

The versatility of literary and artistic property

Invention being originally the result of a mental process, since the act of thinking always **precedes** that of producing, it ensues that every inventor, just like the writer of an original work, has the right to be considered as an author (i.e. one who originates), a seemingly obvious fact that has been kept secret for over two hundred years.

No matter who the inventor is and whether his product is patentable or not, the creative mental process is the same. He connects thoughts, thus combining them in a new way leading to an original idea or concept, which, without him, would not exist. In order to further distinguish this concept from the general thoughts involved in its construction, I will refer to it as a **virtual form** or **conceptual prototype**. From an *exclusively ethical* point of view, as soon as this virtual form or conceptual prototype has been put into tangible form through the use of any number of physical medium (*e.g. ink to paper, sculpture, painting, magnetic tape, laser disc, etc.*) according to rules of literature and/or art, it then seems logical that this unique **combination of thoughts** (*i.e. concept*), which without the inventor would never have existed, can be defined as a **Work of the Mind**, which more simply, is the work itself.

In the current state of our anaemic legislations that promote predatory behaviour, only by putting new concepts into tangible form can one **distinguish between general ideas belonging to everyone and original concepts belonging exclusively to the author. In doing so, one clearly identifies an author to his work.** There is no stronger proof of ownership (*i.e. prior possession*) than a *Work of the Mind*.

These reflections allow us to conclude that any right of production *has its origins in an initial property, intellectual property by definition, as does any other commercial right.* There is therefore, through the use of the patent system, a great injustice that, now more than ever, burdens the inventor. Indeed, he finds himself with monopolistic rights of production, which he doesn't necessarily know what to do with. In fact, such rights are intrinsic to the author's initial property, created through sensitivity, intellect and pragmatism, and are the results of the initial property, just as wine comes from grapes. It is the author's literary and/or artistic effort that results in a *Work of the Mind*, intellectual property, which legislators are inclined to ignore over that which seems more tangible, namely, the material interests that follow.

By going directly to a title of monopolistic production, which is merely a step in the commercialisation of the virtual form created by the inventor, without recognition of the **initial property**, is like putting the horse before the carriage and then shooting the horse for good measure. Truly absurd! The Intellectual Passport C.B. avoids this pitfall by allowing the inventor to be recognized as an author, through the creation of a literary and artistic work ~ a *Work of the Mind*. The monopolistic rights of production are therefore secondary to the copyright, which results naturally from the inventor/author's intellectual property (*i.e. his Work of the Mind*).

How is it that, thus far, no one had yet understood that, in fact, every invention (*no matter what kind*) should be classified as a **Work of the Mind** and should therefore enjoy the benefits related to such works?

The authors of juridical texts are scarcely to blame for not analysing and reflecting upon the subject. There is sufficient literature on the matter. On a more personal level, this subject is further explored in a book I co-authored with Michel Dubois and published at the Librairie Bleue in Troyes entitled "La Propriété Littéraire généralisée à l'invention" which translates to "**Literary Property applied to invention.**"

The convenient and beneficial opportunities offered by **literary and artistic property applied to invention** become all the more obvious when one considers the countless obstacles which **inventors** have traditionally had to face. In being recognized for what they really are ~ **authors** ~ inventors can free themselves from entrepreneurial tasks which, though generally foreign to their competence, are imposed by patent law. Hence the need for a system that **recognizes the initial ~ therefore intellectual ~ property of the original concept**, which, ultimately, leads to commercial goods and/or services.

If indeed, the inventor intended to personally manufacture his invention, as is implied by the monopolistic rights of production that are granted by the patent system, he would not encounter so many obstacles immediately upon obtaining a patent. Such difficulties are not present in a system **that recognizes the initial intellectual property as the source** of future potential commercial enterprise (*both goods and services*) as does the **Distribution of Rights**. This system gets to the heart of the matter by recognizing the logical sequence of events and establishing a method of contracting that reflects natural relationships and rights required to commercialise the invention. Each party can therefore claim his associated rights or property. The author benefits from intellectual property law, hence copyright, the industrialist benefits from the laws of monopolistic production such as patent, and the service industry (**distribution, marketing, etc.**) benefits from the commercial laws supporting fair competition. Indeed, one of the aims of the Intellectual Passport is to improve relations between inventors and industry by making such relations simpler, more honest and more efficient.

Since the 1791, writers enjoy the rights related to intellectual property: **copyrights**. Thus, without having to validate rights which obviously result from their **initial property**, in this case "**literary property**", they can delegate, as true and uncontested owners of their works, the commercialisation of their books to entrepreneurs-publishers. A more appropriate name for such property would be "**intellectual property pertaining to Works of the Mind**", since it includes works of art, trademark or signs, logos, computer programs etc., and therefore extends well beyond the restricted category of "books". Unlike inventors under the laws governing patent or design patent, writers are free from the obligation of editing and publishing their own works. Thanks to the **Intellectual Passport C.B.**, delegating the commercialisation of inventions is also open to inventors.

Getting back to ideas...

One is baffled by the immense number of unpatentable innovative concepts which could lead to the creation of enterprises and those, for lack of recognition (*until now*), that have always been difficult, or even impossible to defend in court against unfair competition or counterfeit... Must the authors of such original ideas be deemed unworthy of recognition or proper defence? Must many innovative ideas go undeveloped because there is no means to ensure the rightful material benefits for the author? Such is the absurdity of the established system.

