PATENT AND TRADE DISPARITIES IN DEVELOPING COUNTRIES

Srividhya Ragavan

OXFORD

Patent and Trade Disparities in Developing Countries

Srividhya Ragavan

OXFORD
UNIVERSITY PRESS

OXFORD
UNIVERSITY PRESS

Oxford University Press is a department of the University of Oxford. It furthers the University's objective of excellence in research, scholarship, and education by publishing worldwide.

Oxford New York
Auckland Cape Town Dar es Salaam Hong Kong Karachi Kuala Lumpur Madrid
Melbourne Mexico City Nairobi New Delhi Shanghai Taipei Toronto

With offices in
Argentina Austria Brazil Chile Czech Republic France Greece Guatemala Hungary
Italy Japan Poland Portugal Singapore South Korea Switzerland Thailand
Turkey Ukraine Vietnam

Oxford is a registered trade mark of Oxford University Press in the UK and certain other countries.

Published in the United States of America by
Oxford University Press
198 Madison Avenue, New York, NY 10016

Library of Congress Cataloging-in-Publication Data
Ragavan, Srividhya.
Patent and trade disparities in developing countries / Srividhya Ragavan.
p. cm.
Includes bibliographical references and index.
ISBN 978-0-19-984067-0 (hbk. : alk. paper)
1. Patent laws and legislation—Developing countries. 2. Foreign trade regulation—Developing countries. I. Title.
K1505.R34 2012
346.04'86091724—dc23

2011052904

9 8 7 6 5 4 3 2 1

Printed in the United States of America on acid-free paper

Note to Readers
This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is based upon sources believed to be accurate and reliable and is intended to be current as of the time it was written. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. Also, to confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate.

(Based on the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.)

PATENT AND TRADE DISPARITIES IN DEVELOPING COUNTRIES

To Raghavans & Tirunelvelis
for your unconditional support

Foreword

Inherently, the debate on intellectual property in the context of trade and sustainable development is paradoxical because each regime promises several consequences: the intellectual property regime promises trade and prosperity, the trade regime promises development, and the environmental regime promises disaster, unless there is a balance with trade and intellectual property. On the one hand, pharmaceutical lobbyists contend that more patents and TRIPS-plus measures remain the only way to achieve nirvana in trade. On the other hand, agricultural lobbyists assert that enhanced intellectual property is the least favored mechanism to eradicate hunger. Thus, a developing-country policy maker is situated among constituents who are both vested and divergent in the outcome, and with both doomsday predictions as well as promises of opulence. Unfortunately, while each of these mechanisms embodies its own benefits and disadvantages, how they interact together and what kind of results they produce remains largely unexplored. Similarly, almost all of these regimes provide generalized solutions that developing countries tend to denounce as ill-fitting. There are several flexibilities that can be used as effective tools, but which flexibility should apply in what context remains contentious. Is compulsory licensing the best way to provide access to medication, or is patent protection more efficient? Should innovation in plant breeding be protected at all, and if so, should it use patents or a sui generis mechanism? These are deliberate yet important questions the book explores from a developing-country perspective.

Preface

A CAT-LIKE MAN AND GLOBAL TRADE . . .

> Arthur Dunkel liked cats. In other words, he liked intelligence, tenaciousness, cleverness, independence. In fact, there is something cat like about Arthur Dunkel himself.[1]
> JEAN-PASCAL DELAMURAZ

On the morning of December 15, 1993, the strike of a distant gavel in front of a crowd of weary global negotiators in Geneva notified the world of the achievements of one Mr. Arthur Dunkel.[2]

Arthur Dunkel, a Portuguese-born Swiss public servant, is best known for strolling with ease through the trade jungle (originally created at Bretton Woods) as the Director of the General Agreement on Trade and Tariffs between 1980 and 1993.[3] Arthur Dunkel's canniness came from his grasp and understanding that the trading system with its promised glories was arguably marred by the then-existing barriers to trade.

I imagine Arthur Dunkel in the middle of the Green Room in Geneva with his draft surrounded by what emerged as two clear platforms of trade negotiators:[4] the

---

[1] Jean-Pascal Delamuraz, *Arthur Dunkel*, in THE URUGUAY ROUND AND BEYOND: ESSAYS IN HONOR OF ARTHUR DUNKEL, (Jagdish N. Bhagwati, Mathias Hirsch ed.,) at 5 University of Michigan Press, Aug. 1999 (hereinafter "THE URUGUAY ROUND AND BEYOND").

