Philosophical analysis of the concept of property clearly establishes that property rights are never absolute in nature. We have seen that the concept of property originates from social inevitabilities and so cannot ignore any social implications. In this chapter a pragmatic approach to this philosophical perspective with reference to evolution of patents is attempted. Our study examines the role of limitations and exceptions in achieving the ends of the patent system or ends of social system from a wider spectrum. When we analyze the evolution of patents, it is interesting that the system very sneakily adapted itself to changing social ends by artfully designing the means to the end. In this evolutionary process, not only newer and newer limitations and exceptions were molded but existing ones changed their characteristics. Apart from this national jurisdictions also followed varied policy approaches in accordance with their assorted social, cultural and economic interests. Till the end of 19th century the international regime remained silent allowing the national system to develop its own norms.
3.1 Evolution of Limitations and Exceptions to Patent Rights (1300-1880)

It is a fallacy and misnomer to make the statement ‘evolution of limitations and exceptions to patent rights’, because it is an established principle of jurisprudence that rights and appended duties to the rights were born together. The existence of absolute individual monopoly was always a myth. The foremost practice resembling patent privileges of the fourteenth and fifteenth centuries is attributed to the Greek city of Sybaris (located in what is now Southern Italy). In Sybaris encouragement was held out to all who should discover any new refinement in luxury, the profits arising from which were secured to the inventor by patent for the space of a year. Here we have the cardinal features of the patent system like inducement of the innovation, exclusive commercial right and limited monopolistic duration. Thus even in this foremost privilege system, the privilege was for a short duration

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of one year to accomplish the social objective of refinement of luxury.\(^4\)
This was perhaps the champion of limitations to monopoly. Thus among the various limitations developed in the course of time it was this principle of limited duration of monopoly which remained evergreen since the dawn of the privilege system.

The next stage in the evolution of limitation to privileges can be seen in the guild practices of the middle ages. There, the enjoyment of guild monopoly over trades and industries was subject to the close scrutiny of the rulers. These guilds were bound to provide good quality provisions to the City States at reasonable price.\(^5\) Sometimes they were bound to perform public services as a mandatory duty. Associations (now called *corpora*) were charged with increasingly onerous obligations, failure of which resulted in the confiscation of individual members' property.\(^6\) Apart from these extrinsic controls, there were intrinsic regulations as to working days, apprenticeship, technical specifications, quality of the glass, ingredients to be used etc., to maintain the quality of the goods.\(^7\) The aim of the sovereign at this time while conferring monopoly privileges to guilds was to make available in his kingdom provisions of good quality at lower costs.\(^8\) The privilege at this time was carefully tuned to attain this objective. Thus if guild marks were the prototypes of modern intellectual property rights, this kind of

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\(^6\) Ibid.


State control on guild monopolies is the earliest instance of limitations and regulation on monopolies by the State to accomplish a larger public interest.

However the genesis of the patent system and patent laws showed their origin in Venice or Florence.\(^9\) While analysing the Venetian history, it was amazing to notice a the regulation of 1297 passed by the Great Council of Venice.\(^10\) The Venetian law was concerned the manufacture and sale of medicines. They could be sold only in shops organized as public firms that were subject to the strict supervision and control of the officers of the State. Yet the invention of new medicines was encouraged by the following provision: "And if any physician wishes to make any of his own medicine in secret, he may be empowered to make it, if only, of course, of the best materials, and all may hold in confidence, and all guild members may swear not to interject themselves into the above mentioned matter."\(^11\) In effect, the council gave the physician monopoly rights over his own invention assuring secrecy and ensuring commercial exploitation. The object behind the regulation was to ensure the availability of high quality medicines at low cost since history shows that it was a time of several epidemics.\(^12\) This was a noticeable event in patent history which showed a fine-tuning of a privilege to accomplish a well articulated public interest.


Prior to the legal formalization of intellectual property laws in Europe, rulers often utilized grants for the exclusive exploitation of new or previously unknown practices. It was by the end of the so called Dark Ages, sovereigns offered patent like privileges to introduce new processes or practices into their own territory. The first of this kind noted in history is a letters patent issued by King Edward 111 to the Flemish weavers, John Kempe and his company. In this royal grant it was clearly stipulated that the privilegee should bring in his servants and apprentices to England and should teach the art of weaving to the local citizens. Similarly, a letters patent was granted in 1440 to John Scheidame on the condition that he will introduce into England a newly invented process of manufacturing salt. Again in 1449, a letters patent was issued to John Utynam for a new method of producing coloured glass on the promise that he will instruct this art to others, so that once his grant expired the process would be readily available for others in the trade.

These letters patent did not simply formed the undisputed progenitor of modern patent system, but also played a very important role in the development of limitations appended to these patent monopolies. It was incumbent on the patent holder to locally work the invention and also to teach the craft to the local artisans. The requirement of teaching and apprenticeship could be considered as the foundation of the modern teaching, research and experimental exceptions in the patent


16 Ibid.
system. Further monopoly was subject to a short duration and in cases of abuses the monopoly stand revoked. They were subject to the suspicious and cautious eyes of the crown. Thus during this period of open letters, the patents were available to the public for non commercial use, teaching purposes and there was no restriction on any kind of non commercial working on patents. The infringement was calculated purely on the basis of commercial exploitation and non commercial activities were not expressly prohibited. The origin of various non-commercial exceptions in modern patent laws could be traced from these provisions. The local working together with teaching of the invention made the invention available even in the streets of England. Further we can presume that the seeds of compulsory licensing were sown here. When the privilege holders failed in the working requirement or in any of the conditions of the grant, the privilege was revoked and the crown had the power to practice the invention under its supervision for the larger interest of the State. Unlike the modern system where the State has negligible role after the grant of patent, the early monarchs were keen in enforcing the national interest even in the post-grant stage. Thus the fundamental principle of the intellectual property system that, Intellectual Property is the catalyst of innovation and creativity, by supporting creativity and enabling access, got a solid footing at this time. However unlike in modern Statutes which manipulates these restriction as ‘user rights’ (available to a third party), in these letters patent it was imposed as a duty on the patent holder.