Let us now go more deeply into this entire subject.

First of all, I will make a seemingly obvious proposal: ***that which comes from my mind and never existed previously, can unequivocally and indisputably be considered mine.*** This is in contrast to the notion that the inventor is the holder of a temporary production right granted by sovereignty of State for his innovating concept rather than simply, as stated above, the owner of his creation.

What do we perceive in an ***original text that contains specific illustrations*** or in the ***written and figurative expression of a concept*** that allows one to produce a machine or set up a service, which previously did not exist? One finds sets ***of ideas that are more or less complex and are structured in a particular way.*** Even though individually, some of these ideas or concepts may or may not be original, the new global concept that emerges is original, and therefore belongs to its creator. One also finds a complex set of interactions and dependencies that result in a specific useful outcome, all of which are elements ***defining the new concept.*** Thus from the thinking process of the creator emerges ***a previously unknown concept*** which one can truly call the ***virtual global form of the invention,*** which in turn serves as the source of everything thereafter possible.

All of which proves irrefutably that such ideas clearly do not belong to the common patrimony (as, for instance, the idea of a window as part of the public domain); otherwise, the physical results originating from the ***global virtual form*** would have already been manifested.

Such a global virtual form, once put into tangible form, is therefore tangible and in no way related to random ideas which belong to everyone: it nevertheless must be clearly recognized as having existed "prior" to any imitations or copies of any kind (*which can occur relatively quickly*) in order to provide the author of the invention with the necessary elements for his defence; ***only in this way can he protect himself.***

Must an inventor be protected or merely have the means to defend himself?

Let us first understand that in order to protect an asset one needs adequate weapons. It is only through the act of defending oneself with such weapons that one **protects** the asset in question. Although **patent** has always purported to “*protect*” inventions, to actually qualify patent as “*protection*” is both **inaccurate** and **absurd**. At best patent is a **weapon**. Let us further clarify these statements.

It is the inventor that must defend himself in order to be protected and, in order to mount a strong defence, the object of the patent (*i.e. the invention*) must first be recognized as a legitimate holding. The reader must understand that upon the receipt of a patent, the originator (*i.e. author*) of the invention is not officially recognized as such. He/she is “assumed” to be the author. The patent is granted without the guarantee of the state. Evidence can always (*and likely will, if you end up in court*) be brought to bear to challenge the legitimacy of the patent. It is this very recognition of legitimacy that can then become an adequate secondary weapon, the first being *the financial means to protect oneself in court*. If patent were true protection, one would not have to go to court to protect one’s protection.

Protection is in effect impossible unless one has sufficient funds to defend one’s patent in a court of law. Much like a driver’s permit, **patent is a title granted by the State, without any form of guarantee**. Patent is indeed a misleading device, allowing at best, to claim anteriority on a unique design or process and thus defend one’s monopolistic right of production! Needless to say, one should only need to defend one’s initial intellectual property, without which follow-on production or commercialisation could not be possible and should not be defensible.

The versatility of literary and artistic property

Among the advantages of choosing **the Intellectual Passport C.B.** is its **immense versatility**. For instance, premature disclosure is not required: thus one avoids **the pitfalls of Technological Vigil**, which many patent holders know only too well from experiencing them first hand. Countless patents are illegally sequestered. A favourite tactic of large predatory organizations, **Technological Vigil** rarely serves the interests of small and medium-sized enterprises, even less so the isolated inventor or researcher. Adapted to each and every invention, the Intellectual Passport C.B. **avoids premature disclosure** without, in any way, hampering economic progress... The **secret that has been put into tangible form as an integral part of a Work of the Mind (published or unpublished)** becomes inalienable and is thus protected from age-old betrayals. Thus reassured, freed from paranoia and confident in the future, the author can promote the commercialisation of his concept and ultimately create wealth for himself, as well as, for his business associates and for the community at large... Also, thanks to this innovating strategy, **inventor and developer are dissociated in a radical way**. Knowing that, as in most cases, he is not qualified or equipped to develop his invention, the inventor can reach a contractual agreement with an experienced entrepreneur who has the required

expertise for the project, without losing total control of the commercialisation process and while maintaining his rightful benefits. The notion of "*commercial rights*" being recognized and defined as a separate entity in the *Intellectual Passport C.B.*, one can now separate the responsibilities of the sales network from product development and production. To bring this approach to fruition, the inventor is encouraged to use the ***Distribution of Rights***, a highly innovative concept dealt with in Parts two and three of this work (*i.e. The Triennial Business Forecast and Contracts*).

Even though the choices of paths offered to the inventor by the "Intellectual Passport C.B." are many, ***the author*** must always keep in mind that his ***initial property*** must constantly be reinforced contractually. An ever increasing "***private jurisprudence***" provided by a coalition of companies is the best way to mount and finance a successful case for counterfeit, plagiarism or other infringements.

Dominique Daguet

With regards to the texts of the present publication

The authors of the present publication aim first and foremost to liberalize access to intellectual property by making it affordable to the general public and to distribute its benefits equitably among people, in consideration of their material or moral interests, in accordance with articles 1, 17, 22 and 27 of the Universal Declaration of Human Rights.

This published work is the result of its authors' research and analysis as well as a logical and philosophical approach used to formulate the criteria for validating a Work of the Mind, based on principles established by the Berne Convention and the Universal Convention on Copyright.

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