[2] Rubens Ricupero, Integration of Developing countries into the Multilateral Trading System, THE URUGUAY ROUND AND BEYOND, *supra* note 1, at 9, 23.

[3] *Id.* at 9; Swiss Former Head of GATT World Trade Body Dies, Reuters News, (Jun. 9, 2005), available at http://www.water.org.tw/simply/wtoenews/news%20in%20English/2005%20June/no.1265%20wtn090605.pdf.

[4] Ricupero, *supra* note 2 at 9, 15.

richer nations who needed to expand their markets to trade, and the poorer nations who had the market and desired the commodity, but lacked the money. And, in the middle of these negotiations sat the cat-like Dunkel, credited for saving the Uruguay Round from failure. Name the trade—textiles, agriculture, goods, services, investments—and you see the handprint of the cat-like man who sat in the middle of the superpowers, the emerging powers, and the countries-*sans*-power to create legal equality between true unequals. In arriving at the concessions that resulted in the World Trade Organization, Dunkel did what no man ever had done before—he put a square peg into a round hole.

Arthur Dunkel's contribution to the world came in the form of the *Dunkel Draft*—the draft that will lead to the conclusion of the Uruguay Round of Settlement that dictates much of the world trade issues we see today. The compromises that Dunkel generated to create a multilateral trading system are now reflected in the Uruguay Round of Agreements—a set of Agreements responsible for opening up the globe to trade as we know it today—leading to both turbulent consequences and triumphant achievements.

Today, the global trade agreements epitomize halfhearted global compromises reconciling realities with ideologies and reflecting the concessions of confrontational interest groups: The set of Agreements whose benefits are enjoyed by a few and whose consequences are suffered by several unknown faces across the globe.

But, this is not to take away the due credit from the man who truly brought the globe together in trade. Yes, Arthur Dunkel deserves credit for bringing the developing world into the multilateral trading system—today, countries such as India, Brazil, and China are feeling the depth of their muscles, thanks to Dunkel.[5]

At the strike of the gavel, on that cold day of 1993, emerged the New World Trade Order, which would quietly change lives, unleash an enterprise of global talent, improve innovation, and challenge the wisdom that knowledge flowed from the developed to the developing world (an assumption on which Dunkel built the trading world), but would also create inconsistent patterns of development, deprive access to medication, and open up new questions in search of global answers.

This book is an outline of the flaws and flourishes of the New Trading Order. It is an effort to join the search for solutions to perfect the trading system Arthur Dunkel left us with.

---

[5] See generally *id.* at 9 (attributing credit to Arthur Dunkel for playing a central role in the Uruguay Round).

Acknowledgments

IN WRITING THIS book, I have benefited from the guidance and superior inputs of a number of people. Of these, I want to extend a special thanks to Professor Jay P. Kesan of the University of Illinois School of Law for being a friend and a mentor. He has handheld me through some of the most important milestones of my career, and I feel deeply indebted. My thanks also to Professors Jim Chen, Shubha Ghosh, Ruth Okediji, Joseph Thai, Peter Yu, Vivekanandhan, Martin Adelman, Dinah Shelton, and Susan Karamanian for your support and encouragement without which I would not have accomplished this work. A slew of students have tirelessly worked on this project—I want to mention Trista Wilson for her exemplary work. A special note of thanks to Professor Darin Fox, librarian at the University of Oklahoma College of Law—I think of Darin as my research genie who can get information from any corner of the globe within an hour. I also want to acknowledge and thank the University of Oklahoma College of Law for supporting my research.

Personally, I want to thank my parents Girija and Raghavan. Every page is symbolic of your contributions to my life. I also want to thank Kalyan, Teja, and my in-laws. I am grateful and deeply honored to have each one of you in my life. I would fail if I do not mention my thanks for the exceptionally positive influences of Dr. Kalyana Sundaram, N. S. Rajendran, and Sainaths in my life.

Contents

Those who do not remember the
past are doomed to repeat it.
GEORGE SANTAYANA

1

CORRELATION BETWEEN PATENTS AND DEVELOPMENT: LESSONS FROM HISTORY

Introduction

A lot has happened since the establishment of the World Trade Organization (WTO). The world as we knew before the WTO's genesis has ceased to exist and trade has become the all-pervading measure of development. As with the case of every issue, there are those who praise the WTO and others who fault it for many of the global woes. Yet, the debate on the global trade regime was the product of two important negotiating groups: the developing and the developed worlds.

