



*" I advise Beaumarchais
to have his factums performed,
should his Barber prove unsuccessful. "*
Voltaire

Rumor and Truth about Intellectual Property

or " the consummate art of misinformation "

carried out notably by
the National Institute of Industrial Property in France
and the Federal Institute of Intellectual Property in Switzerland

**Booklet
by Michel Dubois**

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www.sosinvention.com

www.usdclub.org

www.usdsystem.com

Warnings from ~ Intellectual Property Institutes and Offices ~ against the " IPCB " are aimed at misleading the public

The choice of two things:

Either the statements made by the USD System Consortium are false and therefore must promptly be brought to justice for fraud, breach of trust and misleading publicity;

Or the statements made by the USD System Consortium are true and any attempt to discredit them merely aims at spreading a rumor against the common weal.

Consequences of an historically significant error:

As a result of industrialization more than two centuries ago, authorities created a legal procedural system favoring entrepreneurs at the expense of creators, which led to constant exploitation by industrialists. In compliance with this system, lawmakers classified invention (*from Latin inventio, invenir: find*) as the ***mere finding*** of a technical process with a mainly industrial potential value. This explains why, until the present, inventors never had the means to effectively preserve their original and legitimate rights, especially in case of necessity.

Given this arbitrary policy, every one seems ~ *and most conveniently* ~ to forget that invention naturally springs from **human creativity**. This is legislators introduced a monopolistic title ~ *i.e. patent* ~ in order to presumably recognize its originality. Unable to prove his authorship, the inventor is forced to either improvise himself as an industrialist and business man (*much like a composer becoming an impresario!*) or use secrecy. As a result of such a system, many innovations never found adequate support and therefore seldom succeeded. With time, inventors became totally dependent on industrial financial power; the latter alone were able to assume the costs of commercializing an invention internationally while maintaining a monopolistic title before the law courts. In such a system, countless inventions inevitably remained in the shadow (*i.e. were never commercialized*), and an increasing number of original concepts were fraudulently copied, the whole without any retribution.

Example: In 1876, one Elisha Grey filed a patent application on the telephone two hours after Alexander Graham Bell. Unwilling to agree as to who had priority, both parties took the matter to court; three years later, the tribunal granted Mr. Bell priority (*i.e. anteriority, even though he never created the telephone*). Such a trial would never have taken place, had the tribunal considered Antonio Meucci's temporary patent filed in December 1871 in which the same invention was described. Mr. Meucci was not recognized as the inventor of the telephone because **he could not afford a patent...** In 1887, the American government joined Mr. Meucci's demand to have Mr. Bell's patent annulled for fraud. One hundred and twenty-six years later, the Chamber of Representatives of the United States of America felt compelled to acknowledge the historical truth and restore Antonio Meucci to his rightful place: *i.e. that of creator of the telephone*. Unfortunately, such a magnanimous decision will never benefit Meucci's heirs; the entire bounty remained in Graham Bell's family. **Note of the Author:** Thanks to his copyright, Professor Luc Montagnier had his American counterpart Robert Gallo's patent for the discovery of the AIDS virus annulled in 1987. Antonio Meucci could have done the same, had he been informed of his author's rights and followed a similar strategy.

Much like other trials and unsuccessful claims by great inventors such as Augustin Le Prince, Charles Cros, Nikola Tesla, against a predatory individual named Thomas Edison, Antonio Meucci's ordeal only served Graham Bell's interests... By 1904, the latter had found the means to purchase 900 patents from third parties and to win 600 court cases in order to preserve his two main patents. How many inventors or small/medium sized enterprise could do the same?

