

“The Parable of the Chair” is reproduced and provided with permission from *John Wiley & Sons, Inc.*, publishers of “Patent and Trademark Practice and Tactics” by David A. Burge, Esq. It is an excellent metaphor that describes how patented technology can be built on relevant prior art and the impact of the *negative right* granted by a patent.

The Parable of the Chair

Once upon a time, in a country far away, it was commonplace for citizens to rest their weary bones by sitting on logs and boulders. But logs and boulders tended to be damp and were difficult to move about when one wished to change one’s seating location. The need was clearly present for an improved seating appliance.

Having recognized this problem and given it careful study, Abraham took a small plank and affixed to an underside three depending legs. He experimented with his invention and found that it was stable and portable and constituted a considerable improvement over logs and boulders. He called this invention a “stool.” Since stools were previously unknown and since the country had a patent systems, Abraham applied for and was successful in obtaining a patent on his platform with three legs.

Bartholomew bought one of Abraham’s stools, but found it uncomfortable. The stool provided no support for his back and occasionally tipped over when he seated himself too close to one side of the platform. Bartholomew decided to add a fourth leg to the stool, an upstanding back, and two arms. He called the resulting improvement a “chair.” The chair was found to be far more comfortable than its three-legged predecessor and yet preserved the stool’s lightweight, portable character. The Patent Office, in recognition of Bartholomew’s contribution, granted a patent to Bartholomew on his chair.

And then along came Clyde. Clyde was a man of movement who did not care at all for things that stood still. Clyde viewed the chair as a dull and uninteresting development and decided that chairs would be vastly improved by the addition of curved base members to the undersides of their legs. Clyde called his improvement a “rocking chair.” And the Patent Office, recognizing the ingenuity of Clyde’s contribution, granted a patent to Clyde on his rocking chair.

Now for the question of who has what rights. Since a patent gives one the negative right to *exclude others* from making, using or selling his or her inventions, Abraham can exclude all others from the practice of his stool invention. Bartholomew can exclude others from the practice of his chair invention and Clyde can exclude others from the practice of his rocking chair invention. Moreover, since Abraham’s patent is *basic* to the portable seating appliance art, he can make stools without fear of infringing Bartholomew’s chair patent or Clyde’s rocking chair patent. Because Abraham’s invention is basic to the art, his patent not only confers the negative right to exclude others, but also, under these circumstances, effectively confers to him the positive right to make, use, and sell his basic invention without any fear of infringing patent rights of

others. But realize that basic inventions that can be practiced with no concern at all about infringing rights of others are not all that common.

Bartholomew is in a different position with regard to his proposed manufacture of chairs. While Bartholomew's patent will permit him to exclude others from making devices that include a platform with four legs, a back, and two arms, his patent does not necessarily give him the right to make these devices. Indeed, since a chair includes a platform and three legs (that is, the subject matter of Abraham's stool patent), chairs made by Bartholomew would infringe Abraham's stool patent. If Bartholomew undertakes the manufacture of chairs without first reaching a suitable agreement with Abraham, he should not be at all surprised to receive a cease and desist letter from Abraham's patent counsel.

Clyde has a similar, but greater, problem if he wants to manufacture rocking chairs. While Clyde can exclude others from making, using and selling rocking chairs, the problem remains that a rocking chair includes not only a platform with four legs, a back, and two arms, but also a platform with three legs. In short, Clyde's proposed manufacture of rocking chairs would not only infringe Bartholomew's chair patent, but also Abraham's stool patent. It is therefore necessary that Clyde negotiate suitable agreements with both Abraham and Bartholomew.

If another citizen, Demetri, should desire to make rocking chairs, he would find himself in the very uncomfortable position of having to reach separate agreements with Abraham, Bartholomew, and Clyde. The fact that Demetri may obtain a further patent, for instance, a design patent on the attractive appearance of a particular type of rocking chair, does not confer on him the right to make even the patented style of rocking chair he invented.

Thus, it will be seen that because one may have a patent on an invention does not give that person the right to practice the invention. Patents enable their owners to *exclude others* from practicing their patented inventions. This exclusionary privilege, which forms the object of a patent grant, is a negative right, not a positive one. Only when the invention is very basic to the art does the grant of a patent take on the characteristic of a positive right.

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