

The Masque of Knowledge

Dr. David Martin

PopTech 2003, Camden Maine

The Knowledge Economy

... says who??

Homer 800 B.C.

"What madness, citizens, is this? Have you not learned enough of Grecian fraud to be on your guard against it? For my part, I fear the Greeks even when they offer gifts." So saying he threw his lance at the horse's side. It struck, and a hollow sound reverberated like a groan. Then perhaps the people might have taken his advice and destroyed the fatal horse and all its contents; but just at that moment a group of people

appeared, dragging forward one who seemed a prisoner and a Greek. Stupefied with terror, he was brought before the chiefs, who reassured him, promising that his life should be spared on condition of his returning true answers to the questions asked him. He informed them that he was a Greek, Sinon by name, and that in consequence of the malice of Ulysses he had been left behind by his countrymen at their departure. With regard to the wooden horse, he told them that it was a propitiatory offering to Minerva, and made so huge for the express purpose of preventing its being carried within the city; for Calchas the prophet had told them that if the Trojans took possession of it they would assuredly triumph over the Greeks. This language turned the tide of the people's feelings and they began to think how they might best secure the monstrous horse, ... which they no longer hesitated to regard as a sacred object, and prepared to introduce with due solemnity into the city. This was done with songs and triumphal acclamations, and the day closed with festivity. In the night the armed men who were enclosed in the body of the horse, being let out by the traitor Sinon, opened the gates of the city to their friends, who had returned under cover of the night. The city was set on fire; the people, overcome with feasting and sleep, put to the sword, and Troy completely subdued.¹

Homer in Maine in the Fall ... thank God for the liberal arts! We find ourselves closing the chapter on a year in which knowledge has been weighed in the balance and found wanting. We didn't know whether weapons of mass destruction lay like hibernating scarabs under the desert sand so, in the interest of global security, intelligence warned of an imminent threat and we found our nation at war with a perplexed world. We didn't really know whether the economy was recovering but the combination of

¹ Bulfinch's Mythology, Chapter XXVIII.

positive investor sentiment, attorney general vigilance, and "right-sized" earnings forecasts convinced us that people without jobs, while an inconvenience, will be ok with an \$800 check from the Federal Government that can be conveniently cashed at Wal-Mart. A run-up in the stock market this time isn't the creation of another bubble. We know that "intelligence chatter" is bad and it might mean that bad people wish to do us harm but we know that our homeland is more secure because we've color-coded it. While we're convinced that trade policy must foster a free market economy, we continue subsidies for cotton and steel at rates several fold larger than our fair subsidy of corn. In a country that teaches its children to pledge their allegiance to "One Nation Under God", we've learned that reciting that pledge in an Alabama courthouse could get you placed in a dark closet so as not to inadvertently imply an endorsement of religion. This is the zenith of the Knowledge Economy and we are the illumined!

The Greeks had several words for what we refer to as "knowledge". One - gnosis - conveys a sense of awareness and insight growing out of intense scrutiny, contemplation, and judicial discernment. A byproduct of intentionality, gnosis describes an ideal attained in matters of higher order thought or in intensely intimate interpersonal relationships. The other - eidos - describes awareness derived from visible inspection. This term was used to describe pedestrian information in the visible world. It also is the term to describe the appearance of gods when they masqueraded on earth and took on appearances other than their true form. As we explore the Knowledge Economy, I would encourage you to carry these competing metaphors with you and conclude for yourself which knowledge most accurately characterizes our present state of affairs.

