

LITIGATORS CORNER: Wacky Patents: Only In America?



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NOTE: While this column predates the introduction of Patent Reform Bill, its message remains just as relevant today.

Many commentators on our patent system advocate creating or adopting new procedures. They frequently cite practices prevailing in European countries as a basis for these proposed changes. As one example, my August, 2004 article, *Post-Grant Oppositions: Building on Sand*, cited a paper by economists from a California university who assumed the value of copying a European post-opposition procedure without addressing whether or how such a procedure would be paid for in the United States, or whether it would even be necessary in an adequately-funded U.S. Patent Office. You may know the old joke about economists: if you laid all the economists in the world end to end, they still wouldn't reach a conclusion. Another refrain I hear from economists bothers me greatly: economists often don't like the patent system and, in the words of at

least one author and likely many others, view it as a "necessary evil."

Beware copying anything just because it's European. Uncritical acceptance of another country or continent's patent procedures and methods isn't necessarily the way to improve our own patent system. Europe has given us many wonderful things: our language, for example; also our literature and music. But Europe also gave us the religious persecutions and wars that caused many to emigrate; World War I and a harsh treaty that helped set the table for World War II; and fascism and communism, two scourges of the twentieth century. Europe also gave us the potato famine in Ireland and oppressive taxation. The Beatles' George Harrison wrote his song, "Taxman" about how "There's one for you, nineteen for me," and "If you take a walk, I'll tax your feet."

Some commentators bash the quality of patents obtained in the United States. They point to silly patents, or to patents in areas they believe should not be patentable. The economists I referred to cite a boom in "business method" patents in the late '90s, naming the *State Street* decision as the cause. But there is another cause, far more potent in my view. In the late nineties, the economy boomed, and the most prominent part of that bubble was a wave of new businesses taking advantage of the Internet. Priceline.com, eBay and Amazon.com were just some of the new Internet businesses; there were thousands more. This burst of activity is much more responsible, in my view, for the increase in so-called business method patents. The bubble burst with the recession beginning in late 2000 or early 2001. Many of those businesses vanished. Economists should look at all causes in their investigations, and not just echo the refrain about *State Street*. Relying so heavily on *State Street* as the cause makes me wonder if some made up their minds before they began investigating.

I got curious about whether other patent systems produce the same kinds of frivolous or wacky patents we see in the U.S. I decided to look at some American and European patents, as well as some applications, in the case of the latter, to see if the systems differ in the nature of some of the goofier patents they allow. We all know that there are plenty of oddball American patents. There is the parakeet diaper patent (the "Sanitary Appliance for Birds"),

No. 2,882,858; the peanut butter and jelly sandwich, also known as the "Sealed Crustless Sandwich," No. 6,004,596; "Religious Soap," No. 3,936,384; the "Device for Weighing Individuals on a Toilet Seat," No. 4,697,656, from a French inventor (who, by the way, also obtained a patent in France for it); the "Diaper for Incontinent Dogs," No. 5,234,421; the "Combination Condom Warming and Radio Apparatus," No. 5,310,084; and the "Toilet Training Device," No. 5,560,051, whose inventor is named Butts.

Most readers probably know the story of grave signaling devices. In the 19th century, people were frightened of being mistakenly buried alive. They were afraid a doctor might erroneously pronounce a person dead and that burial would therefore be premature: a live person would be six feet under. Those of you who are Irish may recall the last verse of the song about Tim Finnegan's wake:

Mickey Maloney ducked his head
when a bucket of whiskey flew at him
It missed, and falling on the bed,
the liquor scattered over Tim
Now the spirits new life gave the
corpse, my joy!
Tim jumped like a Trojan from the
bed
Cryin will ye walup each girl and boy,
t'underin' Jaysus, do ye think I'm
dead?

To combat this problem, inventors got to work. Franz Vester of Newark, New Jersey was just one of these inventors. His 1868 patent, No. 81,437, is for an "Improved Burial Case." A vertical tube was attached to the coffin near one end. The tube contained a ladder, and a rope connected to a bell at the top. The patent says the purpose of these devices is:

should a person be interred ere life
is extinct, he can, on recovery to con-
sciousness, ascend from the grave and
the coffin by the ladder; or, if not able
to ascend by said ladder, ring the bell,
thereby giving an alarm, and thus save
himself from premature burial and
death

There were so many of these patents that they actually got their own class 27 (undertaking) and subclass 31 (signaling devices).

One would think we'd have gotten over this fear. But not in Europe and, more particularly, in France. Fernand Gauchard got a French patent, FR2468358, on a "Coffin Alarm System." His system "will give the alarm if someone is buried alive." But his patent wasn't applied for in the 19th century. Gauchard applied in 1979, over one hundred years later. As you can see, Europe has its share of wacky patents, too.

Sometimes, we hear of a US patent that seems so absurd that we think no one but an American could come up with it. For instance, there is Julie Newmar's 1975 patent, No. 3,914,799, "Pantyhose with Shaping Band for Cheeky Derriere Relief." The patent says:

An elastic shaping band is attached to the rear panty portion and is connected from the vicinity of the crotch to the vicinity of the waist band and fits between the wearer's buttocks to delineate the wearer's derriere in cheeky relief.

