

Patents and Exhibitions

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In this article I suggest that a forgotten value of the patent law system is freedom of expression. Vestiges can be found in the law's allowance for exhibition of unpatented inventions under provisions whose history can be traced back to the great exhibitions of the nineteenth century. The provisions' initial purpose may have been to preserve an inventor's ability to patent an invention at a time when exhibition was the dominant norm and patenting relatively limited. But, for various reasons to be explored in the article, patenting has now emerged as the dominant norm. When it comes to reform of patent law, if anything, I argue, the law could expand the freedom to exhibit. There may be some net benefits to be obtained in terms of supporting and driving innovation. However, the benefit most especially associated with exhibitions lies in the collective enjoyment of the spectacle—as flourished in the medieval markets and fairs long before the patent system emerged as a mechanism to permit and regulate monopolies, found a measure of official support in the nineteenth- and twentieth-century museums, galleries and exhibitions, and is now being rediscovered again in certain newer forms of public display of the twenty-first century.

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A Legislative History

Patents legislation commonly provides that exhibition of an invention at an official or officially recognized international exhibition does not invalidate a subsequent patent application. Such exhibitions serve “to educate the public about the wonders of human progress”, as said in article 1 of the Convention Relating to International Exhibitions 1928 (the International Exhibitions Convention). They have the imprimatur of two international conventions: the International Exhibitions Convention, which establishes rules for recognizing and conducting official state exhibitions and the Paris Convention for the Protection of Industrial Property 1883 (the Paris Convention), which states in article II that countries of the Union shall “grant temporary protection to patentable inventions . . . exhibited at official or officially recognized international exhibitions”. However, their genesis precedes the international conventions. It is in the British and Commonwealth legislation that some of the most interesting examples can be found.

The Provisions

An early example of a modern exhibitions provision is section 39 of the Patents, Designs and Trade Marks Act (46 and 47 Vict. C. 57) 1883 where it was stated that:

39 The exhibition of an invention at an industrial or international exhibition, certified as such by the Board of Trade, or the publication