Property Title

- "Ownership" and the mind
- Jurisdiction of Knowledge
- Role of the State in Granting Monopolies



In the February 2003 *Business Week* cover story on the exporting of white-collar jobs to developing countries, the authors conclude making the following summation:

"The truth is, the rise of the global knowledge industry is so recent that most economists haven't begun to fathom the implications. For developing nations, the big beneficiaries will be those offering the speediest and cheapest telecom links, investor-friendly policies, and

ample college grads. In the West, it's far less clear who will be the big winners and losers. But we'll soon find out."²

While we were caught off guard by the ebbing blue collar tide in the 70's and early 80's, the authors feign comfort in the fact that the U.S. economy and, to a lesser degree, that of Europe, may be immune from profound adverse impact of today's knowledge flux as we, after all, are the innovators. We are the

² Engardio, P; Bernstein, A; Kripalani, M. "The New Global Job Shift." *Business Week*. February 3, 2003.

well-spring of innovation. We create. In Doha and again in Cancun, we stand prepared to defend the property rights that are afforded those whose intellect can create property and whose access to judicial self-interest assures dominance.

I would like to consider, however, the untested nature of this hypothesis. In 2001, my company M•CAM, reported to the U.S. Congress and to the European Union the results of an audit we performed on patents issued by their respective patent offices. Using a process known as linguistic genomics, we tested the patents issued in both jurisdictions and found that over 37% contained nothing unique. Over 50% of patent claims contain redundancy to one or more additional claims. Less than 20% of all patents issued around the world contain full disclosures of a unique concept or innovation when compared to other granted patents alone. The United States Patent & Trademark Office has acknowledged that it can only improve quality if it's appropriations are increased – a request that has been denied in response to the growing patent quality crisis. The Court of Appeals for the Federal Circuit now modifies or overturns patent claim interpretation in over 50% of cases. In most instances, patent offices and courts only focus their review on other U.S. patents taking no account for filings from the other 122 countries that issue patents under the Patent Cooperation Treaty. While we have state grants of monopolies, the state has abdicated its role in protecting the public from abuse of this grant in the interest of increasing the number of patents. After all, the more we have, the more enlightened we must be. Regrettably, a patent now serves, in most instances, as a contingent liability from which value can be extracted only after costly litigation afforded to the well-heeled few.



Rothschild's Paradox

εἶδος v. γνῶσις

I care not what puppet is placed upon the throne of England to rule the Empire on which the Sun never sets. The man who controls Britain's money supply controls the British Empire and I control the British money supply.

Baron Nathan Rothschild after hearing of Wellington's defeat of Napoleon at Waterloo June 21, 1815

A proprietary position. These words are the hallmark of public and private company alike. We have a patent for a new drug called aspirin, a new protocol for conducting on-line commerce using a credit card, a method of routing phone calls using numbers, a brilliant improvement to the toaster, a method of swinging on a swing making "Tarzan-like" sounds – all U.S. patents issued in the last two years! In 2001, the Financial Accounting Standards Board promulgated rules to require that

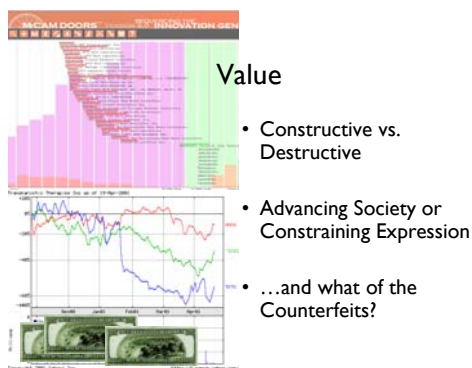
public companies report the value of their acquired intangible assets and make transparent disclosures of their patent holdings. With over 3,000 public companies holding patents, none subjected their patents to a review of commercial uniqueness and enforceability and their accounting firms all certified this violation of accounting standard as "acceptable". PriceWaterhouseCoopers and Ernst & Young deployed template language to deal with FASB Statement 142 and placed it in the first few pages of annual reports in 2002 – stating compliance with a standard that neither they, nor the companies they audit, reliably implement. But, what difference does it make? After all, the market is about investor sentiment isn't it? Do we really

need to know if a patent position will be blown away? Does it matter if the new product that is launching infringes someone else's patent?

In his essay, "The House of Rothschild" David Rivera encapsulates the elegant strategy that allowed the Rothschild family to amass one of the greatest fortunes of modern times.

