publish his work to become its "**owner**". The **Creator** is the "**holder**" of the copyright resulting from the **natural ownership** of his work.

Patent Law pertaining to the technological status knowledgebase stipulates that only third parties' previous publications may challenge a patent. Yet, secrets are deposited in sealed institutional envelopes or at a notary's/bailiff's office every day, even online through private enterprises' web sites which, as per their explanation, might be opposable to a subsequent patent application on the same invention. Relying on that would mean that the proof of an **unpublished** anteriority could be opposable to a subsequently filed patent on the same invention. Some institutions declare that this initiative is limited to the State of the depositor's residence. Other people say the contrary.

Creating an **unpublished literary and/or artistic work** seems a sturdier solution. According to the internal laws of Nations and the International Copyright Conventions, **a literary or artistic work is the author's world property simply because he created it** … **Not because he published it! …** It is in compliance with this Law that a volume from the Intellectual Passport CB Omnibus has set a precedent against a model *(design patent)* registered by the **INPI** *(France's National Institute of Industrial Property)*. Indeed, akin to utility patent, the validity of a design patent also depends on the criterion of novelty, which can be countered by **proof** of a prior creation. Of course, **provided that one does not use the wrong law**.

Design and utility patents are temporary **titles,** not private properties. In this regard, let us come back to what the internal laws of Nations, the International Copyright Conventions and the Universal Declaration of Human Rights say about *"***property***"*:

1) **Pursuant to articles 17 and 27 of the Universal Declaration of Human Rights**: Article 17: *"Everyone has the right to own property alone, as well as in association with others. No one shall be arbitrarily deprived of his property."*...Article 27*: "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."*

Comment: every *(so-called)* democratic State, particularly *(so-called)* lawful State, such as the members of the European Union, North America, Japan, etc., officially recognize "**property**" in their own Constitution.

2) **For their part,** the internal laws of Nations and the International Copyright Conventions similarly state that, "The Work of the Mind *(literary or artistic)* is its Author's "**property**" **by its mere creation**"… The Copyright legislations are based on this virtually universal principle. Moreover, nowhere is it written that the **description** of an industrial invention or of an original service-oriented concept ~ *intrinsic to a literary and/or artistic work* ~ could be excluded from the author's "**property**". The legal principle of "**unity of art**" preserves the author from any potentiality of such deviation.

Consequence: Whatever the nature of the description of an original concept intrinsic to a literary and/or artistic work, the proof of its anteriority is just as opposable to the illegal reproduction of all or part of the work by a third party for commercial purposes © as it is to the subsequent filing of a patent application plagiarizing the same description.

The USD System International Editions Consortium, sole world disseminator of the "**Intellectual Passport CB**" Omnibus Volume, never intended to undermine the patent. It merely reminds that this monopolistic title must be purchased and can only be effectively defended by someone who can afford its legal defense.

By merely publishing its Omnibus Volume, the Consortium could severely hamper utility and design patent business. The **non-publication** of the volume allows the creator of the work ~ *prior to disclosing the secrets embedded in the volume* ~ to negotiate serenely with the investor (potential predator) an **effective** confidentiality and non-disclosure agreement *(because it is linked to a true property),* conducive to a subsequent technological transfer contract, **while preserving the invention's patentability.**

If such is the wish of the investor, it is precisely what the Consortium's strategy enables, provided that he exclusively assumes the costs of an international patent and its global defense… Moreover, the security procured by the original contracts of the **Intellectual Passport CB** omnibus volume is as necessary for its clientele's negotiation with an investor as the world ownership *(without annuity)* on any creation. Withal, the volume contains an international Business Forecast, as well as a **Certificate of Guaranty** ensuring the legal validity of the Consortium's original strategy, based on the **natural property on the work** from which is derived a world Copyright. Indeed, at a price affordable to most people.

The First Jurisprudence of the Consortium: It is with an **unpublished** volume that the initial **property** on the work of its client, Pierre Aguesse, recognized by the Court of Commerce of Lyon ~ **solely because it was created,** not published ~ that this legal precedence was gained in 1st instance (2003), in Appeal (2004) and before the Court of Cassation, France's Supreme Court (2006).

Misled giants, such as **L'Oréal** *(against **Bellure** in 2006)* and **Lancôme** *(against **Argeville** in 2009)* defended a so-called copyright instead of a patent with their lawyers until the Court of Cassation. If such authorities were mistaken, would it be shameful to be wrong?

Conclusion

In summary: It is because the ownership of a literary and/or artistic work, called Work of the Mind, is **the only natural property** in the world that does not need to be published to be inextricably linked to its author. It is consubstantial to it. Therefore, according to the International Copyright Conventions and the internal laws of Nations, this **constitutional property** is **non-transferable, inalienable and perpetual**. No one can misappropriate it without committing a crime for **theft of a third party's property**.