State-controlled Institutes and Offices elude the dangers of patent

Comment:

- Patent is a contract between the presumed inventor and the public represented by the Nation issuing the title. The patentee therefore is the title holder (*not the owner*) of a temporary business and industrial **monopoly**, valid in the country where it is issued; it can be extended abroad at a given cost.
- Monopoly violating free market, one obtains it much like a license; country by country, in exchange for significant costs (*administration + agent's fees, at times lawyer's fees + translation costs + taxes, etc*) as well as several obligations, to wit:
 - 1 - Obligatory publication of the patent, hence loss of secrecy for the inventor** (*i.e. both his technical and commercial secrets*) **18** months after filing his initial application. **Note of the Author:** *Such a procedure often results in the world-wide disclosure of the applicant's secrets prior to launching his product. Paradoxically, during this insufficient extension period, any other patent application filed less than 18 months earlier is not yet published; thus limiting the applicant's knowledge of new and potentially similar technology. This renders his search for anteriority somewhat useless.*
 - 2 - Extending one's patent internationally and recklessly.** **Note of the Author:** *The applicant's right to extend his patent expires at the end of the 12th month following the date of filing of application (or within 20 months from the priority date, depending on the applicant's financial means). Consequently, the (potential) title holder is forced to apply the procedure for extending his patent in every country deemed relevant, within this insufficient delay. Meantime, his initial patent application may be annulled; since he cannot verify patent applications that have not yet been published (i.e. the 18 month delay mentioned in subparagraph 1) and may contain similar technology.*
 - 3 - Proving the anteriority of the applicant's claims and their previous non-disclosure by third parties is well-nigh impossible.** **Note of the Author:** *Given the conditions described in subparagraphs 1 and 2, finding such evidence is nothing short of a miracle!*
 - 4 - The invention being patented involves an inventive activity.**
 - 5 - The invention being patented must serve an industrial function** (*this criterion has been abandoned in some countries several years ago*).
 - 6 - The title holder must pay annuities** in every country where he extended his patent for the entire term: **20 years.** **Note of the Author:** *Failure to pay even one annuity may lead to the annulment of the patent.*
 - 7 - The holder must commercialize the product** resulting from the invention 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 the Author:** *Such a sanction is perfectly logical, since failure to use one's patent inevitably constitutes misuse of one's monopoly which is detrimental to business... A State-granted title, patent provides a **monopoly** (*i.e. a temporary privilege*) that violates the legal and unquestionable principle of free market.*
 - 8 - Simplified applications**, such as temporary patents, requests, etc, are ineffective.
 - 9 - Patents are ineffective** due to the ever-shorter commercial life span of certain innovations (*e.g. computer products that become obsolete prior to the issuance of the patent*).
 - 10 - Administrations** managing intellectual property **are ineffective.**
 - 11 - Competitors can promptly** counterfeit (*with almost total impunity*) or circumvent patented inventions, thanks to modern means of communication, industrial espionage and disclosure of patents, etc...

To this long litany, one must add:

1° - As a result of current globalization, the inventor must extend the national monopoly granted by patent internationally. According to reputable patent agents, a patent costs approximately: from **\$6,000** to **\$14,000** per country in professional fees (*technical description + defending one's application in court, translation costs, tax, etc...*), application and issuance costs.

Result: **most inventors and small or medium sized enterprises cannot afford such an extension.**

2° - Defending one's patent in a court of law (*i.e. patent infringement, notably counterfeit*) can cost from **\$20,000** to more than **\$200,000** per country, depending on the laws and traditions of the country where counterfeit has occurred. In other words, unless one can initially invest from **\$500,000** to **\$1 million** per invention, an international patent cannot answer the needs of inventors or small or medium sized enterprises.

Result: **most inventors and small or medium sized enterprises cannot afford such legal costs.**

Conclusion:

When an invention is ahead of its time, it fatally challenges traditional values; the material interests at stake are greater, hence the dangers inherent in ruthless competition; the idea of protection therefore becomes an illusion!!!

Under these conditions, one easily understands why most people maintain secrecy and why insurance giants such as Lloyd's of London refuse to insure patent; indeed, experts in insurance consider it to be a source of litigation (see *the Web site:* www.dkpto.dk).

