

A PROPER INTERPRETATION THE VENETIAN PATENT ACT OF 1474

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ABSTRACT

Scholars have widely and consistently contended that the Venetian Republic adopted the first “formal” patent system in its Patent Act of 1474. Based upon an extensive examination of archival material from the State Archives of Venice, we conclusively show that this view is incorrect. Rather, the expansive and highly sophisticated Venetian patent system documented by previous scholars was wholly based upon “customary” law—a form of executive and legislative branch common law—which required a direct grant by the Doge’s Council or, much more commonly, a separate legislative act for each patent by the vote of the Senate. The first documentary evidence of a patent granted for a specific technological invention (and conferring exclusionary rights) under this customary system is in 1416, making it the earliest known patent of its kind in the world.

In contrast to these Senate-based grants, the Patent Act of 1474 conferred authority on a specific Executive Branch administrative department, the *Provveditori di Comun*, to grant short-term (10-year) “statutory” patents without Senatorial approval, while maintaining the Senate’s inherent authority to grant patents under the same customary law protocol it had used before the Act. In essence, the Patent Act of 1474 established a petty patent system with a quick examination process, while retaining a lengthier customary patent process for longer-term patents that typically commanded harsher penalties for infringement.

Because of the difficulties in locating these statutory patents and related examination documents, no single legal scholar has identified, much yet discussed, these patents. This failure has led scholars to misread the 1474 Act as somehow “formalizing” or “confirming” via statute the previous system of so-called “ad hoc” grants by the Senate and Doge’s Council, thereby cementing a system of administrative review of patent applications. In this manner, scholars have found the Act to be a watershed in the historical development of patent systems worldwide. Our archival evidence decisively shows that the Patent Act of 1474 was not the beginnings of the first “formal” patent system. The Senate-based system was founded upon customary law from the start in 1416 and rested upon the same foundation until its end in 1796. The 1474 Act simply erected a parallel “statutory” petty patent system. Nor did the Act somehow incorporate administrative review into the customary system—the *Provveditori di Comun* was involved in reviewing customary patent applications before 1474.

On the other hand, the statutory system erected under the 1474 Act may have served as a template for administrative-centered patent systems in other countries, such as England and the Netherlands, as the Venetian practices migrated via Venetian inventors throughout Europe. In this sense, the Act may potentially be viewed as setting forth the foundations of the modern, administrative patent system.

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