18 Ibid.
These open letters very evidently demarcated the scope of individual monopoly and the vast ocean of public interest. The neglect of ‘inventiveness and the inventor’ in these patent grants obviously pointed out that they were not at all an attempt to reward the inventor. On the other hand, it is a gadget in the hands of the sovereign for attainment of his vested social interests. Technology transfer was at the heart of the desire to establish patent, driven by the desire to reduce imports and expand exports. At this time England was lagging behind some of the continental economies, and the King was interested in how craftsman and merchants could borrow more advanced industrial practices. These earlier patents were a method for encouraging the migration of skilled artisans into the territory concerned. The limitations inside these open letters were drafted in a scientific manner to achieve these goals. The local working requirement, coupled with the mandatory obligation on the patent holder to teach the craft to local artisans was the means by which the availability of a cohort of adept practitioners together with technology transfers was accomplished. Short durations of monopoly combined with the iron hands of the King in cases of abuses, served the purpose.

Thus in the pre-statutory period we established four phases of evolution of limitations to privileges conferred by the State. In its nascent stage the limitation of commercial monopoly was for a very short span of one year and its object was to serve the interest of the well-to-do upper class (goods of luxury). It was not an attempt to ensure a larger public interest. However the concept of regulating the monopoly for attainment of a particular purpose owed its origin there. The regulation of monopoly


conferred to the guilds of Middle Ages to maintain the quality of goods, clearly depicted the evolution of a government controlled legal mechanism for attainment of the larger interests of the State. Here, the monopoly was not individualistic and the limitation conferred was also collective in nature. It is incredible and staggering that in as early as the beginning of the thirteenth century that the privilege mechanism was molded in response to the cry of public health, a policy objective of the present patent system. The open letters of privileges however laid the foundation of modern limitations and exceptions in a very lucid and explicit manner. The letters patent very productively and fruitfully imposed a set of social obligations as a prerequisite of obtaining and continuing patent monopoly. These obligations truly paved the way for modern free user rights. The Venetians were successful in developing a practical view regarding the balancing of public interest and private benefits from the ownership of knowledge. Although as yet not a fully fledged public interest in innovation, a preliminary version of the central balance between public benefits of innovation and the private rewards required to encourage intellectual activity, is evident. This approach was hardly alien to the legislators when they were confronted with the task of drafting a Statute.

Thus when the Venetian patent Statute was enacted in 1474, it was an untainted reflection of existing practices. In other words, the patent practices of the medieval age culminated in the codification of the Statute. Key components of the Statute included a balance of knowledge available through a State sanctioned public realm, the rights of inventors to benefit from their intellectual endeavor, and the notion of

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reward of inventor.24 Thus all the principal features of the modern patent system owed its origin here. The Venetian Statute begins by declaring patents as a social end. In the first paragraph of the Statute the legislative intent has been expressed in a lucid and apparent manner as that of attracting men of genius and ingenuity from neighborhoods for the long-term benefit and development of the State.25 As a foremost attempt, following the earlier practices, the individual monopoly was limited for a period of ten years and the patent holder was obliged ‘to make’ the invention within the republic.26 Thus instead of stipulating the working requirements and apprenticeships, it was sufficient that the patentee should make the invention in the realm. The history of patents for the first time witnessed the manipulation of the policy behind limitations to patent rights in accomplishing the changed patent objectives structured by the changed social, economic and political requirements.27 This was of course a successful attempt and a pace-setter for the future, since Venice became a hub of technological innovation within a short span of time and continued as such for the next two centuries.


25 “There are in this city, and also there come temporarily by reason of its greatness and goodness, men from different places and most clever minds, capable of devising and inventing all manner of ingenious contrivances. And should it be provided, that the works and contrivances invented by them, others having seen them could not make them and take their honor, men of such kind would exert their minds, invent and make things which would be of no small utility and benefit to our State”.


27 In addition to this; recognizing the negative impact of copying and infringements on future creativity and innovation individual labour was rewarded for the first moment in time and a mechanism for enforcement was also envisaged with penal sanctions.
The Venetian Statute thus played a very remarkable and incredible task in evolution of limitations to patent rights. The cardinal features of limitations appended to patent monopoly got a very lucid and cogent foothold here. The two distinguished limitations to patent rights - limited duration of patent monopoly and governmental use - developed in all its full vigor from here. In addition to this, manipulation of limitations to patent rights to accomplish changed perceptions of public interest also developed as a policy strategy as early as fifteenth century. It is the failure of craft guilds existing at that time in bringing technology transfer together with the insecure enforcement of rights of foreign inventors in the realm, that forced the Venetian legislator to draft such a decree emphasizing the rights of inventors. Indeed, as Venice's domination of trade with the east weakened, it adopted a number of measures to establish and maintain supremacy in manufacturing. But it should be presumed that the teaching and working requirement should not have vanished from the realm instantly. It might have existed as before, because these practices were not expressly prohibited by the decree.

Venetians were known as prolific travelers and it seems likely that Venetian craftsmen were largely responsible for the spread of the patent system into France, Germany and various other countries in the sixteenth century. Untill the Statute of Monopolies was enacted by the British

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parliament in the year 1624, it was this Venetian practice which prevailed among the countries.\textsuperscript{30} Until the early seventeenth century, in many European countries, grants of patents were subject to the vagaries of political power and personal relationships.\textsuperscript{31} Although there had been moves towards a more formalized system of granting patents across Europe, the UK was the first State to establish a relatively modern legislation to govern intellectual property, utilizing a systematic method of granting patents.\textsuperscript{32} This legislation reflected the practice and policy of the judicial and administrative authorities during the previous hundred years, during which the importation of technologies and the notion of mercantilism continued as the central elements of crown policy.\textsuperscript{33} After the Statute of Venice, the sole responsibility to address the public interest of the realm was on the sovereign, because the individual patent privileges and the apprenticeship clauses were overshadowed by the Statute.\textsuperscript{34} Thus the success of the patent system in fostering economic

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\textsuperscript{30} Ibid.


\textsuperscript{32} Ibid.


\textsuperscript{34} But it should be remembered that the Venetian Statute was a double edged sword. While on the one hand it appears to be an inventor friendly Statute, on the other side a clever fox was sleeping under the guise of the eminent domain clause. It reserved absolute and unqualified power to the government to acquire the invention in case of any needs. The terms ‘power of the government’ and ‘needs of the kingdom’ was undefined leaving enormous discretion to the state in acquiring and working the invention. Thus it was taking away with left arms, all that it gave to the inventors with the right arms. This inclusive power left in the hands of the sovereign if untainted with corruption is an effective tool in ensuring the public interest by preventing misuse of monopolies and ensuring the intended purpose. This was a trump card in the hands of the sovereign to pull off of his vested interests, together with the domestic needs. Thus whether the patent
development facilitating technological innovation was at the mercy of the King because all the other control mechanisms were slackened. But selfish and egocentric rulers easily overlooked their noble task, resulting in sweeping and far-reaching patent abuses. The letters patents issued during this period seemed more like monopoly grants rather than privilege grants. Although monopoly was generally abhorred, it was not regarded as illegal if the good to the realm could be demonstrated. The crown slowly seemed to shirk the responsibility of introducing new trade by shifting it upon the recipient of the letters patent. Prior to this, the crown was responsible for the administration of the patents and consequently the new industry was subject to the strict control of the crown.