Rumor distorts the truth about the " IPCB "

Much like its Swiss counterpart, the INPI (*France's equivalent of the USPTO*) wrote the following : " *It has recently been brought to the INPI's attention that certain **private organizations** ("IPI Ideas-Protect-International", "USD System") **insinuate that the rights of inventors are better protected by copyright**, and list the advantages of copyright over patent applications. These organizations commercialize " titles " called ODIP ("Official Deed of Intellectual Property ") or " IPCB " which, once registered, would grant rights."... End of quote. (Translated from French).*

1° - We have never claimed to "protect" any one. **This statement is false!** The IPI (*issuing of official deeds*) and USD System (*which edits the IPCB*) are two different organizations. When it describes us as similar or even identical systems, the INPI distorts our consortium's message. Unlike the IPI (*AMPI*) and the INPI, we never use the verb "Protect" or the noun "Protection"; we have excluded these words from our documents; indeed, in the realm of intellectual Property, there is no "Protection" save the inventor's financial means to defend his rights in a court of law.

2° - Neither have we ever claimed to "file applications for titles that would grant rights ". **This statement is false!** We are a consortium of editors. Much like other editors, we revise, correct and arrange the contents of literary and/or artistic works ordered by authors of original concepts. Such edited works are included in a collection of books called " *Intellectual Passport CB* ". Given the literary and artistic quality of such works, their content ~ *including a description of the aforementioned original concepts* ~ is (*according to the International Copyright Conventions and the internal laws of Nations*) the natural, hence unquestionable property of their authors, by the mere fact that they created them. Much like his counterparts (*poets, painters, musicians, etc*) the author automatically enjoys the rights resulting from his non transferable property: copyright. Such a right is free of charge, and notably grants the author of the work the exclusive right to produce and reproduce it ©. This means that no one can produce or reproduce all or part of the work for commercial purposes without the author's express authorization (*e.g. by contract*); failing which, the third party who copies the work may be processed for fraudulent acts (*plagiarism or counterfeit*) punishable by law.

Protection = illusion

In order to prove our position towards "so-called protection", I wrote the following passage on pages 27 and 28 of my most recent book "At last, intellectual Property is affordable for everyone!" published 16/01/2004 (available for free on www.sosinvention.com) as well as on pages 32 and 33 of each "IPCB" (*Intellectual Passport CB*):

Protection = illusion: "In order to deny such a statement, an expert must prove that the mandatory disclosure resulting from utility patent or design patent (*registered drawing*) shelters the inventor from unauthorized copiers. **Hence the widespread use of secrecy by all those who fear disclosure.** Indeed, if a title of monopolistic commercialization, such as a patent (*which belongs to the State, not the inventor*), offered real "protection", it would literally "**prevent the inventor from having to take court proceedings**" against copiers. Much like a real estate title deeds, its mere filing in court would maintain the inventor's monopoly... A registered drawing would then provide similar "protection"... In this case, and only in this case, does the word "protection" make any sense... Unfortunately, everyone is aware of the high costs required to defend oneself in a court of law. In the present work, we shall therefore constantly highlight the perverse effects of the word "protection", frequently used solely for fraudulent purposes, including breach of trust... One will also notice that pimps, blackmailers, racketeers and dictators have always used this word (*the notorious S.S. officer Reinhard Heydrich, considered by Adolf Hitler as the ideal Nazi, was named "Reichsprotektor" of Bohemia-Moravia (i.e. appointed by the Third Reich to "protect" the occupied population).*)

In a linguistic sense, it is no accident that the same word is used in such different contexts of abuse of power. Such principles of "protection" are based on a distorted interpretation of justice..." End of quotation.

Indeed, the patentee's sole means of "protection" is his financial means of defending his rights in a court of law!

What do the Institutes and Offices of intellectual Property (or *Industrial Property in France*) mean by "protect" or "protection"?