"Developing circumstances soon allowed the Rothschilds to formulate a plan which would guarantee them the financial control of Europe, and soon the world. It began with taking advantage of the outcome of the Battle of Waterloo, which was fought at La-Belle-Alliance, seven miles south of Waterloo, which is a suburb of Brussels, Belgium. Early in the battle, Napoleon appeared to be winning, and the first secret military report to London communicated that fact. However, upon reinforcements from the Prussians, under Gebhard Blucher, the tide turned in favor of Wellington. On Sunday, June 18, 1815, Rothworth, a courier of Nathan Rothschild, head of the London branch of the family, was on the battlefield, and upon seeing that Napoleon was being beaten, went by horse to Brussels, then to Ostende, and for 2,000 francs, got a sailor to get him to England across stormy seas. When Nathan Rothschild received the news on June 20, he informed the government, who did not believe him. So, with everyone believing Wellington to be defeated, Rothschild immediately began to sell all of his stock on the English Stock Market. Everyone else followed his lead, and also began selling, causing stocks to plummet to practically nothing. At the last minute, his agents secretly began buying up the stocks at rock-bottom prices. On June 21, at 11 PM, Wellington's envoy, Major Henry Percy showed up at the War Office with his report that Napoleon had been crushed in a bitter eight hour battle, losing a third of his men. This gave the Rothschild family complete control of the British economy, and forced England to set up a new Bank of England, which Nathan Rothschild controlled."

Now clearly this couldn't happen to us. We have a well-regulated (and compensated) governing board at the New York Stock Exchange. They wouldn't allow perception-based chaos like the silly English. Or would they?



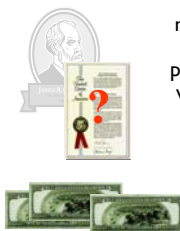
Over the past 4 years, patent disputes have enjoyed the distinction of representing one of the greatest causes of market cap erosion across all sectors. With the exception of Bank of New York's Westminster Research group, no investment bank or securities exchange body has done anything to verify statements made by companies regarding representations of proprietary positions. Where were they when Rambus saw their market cap erode over 50% in the hours following a Virginia court decision? Where were they when Morgan Stanley issued "buy"

recommendations for both Amgen and Transkaryotic Therapeutics despite the knowledge that one of the parties did not have the unique patent position they had represented to the market? Where will they be when patent donations to universities recommended by Caterpillar, PWC, Ford, and E&Y are scrutinized for their actual market value? Where will they be when patent transfers to Special Purpose Entities are shown to have actually created a capital gain? Where will they be when business models built on patent licensing are shown to be based on patents that were issued by a patent office in which Congress has “no confidence”?

Patents were designed to represent a sovereign exchange. In exchange for enabling the advancement of society, technology and commerce through technical disclosure of novel innovations, the state (under the only property right afforded by the U.S. Constitution) would grant a limited monopoly. This right – the right to block someone else from commercially exploiting an invention – carries with it no affirmative value. A patent does not grant the right to a business – merely the right to block others from it. Therefore, when a patent granted to one party relies on processes owned by another, no business is directly enabled without first resolving the dependencies. Under current practice, U.S. law does not require any inventor to discover or disclose these dependencies and, as a result, the public has no means to know whether a disclosure in a patent is encumbered. And, in the majority of cases, it is.

Even more troublesome is that the government, because of its insistence on keeping a paper patent system, is unable to detect whether more than one of any patent is being granted until it is too late. This results in the unfortunate reality that over half of all U.S. patents are encumbered by other patents – saying nothing of encumbrances from international documents and traditional knowledge databases! In short, the Knowledge Economy is awash in state-minted counterfeits.

Garfield's Paradox



"I am an advocate for paper money but that paper money must represent what it professes on its face. I do not wish to hold in my hands the printed lies of the government"

President Garfield – 1880

At the dawn of this country's industrial economy it became clear that interstate commerce required a more uniform currency than had existed in our agrarian barter roots. However, absent a standard for denominating the currency, President Garfield was gravely concerned that a uniform national monetary system could actually undermine commerce unless it was built on reliable basis of value.