Relaxation of local working and apprenticeship clauses brought in large scale unemployment within the kingdom. Further patent privileges over existing industries paved the rise of strong monopolies resulting in price rise and utter social and economic confusion. The socio-economic milieu that compelled the enactment of the Statute of Monopolies of 1624 was a pure victim of the adverse impacts of the hasty privilege system administered by the crown in its excitement to be more wealthy and powerful. The Statute was structured to find a solution to these

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36 The matter was brought before the judiciary also, which resulted in two landmark judgments in history. Once such grant over playing cards set the momentum against odious monopolies which ultimately lead to the Statute of Monopolies of 1624 during the reign of James I. The case of Darcy v Allen I W.P.C 1: Moore K.B.671., popularly known as the Case of Monopolies is regarded as the first case wherein patents were viewed as a legal right of the inventor rather than the...
miserable conditions of the realm, rather than with the objective of attracting foreign inventors like its predecessor. A clear shift in nature of public interest was evident. The parliament was on the edge to prevent monopolistic abuses and its outcomes like price rise and unemployment. Consequently the Statute came with provisions addressing patent abuses and price control mechanisms. Out of the bitter experience from the monopolies, the Statute begins by declaring all monopolies utterly void and contrary to the laws of the realm. But it did not address the royal prerogative. Even though the suit was filed for the abolition of the odious monopoly enjoyed Darcy, it substantially failed in upholding the public interest. In spite of strong words that monopoly is prima facie against the common law, the Statute law, and the liberty of the subject because it damages not only those working in the trade but all other subjects of the realm as well by raising prices, reducing merchantability, and reducing employment, the court took a deaf and dumb attitude. Going in tune with the tide of fascination at superior continental technologies the court also took a liberal attitude favoring monopolies. Thus the odious monopolies and their abuses continued without any interruption. In response to this in 1606, King James I issued a declaration known as Book of Bounty which stated that monopolies were against the law of the land but the crown reserved the right to reward new inventions and the discretion to withdraw them in case of rise in prices due to such grant. The Cloth workers of Ipswich Case in 1615 marked the beginning of the end of royal prerogatives as it ultimately lead to the Statute being enacted against monopolies. This judgment also like its precursor justified the issuance of monopoly because it enables the introduction of the new industry in the realm and trains the Englishmen in the trade.


38 English Statute of Monopolies (1623) Para 1: “all grants of monopolies, and of the benefit of any penal laws, or of power to dispense with the law, or to compound for the forfeiture, are contrary to your majesty's laws, which your majesty's declaration is truly consonant, and agreeable to the ancient and fundamental laws of this your realm: and whereas your majesty was further graciously pleased expressly to command that no suitor should presume to move your majesty for matters of that nature; yet, nevertheless, upon misinformation's and untrue pretences of public good many such grants have been unduly obtained and unlawfully put in execution, to the great grievance and inconvenience of your majesty's subjects, contrary to the laws of this your realm, and contrary to your majesty's royal and blessed intention, so published as aforesaid: for avoiding whereof and preventing of the like in time to come, BE IT ENACTED, that all monopolies and all commissions, grants, licenses, charters, and letters patents heretofore made or granted, or hereafter to be made
not neglect the importance of patents in technological development and renovated the patent policy in a unique manner upholding the public interest attributes. So it validated patent privileges subject to the legal controls of limited duration, working or making clauses and it was clearly stipulated that patent privileges would in no way be harmful or detrimental to the realm. Further, the economic exploitation was conditioned by price control mechanisms and it was obligatory on the patentee that working of patent should not hurt the ordinary course of trade and should in no way be inconvenient to the realm.\textsuperscript{39} This shows the beginning of a new era of limitations to the patent system.

The period from Venetian patent decree to the Statute of Monopolies was a clear experience of the defect and failure of patent system to incorporate and establish suitable limitations to patent monopoly for addressing the public interest. At the outset while the Venetian decree

\begin{quote}
\textit{or granted to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of anything within this realm or the dominion of Wales, or of any other monopolies, of power, liberty, or faculty, to dispense with any others, or to give licence or toleration to do, use, or exercise anything against the tenor or purport of any law or Statute; or to give or make any warrant for any such dispensation, licence, or toleration to be had or made; or to agree or compound with any others for any penalty or forfeitures limited by any Statute; or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money that is or shall be due by any Statute before judgment thereupon had; and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering, or countenancing of the same, or any of them, are altogether contrary to the laws of this realm, and so are and shall be utterly void and in no wise to be put in use or execution”.
\end{quote}

\textsuperscript{39} \textit{Ibid.}, at Para 6 \textit{(a)}: Provided also, that any declaration before mentioned shall not extend to any letters patents \textit{(b)} and grants of privilege for the term of fourteen years or under, hereafter to be made, \textit{(c)} of the sole working or making of any manner of new manufactures within this realm \textit{(d)} to the true and first inventor \textit{(e)} and inventors of such manufactures, which others at the time of making such letters patents and grants shall not use \textit{(f)}, so as also they be not contrary to the law nor mischievous to the state by raising prices of commodities at home, or hurt of trade, or generally inconvenient
appears to be fascinated towards patent privileges, Statute of Monopolies shows bitterness to the patent monopolies and a cherished concern for public interest. In the Statute of Monopolies, the recognition of patents was an exceptional compromise, not a general allowance of monopolies. It emphasized the limitations to patent monopolies; rather the patent privileges itself like the Venetian Statute. Thus well articulated patent limitations, both pre-grant and post-grant got a strong legal foundation. Utility and novelty were insisted upon at the pre-grant stage to control and prevent the issuance of fake and fraudulent privileges. Similarily, post-grant limitations like shorter duration, working requirement and price control were imposed to ensure the smooth working of the system. The compulsory working requirement and short duration of monopoly again got engraved in golden words. Limitations were framed to address the existing evils in the contemporary society. However, it is interesting that ‘governmental use’ the core of Venetian Statute and the ‘apprentice clauses’ the corner stone of royal patent grants, lacks mention here. On the ‘governmental use’ two interpretations are possible. It must be because of the proven failure of the Crown in ensuring public interest or it must be because of the fact that the King’s superior hegemony over the patent privileges was an established one. We can presume this to be a combination of both factors. But the working of the patents at that time lucidly establishes a superior control on patents by the government. Thus the

40 The Venetian Statute recognizes the natural right of author on the invention and also provides the mechanism for enforcement.

