

A BRIEF HISTORY OF THE U.S. PATENT SYSTEM



How did we
get here?

In the beginning, in the world

- 1474 – First known statute giving inventors exclusive rights to their inventions is passed in Venice.
 - Required novelty, proof of usefulness, and explanation of the invention
- 1624 – Statute of Monopolies passed in England
 - Previously, in England, monopolies were given as gifts from the Crown and were not the subject of any cohesive “law”
 - Sometimes on entire industries or commodities (e.g., salt).
 - Seen as a rebuke of the Crown’s power by Parliament
 - Added the concept of a limited patent term (14 years)



In the beginning, in the U.S.

- Initially, “patents” were only granted on a case-by-case basis
 - No established laws for issuing a patent
 - Appeal to colonial government
 - Exclusive commercial right to an invention/product for specific people
 - Earliest patent grant: Massachusetts Bay Colony, 1641 (process for making salt)
- Some state-level legislation passed in the late 1700s
 - One of the first was "An Act for the Encouragement of Arts and Sciences“ passed in South Carolina in 1784
 - Mostly focused on copyright protection, but also stated:
 - “The Inventors of useful machines shall have a like exclusive privilege of making or vending their machines for the like term of 14 years, under the same privileges and restrictions hereby granted to, and imposed on, the authors of books.”
- Generally resembled patent laws in England, for obvious reasons





- Adopted September 17, 1787

- Article I – The Legislative Branch
- Section 8 – Powers of Congress

“The Congress shall have Power . . .

To promote the Progress of Science
and useful Arts, by securing for limited
Times to Authors and Inventors the
exclusive Right to their respective
Writings and Discoveries”

- Based on proposals made by James Madison and Charles Pinckney

- The Industrial Revolution was ongoing, creating pro-patent climate

Thomas Jefferson

– The Anti-Patent Founding Father

- Initially, Thomas Jefferson firmly opposed a patent system
 - Opposed to monopoly in any form
- But his views eventually softened
- In 1789 Jefferson even mentioned to James Madison in a letter that he would like to see an addition of an article to the Bill of Rights that:
 - “[m]onopolies may be allowed to persons for their own productions in literature and their own inventions in the arts for a term not exceeding (a set period of years) but for no longer term and no other purpose.”



Thomas Jefferson

– The Anti Pro-Patent Founding Father

- Eventually became fervent about patents due to their potential to encourage invention and related societal benefits
 - In an 1813 letter to inventor Isaac McPherson, Jefferson stated:

“He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me . . .”

- Notably, Jefferson’s letter was relied by the Supreme Court in the decision of *Graham v. John Deere Co.*, and many of Jefferson’s quotes have appeared in other court decisions through the years



The Patent Act of 1790

inventions: 1
everything else: 0

- April 10, 1790
 - First federal patent statute in the United States
- Formally defined subject matter of a U.S. patent:

“upon the petition of any person or persons . . . setting forth that that he, she, or they, hath or have invented or discovered any useful art, manufacture, engine, machine, or device, or any improvement therein not before known or used, and praying that a patent may be granted therefor, it shall and may be lawful . . . to cause letters patent to be made out in the name of the United States”
- Granted the applicant

“for any term not exceeding fourteen years, the sole and exclusive right and liberty of making, constructing, using and vending to other to be used, the said invention or discovery”



The Patent Act of 1790

inventions: 1
everything else: 0

- Established a “Patent Board” of three members (2/3 approval required to get a patent)
 - Secretary of State
 - Secretary of War
 - Attorney General
- Required that
“a written specification be filed with the Secretary of State, containing a description of the article desired to be patented, accompanied with draft or model and explanations and models . . . not only distinguish[ing] the invention . . . but also to enable a workman or other person skilled in the art or manufacture . . . to make, construct, or use the same”
- No Appeals Allowed
- Provided Remedies for Infringement
 - Jury trial assessed damages and appropriate punishment
 - If found guilty, hand over infringing device to the patent owner



Thomas Jefferson

– The First Patent Examiner

- As previously mentioned, one of the members of the “Patent Board” was the Secretary of State
- Thomas Jefferson served as the first Secretary of State
 - March 22, 1790 - December 31, 1793
- Which makes Thomas Jefferson one of the first U.S. patent examiners



The Patent Act of 1793

“the upgrade”

