

Jefferson vs. The Patent Trolls: A Populist Vision of Intellectual Property Rights

By Jeffrey H. Matsuura

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In today's world there is a great emphasis placed on inventions and creative works. Intellectual property law rights work to protect an individual's intellectual and societal advancements. Furthermore, intellectual property law works to protect the economic value inherent in the creation and advancement of products; the economic potential in intellectual property cannot be overlooked. However, existent within intellectual property is the creative human effort to produce new products. There is a natural tension between protecting an individual's intellectual property rights and bettering society as whole by allowing access to the creative human effort required to produce new products. In Jefferson v. the Patent Trolls: A Populist Vision of Intellectual Rights, Jeffrey H. Matsuura¹ reflects on intellectual property rights during the birth of the United States, giving particular attention to how Thomas Jefferson worked to balance protecting traditional intellectual property rights with furthering and advancing society as a whole. Matsuura uses this historical perspective to address the manner in which today's society needs pursue this delicate balance.

Matsuura begins his discussion by revealing the pressing intellectual property issues existent in today's world and comparing them to the issues prevalent during Jefferson's time. Matsuura notes that, today, individuals, businesses, research institutions, and governments are

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primarily concerned with the economic value in intellectual property rights.² Matsuura notes that the growing commercial and economic value of intellectual property leads to a fundamental conflict between the rights of owners of the intellectual property against the rights of users of the said property.³ During Jefferson's era, an era spurred on by the age of the Enlightenment, the primary issue, as is prevalent today, was the balance between intellectual property control and promoting the access necessary to encourage and continue creativity and innovation.⁴

“Property is the legal principle of private exclusion from the public domain.”⁵ Matsuura discusses the issue of whether or not the public domain is unreasonably limited in the next portion of the book. The term public domain refers to works and material that is not eligible for intellectual property law protection, including material once protected by intellectual property law and either the trademark or copyright protection has expired.⁶ A corollary to the public domain is the general welfare. “The general welfare embraces an orientation of the legal systems toward the interests of broader society.”⁷ Jefferson relied heavily on the public domain as a source of information from which innovation and advancement could take place.⁸ A general concern of intellectual property law, today, is limiting access to public domain content, in turn, serving as an obstacle to innovation and societal advancement as a whole.

Noting the need to delicately balance protection of intellectual property rights and the advancement of society as a whole, Matsuura moves forward to discuss Jefferson and his importance as a scientist and inventor. The importance of science during the time of Jefferson can not be underestimated. According to Matsuura, during the early 1800's, science was not a

² Jeffrey H. Matsuura, *Jefferson vs. The Patent Trolls: A Populist Vision of Intellectual Property Rights* 11 (2008).

³ *Id.*

⁴ *Id.* at 12.

⁵ O. Lee Reed and E. Clayton Hipp, A “Commonest” Manifesto: Property and the General Welfare, 46 Am. Bus. L.J. 103, 108 (2009).

⁶ See Matsuura, *supra* note 2, at 33.

⁷ Reed and Hipp, *supra* note 5, at 110.

⁸ See Matsuura, *supra* note 2, at 35.

luxury, rather it was an aspect of day to day life.⁹ As an inventor, Jefferson worked extensively on the field plow moldboard design. More importantly, Matsuura notes that Jefferson did not patent any of his innovative advancement on the plow, but rather wanted to make his work widely accessible for the benefit of society.¹⁰

Further proof of Jefferson and his desire to promote societal advancement was Jefferson's formal role in patent approval and enforcement. In present day, Matsuura notes the work of patent "trolls." "A 'troll' is pejorative term describing a non-manufacturing patent owner who owns one or more patents and asserts the patent(s) against alleged infringers, with a desire typically to obtain settlement rather than actually trying any lawsuit."¹¹ Even as early as the days of Jefferson, there were inventors who were using patents for a commercial purpose. Matsuura notes that Jefferson viewed the use of patents as a commercial enterprise as a misuse of the purpose of patents.¹² Jefferson believed that patent infringement should be enforced as narrowly as possible in order to promote the use, innovation, and advancement of technology and science in everyday life and, in particular, to advance society in a young and developing country.¹³

Matsuura presents a unique view of the pressing issues in modern intellectual property law: the delicate balance between property rights and opening intellectual property for the advance of society as a whole.¹⁴ Pressing issues existent in present day were also existent during Jefferson's time and the birth of patent law. Matsuura notes how Jefferson, while aware of intellectual property rights, urged limited intellectual property protection in order for

⁹ See Matsuura, *supra* note 2, at 59.

¹⁰ See Matsuura, *supra* note 2, at 67.

¹¹ Donald W. Rupert, *Trolling for Dollars: A New Threat to Patent Owners*, 21 No. 3 *Intell. Prop. & Tech. L.J.* 1, 3 (2009).

¹² See Matsuura, *supra* note 2, at 102.

¹³ See Matsuura, *supra* note 2, at 107.

¹⁴ See generally Rupert *supra* note 11 (noting issues with patent commercialization and issues with patent "trolling").

technology, science, and society as a whole to advance in a young and developing country. In present day, intellectual property rights need to be properly balanced in order to promote private property rights, but at the same time mindful of the promotion of the general welfare.¹⁵

Overall, Matsuura does an excellent job of highlighting present day issues through the historical lens of one of our nations Founding Fathers whom was on the frontier of science and innovation. Matsuura does not present an in depth analysis on patent law principles nor on patent law theories, but rather, he presents an historical comparison of two eras. Therefore, a background in patent law is not needed to read and enjoy this book. An intellectual law practitioner, law student, or any individual who is interested in a concise historical approach to intellectual property and patent law issues will find this book very interesting, as well an easy read.

¹⁵ See generally Reed and Hipp *supra* note 5 (outlining the delicate balance between private property rights and the advancement of the general welfare).