41 Although many terms may indicate a significant continuity with modern law, we should be careful to recognise the divergence of meaning over time. Novelty should be presumed to be mere importation into the UK, rather than actual novelty itself. Utility should be interpreted to mean something not contrary to the law and something not hurting trade.

42 We can see that this governmental control was evident from the nature of patent grants and persons holding patents. Patents were issued most commonly to courtiers’ and friends of the crown. Further most common grants were for
governmental use was exercised as a control mechanism on patents both at the post-grant and pre-grant stage. Similarly the apprentice clauses lacked mention because it was an established practice there. Since technology transfer was the mainstay behind the grants, any failure from it was met with the iron hands of the King. Further the common law decisions in Darcy and Cloth Workers of Ipswich,⁴³ has solidly established the existence of a robust patent limitation on apprenticeships.⁴⁴ Similarly the fourteen year period of patent was not fixed in an arbitrary manner. It was made in the sense that it would allow at least two apprentices to have been trained in the new industry. As the duration of apprenticeship lasted for seven years, fourteen years would enable two generation of artisans to be trained in the new art. The working requirement together with other post-grant limitations was however successful in ensuring technology transfer. This is

inventions related to currency and military supplies. Although other inventions were not often protected by patents, anything that involved the conduct of warfare was easily granted protection to enhance the country’s security and power projection capabilities. Thus crowns control was thoroughly established on patents. The patent grants also always allowed the crown and military authorities to conduct security-related affairs without respect for any rights thereby awarded, a compromise which was hardly novel to the country.


⁴⁴ While upholding patent monopoly for the larger interest of the kingdom, the court emphasised the need of working and apprenticeships. Thus the common law jurisprudence of sound balancing between the competing claims of public interest and private monopoly got a tough footing as early as the beginning of seventieth century. These judicial responses were of course a reflection of the existing socio-economic scenario. Further the water tight division of organs of state was not established at that time and the courts might have been strong instruments in the hands of the king to promote his interest. Inspite of their adherence to crowns policy, the court was successful in laying down a concrete principle of public welfare for the issuance of patent grants without which the monopolies will be void. The teaching requirement and the apprentice clauses thus got a well established common law appreciation spaced out from being a fraction of royal proclamations or in turn we can presume that this was a pioneer attempt in recognizing the modern research use and compulsory working requirements by the common law.
evident from the fact that England remained the home of industrial revolution.\(^{45}\) Further it is really noticeable that even when the statue evidently lays down the limitations to patent monopolies or when it allows patents subjected to certain well articulated conditions, there is not a single provision in the Statute addressing the right of inventor. Similarly there are no express or implied provisions on patent infringement also. So it was an eloquent attempt to reiterate the limitations to patent grant.

The Statute of Monopolies was rightly called the first germ of patent law, springing forth from the destruction of despotic privilege, like a young tree from the ruined feudal castle.\(^{46}\) The Statute succeeded in reiterating the common law principles in the statutory form\(^{47}\) and also it was a condensed and of course an imperfect summary of existing practices. If we analyze the patent grants immediately prior to the Statute, we can see that it was an attempt to recapitulate the existing limitations.\(^{48}\) A wholesome endeavor to recall patent down to the streets

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\(^{48}\) The grant to Stephen Groyett and Anthony Le Leurye to make white soap of Castile stipulates that two at the least of the servants of the patentees shall be of native birth, and that the soap should be of very fine and good variety (1561). License to Philip Cockerman and John Barnes to make saltpetre stipulated that the secrets of manufacture should be reduced in writing before the award of reward (1561). The license to George Gylyplane and Peter Stoughberken to make ovens
enabling widespread diffusion of knowledge coupled with ensuring access was thus made. The incredible and astonishing development of the UK within a short span of time as the world’s most technology producing and supplying country, established the success of the patent system. The rapid technological advancement depicted that technology was freely available for future research and development and there was no blockage in access to information. This might be the reason why there was no need of express provision for research and experimental use. The absolute autonomy of the king coupled with direct control on the patents

and furnaces for ten years was conditioned that it will be void if not put into practice within two months. License to Roger Heuxtenbury and Bartholomew Verbrick for Spanish Leather insisted on the employment of one English apprentice for every foreigner employed (1564). License to Anthony Beckuand John Carre to make window glass insisted on the instruction of the English as a condition of the validity of the grant (1567). In a grant to Goldinge for an engine for land drainage and water supply in 1571, it was stipulated that the grant is void if the engine be not erected within two years or fails to work efficiently as set forth. In the grant to John Synertson to put into practice an instrument for land drainage a term of two years was fixed for introducing the industry, after the lapse of it the grant will be void (1573). In license to John collyns to make brode clothes for twenty one years, the grant recites that the art had been introduced and apprentices educated therein (1574). In the grant to Jeremy Nenner and George Zolcher for a method of sparing fuel for seven years, the grantees are bound to erect within one year a trial installation and to prove its efficacy (1574). The in grant to James Verselyn for making drinking glasses (1574), importation of foreign glass is prohibited and the relations between the retail trade and the grantee regulated. In grant for making white salt to Rd Spence two years was fixed for introducing the industry and to supply a better salt at cheaper rates (1582). The grant to Harebrowne was granted subject to the condition that it is revocable if found inconvenient to the town or commonweal (1582) and the grant would be declared void if the manufacture be discontinued for a minimum of six months.

was very much successful in accomplishing the desired goals of patent privileges.\textsuperscript{50} Christopher May and Susan K Sell point out that as early as 1640’s the Royal Society of the King worked as the State sponsored research institute with the objective of frequent and speedy development of useful innovations and technologies.\textsuperscript{51} Thus the role of patents in technological development was realized and the patent policy was meticulously and scrupulously driven to that end.

