ABRAHAM LINCOLN

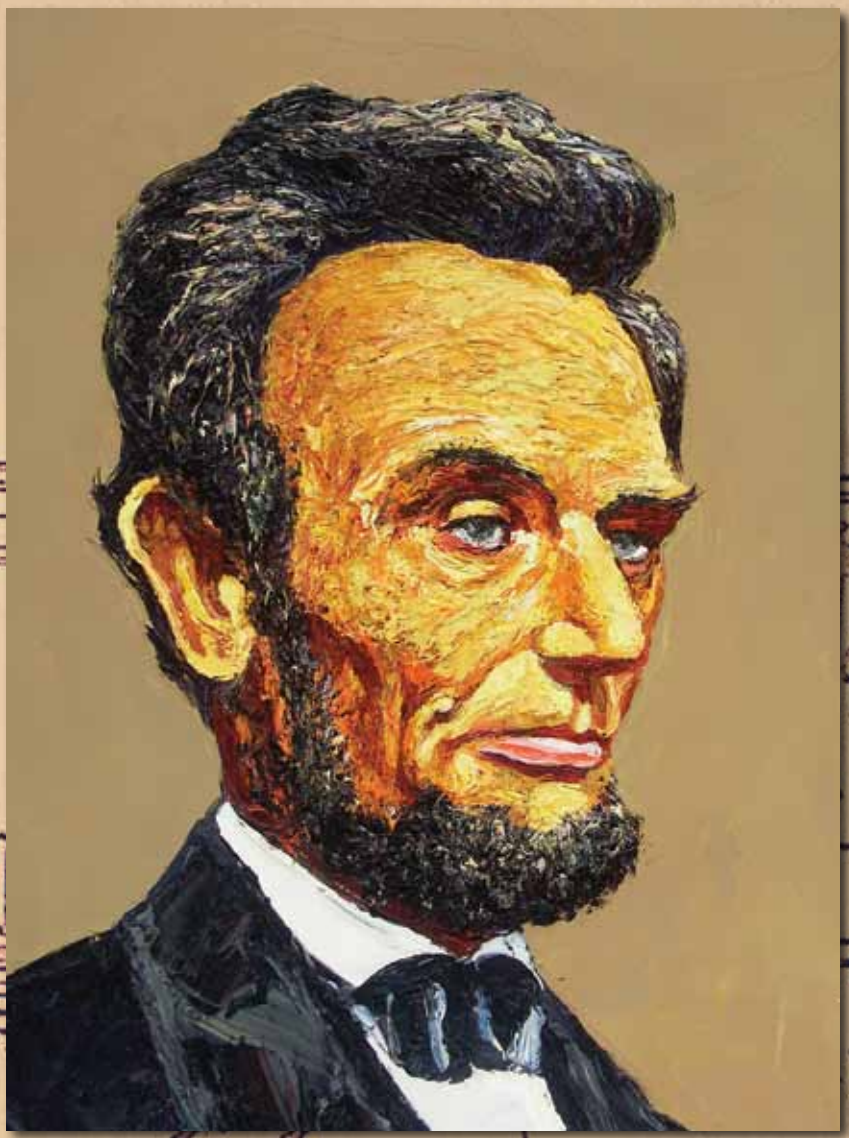
MANNER OF BOUYING VESSELS

No. 6,469

Patented May 22, 1849

# Patently Lincoln

M. Kelly Tillery



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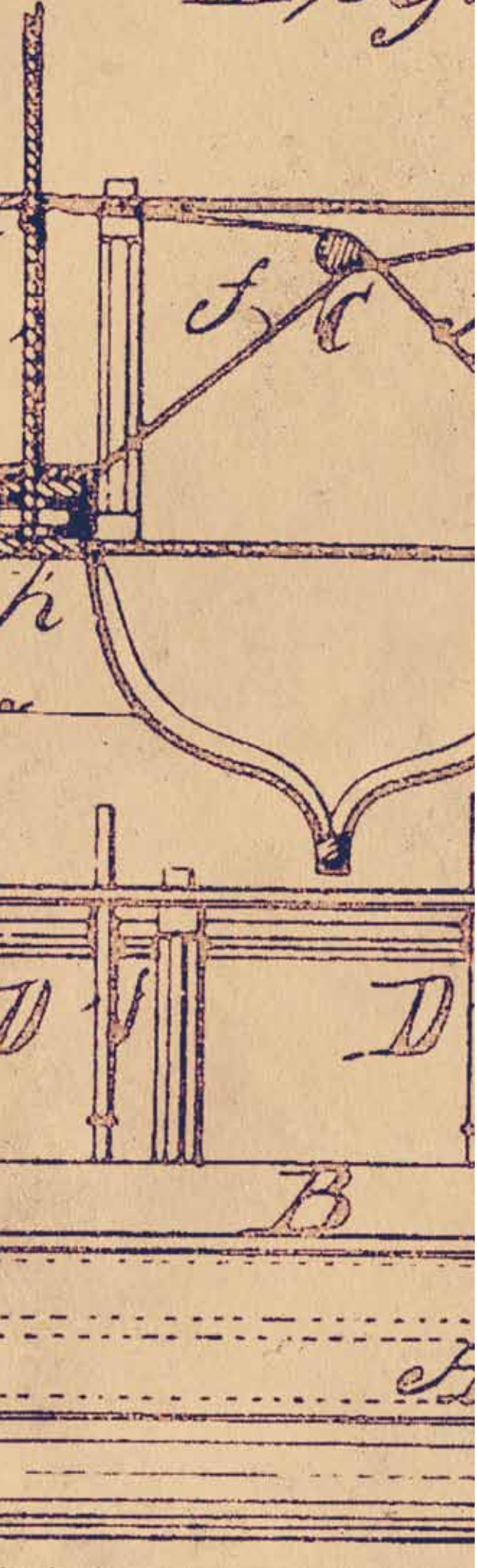



Some may know that Abraham Lincoln is the only president to apply for and be granted a U.S. Patent (No. 6,469 – "A Device For Bouying Vessels Over Shoals"), but few are aware that he was also an active patent litigator and a strong supporter of the patent laws and of inventors. Lincoln believed that America was built on discovery and innovation, and this unique characteristic would be the light that would let this nation lead the world. For Lincoln, the limited monopoly provided by the patent laws added "the *fuel* of interest to the *fire* of genius."