Akin to a State-granted license, a patent is a **title temporarily granted** to a natural person who claims its anteriority. A **claim is neither a proof, nor a property!** According to patent law, **novelty** and **inventive activity** are the criteria that constitute the **current technological status**. In order to invalidate a patent *(or other title)* filed after the creation of an **unpublished** work embedding the description of the same invention, the legal recourse must then be **theft** *(under the Penal or Criminal Code depending on the country)* **in relation to Copyright Law**.

* * *

6 - 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.

<u>Comments</u>: 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 <u>does not procure any property</u>. 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.

To the rescue of SME

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 **<u>title</u>** such as the patent, the rights held by **<u>titleholders</u>** *(employees or collaborators)* and the SME that employs them, are first and foremost defended under <u>Civil</u> Law. Yet, similar to their staff, SMEs hardly ever have the means indispensable to sue their counterfeiters under <u>Civil</u> Law.

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 **<u>Criminal</u> 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),* <u>which is the only natural property that exists in the World</u>. For this single reason, PLAGIARIZING his work is **<u>THEFT</u>** in the <u>criminal</u> 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.

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 <u>Civil</u> 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.

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7 - 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

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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.

8 - 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 progenitude'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."

* * *

9 - 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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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.)*.

11 - Notes by Michel Dubois related to Francis Gurry's speech on "The Intellectual Property Challenges in the Global Economy"

The speech given by **Mr. Francis Gurry**, Director General of the **WIPO** *(**W**orld **I**ntellectual **P**roperty **O**rganization – a **UN** agency)* at the *Institut d'Études Politiques Sciences PO* in Paris, France ~ **https://vimeo.com/tag:francis+gurry** (in French)~ on Thursday, 25th of November 2010, gave me the incentive to write the following:

1 - Francis Gurry's Relevant Statement:

The global annual investment for R&D amounted to US$1,100 billion *(in 2009)*. The 35 OECD countries ~ *whose mission is to promote a sturdier, sounder and fairer world* ~ allocate 2.3% of their annual GDP in R&D. It would seem that:

1) 1,900,000 national patent applications were filed;
2) 160,000 international patents were granted;
3) 3,300,000 national trademarks were filed *(900,000 of which in China)*;
4) 40,000 international trademarks were granted,
5) 700,000 designs and models applications were filed;
6) In 1913, Europe and North America represented 33% of the world population; in 2003, it dropped to 17%; and in 2050, it will lower to 12%;
7) In 1800, Europe and North America represented 32% of the global GDP; in 1950, it increased to 68%; in 2003, it dropped to 57%; and in 2050, it will lower to 30%;
8) In 1994, China, Japan and South Korea totaled 7.6% of the global patent applications; in 2010, this percentage rose to 29.2%;
9) How can the European Patent Office understand the global technological status when ⅓ of the products are written in Chinese, Japanese or Korean?
10) In the OECD countries, the number of foreign students is three times that of 1985;
11) 22% of scientific, technological and medical articles are published by authors from countries outside of the OECD;
12) The arrival and development of digital technologies *(such as printing)* altered the world of Intellectual Property;
13) Democratized access to knowledge led to the obsolescence of the Intellectual Property legal model, particularly in the case of Copyright *(Author's Rights)*. Through the use of Internet, it is easier to illegally acquire works. This affects the core of innovation, especially with the introduction of Open Innovation *(<u>NFA</u>*: in every country)*;
14) The persistence of the world poverty problem is the result of an inequality in research distribution. Although economic cycles between rich and developing countries are offset in the short-term, a growing gap between both becomes apparent in the long-term. Indeed, while the growth rate of developing countries is superior to that of its industrialized counterparts, it does not include the 53 poorest countries that are increasingly losing ground. These inequalities are growing;
15) The five largest transnationals on the planet spend over US$8 billion in R&D per year; or more than the total GDP of the 53 poorest countries. These transnationals spend more on the creation of knowledge than what these countries produce for the survival of their people.