An examination of the Records of the Privy Council during these periods also substantially establishes that this was a golden period of patent limitations and the vigorous enforcement of patent limitations in achieving the larger public interest was scientifically proven.\textsuperscript{52} There where series of instances were King revoked the patents on grounds like non working, hurting trade and causing inconvenience to the realm.\textsuperscript{53} Eighteenth century witnessed a new paradigm in the evolution of limitations to patent rights. Till the beginning of this century we identified a common thread in patent objectives and also in the patent tactics. But by the end of 18\textsuperscript{th} century and the early decades of 19\textsuperscript{th}

\textsuperscript{50} Ibid.
\textsuperscript{53} For a detailed study see: H.E, Wyndham. (1917) ‘Privy Council Law and Practice of Letters Patent for Invention from the Restoration To 1794’, Law Quarterly Review, 50 (1), 63-75. A patent to company of Perruque-makers was declared void by the Privy Council on the ground of non use in 1673. In 1677 patent granted to Bayly’s was revoked on the ground of deceiving the king because of prior use. In 1675 a patent on the invention for the Dutch method of making stone blue was revoked on the ground that it caused trouble to the trade. In 1683 Walcott’s patent for distillation of sea water was declared void by the king for keeping the invention idle and a patent for similar invention was issued by the same order to one Fitzgerald. On 12th may 1678 Hutchinson’s patent for smelting malleable lead and other metals with coal was declared void on the ground that during the first ten years of his grant the patentee had made no manner of use of it.
century the patent scenario was influenced by two divergent philosophical approaches and also differing socio-economic objectives of the countries which resulted in obvious and sharp ramifications in patent policy. The limitations appended to the patent rights, which remained the tool of accomplishing the social aspirations underwent systematic and logical modifications. The philosophical challenge came from romantic notions of author inspired by the natural law on the one hand, and the utilitarian conceptions on the other hand. As a matter of public policy, utilitarian notions are designed to reward creation and diffusion, whereas natural rights or romantic notions privilege the goal of stewardship or the right to manage. Countries like the UK always emphasized the public interest concerns of the patent system. In such legal regimes watchful eye was kept on the role of inventions in furthering utility and in case of conflict between author right and user right, it was the user right that prevailed. But the countries like France and Germany influenced by natural philosophy stressed universal moral and economic right enabling authors to exercise control over their creations and inventions and to receive remuneration. Even then working requirement and apprentice clauses formed a sacrosanct feature of patent grants here, but gradually diminished their earlier vigor and dynamism. In case of inconsistency between the two competing interests it was the author’s interest that prevailed over the user rights.

Spaced out from this philosophical contradiction, the changing social and economic objectives and political cataclysms also contributed to this divergent attitude. Countries like the US who just freed from the iron hands of their colonial masters, wanted the available competing technologies and in furtherance of this objective retained the right to appropriate the ideas, scientific inventions, and literary creations of the leading countries. So in these developing countries patent privileges were
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Chapter 3

at the mercy of the State who manipulated it according to their domestic needs to further utility to the State, rather than to reward the inventor. So the user rights like local working of the invention or the eminent domain power of the State to acquire the invention when it becomes a menace to public policy enjoyed a privileged position rather than the individual rights. The inventiveness and utility was stipulated in these countries with much vitality, with an intention to become much superior to their previous masters. On the other hand the net exporters such as France, Germany and England stressed the economic rights of their authors and inventors in exploiting their inventions and receiving remuneration. Comparatively developed and technologically sufficient, these countries do not stress the local working and compulsory acquisition as a public policy. The earlier semblance in the patent policy and patent tactics thus began to vanish and an international conflict of opinion developed in course of time. The countries began to frame patent policy in accordance with their changed social, political and economic state of affairs.

A glance at the premiere legislations of these countries is a perceptible portrayal of these assorted postures. For example while preamble to the US Patent Act of 1790 declares the objective of patent grant as the advancement of useful arts and science for the larger interest of the realm,\(^\text{54}\) the French Patent Act of 1791 declares the objective behind the grant as the reward and recognition of natural rights of the author.\(^\text{55}\) The emphasis in French Law was on the inventor having

\(^{54}\) The Constitutional basis for federal patent and copyright systems is to be found in the Constitution of the United States Article 1, Section 8, clause 8 which states: Congress shall have power ... to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. USA Constitution is available online, at http://www.usconstitution.net/xconst_A1Sec8.html [Accessed on March 2010].

\(^{55}\) Section 1 of the French law of 1791 took a somewhat different approach: "All new discoveries are the property of the author; to assure the inventor the property
property in his discovery - an emphasis on the rights in the invention rather than on the benefits to society as in the UK or the US. However divergent the systems were, we can see a common thread running in between when it came to the matter of restrictions to the patent rights. All these première Statutes have incorporated provisions to make patent more useful or less detrimental to the society. But these practices were very often a replica of established usages left by common law modeled by the Statutes of Monopolies and finally by the individual grants. Thus these were either fixed duration of monopoly period and local working requirement. Thus all legal regimes whether imperial or colonial was motivated to ensure utmost technology transfer. The local working requirement allied with revocation clause was sufficient to assure this noble quest. Thus even without well embossed and imprinted limitations to patent rights, the patented technology and knowhow was available for future ingenuity and resourcefulness without any formal hindrances and impediments.

But in course of time technology became more complex and intricate. The local working requirement and the formal disclosure methods were in practice found to be quite inadequate to meet the growing quest of scientific enquiry. The practical implementation of patents also proved that the apprentice clauses, working prerequisites and disclosure requirements were in vain. However the socio-

economic scenario, coupled with the technological flare-up demanded access to existing knowledge as a prior art to start up the technological blaze. Thus just like any legal phenomenon, it was judiciary who came up with a radical solution to the burning scenario by developing a novel concept – ‘the experimental use exception’. As early as the beginning of nineteenth century we witness the development of this concept through a couple of judgments by Justice Story of the US Supreme Court.

The origin of the common law experimental use exemption to patent infringement is universally attributed to Justice Story's opinion in *Whittemore v Cutter*. In *Whittemore*, Justice Story opined thus:

"it could never have been the intention of the legislature to punish a man, who constructed such a patented machine merely for philosophical experiments, or for the purpose of ascertaining the sufficiency of the machine to produce its described effects."

At the time Justice Story wrote these words in 1813, "philosophical" referred to the field of "natural philosophy" or what we call today "science." Properly interpreted, Justice Story's statement contained two distinct experimental use exemptions to patent infringement: (1) an exemption for using patented subject matter in order to perform scientific experiments and (2) an exemption for using patented subject matter in order to test its claimed utility. Further Justice Story made it clear that in order

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58 29 F. Cas. 1120  (C.C.D. Mass. 1813 )  (No. 17, 600 ) . In this case, the defendant appealed a jury instruction, which stated in part that the "making of a machine with a design to use it for profit" constituted infringement.

59 *Whittemore v Curtis*, 29 F. Cas. at 1121.

60 *Ibid.*, at 1122.
to constitute patent infringement, there is no requirement of damages.\textsuperscript{61} Thus to claim the defence of experimental use, neither the intention nor the proof of damages was necessary. On the other hand it should be proved beyond doubt that the infringing act was not purely for a scientific or philosophical purpose. Thus a very lucid expression of a new principle incorporating the core of patent grant (advancement of useful arts and sciences) got solid footing.