Much like similar texts by the USPTO **and other State-controlled Offices or Institutes**, the following "questions and answers" published in the CIPO's Guide to Patents (*Canadian Intellectual Property Office*) page 12, second column (ISBN 0-662-84233-2) prove that this form of deceit is used world-wide: "... Patent infringement happens if someone makes, uses, or sells your patented item without your permission in a country that has granted you a patent, during the term of the patent. If you believe your patent is infringed, you may sue for damages in an appropriate court. The defendant may argue that infringement did not occur, or may attack the validity of your patent. The court will decide who is right, based largely on the wording of the claims. If what the defendant is doing is not within the wording of any of the claims of your patent, or if the patent is declared to be invalid for any reason, there is no infringement." **End of quotation.** In other words, "protection" is the right to take legal action for counterfeit. No need to comment...

Given the foregoing, the right question to ask is: what can invalidate a patent? The right answer is: an intellectual property preceding the patent.

Anteriority is legally valid without having to prove one's property The Work of the Mind is the only natural property that can be used against third parties

One can therefore better understand the significance of our undertaking and the nature of our intention; both of which gave rise to the aforementioned rumors against our enterprise. Such rumors in fact violate the public's right to know the truth, especially when the latter disturbs an arbitrary system which has ruled intellectual property for 214 years.

**Example of misinformation by the INPI (ou I.F.P.I.S)
dated December 5th, 2003 and included
in Michel Dubois' analysis of copyright**

INPI claims that:	Michel Dubois points out that:
<p>♦ Protecting a form:</p> <p>Copyright "<i>protects</i>" the original <u>form</u> (<i>arbitrary</i>) of a work of the mind.</p> <p>Copyright does not "<i>protect</i>":</p> <ul style="list-style-type: none"> √ <u>Purely functional forms</u>, chosen because of their purpose; √ Anything that is not material, such as <u>ideas, concepts, processes or methods</u>. <p>♦ With regards to inventions, authorship only creates one right, namely a moral right.</p> <p>♦ Without application for a title:</p> <p>Copyright's protection does not require any formality, and is not recognized as part of an official title. It therefore does not require the payment of an official fee.</p> <p>♦ Scope of copyright's protection:</p> <p>Finally, copyright allows one to forbid third parties from producing the form that it protects, except, as the case may be, for its related technical content.</p>	<p>♦ Property (and not " protection ") of an original literary or artistic work (not just a form ~ too vague a term ~):</p> <p>Copyright results from the ownership of a work of the mind. It grants the author notably the exclusive right to produce and reproduce © all or part of his work; namely:</p> <ul style="list-style-type: none"> √ <u>the texts (formulations) and the graphics (forms) intrinsic to the work.</u> <p>Copyright <u>does not grant an industrial and commercial monopoly on the work</u> (i.e. "<i>protection</i>" in its <i>subliminal sense</i>). Copyright grants the creator the exclusive right to enjoy his property; namely: That which constitutes the material expression of the work; in other words, the idea put into concrete form onto some physical medium.</p> <p>♦ Authorship provides a right that is recognized world-wide: <u>copyright!</u> Whether or not the work contains the description of an invention, it is a moral and material right to produce, interpret and reproduce © all or part of a work of the mind for commercial purposes.</p> <p>♦ Without application for a title:</p> <p>Much like filiation (<i>a consequence of procreation</i>), copyright (<i>a consequence of creation</i>) results from the only natural property that exists: ownership of a work of the mind. It therefore does not require any formality. Copyright is valid without the issuance of an official title. It therefore does not require the payment of a fee to the State.</p> <p>♦ Scope of copyright:</p> <p>Ownership of a literary or artistic work (<i>including the description of an invention</i>) can be used against a patent (<i>or any other official title</i>) if the date of its creation precedes the date of filing by the applicant. In this case, the patent (<i>or any other official title</i>) can be annulled for lack of novelty. Numerous court cases ~ <i>in the U.S. and elsewhere</i> ~ confirm this point.</p>

Misinformation often results from omission

As shown in the analytical comparison of the preceding page, the INPI does not lie. It merely omits to tell all the truth; notably if such truth impedes the patent system: i.e. a commercial monopolistic title serving the interests of industrialists and not those of authors of inventions. When it claims that only patent ~ *and not copyright* ~ "protects" inventions, the INPI does not lie. It merely forgets to specify:

- 1° - what are the limits of "protection" granted by patent (page 5);
- 2° - what are the dangers resulting from patent (see preceding pages 3 and 4);
- 3° - on what ground have tribunals ~ both in national and international cases ~ judge in favor of copyright at the expense of patent and other official titles.

