The CAR COLLECTOR & Car Classics

Patently Unfair

BY LAWRENCE SAVELL

The term "patent" is familiar to most people as a grant by the government to an individual or company, giving him, her, or it the exclusive right to make and sell a new invention. However, not every "creation" is patentable. Generally speaking, to be patentable, a device must embody some new idea or principle not before known.

Patents, once awarded, can be challenged in court. One of the most famous patent law cases involved one man's temporarily successful effort to patent a device of particular interest to readers of this magazine: the automobile.

George B. Selden was, conveniently, a patent attorney. When he viewed a stationary gasoline engine at an exposition in 1876, it occurred to him to incorporate such a mechanism into a wheeled vehicle.

Selden submitted a patent application for a device to do just that in 1879. However, rather than having the patent issued promptly, Selden kept the application process going for over 16 years by filing additions or changes which resulted in a series of postponements. (Some have attributed this delay to Selden's legal shrewdness, speculating that he was biding his time until the progress of others' automotive efforts increased the value of his nascent patent. Others have pointed to Selden's recurrent difficulty securing financing.)

Regardless of the true motivation, the result was that in 1895, by which point the development of the automobile by others had progressed significantly, George Selden, who had himself never actually built a vehicle, was granted patent No. 549,160 for a gasoline-powered "road locomotive." The Selden patent gave its owner, in effect, a complete monopoly on the burgeoning automotive industry. (Having a life of 17 years from the date of issue, the patent would be good until late 1912.)

For some reason, Selden did not attempt to collect patent royalties from automobile manufacturers for a few years. Eventually, however, he sold his patent to the Association of Licensed Automobile Manufacturers, comprised of the majority of the industry at the time. The A.L.A.M. agreed to pay Selden a royalty of 1.25 percent of the retail value of every car sold. The Association apparently planned to use the patent to force all automotive manufacturers to join the organization or else withdraw from the marketplace.

And all the manufacturers did join. All, that is, except one. His name was Henry Ford.

Ford refused to honor the Selden patent. Selden and various manufacturers (acting on behalf of the A.L.A.M.) responded by suing Ford for infringement of the patent.

On September 19, 1909, the United States Circuit Court for the Southern District of New York issued a ruling upholding the Selden patent. It essentially required Ford to pay royalties for every car his company had ever produced. Ford, not one to take such adverse news lightly, appealed.

The A.L.A.M. undertook an aggressive advertising campaign which, in effect, threatened potential Ford buyers with legal action if they bought a Ford vehicle. Ford responded by posting a bond covering any payments Ford customers might be required to make were the Selden patent ultimately upheld.

The winding road of the Selden patent finally came to an end on January 9, 1911, when the United States Court of Appeals for the Second Circuit reversed the lower court.

The Court of Appeals noted that the Selden patent basically covered a combination of three elements: the carriage, the drive mechanism, and the engine. It observed that the first two elements were "old" and that the patent offered no "novelty" concerning them. The court further noted that the engine, described in the patent as a "liquid hydrocarbon gas engine of the compression type" was also old. Indeed, at the time of the application, two distinct forms of such engine were in extensive use: (1) the Brayton or constant pressure engine with slow combustion and constant flame ignition, operating without explosion; and (2) the Otto or constant volume explosion engine.

The court upheld the Selden patent as incorporating as a novel element an improved liquid hydrocarbon engine of the Brayton type. The patent's improvements and adaptations, resulting in a decrease in weight and bulk in proportion to the power produced and an increase in speed, constituted invention. Selden won the battle but lost the war, however, as the court further ruled that his patent was not infringed by the "modern" gasoline automobile in which the engine was of the Otto constant volume or explosion type with electric ignition. As the court concluded, Selden, "like many another inventor, while he had a conception of the object to be accomplished, he went in the wrong direction. The Brayton engine was the leading engine at the time, and his attention was naturally drawn to its supposed advantages. He chose that type. In the light of events we can see that had he appreciated the superiority of the Otto engine and adapted that type for his combination his patent would cover the modern automobile. He did not do so. He made the wrong choice, and we cannot, by placing any forced construction upon the patent . . . make another choice for him at the expense of these defendants who neither legally nor morally owe him anything."

Thanks to the determination of Henry Ford, the Selden patent monopoly was finally banished to the junkyard.

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