In reality, every country is in constant "development" from its current state. But, the terms "developing" and "least-developed nations" in this book refer to countries with limited economic and social development.[1] Within a nation, economic and social development is a statistical measure of several indices such as per capita income, education, and access to basic necessities including food, water, and housing.[2] Generally, countries that are yet-to-be-*developed* are characterized by low

[1] *See, e.g., The Progress of Nations 2000,* UNICEF, *available at* http://www.unicef.org/pon00; *see also Understanding the WTO: The Organization: Least-Developed Countries,* WORLD TRADE ORGANIZATION, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm (last visited Feb. 5, 2012); *The New Titans,* ECONOMIST, Sept. 14, 2006, *available at* http://www.economist.com/surveys/displaystory.cfm?story_id=E1_SRSSJVJ (last visited Apr. 20, 2011) (discussing that there is more than one way to measure the extent of development). International organizations such as the UN generate economic and social statistics to guide national governments to designate themselves as developed, developing or least developed. *See generally A Question of Definition,* ECONOMIST, Sept. 14, 2006 *available at* http://www.economist.com/surveys/displaystory.cfm?story_id=E1_SRSRTDR (last visited Apr. 15, 2011).

[2] *The New Titans,* ECONOMIST, Sept. 14, 2006, *available at* http://www.economist.com/surveys/displaystory.cfm?story_id=E1_SRSSJVJ (last visited Apr. 20, 2011); *See also A Question of Definition, supra* note 1.

per capita income, restricted infrastructural or technological facilities, inadequate health care, and increased poverty.[3] Within the yet-to-be developed countries club, the nations can be categorized as either developing or least developed. Although both these categories of nations suffer from comparable economic and social malaises, there is a variance in the scale of sufferance and wide resource distinctions in the national economic context.[4] That said, as a general note, this book's thesis on developing nations is applicable to the least-developed nations, unless otherwise indicated.[5]

The defining term "developed world" refers to a small number of countries that have shown superior measurements of the criterion that is used to define development. The criterion, such as economic development, industrialization, per capita income, health care, etc., used to measure development are also sought after by the rest of the globe to achieve the status of being *developed.* Thus, the policies that the developed world embraced to achieve these developmental measures is perhaps the best starting point to examine whether the path to development proposed by the WTO is viable to achieve its objectives.

Generally, this book's vision originates in the pre-WTO era, the information from which is used to enhance the appreciation of the post-WTO era. The following chapter studies the pre-WTO era to examine how patent policies served as a tool to achieve the different criteria typically used as a measure of development. Thus, this chapter examines how patents were historically embraced and patent policies engineered to achieve development along with the circumstances that contributed to the current patent regime. The chapter then highlights aspects of the early development

---

[3] Black's Law Dictionary 482 (8th ed. 2004); *see also* 1 A.A. Fatouros, *Developing States*, Encyclopedia of Public International Law 1017 (1992); *A Question of Definition*, *supra* note 1, *available at* http://www.economist.com/surveys/displaystory.cfm?story_id=E1_SRSRTDR (highlighting that indices such as degree of industrialization or social development are low relative to the population).

[4] Black's Law Dictionary, *supra* note 3, at 482. For instance, developing nations lacking economic development relative to population, such as China, India, and Iran, may be resourceful in other areas such as the military. *Id.*

[5] *Id.* at 482 ("[T]hese terms are essentially interchangeable as they refer to the same group and kind of countries."). Overall, despite the presence of socially or economically developed pockets, considerable sections of the population in countries with limited development have a low standard of living. Of these nations, countries with progressively developing economies designate themselves as "developing nations." *See The New Titans,* Economist, Sept. 14, 2006, *available at* http://www.economist.com/surveys/displaystory.cfm?story_id=E1_SRSSJVJ (last visited Apr. 20, 2011) ("[V]ariations in the use of the term reflect significant changes in the perception of the central issue, namely, economic development, as well as responses to justified sensitivities on the part of the countries principally concerned."); *see also More of Everything,* Economist, Sept. 14, 2006. Nations such as Somalia and Sudan—which record limited progress owing to a large-scale breakdown of the rule of law—also categorize themselves as least-developed nations. Within the broad class of developing or least-developed nations, individual countries rarely share the same or similar problems.

of patent regimes to raise questions that are relevant in the context of intellectual property issues in the trade regime.

