

Capsule 8

The dangers inherent in utility patent

Madam, Sir,

Could there be danger in patenting one's invention?

- Patent is a contract between the presumed inventor and the public, which is represented by the Government of the country where it is registered. The inventor-patentee therefore holds a temporary **monopolistic** title (*he does not own it !*) for the commercial exploitation of a product, process or method, which can be extended to other countries (*for an expectedly very high cost*).
- Since a **monopoly** violates the principle of free market, it is granted much like a license, on a country per country basis, for a high cost (*administration + agent fees, or even legal fees + translations + tax, etc...*) and is subject to several obligations which the holder must comply with:
 - 1 - Loss of secrecy** for the inventor (*from a technical and commercial point of view*) as soon as the patent is mandatorily published **18** months after the initial registration of the patent claim. Note of USD-System: *Such a procedure often discloses the claimant's secrets to his competitors before the product/process/method has been marketed. Paradoxically, this delay also prevents the claimant from verifying the technological developments that occurred during the 18 months prior to the registration of his patent claim thus making the mandatory search for anteriority almost pointless.*
 - 2 - The patent must be extended internationally and at random.** Note of USD-System: *The patent claim must have been extended to other countries at the latest by the end of the 12th month following the registration of the initial claim. Within this insufficient delay, the title holder must therefore apply the procedure of extension in every country concerned, with the risk of having his patent annulled and losing the amounts of money invested. This abusive practice: All of this is due to the fact that when the claimant's delay to extend his patent begins, the 18 month delay for the publication of third parties' patents has not yet expired.*
 - 3 - Proof of the anteriority of the claimant's demand and proof that such demand was not previously disclosed by a third party are almost impossible...** Note of USD-System: *Given the conditions of paragraphs 1 and 2, fulfilling this condition when registering a patent claim is mere wishful thinking!*
 - 4 - The patented invention must involve a creative activity, failing which the patent can be annulled in a court of law.**

- 5 - **The invention being patented must serve an industrial function** (this criteria has been abandoned several years ago, at least in North America).
- 6 - **Annuities must be paid** in every country where the patent is registered for the entire term, namely, **20 years**. Note of USD-System: *Failure to pay even one annuity may lead to the annulment of the patent.*
- 7 - **The holder must commercially exploit his product/process/method** for which a patent has been granted. According to law, the patentee who unjustifiably prevents or impedes the manufacturing, use or sale of the product may be deemed to abuse the rights granted by the patent. Note of USD-System: *Such a sanction is perfectly logical, since failure to use one's patent inevitably represents an abuse of one's monopoly, which is detrimental to business... Patent being a title granted by the government, its **monopoly** is a temporary privilege, which allows an enterprise to violate the legal and unquestionable principle of free market.*
- 8 - Provisional registrations, patent requests and other such procedures **are ineffective**.
- 9 - **Patents are ineffective** because some innovations have a much shorter market value than ever before (e.g. software products that become obsolete before the granting of the patent).
- 10 - The intellectual property **institutions are remarkably slow**.
- 11 - **Competition** can counterfeit one's innovation or design around a patent **very quickly and in almost total impunity** thanks to the modern means of information, industrial espionage and patent disclosure.

Conclusion:

When an invention is ahead of its time, it fatally challenges traditional values; the material interests at stake are greater, hence the dangers of collusion between competitors; the idea of protection through patent's disclosure therefore becomes an illusion!!!

Under these conditions, one can easily understand why so many people prefer to use secrecy and why insurance giants like Lloyd's of London refuse to insure utility patent because, in their expert opinion, this title too often leads to litigations (see the Web site: www.dkpto.dk)