Justice Story further elaborated on his observations in \textit{Whittemore} in the case of \textit{Sawin v Guild},\textsuperscript{62} decided in the same year. In \textit{Sawin}, Justice Story contrasted the making of a patented machine with an intent to use it for profit, which would be an act of infringement, and the making of a patented machine for the purpose of a scientific experiment or to ascertain the "verity and exactness of the patent specification," which would not be an act of infringement.\textsuperscript{63} Justice Story did not fully explain what he meant by using patented technology for the purpose of profit. His "for profit" test, however, can be interpreted in two ways. One interpretation of the "for profit" test would eliminate the experimental use exemption for all business organizations engaged in furtherance of their legitimate business.\textsuperscript{64} The rationale for this interpretation would be

\begin{itemize}
\item \textsuperscript{61} In Justice Story's opinion, "where the law gives an action for a particular act, the doing of that act imports of itself a damage to the party. Every violation of a right imports some damage, and if none other be proved, the law allows a nominal damage." Whittemore, 29 F. Cas. at 1121.
\item \textsuperscript{62} 21 F. Cas. 554 (C.C.D. Mass. 1813) (No. 12, 391). Sawin involved the interesting question of whether the seizure and sale of patented machines by a sheriff pursuant to the execution of a judgment on a debt would be an infringement of the machine patent. Id. Justice Story held that this was not an act of infringement, reasoning that to hold otherwise would allow debtors to place property beyond the "grasp" of creditors by investing their property in patented machines. \textit{Ibid.}, at 554-55.
\item \textsuperscript{63} \textit{Ibid.}, at 555.
\item \textsuperscript{64} See Parker, D.L. (1994) 'Patent Infringement Exemptions for Life Science Research', \textit{Hous.J.Int'lL.} (16) 615, 627 Sawin can "readily be
that the goal of all business organizations is profit and therefore all of the activities of business organizations, including experimentation, are in pursuit of that profit. A second interpretation of the "for profit" test would allow business organizations to experiment with patented technology where the immediate goal was to obtain scientific knowledge or to test patent claims, but disallow the use of patented technology for its intended purpose in direct revenue-generating activities. It is not clear which of these two interpretations Justice Story had in mind, nor is it clear how Justice Story viewed the absence of profit intent. Would a nonprofit organization always be entitled to an experimental use exemption for the use of patented subject matter in scientific research and testing? Would the lack of a profit motive exempt a nonprofit organization from patent infringement if it used patented subject matter outside of the realm of scientific research and testing? These questions raised by Justice Story’s seminal pronouncements on experimental use were slowly, and somewhat erratically, answered over the next two centuries.

Thus for the first time in patent history a full fledged user right to defend the aristocratic rights of the patent holder got a solid snatch. But the true rationale behind this exception was really mystifying. The requirement that there be an intent to use for profit or an intent to infringe the patent rights is rather confusing in view of the fact that the Statutes did not require any such intent. It may be that Justice Story was influenced by the fact that at that time remedy for patent infringement

interpreted to mean that any use that is not itself a use for profit is not an infringement, with 'philosophical experiment' and 'determining the adequacy of the disclosure' merely two examples of uses that are not considered 'for profit.'" Id. at 627 (Quoting Sawin, 21 F. Cas. at 555).
was by an action for trespass on the case which, in the normal situation required either a wrongful intent or an act of negligence. However patent infringement was not a common law tort, but a creature of Statute and should be governed by the Statute. The Statutes had been repeatedly held that purpose and intent of the infringer are immaterial in determining the question of infringement. Another possible theory explaining Justice Story’s experimental use is that such use causes no damage to the patentee and hence in accordance with the common law principle *injuria absque damno*, no action would lie.65 But this actual damage theory is negatived by Justice Story’s statement that “where the law gives an action for a particular act, the doing of that act itself imports of damages.”66 Thus these two hypotheses to test the obscurity of experimental use exception creates a legal anomaly. And finally the whole discussion establishes the fact that Justice Story was really motivated by the paramount objective of patent law that, in order to promote technological innovation, one must be allowed to advance over the disclosed prior art, utilizing the prior art as a starting point.67 Thus

65 As a matter of fact more than nominal damages may occur when an experimental use takes place. This is because the patentee may be substantially injured in that he has failed to acquire a just and deserved gain namely, that is the collection of reasonable royalty form the experimental user.


67 Bee, R.E. (1957) ‘Experimental Use as an Act of Patent Infringement’, *J. Pat. Off. Soc’y*, 39 (3), 357-367. Donald Chisum has indicated that the phrase “philosophical inquiry probably had a different meaning when Justice Story created the experimental use exception than it carries today. In his view, philosophical inquiry was likely to have meant research directed at developing new technologies. Chisum, supra note 5, at 1019 n.203. Chisum does not elaborate on this, and we are left to wonder from what sources he draws such a conclusion. Rebecca Eisenberg has interpreted Justice Story’s "philosophical experiments" differently, writing, "the first prong of Justice Story's experimental use privilege, permitting 'philosophical experiments, ' is not well defined in the cases, but it seems to permit subsequent researchers to use the patented invention at least in traditional basic research with no commercial implications."
the Byzantine nature of technological discoveries acquired a primary judicial recognition.\textsuperscript{68}

At this point it would be well to consider carefully the exceptions actually set forth by Justice Story.\textsuperscript{69} A couple of case laws from the US judiciary and a landmark judgment from English court of law in the nineteenth century are the real authorities to identify the exact length and breadth of this novel phenomenon. Analysis of the case laws in which experimental use is claimed as defense shows a two stage filtration process. In the first stage attempt is made to ascertain whether the use is one permitted under Justice Story’s policy. If the first stage filtration is answered positively, the second stage begins to identify the true motive behind the use; i.e. whether commercial or philosophical. The case laws points out that subsequent interpretations and application of the concept both practically and theoretically was much more restricted than that propounded by Justice Story. His philosophy appears to be more utilitarian and rational than subsequent developments. It is better to analyze them in chronological order.