But, the rest of the world is right there with us on this high technology, too. A patent in China (CN1233942) to a Japanese inventor says:

The clothes for molding a beautiful and neat buttock figure eliminate generation of wrinkles in the vicinity of the back center of buttocks, permit a valley between two buttock bulges to appear neat, can represent beautiful roundness of buttocks and prevent a buttock joint from being reflected at an outer wear.

Or you could check out a British patent, GB2301524, by Edouar DeBerger. His patent is for a "Contoured Ulterior Pouch." He begins:

From time immemorial an integral element of the male psyche has been his awareness of the presence or absence of pronounced manly form in his loins.

I am not making this up.

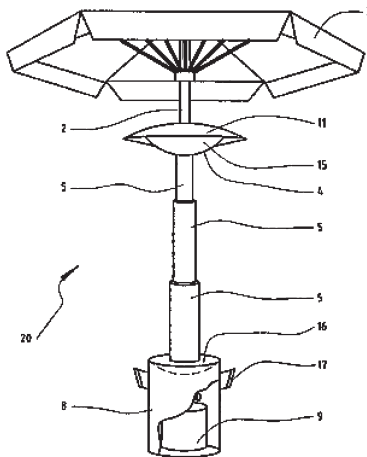
I have some other favorite European inventions, too — all of which were granted patents. There is the "Retractable Medical Lavatory Seat," FR2739014, which states: "The lavatory seat laterally retracts the buttocks,"

And then there is the "Spider Ladder Provided With Means for Attachment to an Item of Sanitary Ware," GB2272154:

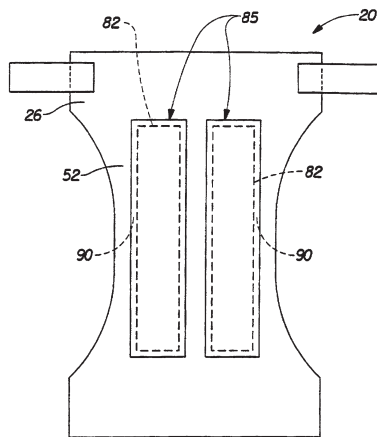
A spider ladder comprises a thin flexible latex rubber strip (1) and a suction pad (5), the strip is designed to follow the inner contours of a bath. Suction pad (5) enables the strip to be positioned on or near the top edge of a bath. In use the suction pad is positioned on or near the top edge of a bath and the strip is allowed to fall under gravity down the inner contours of a bath. Trapped spiders searching for an escape route will scale the spider ladder by means of (2) and (3) the inner and outer steps respectively.

Another great favorite of mine is the Parosol with Heating Device, WO0224019 and EP1320307:

Parosol (10) comprising a column (2) which is provided with a base (8) and has attached thereto a collapsible canopy (3), provided with a heating device (4) mounted on the column (2), wherein the heating device (4) is displaceable along the column (2) between a lowest position in state of rest, wherein the canopy (3) is collapsed, and a highest position in operating state, wherein the canopy (3) is opened out.



I would hate to omit another personal European favorite: "A Diaper Having Perfume Zones," WO9825562 and EP0957869, which says:



The present invention relates to an absorbent article and preferably a diaper or incontinent device having perfume zones disposed on the backsheet outer surface or on a backing member attached to the backsheet outer surface. The perfume zones generally comprise a binder having release agents of one or more types dispersed therethrough. Additionally, the perfume zones contain pull-strips attached to the binder which, when detached from the binder,

will cause perfume to be released from the release agents either by shearing of the agents or diffusion as a result of uncovering the binder. The perfume provides the functions of either masking and/or absorbing malodors and are released via fragrance burst, and/or diffusion over time. Furthermore, perfume is released either at attachment of the article about a wearer, at removal of the article from about a wearer and/or during sustained wear of the article about a wearer.

This one, you'll be pleased to know, also has a US patent (No. 5,769,833).

There are some more European applications, which have not been issued patents yet, probably because they are recent applications. Check out a PCT application (WO2004/000192 A1), from an English inventor for a funeral hearse which is a motorcycle sidecar. Or see the "Coffin Device With Cooling Function," WO2004/052264 A1, where the deceased is cooled by a reduced amount of dry ice, thus benefiting the "global environment." This one reminds me of Gordon MacCrae's song in *Oklahoma* about the villain, Judd Fry, played by Rod Steiger. MacCrae sings about Judd's funeral: "It's summer and we're runnin' outta ice." Last, there's a published application from a Canadian inventor for melting the remains of the deceased, allowing the "molten mass" to "cool to form a solid glossy product," WO2004/066898 A1. So, you can fashion the deceased into a soap dish!

I conclude that there is significant evidence that the patent systems of other countries produce the same wacky patents our system does. Every patent system misfires from time to time. On my rather unscientific test, I conclude that the patent systems of other countries are not so superior, as some of our commentators assume. There's no reason we cannot study other patent systems. But we should do so with a more skeptical eye. It isn't perfect just because it's European. **IP**

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