

Patent Law and Defense Technology: Original Intent and Current Practice

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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. Using diverse points of view, the authors present the history and the current impact of the Patent system on the development and deployment of technology, especially as these relate to national defense issues. 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 thought concerning the current practice and future changes to encourage creative endeavors from the point of view of Judicial, Industry and Academic participants. 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 possible areas of future disruption.

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 IP 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, which has appellate jurisdiction for patents. 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 has been granted well over fifty patents that were filed 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 an 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. Before retiring, he was the Director of the JESPP project at USC 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 at the Maui High Performance Computing Center as the Director of Contracts and Finance and 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.