Evolution of Patent Regimes in the Developed World

Historically, Venice is credited for crafting exclusive rights to practice a trade in return for introducing a new trade into the local economy.[6] In 1323, a German milling engineer who undertook to build grain mills to satisfy the storage needs of entire Venice was granted the first known privilege for approximately 80 ducats.[7] The first law providing for the grant of exclusive rights for a limited period to inventors evolved in Venice in 1474.[8] By 1488, the *Statuto Mineraria* vested monopoly rights for 10 years with a view to further local industrialization and promote economic development.[9]

Notably, the period from 1400 to 1550 represents the peak of Venetian economic prosperity.[10] The fall of Constantinople to the Turks in 1453 resulted in artisans moving to the Roman empire.[11] Hence, Venice adopted several measures to establish and maintain preeminence in manufacture.[12] These measures include enacting laws prohibiting emigration of skilled artisans and the export of certain materials, encouraging immigration of skilled workers from other countries by providing a tax holiday for two years after their arrival in Venice, etc..[13] Providing monopoly rights to foreign artisans to attract immigrants to encourage local industrialization was one such measure.[14] Importantly though, improving local industries remained the crux and focus of this policy. Thus, the earliest history of patents categorically indicates that they were not used as a tool to improve or induce trade, but to improve local industrialization.

---

[6] Martin J. Adelman et al., Cases and Materials on Patent Law 10 (1998).

[7] *Id.*

[8] Giulio Mandich, *Venetian Patents (1540–1550)*, 30 J. Pat. Off. Soc'y 166 (1948) (discussing the early Venetian patents as well as the 1474 statute); *see also* Adelman et al., *supra* note 6, at 10.

[9] Adelman et al., *supra* note 6, at 12 (discussing the history of early Venetian patent law); *see also* Edward C. Walterscheid, *The Early Evolution of the United States Patent Law: Antecedents (Part I)*, 76 J. Pat. & Trademark Off. Soc'y 697, 705–8 (1994) [hereinafter "Walterscheid (Part I)"] (discussing the statute's role in encouraging new trade and industry). *See generally* Edward C. Walterscheid, *The Early Evolution of the United States Patent Law: Antecedents (Part II)*, 76 J. Pat. & Trademark Off. Soc'y 849, 879 n.15 (1994) [hereinafter "Walterscheid (Part II)"].

[10] Walterscheid (Part I), *supra* note 9, at 710.

[11] *Id.* at 703, 710.

[12] Walterscheid (Part I), *supra* note 9, at 708–9 (1995); *see also* Ladas & Perry LLP, *A Brief History of the Patent Law of the United States*, http://www.ladas.com/Patents/USPatentHistory.html (last visited Apr. 28, 2011); *see generally* Adelman et al., *supra* note 6, at 12.

[13] *See* Walterscheid (Part I), *supra* note 9, at 710.

[14] *See id.*

PATENT DEVELOPMENT IN ENGLAND

The Venetian system influenced the French, the Germans, and the British,[15] who pioneered the early development of patents.[16] In England, monopoly rights were engineered in the form of the Crown's prerogative to issue letters patent.[17] Such letters patent or, *literae patentes*, were public documents that were not sealed and directed or addressed by the king to all his subjects at large.[18] The letters patent bestowed privileges upon individuals in furtherance of royal policies.[19] Initiated in the fourteenth century, the letters were issued by King Edward III for protecting foreigners coming into England to train local subjects in various trades.[20] A study of the early development of the British patent system illustrates the influence of and the parallels with the Venetian systems. Like Venice, England used patents to specifically further local industrialization. That is, patents served as a tool to lure foreign industries first, and later to sustain local industries.[21] Importantly, the British patent system worked toward the specific objective of stimulating domestic production of materials previously imported from abroad.[22] In fact, Sir Walterscheid asserts that in the entire Continent the patent custom arose to encourage the development of new industries. Two specific mechanisms of furthering such development were identified. The first was to import knowledge of foreign industries into the respective country. Importation of new knowledge appears to have been the favored mode on the grounds that certain industries practiced aboard might be profitable if worked locally. Further, it was easier to determine or infer the economic potential of particular foreign industries when worked locally. The second was to encourage industries or inventions hitherto unknown locally. But, such industries were considered more speculative as their market potential was harder to deduce.[23]

In granting patents Queen Elizabeth's original efforts were "to stimulate domestic production of both raw materials and a wide variety of manufactured goods

---

[15] *Id.* at 711–12; *see also* Thomas M. Mesbesher, *The Role of History in Comparative Patent Law*, 78 J. PAT. & TRADEMARK OFF. SOC'Y 594 (1996) (discussing origins of European patent law). *See generally* Walterscheid (Part I), *supra* note 9.

