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## Patent Republic: Representing Inventions, Constructing Rights and Authors

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### In lieu of an abstract, here is a brief excerpt of the content:

Mario Biagioli Patent Republic: Representing Inventions, Constructing Rights and Authors COMPARED TO CASTING A VOTE, APPLYING FOR A PATENT IS SLOW, costly, and tedious. Still, both practices play out in different ways what it means to operate in a regime of political representation. In colonial America (as well as in early modern France, England, Spain, Italy, Germany, and Russia), patents were gifts the sovereigns could either grant or withhold from their subjects. Today, instead, we have the right to claim intellectual property in our inventions, and to have it recognized upon fulfilling certain requirements about the invention's subject matter, novelty, utility, nonobviousness, and adequate disclosure. The transition from patents as privileges to patents as intellectual property rights parallels the demise of political absolutism, the development of liberal economies, and the emergence of the modern political subject. In France, patents were declared one of the *droits de l'homme* less than two years after the revolution, and the US

Constitution was the first, in 1787, to include a clause about the authors and inventors “exclusive rights to their respective writings and discoveries” (Loi Relative, 1791).<sup>1</sup> Today’s discussions about the pros and cons of intellectual property are essentially political in nature, hinging on different views on the right balance between what should be or remain public and what should be allowed to become private (and for how long) so as to provide social research Vol 73 : No 4 : Winter 200 6 1129 incentives to innovation. My goal here is to look at the same balance at a more microscopic level—to move it from the level of broad political and cultural debates to the mundane details of patent applications. Far from depoliticizing the debate over intellectual property by shifting it into the grey, technical realm of patent bureaucracy, I want to show that one can sketch out an “archaeology of democracy” from a very mundane but key step in the patent application: the disclosure of the invention. Required by modern patent law in the United States and virtually every country in the world, this is the section of the application where the inventor describes (in words and images) the invention in sufficient detail to enable a third party to repeat it. It is the specification requirement that makes the patent system defensible in political terms. The most famous of US patent officials, Thomas Jefferson, took patents to be private monopolies—monopolies he disliked and tried to limit (Bickford et al., 2004:1412). Even those who do not share Jefferson’s views still acknowledge the tension between the image of equality and free competition democracies put so much effort in polishing and the temporary monopolies those same democracies are happy to grant to a great number of inventors.<sup>2</sup> Debates over the relationship between patents and monopolies have a long history. Jacobean England tried to distinguish unacceptable monopolies (many of which were banned in 1624) from acceptable ones (exemplified by patents of invention). Because the latter were limited to new inventions only, they were seen as taking nothing away from the public that it had before (Loosey, 1849:117).<sup>3</sup> Used throughout the nineteenth century in Europe to defend the patent system from serious and occasionally fatal attacks, the argument is still alive today—often with the additional spin that without patent protection many inventors would be likely to withhold or take their discoveries to the grave with them (Dutton, 1984: 22-23; MacLeod, 1996:137-153; Schiff, 1971). The real enemies of public knowledge, we are told, are not patents but trade secrets. While bearing conceptual family resemblances, defenses of the patent system display a distinct shift in emphasis as we move toward the present. The 1624 English Statute of Monopolies stated that patents 1130 social research of inventions were harmless and therefore allowable because they did not take anything away from the public, but it is now not uncommon to hear that patents are good—that they should be...

Mario Biagioli  
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COMPARED TO CASTING A VOTE, APPLYING FOR A PATENT IS SLOW, costly, and tedious. Still, both practices play out in different ways what it means to operate in a regime of political representation. In colonial America (as well as in early modern France, England, Spain, Italy, Germany, and Russia), patents were gifts the sovereigns could either grant or withhold from their subjects. Today, instead, we have the right to claim intellectual property in our inventions, and to have it recognized upon fulfilling certain requirements about the invention's subject matter, novelty, utility, nonobviousness, and adequate disclosure. The transition from patents as privileges to patents as intellectual property rights parallels the demise of political absolutism, the development of liberal economies, and the emergence of the modern political subject. In France, patents were declared one of the *droits de l'homme* less than two years after the revolution, and the US Constitution was the first, in 1787, to include a clause about the authors and inventors "exclusive rights to their respective writings and discoveries" (*Loi Relative*, 1791).<sup>1</sup>

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