2 - Consequences:

1) **Stress!** The international Intellectual Property System is stressed. Indeed, the technological world is changing faster than political architecture;

2) The forces of globalization are directed toward the center, creating interdependence; whereas the others are flowing toward the periphery. For example, the 5,000 patents related to the mobile phone *(cellular)* are held by 50 companies, whose lack of financial means prevent them from commercially extending their invention to the world without forming an international cooperation. Thence, only few giants share the world monopoly on this technology. *(NFA*: this enables multinationals* (predators) *to exploit SME patents without any risk since on the one hand, they can copy their technologies in all of the countries where the SME patents are not in effect and, on the other, infringe on those in the country of residence of these SMEs without major risk due to insufficient funds for defending the patents involved in court… Alas, what holds true for the phone is also true for any other industrial, scientific and medical technology.)*

3) *NFA * continued: To counter this injustice, an international cooperation between multinationals and SMEs should be established. This is not the case since multinationals solely aim at further extending their hegemonic monopoly to the detriment of SMEs, in spite of the fact that the majority of inventions and employment are created by these same SMEs.*

4) It is not a coincidence that conventions on biological and cultural diversities were established. How else can these diversities be preserved in such a globalization wave *(NFA: dehumanized)*?

3 - Result: Intellectual Property is in a deadlock predicament!

1) The world needs to unblock this predicament *(NFA*: to implement a more equitable organization).* Whether it relates to the displacement of people, genes, epidemics, pollution, and capitals, the problems cannot be resolved by any one country. Consequently, solutions must be global, which is hard to achieve in our current international climate.

2) What are the risks involved in this predicament?

   1 – Whether related to the world of commerce or intellectual property, the bilateral agreements proliferate between various countries *(several hundreds)*. The G20 conferences stimulate both plurilateral and non-multilateral agreements. *(NFA*: G20 members often make agreements amongst themselves at the expense of other countries.)*

   2 – Political Risk. Given that the political world cannot follow the speed of technological evolution, it is the private sector that is called to take the lead. Examples: The Google Books digital library has already taken over State-owned libraries. Private structures progress while public international authorities stagnate.

   3 – Consequently, the needs of the international community are not met. Moreover, it is not provided with the tools that it would need.

4 – According to Francis Gurry, what clues and potential solutions can solve this issue?

1) National interest cannot be disjoined from international interest. The noticeable lowered markets performance is caused by the inequality between countries;
2) International Cooperation mediums must be reviewed. *(NFA*: Lacking an effective international cooperation)*, a sustained effort must be aimed at the technical, rather than the legal, infrastructure. The complex evolution of international legal agreements is continually postponed;
3) The difficult access to medicines in poor countries is screaming injustice. Pharmaceutical industries do not conduct much R&D in tropical countries because of a weak market. Alas, consumers of these countries cannot afford to buy the minimal necessities for their health;
4) Everything between the financial system interface and the Intellectual Property System should be revisited;
5) The pharmaceutical industry holds opposite interests to those of the computing industry: the latter does not like to resort to injunction because it can collaterally overthrow SMEs, while the former states that without injunction it has nothing!

The patent system is at a standstill because it applies as much to the small farmer as molecular biology… *(NFA*: it is the same for conceiving a screwdriver than for spatial technology, etc.)*. A unique Data Global Center should distribute licenses… Everything should thus be simplified by creating such a Data Global Center.

5 – According to Michel Dubois*, there is another solution to unblock this issue:

The stipulated **W.I.P.O.** mission is to "***Stimulate Creativity*** *(not inventiveness)*". To unblock this issue, the only globally recognized Right should be used: **Copyright *(Author's Rights)***. Derived from Natural Law, it costs nothing. It puts all of the economic players *(from the smallest to the largest)* on an even social, financial and legal footing.

It is the preponderance of anteriority that renders the effect of Law, according to national and international principles on Intellectual Property. These principles have notably been formulated and enacted by International Conventions on Copyright and related national country laws. The use of the axiom, "**Creation ➔ Invention ➔ Innovation**", is thus logically applied to each person's ethics and those of the global community.

Prior to being an inventor, the person who initiates something new begins by giving life to his idea through texts or illustrations that he renders concrete on a material medium. This person is first a **Creator** who can benefit from Copyright on the description of his **original concept**, without the reproduction © of which, it would be impossible to make a mold, fashion a part, assemble components, organize services, etc.

Given that **Copyright** is exclusively reserved to the **Creator** of a literary and/or artistic work, suffice it that the **description of his original concept** be intrinsic to such a work to derive its benefits. To the above is mandatorily added the strict minimum required for the technical, legal, commercial and financial development of the original concept so that its economic progression is achieved, thus its social one as well. It is precisely this realization that demands the recourse to a volume of the **Intellectual Passport CB** Omnibus.

12 - 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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Very important!

In the form hereinabove, the lawyer writes his objections in a Word file, dated and signed, which he sends by email to info@sosinvention.com

The USD System International Consortium of Editions hereby undertakes to publish it within its Site www.sosinvention.com for the minimum period of one year.

Michel Dubois reserves the right to publish his answers to the lawyers if he deems it necessary

In the event that the lawyers' opinion exceeds the spaces hereinabove, would they please add more pages to the present document.