From an early age, Lincoln began to appreciate the value of labor-saving devices and the freedom they afforded for more cerebral pleasures. A man with no fondness for manual labor, Lincoln had a great interest in any invention that could enhance "the pursuit of happiness," further develop the Union, and later, help save it.

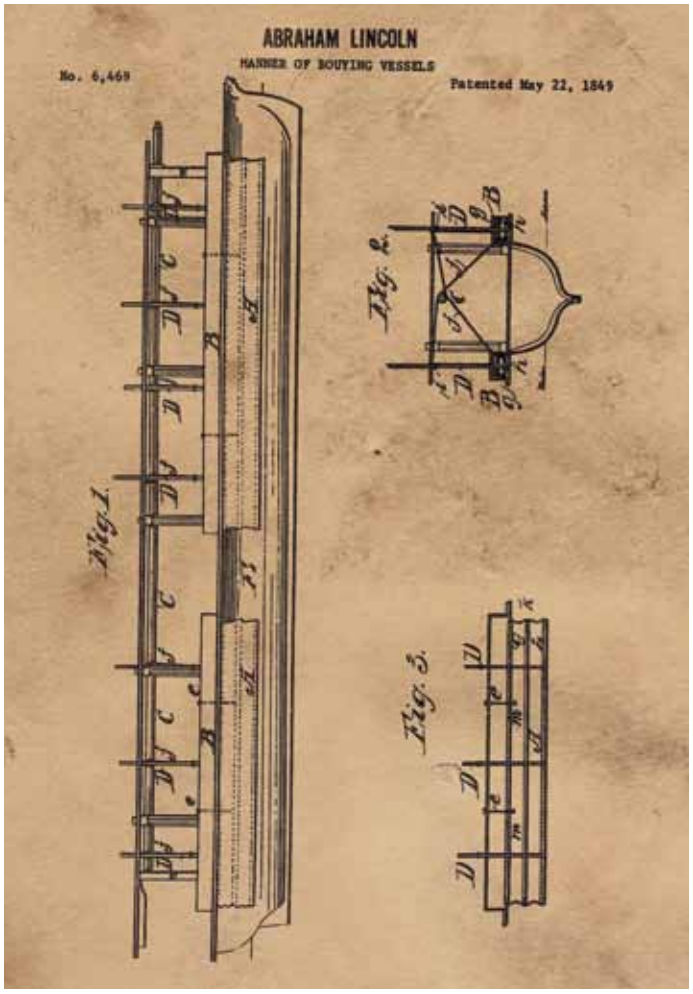
In an era when almost every able adult, and most children, labored from dawn to dusk, six days a week just to survive, new labor and time-saving devices were in substantial demand. Lincoln was admitted to the Illinois Bar in 1837, only a year after the U.S. Patent Office was created. Only 436 patents were granted in that first year, but that number more than doubled to 993 by 1850, and quintupled to 4,778 by the time of Lincoln's election in 1860. In 2011, the number topped 247,000.

