

Patent Law: Practice, Problems and Pathways

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ABSTRACT

The protection of inventions and other intellectual property (IP) is provided for in Article I of the U.S. Constitution, but the passage of time and the evolution of society has clouded the original goals and obfuscated the vision of promoting progress. The authors come from three different communities and represent three views of the patent processes: Judicial, Industrial, and Academic. They also bring decades of experience with the DoD and the impacts that IP law can have on the defense of the nation. This paper begins with a quick review of the inherent need for the protection of IP, the founders' intent, and the ways in which the legal processes have altered over the decades. They justify their assertion that not all of these changes have been salutary and discuss times when they have become impediments to or destructive of progress. Some feel that protection of the lone inventor has given way to weapon of organized interlopers and defensive tactics by large corporations. Patent grants have exploded to unimaginable levels. Data will be presented on the number and complexity of patents. The paper will follow that with an analysis of the pressures that have caused that drift from the original goals. There is a review of current thought in all three communities concerning the current practice and future changes to encourage creative endeavors. A brief outline is given of international issues and the impact of various countries' approach to this problem and steps that the U.S. might take to enhance the rule of law and the global protection of IP. This is discussed in relation to its being necessary for a strong defense environment for the Nation and its allies. The paper closes with suggestions of areas that bear watching and traps that require avoiding.

ABOUT THE AUTHORS

Garth D. Baer is an Administrative Patent Judge in the United States Patent and Trademark Office in Arlington, Virginia. Prior to that appointment, he practiced law as an associate with Finnegan, Henderson, Farabow, Garrett & Dunner, LLP. After finishing law school at The George Washington University, he clerked for US District Court Senior Judge James Moody of the Northern District of Indiana, and then for Circuit Judge Raymond C. Clevenger, III, of the Circuit Court of Appeals for the Federal Circuit. Prior to law school, he worked in the support group at Oracle Corporation for four years. Garth earned a B.A. degree in Physics from the University of Colorado, Boulder, an MS Degree in Information Technology from the Colorado Technical University, and a JD from The George Washington University School of Law, Washington, D.C.

Mark C. Davis Ph.D. is currently retired after careers in the US Navy and as a computer design engineer for both IBM and Lenovo. Rising to the level of Distinguished Engineer at Lenovo, he was responsible for the design of laptop computer cross-disciplinary technology, including PC architecture, imbedded systems, open source and virtualization. Previous work was with IBM in the areas of software development and architecture involving security, storage and virtualization. Dr. Davis holds about fifty patents that were granted during his service at both companies. He is a graduate of the Duke University NROTC program and was commissioned as an Ensign, attended nuclear power school, and served as a Submarine Officer for twelve years before leaving the service as a Lieutenant Commander to pursue a PhD. Mark holds a BSEE degree from Duke University and a PhD in Computer Science from the University of North Carolina, where his advisor was Professor Fredrick P. Books.

Dan M. Davis is a consultant for the Institute for Creative Technologies, University of Southern California, focusing on large-scale distributed DoD simulations, including being the Director of the JESPP project for a decade. As the Assistant Director of the Center for Advanced Computing Research at Caltech, he managed Synthetic Forces Express, bringing HPC to DoD simulations. Prior experience includes serving as a Director at the Maui High Performance Computing Center and as a Software Engineer at the Jet Propulsion Laboratory and Martin Marietta. He has served as the Chairman of the Coalition of Academic Supercomputing Centers and has taught at the undergraduate and graduate levels. As early as 1971, Dan was writing programs in FORTRAN on one of Seymour Cray's CDC 6500's. He saw duty in Vietnam as a USMC Cryptologist and retired as a Commander, Cryptologic Specialty, U.S.N.R. He received B.A. and J.D. degrees from the University of Colorado in Boulder.