It was established fairly early by the case of \textit{Poppenhusen v New York Gutta Percha Comb Co.}\textsuperscript{70} that where the making or using is done as a matter of business, that is in connection with the operation of a business then the experimental use exemption is not applicable and such making or using will render a party liable for patent infringement.\textsuperscript{71} This

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\item \textsuperscript{69} From the earlier analysis it is clear that he stated only two very limited exceptions, first philosophical experiments and second a use for the purpose of ascertaining the verity and exactness of the patent specification or disclosure.
\item \textsuperscript{70} 19 Fed.Cas.1059.No.11, 283 (C.C.S.D.N.Y 1858).
\item \textsuperscript{71} In that particular case the defendant was using a patented process for shaping articles made of vulcanized rubber and had actually placed quantities of such
literal application of Justice Story’s philosophy was followed by the court in subsequent cases also. In Poppenhusen v Falke et al,\(^\text{72}\) wherein the scope of the philosophical experiments exception was stated in its more familiar present-day form namely “an experiment with a patented article for the sole purpose of gratifying a philosophical taste or curiosity or for mere amusement is not an infringement.”\(^\text{73}\) To illustrate the true narrowness of the exception the case of Beadle v Bennet\(^\text{74}\) should be considered. In the Beadle case, it was held that the use of a patented invention solely for personal; convenience was an act of patent infringement.\(^\text{75}\) The court even failed to appreciate a pure personal use of a patented invention. The next two cases to consider the experimental use exception actually rejected the proposition that such an exception even exists. In Albright v Celluloid Harness-Trimming co.\(^\text{76}\) the defendant in the course of perfecting the manufacture of metal harness trimmings coated with celluloid, experimented with dies or molds of the same construction as covered by plaintiff’s patent. The experiments were unsuccessful and were shortly abandoned. The court held this to constitute a technical infringement. The second case is Palmer v United articles on the commercial market. The defendant tired to escape the charge of patent infringement by pleading that the use was only experimental.


\(^\text{73}\) Ibid., at 1049. The exact activities of the defendant were not reported in that case, but it was indicated that defendant’s purpose was in fact not experimental but commercial. The defendants were rivals of plaintiff in the very same business to which his patent relates and the former employees of the plaintiff in manufacturing of articles under the patent.

\(^\text{74}\) 122 USA 71 (1887).

\(^\text{75}\) Id. at 73. To support this holding the Supreme Court cited the case where the patented invention was a well for drawing water from the earth. The well without the consent of the patentee had been installed in a house. Sometimes later, the defendant rented the house and used the patented well solely to obtain a supply of water for the sole purpose of his family.

\(^\text{76}\) 1 Fed. Cas. 320, No. 147 (C.C.N.J.1877).
States, wherein the court held that an experimental use by the army of a certain type of patented knapsack was practical and an act of patent infringement.

The next four cases chronologically speaking recognized the existence of the experimental use exemption but reaffirmed the limited nature of the experimental use. The first case was Bonsack Machine Co. v Underwood, wherein the defendant constructed the patented machine and then used it to demonstrate the usefulness of his own patented improvement for the purpose of selling his patent. The court held that this represented a use for profit and hence did not come within the experimental use exception. In Clerke v Tannage Patent Co., wherein the court held that even the expression of a willingness by the patent owner to sell a license under the patent did not in the absence of actual permission confer the privilege to use the specialty of patent to experimentally test its desirability or utility. By emphasizing the requirement of express permission for experimental purpose, the court flouted even the fundamental tenets of experimental use. A similar result was found in Cimiotti Unhairing Co. v Derboklow. The defendant had been using the infringing machine in its business for nearly three years. The "experiments" consisted of running customers' pelts through the infringing machine in the ordinary course of the business. However the defendant’s experiments consisted of dehairing pelts for customers who gave them to the defendant to dehair in the ordinary course of business. The court noted that the use "is not fairly within any legitimate use for

77 20 Ct.Cl. 432 (1885).
78 73 Fed. 206 (C.C.N.C 1896).
79 84 Fed. 643 (3d Cir. 1898).
80 87 Fed. 997 (C.C.E.D.N.Y.1898).
experimental purposes only."\textsuperscript{81} Such use was plainly "using" the patented machine as the commercial method for processing the pelts rather than any legitimate study of the patented machine. Thus every time the judiciary was vigilant in making an intelligent balance between rights of patent owners and that of third parties. This was followed by the case of \textit{United States Mitis Co. v Carnegie steel Co.}\textsuperscript{82} wherein the act of infringement was a use by the defendant for a period of about three or four months of the patented steel making process.\textsuperscript{83} The court said that the use of aluminum while the defendant was engaged in the practice of the so called armor plate process was merely experimental cannot be accepted.\textsuperscript{84} Court considered it as a commercial use, extending over a period of several months and involved a very large product. The judicial interpretations reflect the strategic US policy\textsuperscript{85} of protecting and enforcing the noble rights

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\textsuperscript{81} \textit{Ibid.}
\textsuperscript{82} 89 Fed. 343 (C.C.W.D Penn. 1898).
\textsuperscript{83} The defendant made 2769 tons of armor plate from ingots that were cast according to the patented process.
\textsuperscript{84} Id., at 351.
\textsuperscript{85} When we analyse the evolution of the US patent laws, it is really interesting that even while influenced and coerced by the English statutory and common law, the country took a very different patent policy. While English recognised the utmost public interest and very often neglected the inventor for the sake of the kingdom, the US took a policy of developing patent by rewarding and recognizing the inventor as the champion. There is lot of writings on the issue. One view is that till the middle of eighteenth century America was an agrarian economy and in its transition to an industrialized country it needed strong technological base. In that attempt it tried to attract more inventors and thus framed a patent policy favoring the individual inventors. It has also been stated that, it was at the time when the constitutional debates were going for the adoption of patent system in America the patents loose themselves from the status of 'privilege' to a 'property right' of the inventor. And this individualism behind patents which sprang up as fire and influenced by French revolution have also left its own mark on the US patent policy. For details see; Waltershield, E.C. (1994) ‘The Early Evolution of the United States Patent Law: Antecedents’, \textit{J. Pat. Trademark Off. Soc’y}, 76 (6), 715; Prager, F. D. (1961) ‘Historic Background and Foundation American Patent Law’, \textit{Am. J. Leg. Hist.}, 5 (4), 309; Anon, S. (1940) ‘Proceedings in Congress Relating to The First Patent and Copyright
\end{flushright}
of the inventor more vigorously than that of the rights and needs of the public. The dynamic and vibrant utilitarian philosophy propounded by Justice Story thus end up as a sluggish and lethargic phenomenon. Instead of defending public interest, in course of time it became a margin to uphold the rights of inventor. Pure experimental uses were disallowed even in the absence of profit motive or actual commercial exploitation as technological infringement. Similarly it is really surprising that an infringement for a personal convenience was disallowed in Beadle case. This makes one to wonder while the satisfying of a philosophical thirst is not an act of patent infringement, the act of satisfying pure personal physiological thirst is an act of patent infringement. The cases support the position that courts were skeptical and unconvinced about actual experimental uses and were very cautious towards its extension to commercial purposes. Consequently the line between commercial and noncommercial uses became very thin. Even though experiments for developing new uses and improved technology without actual commercial use was the need of the time, it should be appreciated that a very broad experimental use exception at such a nascent stage might have the chance of obliterating the very objective and balance of the patent system.