Lincoln's first visit to the Patent Office was while serving his first and only term in Congress, on April 10, 1848, on behalf of a constituent and potential client, Jesse Lynch, of Magnolia, Ill. He went to investigate the status of a patent application filed by another in which Lynch had some interest. Lincoln discovered that "no patent has [been] issued to anybody on any application made as late as the first of July last." Apparently, the glacial pace of the patent application process had set in even as early as 1847. Today, there is a backlog of 600,000 applications and the average pendency for an application is 32 months.

Though he revered the patent laws, as with the writ of *habeas corpus,* Lincoln refused to permit those, or any, laws to interfere with efforts to end the war and preserve the Union. On Jan. 13, 1864, Lincoln ordered the testing of a new projectile invented by John Absterdam (Patent No. 41,688). When his Chief of Ordnance, Brigadier Gen. George P. Ramsey, expressed reluctance to purchase the new weapon because of a patent dispute, Lincoln brushed aside such concern, "I think the Absterdam

projectile is too good a thing to be lost to the service… I am for the government having the best articles, in spite of patent controversies."

While Lincoln respected the orderly process of government, he was always prepared to use the weight of his office to expedite any such process in order to aid the cause. On April 24, 1862, he wrote to Commissioner of Patents David P. Holloway on behalf of an inventor, requesting an early examination of William P. Goodwin's application filed just the day before for an "Improvement in Breech-loading Ordnance." Lincoln's thumb on the scale apparently made a difference. Goodwin was issued a patent 14 days later (No. 35,311).




In almost 25 years of practicing law (1837-1861), Lincoln handled, on the average, one patent case per year, but all in the last 10 or so years of his practice. Having less than one year of formal education, autodidact Lincoln was neither a patent agent nor registered as a lawyer with the U.S. Patent Office, and he never filed a patent application. But, even without technical training or expertise, he was a master of digesting almost any technical information, and making same understandable to the equally untrained minds of prairie judges and juries. That was, in large part, his genius. He was, as his peers called him, a "case lawyer." As it is today, the most persuasive litigators are those who, like Lincoln, are able to explain the most complex in simple, clear terms, without condescension.

Lincoln and his partners handed more than 5,100 litigation matters, 340 of which were in federal courts, and 22 of which were patent cases. Though a small number in gross and an even smaller percentage of either all his litigation cases or even his federal cases, this was actually an astounding number for a country lawyer from Springfield, Ill. at that time, or indeed, at anytime to this day.

Nine of his patent cases included claims of infringement, three were partnership disputes in which patent rights were important assets in play, nine involved disputes between parties to agreements for sale or license of patent rights and the facts of the last are lost to history.

Lincoln's most famous patent case was neither his first, nor really his case at all. It was for him, the "grim," or at least, the "humiliating," "Reaper Case."

Philadelphia Lawyer George F. Harding, one of, if not the top patent lawyer in the nation in Lincoln's era, successfully led the defense of J.H. Manny & Company against Cyrus H. McCormick's claims of patent infringement in the famous "Reaper Case" (*McCormick v. Manny*, 6 McLean 539, 15 F. Cas. 1314 (1856)). Harding, through his co-counsel, Peter H. Watson of Washington, D.C., initially retained Lincoln to serve as Manny's local counsel and to give the closing as the case was then venued in Chicago. When the case was adjourned to Cincinnati, Harding and his other co-counsel, rising young Pittsburgh attorney, and later Lincoln's second Secretary of War, Edwin M. Stanton, then ignored and humiliated Lincoln, whom they viewed as a country bumpkin.

McCormick, angry at those whom he believed were stealing his intellectual property, hired a legal "Dream Team" of the day – former U.S. Attorney General Reverdy Johnson of Baltimore and New York's Edward N. Dickensen, both already legendary patent litigators. Lincoln might not have felt so "depressed," "humiliated" and "mortified" by the treatment he received by the lawyers on whose side he thought he was on, if he had not spent so much time preparing to do battle with the renowned lawyer from Baltimore.

Although the Manny interests favored having Lincoln participate, when Stanton reportedly threatened to quit "if that giraffe appears in the case," they relented and Lincoln was told he would not be needed. Although that quote may be apocryphal, the sentiment and result are not. Even after being dismissed, Lincoln, through Watson, sent Harding the carefully prepared, detailed argument he had worked on so

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diligently. Coldly, Harding returned it, unopened and unread.