Remark

According to the international copyright Conventions and the internal laws of Nations, copyright "protects" the expression of an idea and not the idea itself. Likewise, patent "protects" the idea that has materialized and not the idea itself. The same applies to secrecy, as long as it is not included in a seizable personal property.

Why is it so? Because an idea per se is immaterial. Only once an original idea is put into concrete form onto some physical medium does its expression come to life. Only in its material form is a work exposed to illegal copy. In order to successfully claim "**property**" of his work, the author must actualize it in compliance with the criteria of "**works of the mind**"; this basic principle is enforced by the international copyright Conventions as well as the internal laws of Nations. In other words, it must be actualized in application of technical rules inherent in a recognized art: e.g. literature, painting, music..." **The expression of an idea therefore is intrinsic to the author's work!** "

It is the ownership of a work that provides "**copyright**". That is to say, the exclusive right to produce, interpret and reproduce one's work. Such a right to enjoy private property forbids third parties to produce, interpret or reproduce © all or part of the work for commercial purposes without the owner's authorization.

How could a third party's employees make a mould or a part, promote end user operating/maintenance instructions or a methodology, etc., without reproducing for commercial purposes all or part of the work that expresses these creations? Without the author's express authorization, how could this third party legally distribute among his partners and employees, copies of the description of the invention included in the author's work? How could he legally reproduce or interpret the expression of the work in a utility or design patent; in other words, how could he commercialize the author's original idea included in the latter's literary and/or artistic creative work, without violating copyright?

A few cases of illegal copy of inventions where copyright prevailed

In 1987, Professor Luc Montagnier had Professor Robert Gallo's U.S. patent on the AIDS virus (1984) annulled, when the former claimed copyright on the same discovery after publishing it in the magazine "**Science**" in May of 1983... Since the 1930's, the Court of Cassation (France's Supreme Court) decided on numerous occasions that artistic protection is admissible against design patents (*industrial design in the U.K.*), even industrial ones (*Crim. March 30th, 1938, Cassation, 27/2/57, 8/12/59, 16/3/62, 21/1/76, 16/1/87*). In addition to the myriad cases won by the Walt Disney Company against plagiarists and counterfeiters of all nature, the Court of Appeal of the Federal Circuit of Courts of the United States of America decided in favor of the Professors of the University of Colorado's copyright against a patent filed by a multinational (N° 97-1468,98-113, November 19th, 1999). Finally, in a judgment benefiting the *Intellectual Passport CB*, the Court of Appeal of Lyons (France) invalidated a design patent, issued by the INPI under N° 974631 on July 31st, 1997, in favor of French inventor Pierre Aguesse's copyright (*resulting from an unpublished literary and artistic work*); (*Court of Appeal of Lyons, France – May 27th, 2004 – R.G. 03/06633*).

The State-regulated Institutes and Offices are fighting the wrong adversaries

Instead of speaking disparagingly of those who seek to liberalize intellectual property ~ *thereby making it affordable to inventors* ~ Intellectual Property's official representatives (*i.e. various organizations*) should support their effort!

How can one claim to "protect" inventions when inventors are left unprotected?

Following their National Constitution, their civil and penal codes and article 27 of the Universal Declaration of Human Rights *, each governmental organization must first and foremost fulfill one purpose: to serve public interest. They must therefore safeguard ~ *regardless of his invention and prestige* ~ the inventor's social condition, by preserving first and foremost his moral and material interests. Now let us examine how the *Intellectual Passport CB* can help authors of original concepts (*patentable or unpatentable*) increase patent's commercial potentiality.