[16] Walterscheid (Part II), *supra* note 9, at 849, 850, 854.

[17] Adam Mossoff, *Rethinking the Development of Patents: An Intellectual History 1550–1800*, 52 HASTINGS L.J 1255, 1261 (2001).

[18] WILLIAM BLACKSTONE, 2 COMMENTARIES ON THE LAWS OF ENGLAND 316-17 (1768).

[19] *Id.*

[20] CHRISTINE MACLEOD, INVENTING THE INDUSTRIAL REVOLUTION: THE ENGLISH PATENT SYSTEM, 1660–1800 (1988); *see also* Mossoff, *supra* note 17, at n.16.

[21] *See* Walterscheid (Part II), *supra* note 9, at 864, for a discussion of Queen Elizabeth's monopoly grants. *See also* Mossoff, *supra* note 17, at 1266.

[22] Mossoff, *supra* note 17, at 1259–61 (noting that the privileges were designed to "entic[e] tradesmen and industrialist to [manufacture] in England."); *id.* at 1259 n.15, 16.

[23] *See* Walterscheid (Part I), *supra* note 9, at 709–10.

previously imported from abroad."[24] England's focus was on acquiring superior technology to reduce imports.[25] The Crown, Sir Walterscheid wrote, wanted to "attain economic self sufficiency, thereby gaining in power and strength not only within its own borders, but also relatively to other states."[26] Patents are acknowledged as having enabled Britain to achieve a level of self-sufficiency.[27] Thus, like Venice, in England too patent laws were not used as a mechanism to increase trade, but to improve local industrialization.[28] In fact, Mossoff seems to allude to this factum in writing that "[I]n essence, patents originally represented royal privileges issued under the royal prerogative to achieve royal policy goals."[29]

Queen Elizabeth issued four classes of patents in exercise of her *Prerogative Royall* to achieve what was construed as domestic objectives.[30] The first category consisting of monopolies were issued for new discoveries and for introducing new industries from abroad.[31] A second category that assumed the form of special royal licenses was bestowed to import, export, and transport protected commodities.[32] The third category vested power of supervision over an existing trade or industry.[33] The last category granted an exclusive right to engage in an already established trade or industry, thereby creating private domains from what was originally public domains.[34] Examples of this class of monopolies relate to the production and sale of vinegar, starch, and playing cards.[35] However, the enormous power that the queen had to grant letters patent unfortunately resulted in patents becoming a political tool for granting patronage.[36] Several grants, especially those that were issued on existing trade, became subjects of criticisms for being politically motivated, and were considered to violate the liberty of the subjects working in their respective trades.[37] Some forms of patents were so abused that despite the benefits from patents, the effect of Queen Elizabeth's monopoly patents ignited discontentment within the British Parliament.[38]

---

[24] Walterscheid (Part II), *supra* note 9, at 855 n.21; *see also* Walterscheid (Part I), *supra* note 9, at 700–1. *See generally* MacLeod, *supra* note 20.

[25] Walterscheid (Part II), *supra* note 9, at 856.

[26] *Id.*

[27] Mossoff, *supra* note 17, at n.1, 23.

[28] *Id.* at 1261–62.

[29] Mossoff, *supra* note 17 at 1272.

[30] *See* Walterscheid (Part II), *supra* note 9, at n.59.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] Mossoff, *supra* note 17, at 1259–61.

[36] *Id.*

[37] *See* Walterscheid (Part II), *supra* note 9, at 864.

[38] *Id.*

Discontentment against Monopolies:

The discontentment against patents was first felt in the Parliament in 1571.[39] But, the turning point that came in 1597 was triggered by the industrial depression.[40] The economic woes of the depression increased the sentiment leading to an innate distrust and discontentment toward monopolies.[41] Thus, patents were perceived as a tool that obstructed free flow of trade.[42] Consequently, they were blamed for high prices, inferior goods, and unemployment, all of which were perceived to have precipitated the economic depression.[43]