We congratulate our enlightenment by proclaiming that we are now the pioneers of the Knowledge Economy. Yet we find ourselves less in tune to economic realities than a President in 1880. Our government and the governments of the WTO are issuing monopolies – the new form of business currency – and are doing so with no basis. While the United States Code and its international equivalents

stipulate that a patent may be granted when a novel invention is disclosed, no affirmative discovery standard is applied to either applicant or examiner. In fact, today's patent examiners are incentivized to issue patents in under 20 hours of total contact time! Even if they had the access to global data, the current sweatshop paradigm would render the access impotent. The patent offices of the world have constructed hollow horses. In our frenzy to believe the inventive lies we are told, we ignore the threat within. And our chiefs at the gate upon whose opinion letters our investments are made assure us that the patents are valid. Yet we fail to ask them the right question – not are they valid but are they UNIQUE? After all, frequently many people legally claim title to the same invention – but the priestly class whose livelihoods depend on the dark arts of innovation don't want to tell you that.

“Opportunity” Cost

- Creativity
 - Reality or contrivance based on myopia
- Economics (parochial)
 - R&D to what end; Prosecution; Litigation
- Macro economics
 - Securities, Tax, Trade



Notwithstanding all of the dereliction of duty presented above, we must delve into a more fundamental matter. Should one own the creation of the mind? Are our thoughts ours? Could it be that every thought that each of us has is merely the compilation of observations synthesized from the thoughts of others? The notion that one can ascribe property rights to thought or creative production is, after all, at the core of numerous public debates. The recording industry has made its

position clear – copyright abridgement is a crime far worse than collusive price fixing. When a certain cartoon mouse gets too old, we find that, in the public interest, Congress needs to revise the law under which the mouse was protected so that some selfless benefactor can pay to digitize celluloid. Despite its abuses, I would argue that the principle of intellectual property is noble. Whether through intellectual property rights as we now define them or alternative structures, the ability for a new entrant to exploit a commercial innovation leads to dynamism in the market that would be lost if only those with resources could control markets and access thereto.

An inventor or author should benefit from his or her creative work provided that it both represents an advancement of society and is unique. However a system which neither validates statutory standards nor considers the economic consequence of its error is both morally and legally indefensible and, might I add, unconstitutional. The Constitution clearly sets forth a social contract that is in breach by those sworn to defend it. Let's review the bidding.

Our current copyright, trademark and patent systems come with no ability to detect domestic or international uniqueness leaving all users of the system powerless to place faith and confidence in the property right itself. While this could be solved by placing the liability for erroneous grants at the public interest responsible for their grant, this remedy is unlikely. Our governments, like the 1449 monarchy of

King Henry VI who is heralded as the creator of the modern patent system, enjoy sovereign irresponsibility of granting patents without full and fair review of merit. As patent offices survive on fee income, their incentive is to grant patents building annuities to prop up an antiquated, defenseless anachronism.

Second, the present enforcement scheme requires that the courts, not an absolute standard of redundancy be the arbiters of title. The 35 U.S. Code mandates that the patent office, not the courts, should be the authority on patentability. However, the paper-based patent system places opposition to granted patent claims of uniqueness on a public vigilance that is neither informed nor empowered. Even in a properly functioning system, from time to time, disputes may arise. However, the use of the prohibitively expensive judicial system to underwrite the failings of the legislative and executive branches of government fails to provide full and free access to the Constitutionally granted property right of each citizen.