However the English jurisprudence on the concept was quite different. They took a liberal approach by allowing experiments to improve upon the invention. In Freason v Loe\(^6\) the court held that if a patented product was made only for bona fide experiment, without the intention to sell it or use it but with the view to improving upon the invention or seeing whether an improvement can be made or not, would

\(^6\) (1878) 9 CH. D 48.
not infringe.\(^87\) Thus even if the ultima behind a bona fide experiment was commercial, the defense was allowed on the proof of absence of actual commercial exploitation. Thus a splendid balance between the monopoly of the right holder and demand of science in access to information was established in a more vigorous manner.

This divergence on experimental use was not a mere conceptual asymmetry existed among the countries but of course a matter of sovereign political strategy, which manifested in all fields of patent policy. The attitude of countries towards compulsory licensing and local working is also a clear manifestation of this social and political maneuvering. The only jurisdiction in the early nineteenth century not compelling native patentees to work their inventions was United States.\(^88\) In the UK the nonworking of a patent is an offence against the conception underlying the grant.\(^89\) Even the French law carried with it the restrictions to patent rights like fixed duration and revocation in case of non working.\(^90\) The French law of 1844 also embrace the revocation clause on failure of nonworking by justifying that ‘it would be injurious


to the society at large to allow any one individual to cramp the efforts and attempts of more industrious by obtaining a patent which he did not intend to work.\textsuperscript{91} In the German law of 1877 a patent could be revoked after the first three years if it was not effectively put in use, if the owner refused to grant licenses or if the invention was primarily exploited outside Germany.\textsuperscript{92} In the US (1836 law), foreigners had to exploit their patented invention within eighteen months.\textsuperscript{93} In Japan (1888), there was a local working requirement of three years.\textsuperscript{94} But the US law doesn’t permit compulsory licensing under any patent, no matter how vital the invention to public welfare.\textsuperscript{95} In the UK any one may apply for compulsory license under a patent on an invention relating to food or medicine without having to establish non-use.\textsuperscript{96} It is interesting that, Japanese follow a very exciting patent policy to foster their industry and economy.\textsuperscript{97} The Japanese has an eighteen month publication provision so that soon after filing, the new technology will be made available to industry.\textsuperscript{98} This publication permits industry to make slight modifications of the published invention to super invent, to come with improvements and generally to stimulate innovation by avoiding infringement. Deferred examination system and pre-grant oppositions increases this delay.\textsuperscript{99}

\begin{thebibliography}{99}
\bibitem{91} Ibid.
\bibitem{92} New York Times (June 9, 1877) “The New German Patent Law”.
\bibitem{93} Section 15 of the US Patent Act of 1836.
\bibitem{94} New York Times (June 9, 1877) “The New German Patent Law”.
\bibitem{95} The US Patent Law of 1836.
\end{thebibliography}
There was strapping inspirations behind this maneuvering of patent policy. For example while the goal of Japanese patent system is to teach their industry new inventions,\textsuperscript{100} in the US essential purpose of patent is to protect the patentee.\textsuperscript{101} At this nascent stage of development from an agrarian economy to an industrialized economy, the US solely directed their patent to stimulate invention in a competitive environment.\textsuperscript{102} Thus


\textsuperscript{101} Not only is the actual patent system designed to benefit industry at the expense of the patentee, but implementation of the system both within the industry and by the patent office further promotes such objectives. Patent examiners tend to interpret the claims in the narrowest sense. Aware that the grant of a claim will serve to prevent the competitors from practicing the claim, they have a tendency to narrowly limit the claims. Further the Japanese industry uses the patent system for defensive purposes. Idea behind filing patent application is not to gain broad protection for that innovation to stop others, but just to cover the species so they can to continue to practice the invention themselves. The majority of application filed by industry are not even examined but permitted o be abandoned after the seven year deferral period. Most of the applications are filed not show others what a particular company is doing so others can design around it without and avoid direct infringement while providing variations of their own. This effectively permits industries to use new innovations but have each develop a particular variation of its own. Thus the purpose of Japanese patent system is not to maintain exclusivity, but to each others what a particular industry is doing and encourage others to innovate. See for details Supra note: 87.

it is suggested that there are fundamental conceptual difference between these patent systems. Similarly compulsory licensing was incorporated into British Statute at a time when the severe agricultural depression through which England has been passing was at its height, and at a time too when British industry was suddenly beginning to realize that the gap which had opened between it and that of the continental countries was rapidly being narrowed. Demands for protection of the British industry against foreign competition were rising, against this background the act of 1883 might be regarded as protectionist measure.

Thus it is very obvious and perceptible that the patent system and its fundamentals were inherently and intrinsically linked with the erratic social, economic and cultural requirements of the time. Consequently the basic concepts of patent like rights and its appended obligations were twisted and curved to achieve the strategic policy requirements. Thus English patent was always a conditional monopoly; while in America “the patentee is within his domain czar”, and in Japan patents were for the industry. As a result the US remained doubtful towards implementing patent limitations and Japan for the sake of industry and the UK for the public interest made a fine tuning of limitations to patent rights.


103 Inventors and industrialists form abroad, particularly Germans had been taking out patents on inventions in Britain, but, instead of working their inventions there, they were using the patents to prevent manufacture in England, and thus preserving an export market.

3.2 Conclusion

Finally it should be accepted that patent policy is truly the kingdom of unintended consequences. And at every moment of these socio-economic and political catastrophes on patent policy, the limitations to patent rights played a very important role in casting the patents towards these challenges. It is also evident that countries enjoyed a substantial degree of flexibility in framing their patent policy to achieve their strategic needs. However it should also be kept in mind that colonies of the imperial powers like the UK and France lacked that discretion and were forced to be abide by the policy of their masters. Thus from the very beginning to the end of the nineteenth century patents remained a matter of absolute sovereign prudence. Similarly while the patent rights manifested some amount of uniformity in spite of socio-economic discrepancies, the limitations to patent rights remained the trump card in the hands of the sovereign and manifested discernible diversity among the countries in accordance with the varying public interest. It was also evident that, with the changing perceptions of public interest the domestic policy on limitations underwent changes both at the stage of adoption and execution.