The story of discontentment against patents goes back to the playing card patent of 1598 that was issued for a term of 12 years.[44] This story, discussed below, represents a first step that lead to the royal's rights to bestow patents being circumscribed by the common law. This story highlights how patents evolved from having an elite origin to being subject to a constant struggle that ultimately culminated in the commons circumscribing its role. The story begins with a patent issued for playing cards to a Mr. Edward Darcy, who served as a groom in Her Majesty's privy chamber.[45] Even though playing cards were an existing trade at that time, the patent issued to Darcy authorized him to regulate the activity in England. Notably, the playing card patent had first been issued to Bowes and Bedingfield in 1576, reissued in 1578, and in 1588 reissued to Bowes alone.[46] The playing card patent triggered a discontentment against patents that soon spilled over into the 1601 session of Parliament culminating in a threat to limit or eliminate the concept of royal prerogative.[47] With a view to please her subjects but without losing the right to issue a royal prerogative, the queen issued a proclamation agreeing to submit her patents to the scrutiny of the common law courts.[48]

The proclamation is generally regarded as a realization that the use of patents was not merely a political tool to assert royal prerogative but it also had an economic impact. Of course, the story of the *Case of Monopolies,* as this case came to be known, inched toward a historic conclusion when in 1602, Darcy sued a third party

---

[39] *Id.*

[40] *Id.*

[41] *Id.* at 863–64 (stating that the industrial depression "brought [the discontentment] to a head" resulting in monopoly rights of patent owners being perceived as a violation of the right to trade).

[42] *Id.*

[43] *Id.* at 855.

[44] *See* Jacob I. Corré, *The Argument, Decision, and Reports of* Darcy v. Allen, 45 EMORY L.J. 1261, 1324–25 (1996); *see also* Darcy v. Allen, 11 COKE REP. AT 86 B, 77 ENG. REP. AT 1263 (K.B. 1603).

[45] Corré, *supra* note 44.

[46] *See* Walterscheid (Part II), *supra* note 9, at 867.

[47] *See id.* (describing the event as one of the significant incidents of English Constitutional History).

[48] *Id.*

(Allen) for violating the patent. *Darcy v. Allen* resulted in instigating continuous conflicts between the Parliament and the Crown over the grant of patents.[49] The case triggered several questions on the policy behind issuing patents on existing trade.[50] The highlight of the judgment was the holding that the monopoly rights in a patent violated principles of common law.[51] The one exception was the grant of a government monopoly for a reasonable time when a new invention or trade was introduced.[52] Although Darcy's patent was voided, the common law scrutiny of royal grants paved the way for sentiments that would lay the foundation for anti-trust law.[53] Immediately though, this case resulted in vesting on common law the right to restrict the terms of the royal prerogative to issue patents.[54]

The case acted as a conduit to cause interesting long-term consequences. First, the case laid the foundation for the state to restrain trade (and the terms of the patent) in the interest of the nation—a power similar to present-day compulsory licensing, the use of which is generally not favored by developed nations. Second, the case established a strong nexus between patents and existing economic conditions—a fact that the harmonized patent regime is criticized for ignoring. Third, patents ceased to be a prerogative but assumed the form of something that was earned when a new invention or trade was introduced.

In England though, the general distrust spewing out against patents resulted in skirmishes between the Crown and the Parliament. Soon, the sentiments caused from *Darcy v. Allen* resulted in the Parliament enacting the Statute of Monopolies in 1623.[55] The legislation provided statutory recognition and created a standard for issuing patents. Under § 6, only "manners of new manufacture" was eligible for patent protection.[56] The section specified:

> Provided alsoe and be it declared and enacted, That any Declaracion before mencioned shall not extend to any tres Patente and Graunte for the tearme of fowerteene yeares or under, hereafter to be made of the sole working or makinge of any manner of new Manufactures within this Realme, to the true

---

[49] Corré, *supra* note 44, at 1271.

[50] *See* Darcy v. Allen, 11 COKE REP. AT 86 B, 77 ENG. REP. AT 1263 (K.B. 1603) (the first issue related to the Crown's power to grant exclusive control over an otherwise freely exercised trade).

[51] *See* Walterscheid (Part II), *supra* note 9, at 867–79 for a detailed discussion of how the discontentment regarding patents resulted in the state, in the national interest, using the common law right to restrict the terms of patents.

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] Corré, *supra* note 44, at 1267–70, 1271; *see* 21 James I, c. 3, VII Statutes at Large 255. Also reproduced in Fox, op cit. at 339–42; A.W. DELLER, 1 WALKER ON PATENTS 18–21 (Deller's ed. 1937).

[56] *See* Walterscheid (Part II), *supra* note 9, at 874.