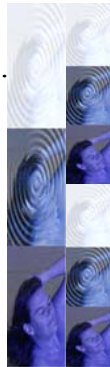
We must assess the basis for our economy. We must call for today's "gold standard". Consider the following challenge. In the late 80's and early 90's, many corporations began to offer financial incentives for their employees to file patents. Like their academic research colleagues, self-proclaimed innovators were rewarded with pronouncements of wealth and tenure. However, have any of us read the shocking stories of professors plagiarizing research papers? Have we heard of cases where grant applications are resubmitted to ensure support for graduate students? Do we genuinely think that patents are immune from this inducement to cheat? To the contrary, many of today's innovative companies have policies that actually advise their inventors not to examine other people's work so as not to inadvertently build evidence of infringement. That's like telling college students to write term papers without going to the library – oh, we already do that because I can download them from the net – silly me.

Would that this just be another little nuisance – a mere inconvenience. The problem is that the state, in whose name the property right is granted, does nothing to insure the public against the resulting abuses and affords no fiscal responsibility for the attendant economic devastation. Rather than advancing the economy and industry – as a legitimate system may enable – our current paradigm actually serves to constrict the march of innovation. For fear of infringement, vital technologies are shelved. Unmitigated accounting abuses lead corporations to falsify their financials building monumental tax and securities misstatements that will, one day, serve to erode industry stalwarts in biopharmaceuticals, telecommunications, energy, transportation, commerce, agriculture and materials sciences. Inappropriate grants of monopolies for inventions that are not practicable but whose claims have been granted will undermine legitimate claims for future inventions. In short, kiss solar, hydrogen and fuel

cells good-bye. By the time the technology is commercializable, few patent rights will remain for the real enablers.

We Hold These Truths...

- Duty and Candor
 - Constitutional Test
 - International Test
- Accountability
 - This Note Is Legal Tender
- International Jurisdiction



Plato's Republic

"Consider further, most foolish Socrates, that the just is always a loser in comparison with the unjust. I am speaking, as before, of injustice on a large scale in which the advantage of the unjust is most apparent; and my meaning will be most clearly seen if we turn to that highest form of injustice in which the criminal is the happiest of men, and the sufferers or those who refuse to do injustice are the most miserable - that

is to say tyranny, which by fraud and force takes away the property of others, not little by little but wholesale; comprehending in one, things sacred as well as profane, private and public; for which acts of wrong, if he were detected perpetrating any one of them singly, he would be punished and incur great disgrace - they who do such wrong in particular cases are called robbers of temples, and man-stealers and burglars and swindlers and thieves. But when a man besides taking away the money of the citizens has made slaves of them, then, instead of these names of reproach, he is termed happy and blessed, not only by the citizens but by all who hear of his having achieved the consummation of injustice."

"Then what gives the objects of knowledge their truth and the mind the power of knowing is the Form of the Good. It is the cause of knowledge and truth, and you will be right to think of it as being itself known, and yet as being something other than, and even higher than, knowledge and truth. And just as it was right to think of light and sight as being like the sun, but wrong to think of them as being the sun itself, so here again it is right to think of knowledge and truth as being like the Good, but wrong to think of either of them as being the Good, which must be given a still higher place of honor...."

"The Good therefore may be said to be the source not only of the intelligibility of the objects of knowledge, but also of their existence and reality; yet it is not itself identical with reality, but is beyond reality, and superior to it in dignity and power."³

Shoulders to the horse my friends and away from the city gates! The spear has found the hollow shell. *Hippos* and *eidōs* must be sent to Poseidon. We must resist the temptation to let our self-proclaimed knowledge blind us to the truth that we are not spatially or temporally alone. With the full faith and confidence of currency we must demand the defense of true innovation when it infrequently appears

³ Plato's Republic

regardless of the venue. We must denounce the proliferation of state sanctioned counterfeits and rally for accountability. The unconsidered assent to the status quo will undermine the last foundation upon which we now rest our economic destinies and, like Troy – we will fall. Or, on this fall day in Maine, we can choose a path illumined by the ancient priest Laocoon who dared to warn against the hubris of a victory perceived yet not won. The siren song praising the apogee of our knowledge must be seen for what it is – a hypnotic echo. We must unmask ignorance and firmly embrace gnosis.