- 1° - The Intellectual Passport CB allows all authors of original concepts ~ **patentable or unpatentable** ~ as well as the most humble person to claim intellectual property.
- 2° - More than any official title (*patent or others*), it identifies the author of an original concept.
- 3° - It allows originators to share authorship of their work with their business partners (*i.e. coauthors as joint tenants*); they can create new contractual "employee – employer" relations that are effective against industrial espionage and illegal transfer of data.
- 4° - Since it is not published, it preserves the author's secrecy for as long as necessary; either prior to divulging his business strategy, or to obtaining a patent (or other monopolistic title).

The unpublished *Intellectual Passport CB* preserves **secrecy** of the author's (*or coauthors*) world-wide intellectual property of an original concept, prior to obtaining a patent (*or any other monopolistic title*); the "employee – employer" and/or "inventor – investor" relation is thereby reinforced in every party's interest.

Comment: How is it that none of the State-controlled organizations ever really noticed that by systematically publishing the Intellectual Passport CB, one would inevitably, methodically and gradually eliminate patent and other official (*i.e. State-delivered*) monopolistic titles world-wide?

This statement is supported by an unquestionable precedent: In order to prevent U.S. Monsanto laboratories from filing patents on the active principle of certain tropical plants, the NIAR (*National Institute of Agricultural Research*) systematically publishes such active principle prior to any patent application being filed... Recently, the European deputies' refusal to patent creative software also is a sign that not everything runs smoothly under patent skies.

One can still reach an agreement: For the time being, the *USD System International Editions Consortium* has the exclusive power to publish or not publish the *Intellectual Passport CB*; including the inventions and original concepts comprised therein. Should ~ *for whatever reason and under any possible pressure* ~ the *Consortium* deem it necessary to systematically publish the *Intellectual Passport CB*, each publication would precede and therefore legally terminate (*nationally and internationally*) patent's (*or any other State-delivered monopolistic title's*) term of validity.

Preserving secrecy is the only way to preserve patent ...

* **Article 27 of the Universal Declaration of Human Rights:** "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."

Last point to clarify: the price of the *Intellectual Passport CB*

Copyright is free of charge!

Why pay the cost of a book and the specialized consultant's fees?

Intellectual property per se cannot guarantee a project's commercial success. One must demonstrate its potential economic and contractual value through a personalized business plan. One must also contractually deal with financial organizations, investors and/or entrepreneurs around the planet while safe-guarding one's rights!

Such obligations can amount to several tens of thousands of dollars in addition to the initial costs!... Both inventors and small or medium sized enterprises may well be unable to assume such expenses!

The *Intellectual Passport* [®] is a book in three parts meeting their basic needs!

Part one: includes the author's biography, plus the description of his invention or original concept – evidence proving the author's identity – i.e. the basic and unquestionable demonstration of his intellectual property. From a strategic point of view, the author can therefore easily prove illegal copy.

Part two: contains the international potential market evaluation – based on the initial strategy to conquer the market, according to the principle of distribution of commercial rights – over a three year projection; this strategy is applicable to each of the specialized partners (*distributor, retailer, producer, importer, etc...*) that might join the commercial network (*i.e. the innovators*).

Part three: a set of international contracts in line with the business strategy set out in Part two.

Given the foregoing, any effort to pass off the USD System International Editions Consortium as a mere "copyright trader" is nothing less than pure defamation!

Conclusion

Of two things one:

Either: I personally ~ consequently, the entire USD System Consortium ~ am lying, in which case one I ~ and USD System ~ should be prosecuted for false publicity, breach of trust and swindling!

Or: we tell the truth, and the rumors against us are groundless!

Until such rumors end, for lack of any serious argument, I must point out that Judges and/or objective experts on intellectual property agree with my following statement:

"Each individual being the owner of his own body, each of his creations is consubstantial to the human being. This implies: rights and duties... "In any State respectful of its constitution, its judiciary codes and the Universal Declaration of Human Rights, no one has the right by a ruling to deny or ignore the relation, based on consubstantial rights, between the product of an invention emanating from an original idea put into concrete form in a literary and/or artistic work, and the initial intellectual concept which proceeds from the Author's Mind."

July 14th, 2005



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