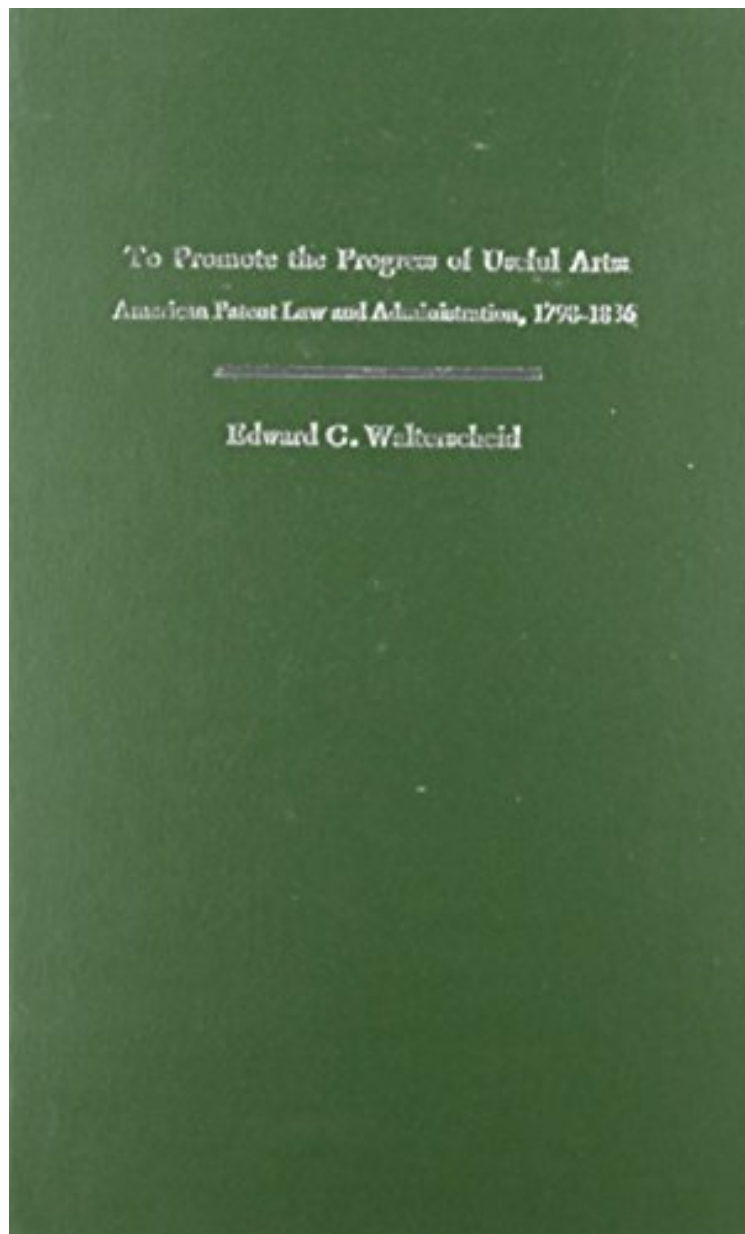



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To Promote the Progress of Useful Arts: American Patent Law and Administration, 1787-1836

Edward C. Walterscheid

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Edward C. Walterscheid : To Promote the Progress of Useful Arts: American Patent Law and Administration, 1787-1836 before purchasing it in order to gauge whether or not it would be worth my time, and all praised To

Promote the Progress of Useful Arts: American Patent Law and Administration, 1787-1836:

0 of 0 people found the following review helpful. If you're interested in IP, especially how it has developed, this should be the first book you read. By Customer When you read this book you will see plainly what scholarship is. The amount of research it took to write this would take me multiple lifetimes. 6 of 6 people found the following review helpful. A quick read. Solid writing. By Tom Brody I own both of Mr. Walterscheid's books, the one under review, which concerns U.S. patent law from 1798-1836, and the other, which concerns U.S. patent law at an earlier time. The correct title of the book is as follows. "To Promote the Progress of Useful Arts: American Patent Law and Administration. 1798-1836." The chapters are as follows: 1. Introduction. 2. To Promote the Progress of Science and the Useful Arts. 3. Early comment and interpretation. 4. The first patent Bill. 5. Creating the Patent Act of 1790. 6. Coming to grips with a national patent system. 7. Enacting the Patent Act of 1793. 8. Comparative law at the end of the eighteenth century. 9. Patenting and administrative practice under the Act of 1793. 10. Administrative practice-the secrecy issue. 11. Perspectives, public and private. 12. Congressional action and inaction. 13. Judicial process. 14. Novelty. 15. The role of the specification. 16. New beginnings. The Patent Act of 1836. There are also fifteen Appendices, which reproduce various patent Bills, and patent Acts. The writing in the book is solid. There are no mannerisms in the writing. The writing flows nicely, and there are few or no gaps in the flow of the commentary. The book is 516 pages long. The book does not require any background in U.S. history. The citations are generous and easy to find (they are right at the bottom of each page, and do not require flipping to the end of the chapter.) The cover of the book is rock-solid, it is not a flimsy cover. The book discloses attempts to formulate U.S. patent laws and policies, using elements of the English patent system. One difference between early U.S. patent law and English patent law, was that patents in the U.S. were issued as a right, and merely required satisfying the procedural aspects of patent law and policy, but in England, patents were issued "on the exercise of the royal prerogative . . . at the discretion of the sovereign." (page 239) The book discloses the era of patent registration, where no examination on the merits was required (1793-1836), and that a basis for having no examination was merely for the U.S. government to save money (pages 222, 223, 235, 253). However, the book reveals that on occasion, a U.S. patent application was actually examined on the merits, and then refused for lack of novelty, e.g., the refusal of an application of Robert Fulton "on the grounds that all he was proposing was a change in the proportions . . .," where the refusal was imposed by Thomas Jones, the Superintendent of Patents (page 260). The book discloses that an early difference between U.S. and English patent law, was that the U.S. system was a first to invent system, while the English system used a first to file system (page 240). Topics include the use of "premiums," which were bounties of money, used in Scotland instead of patents (p. 150). The book tells about Alexander Hamilton's dislike of premiums, and preference for patents (p. 153-154). The book discloses the defense of invalidity, which was used in some early litigations in the U.S., e.g., *Evans v. Chambers*, an 1807 opinion concerning U.S. Pat. No. 4,555, a patent to a "hopperboy." (pages 159-163). The book reveals "patents on importation" (page 236, 303, 319-321), and commentary on this type of patents, in a quotation from *Whitney v. Emmett* (CCED Pa 1831). A "patent of importation" is a U.S. patent, where the "inventor" actually was merely the first to bring to the United States a foreign discovery. The book reviews the possibility of renewing patents or extending patent term. For example, in 1811 a group called the Massachusetts Association for the Encouragement of Useful Inventions petitioned the U.S. Congress to seek the right to renew U.S. patents (pages 309-313). We learn that *Morris v. Huntington* (CCDNY 1824) provided judicial sanction to Reissue patents (page 267), that *Grant v. Raymond* 31 U.S. 241 (1832) also provided judicial sanction to Reissue patents, and that the Patent Act of 1832 made Reissue patents official. We learn that, before the creation of the Patent Office, a patent Board met from time to time (the last Saturday in each month) to evaluate patents. The Board included Thomas Jefferson and Henry Knox, with Henry Remson, a clerk in charge of administering details regarding the issuance of patents. We learn that James Madison created the Patent Office, and that William Thornton was the first Superintendent of Patents (page 253). William Thornton was Superintendent from 1802-1828, and before that, he was a member of the American Philosophical Society who'd written a treatise on language, and had served on the board of commissioner of Washington, D.C. In a pamphlet written in 1811, Thornton required that the patent contain drawings if the invention was a machine, a model if the invention was a complex machine, and a sample if the invention was a composition of matter (this is a lot like the present day biological deposit) (page 255). The second Superintendent was Thomas P. Jones, who was formerly editor of *Journal of the Franklin Institute*. Jones was Superintendent of Patents for only one year (1828-1829) (page 19, 278, 325). In 1828, Jones wrote a pamphlet stating that the specification may refer to drawings, requiring that no part of the invention may be omitted (this is like present day *In re Mayhew*), and requiring the best mode (page 258). The third Superintendent was John D. Craig, who was superintendent from 1829-1834 (page 263). According to another source, John D. Craig's previous position was as master of an academy in McClellan's Alley in Baltimore (Kenneth W. Dobyns (1994) *The Patent Office Pony: A History of the Early Patent Office*, published by Sergeant Kirklands Museum). Craig discontinued the requirement for models (page 263). The concepts set forth in this book, for example, of extending patent term, interferences, first to file versus first to invent, and foreign "prior art," continue to be issues in present-day patent law. FIVE STARS. It might also be noted that there are dozens of references to Justice Joseph

Story. The book discloses that he was one of the architects of early U.S. patent law. Every law student, of course, remembers Justice Story's opinion for *Swift v. Tyson* (1842), a case regarding choice of law which was the prevailing doctrine for about a century, until it was overturned by *Erie Railroad v. Tompkins* (1938). According to Mr. Walterscheid, Justice Story provided an origin for the Doctrine of Equivalents where, in *Evans v. Eaton* 20 U.S. (7 Wheat) 356 (1822), he wrote, "If they were the same in principle, and only differed in form and proportion . . ."

This book is an historical treatment covering the first 50 years of the development of the United States patent law and its associated patent system and setting forth the background against which the modern patent examination system came into being in 1836.