- Patent Act of 1790 was repealed and replaced with the Patent Act of 1793
- Updated the subject of patents to include:
“any new and useful art, machine, manufacture or composition of matter or any new and useful improvement on any art, machine, manufacture or composition of matter, not known or used before the application . . .”
- Simplified the application process:
 - Petition Secretary of State to acquire examination from Attorney General
 - Attorney General then has 15 days to certify the letters patent
 - Secretary of State presents the letters patent to be signed



The Patent Act of 1793

“the upgrade”

- Simplified “Examination”
 - No longer required inventions to be “sufficiently useful and important” just somehow useful, even if insignificant
 - Required the invention to be “not before known or used”
 - But no formal examination process for novelty
- Increased the number of granted patents
 - 57 patents in 1793 → 10,000 patents in 1836
 - But many considered to be of poor quality



The Patent Act of 1836

“reeling it in”

- Important Changes:
 - Mandatory examination for novelty
 - Formally established the Patent Office
 - Commissioner of Patents
 - Professional patent examiners
 - Made newly granted patents accessible at libraries throughout the country
 - The old-timey version of Public PAIR
 - Possible 7-year extension of patent terms
 - Allowed non-U.S. citizens to file for U.S. patent
 - Explicitly recognized that one patent may dominate over another



The Patent Act of 1836

“reeling it in”

- Related to mandatory examination for novelty, required that an applicant:

“particularly specify and point out the part, improvement, or combination, which he claims as his own invention or discovery.”

- Effectively created the modern practice of claim drafting.



Random facts to impress your friends

- The U.S. Patent system didn't initially use patent numbers until the 1836 Act
 - Names and dates only
- Patents granted prior to this were retroactively numbered with an "X"
 - e.g., the first patent from 1790 is patent no. X000001 (and is entitled "The Making of Pot Ash and Pear Ashes")
- In 1836, a fire destroyed the Patent Office, and less than 3,000 patents were recovered
- Another fire in 1877 destroyed 80,000 models and 600,000 drawings, but no patents were lost (filing in duplicate was required after the 1836 fire)



The Patent Act of 1952

**“it’s like we’re
living in the
future”**

- Significant Changes to existing U.S. Patent Law
 - Clarified and simplified application and examination
 - Codified the requirement of non-obviousness
- Generally what we know today as Title 35 of the United States Code



The Patent Act of 1952

“it’s like we’re
living in the
future”

- Includes three parts:
 - **Part I** – Patent and Trademark Office
 - **Part II** – Patentability of Inventions and Grant of Patents
 - **Part III** – Patents and Protection of Patent Rights

Later amended

- **Part IV** – Patent Cooperation Treaty



Leahy-Smith America Invents Act (AIA) 2011

“AIA all the way”

- Most significant changes to the U.S. Patent system since the Patent Act of 1952
 - Moves U.S. from a first-to-invent system to first-to-file system
 - You know the rest



Other Notable Dates

- **1829** – Supreme Court recognized that an inventor could delay filing a patent application until competition was imminent and construed the 1793 Act so as to create a statutory bar to deny patent protection based on prior public use (*Pennock v. Dialogue*).
- **1832** – An insufficient description of a patent was grounds for defense in cases of infringement
- **1839** – A grace period of 2 years to use the invention was allowed
- **1839** – Amendment enabled the appeal of patents that are twice rejected
- **1861** – Standard patent term changed from 14 years to 17 years for utility patents, 3.5, 7, or 14 years for design patents (terms modified again in 1995)
- **1861** – Appointment of “Examiners-in-Chief” to hear appeals
- **1887** – United States joins the Paris Convention for the Protection of Industrial Property (old-timey version of the PCT)



Other Notable Dates

- **1890** – Sherman Act
- **1925** – Patent Office transferred to the Department of Commerce and Labor
- **1930** – Plant Patent Act
- **1939/1940** – Amendment that reduced the grace period to use the invention from 2 years to 1 year
- **1966 onward** – Amendments and case law serve to modify patent law in various ways (too many to list):
 - e.g., Supreme Court decisions in *Graham v. John Deere Co.* (1966), *KSR v. Teleflex* (2007), *Bilski v. Kappos* (2010), etc.



“The patent system added the fuel of interest to the fire of genius”

— Abraham Lincoln