Watson had given Lincoln a $400 retainer at their initial meeting and later sent him a check for $600 more after the trial. Lincoln returned the check, but Watson sent it back, insisting Lincoln keep it, and this time, he did. After all, Lincoln had spent a great deal of time on the case, Manny won and even if Harding and Stanton did not, Watson, at least, felt somewhat guilty about the way Lincoln had been treated.

Lincoln learned a great deal in this painful experience, but he told a friend that he was most impressed with the legal skills of these college and law school educated Eastern lawyers. He said he intended to return to his law office to learn more about the law because these types of lawyers "were coming West" and when they did, he wanted to be ready for them.

In August 1848, John B. Moffett retained Lincoln to secure an accounting and fair distribution of the assets of a dissolved partnership. *Lewis v. Moffett*, Sangamon County Circuit Court, Illinois Supreme Court, 1848-50. Moffett had entered into a simple partnership agreement that the partners, unwisely as it turns out, had drawn up themselves. The partnership was a foundry business, but its main assets were three inventions.

Lincoln handled 21 cases to settle partnerships and five accounting cases, so this was not new to him. However, this appears to be the first case of any kind that he handled involving a patent or patent law.

Although he achieved a favorable result, no good deed goes unpunished. After depositions, briefings, trial and appeal, Moffett stiffed Lincoln & Herndon for their fee and they had to sue him to collect $150 due. An honorable man, he expected others to be likewise.

Lincoln did not handle his first patent infringement case until July 1850. Despite his inexperience in this specialized area of the law, there is no evidence that Lincoln was the least bit reluctant to undertake the defense in this important federal case, *Z. Parker v. Charles Hoyt*. He brought to the table his lifelong interest in mechanical devices, his ability to learn and understand how they worked and, most importantly, the genius to be able to explain same to a jury of everymen.

Lincoln defended Hoyt on charges of patent infringement of a "water wheel" and Lincoln won in large part because of his

ability to understand the technology at issue and to explain it to the jury in such a clear, simple manner, comprehensible to the average man. He regarded it "as one of the most gratifying triumphs of his life."

His first patent infringement trial victory was important not only for him as a lawyer or for his client as a litigant, but also for patent law in the U.S. generally and for the ability of small entrepreneurs to invest and develop. Lincoln defended arguing that the "patent" was based on readily available and widely known technology, that is, it was invalid as not new and novel, and that such meritless claims seriously inhibited the ability of small businessmen to invest and develop their businesses. Parker had been threatening to sue and suing alleged infringing small saw mill owners for years and had secured several thousand dollars from legitimate, innocent businessmen who paid money rather than fight in court and take a risk.

A Chicago newspaper observed, in a statement, perhaps heartening today to some defendants besieged by similar lawsuits, "The public will reap an advantage, and mill owners, will not be subject to the paying visits of agents, nor to pay any more 'black mail' for a principle as old as the arts."

Hoyt and Lincoln stood fast and won. Parker saw no damages or license fees thereafter.

Lincoln represented accused infringers and wronged patent owners and had success for both. Jonathan Haines of Pekin, Ill., an inventor and owner of Patent No. 3987 for his "Illinois Harvester," retained Lincoln in August 1856 to sue George H. Ruggs for infringement. *Ruggs v. Haines*, U.S. Circuit Court, N.D. Ill., 1856-1862.

On March 15, 1864, after only a "short absence," the jury returned a verdict for Lincoln's client, finding that Ruggs had infringed the Haines patent and awarded $2,300, a victory later upheld by a divided U.S. Supreme Court.

Lincoln was often turned to as an appellate lawyer when trial counsel was found wanting. In February 1855, Lincoln, taking up the case for the first time on appeal, argued on behalf of defendants in the Illinois Supreme Court in a dispute over patent rights to a "horological cradle," a mechanical device to relieve mothers from the chore of cradle rocking. *Alexander Edmunds v. Mayers & Mayers*, 16 Ill. 207 (1855). Lincoln amused visitors to his office by playing with a model of the cradle, but the court found against Lincoln's clients, reversing the lower court's decree. Lincoln was good, but he lost as many cases as he won.

Lincoln's contributions to invention and patent law pale in comparison to his saving the Union and/or freeing the slaves, but they were significant and the greatest by any president since Thomas Jefferson and unmatched until those of the next president with a similar bent, Theodore Roosevelt. ■

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*M. Kelly Tillery (tilleryk@pepperlaw.com), a partner with Pepper Hamilton LLP, is a member of the Editorial Board of The Philadelphia Lawyer.*