



BERNE DECLARATION

The Relationship Between Patents and Development - the View of the Swiss Industry¹

We, leading Swiss industrialists, have serious misgivings about the introduction of patent protection in Switzerland and view it as a great danger to the economic prosperity of our country.

Even patent advocates have to admit these days that an all too liberal policy of granting patents would create a nuisance for industry, a nuisance that is already making itself felt in countries like England or France.

“What would have been the outcome,” Professor Böhmert rightly says, “if the first saw, the first scythe, the first pot, the first boat, the first plough had been patented and the imitations of numerous meaningful creations of the human mind through which our culture gradually evolved, had been declared technological thievery?”

Patents settle on a country like a swarm of locusts, impede trade and transport and raise the price of consumer needs. In an absolute way patents on inventions stifle the productive forces of the populations that recognize them.

Every great invention is by no means the product of a single individual but results from the application of scientific research past and present. Thus it happens that several persons who independently of each other process and properly use existing materials come up with the same inventions. Therefore it is unjust to grant by means of a privilege the fruit of the labors of many to a single person, and disinherit, as it were, that person’s contemporaries.

With no patent protection whatsoever Switzerland has become, relative to the size of its population, the world’s most industrialized country and has successfully conquered the global marketplace despite its unfavorable geographical location, its lack of coal and iron, and the fact that it is surrounded by nations with prohibitive and protective tariffs.² This is proof positive that the lack of patent protection did not impede industrial development in any way. This may be all the more confidently claimed as the rise of Swiss industry occurred at a time when all major nations such as England, France, America and most parts of Germany had long ago adopted patent protection. Indeed, if patent protection were even

¹ This composite text articulates the position of Swiss industrialists at the end of the 19th century. The text is entirely composed of original quotes. Unless otherwise noted these were taken from: *Ein Beitrag zur Frage der Einführung des Patentschutzes in der Schweiz. Den hohen Bundesbehörden gewidmet von einer Anzahl schweizerischer Industrieller, 1883.* (A contribution to the question of the introduction of patent protection in Switzerland. Dedicated to the honorable federal authorities by a number of industrialists, 1883). One of the industrialists was J. Geigy-Merian of the J.R. Geigy company, one of the precursor companies of Ciba-Geigy, today Novartis/Syngenta.

² Die Erfindungspatente nach volkswirtschaftlichen Grundsätzen und industriellen Erfahrungen, Prof. Victor Böhmert. Berlin 1869

remotely the vital element of industrial growth that its friends make it out to be, modern Swiss industry should not have survived without it, much less been able to establish a significant position beyond its borders and, in various sectors, outperform its competitors in more favorably located patent states.

It cannot be denied that the beginnings of some industries in particular drew considerable benefits from the lack of patent laws. The silk ribbon and silk fabric industry, for instance, had a period when it routinely imitated patterns received from abroad. Meanwhile, strengthened by improved distribution channels, they are now completely self-sufficient even in terms of patterns.³ To the impartial observer the experiences of other countries clearly show that a law to protect the inventions of the chemical industry is not desirable; indeed such a law would not benefit this industry at all and might even give rise to unfavorable aftereffects.⁴ Until now, Switzerland was a neutral territory to which chemists from Germany and France could withdraw. Once we have patent protection like our neighboring countries this industry is likely to emigrate to the large consumer markets.⁵

The chemical industry has been dismissive of patent laws all along and with such success that the proposed revision was rejected in a national referendum in 1882. The eventual mandate to establish legal norms for the protection of inventions in 1887 only came about on condition that chemical inventions and discoveries be excluded.⁶

A patent on substances hinders the industry as a whole in its attempts to find new ways of creating a valuable new substance and the high prices for patented products become a plague for the general public. A general patent on processes is even more unjust and is inconsistent with the only worthy objective of a patent law, i.e. encouraging researchers to learn from one another and in this way allowing everyone to advance together.⁷

One of the most corrosive aspects of patent protection is that it promotes capitalism and the ruinous machine production and it is thus a major enemy of the development of autonomous individualities.

The above said would appear to justify the view that the lack of patent protection laws is absolutely no impediment to the development of our trade and industry. But we feel impelled to go one step further and declare that patent protection is in fact its biggest stumbling block.

No drawn-out argumentation is needed to show that patent protection is inimical to the free development of industry. Freedom for industrial technology requires freedom of combination, composition and construction. Every patent represents a part torn out of the whole of an industry whose future development and recombination has thus been rendered

³ Expertise concerning the effects of a lack of patent laws on Swiss industry, by Prof. Bolley and Prof. J.H. Kronauer, Zurich, 1862

⁴ From a petition of Bindschedler and Busch, a chemical company in Basel, to the federal assembly. The document was signed by 143 industrialists from the chemical industry. 1881.

⁵ Quoted from a statement of national councillor J.R. Geigy-Merian at the Swiss congress on the introduction of patent protection. Zurich 1883

⁶ Swiss Society for the Chemical Industry. Expertise concerning the protection of intellectual property in industry, by Prof. E. Zürcher and Avocat L. Forrer, 1892.

⁷ Petitions of Basel chemical factories and electro-chemical industries concerning the extension of patent laws to include chemical inventions, 1905.

more difficult for everyone save the holder of the patent. The more patents an industry has, the more serious is the damage inflicted on its freedom of combination and construction.

How can free work, a free mental activity be possible if at every turn the worker has to devise new means of navigating around patents blocking his path; not to mention the fact that he often has no way of knowing every last patent that impacts his field and that such ignorance gives rise to feelings of insecurity in all new endeavors that ultimately paralyze the work. These unfavorable influences would be more intensely felt in Switzerland than in large countries. For one because our country would be disproportionately beset by foreign patents and for another because Swiss industry is particularly vulnerable given its difficult trading and geographical position. Each and every limitation of the freedom to combine and construct would constitute a significant drain on its forces.

Moreover, the principle of patent protection is at its core entirely selfish. In this selfishness lies the seed of destruction for the cooperative spirit of Swiss industry which alone allows us to compete with the other countries and has often saved us in times of crisis. No meaner blow could be dealt to our industry than an institution that only serves the individual and would most likely be detrimental to the collective whole.

If the proposed enactment of federal laws for the protection of patents strikes you as a deplorable scheme, then you will surely agree that the dangers of entering into a binding international agreement deserve to be warned against even more insistently.⁸

However, if you are intent on putting Swiss industry in chains then by all means, go ahead and enact Swiss patent laws.

Commentary: Despite considerable pressure from abroad, Switzerland was slow in adopting patent laws and did so only to the extent that it complemented its own development. The government always made allowances for the needs of industry, especially the chemical industry, in matters of patent law. In fact, the first Swiss patent laws of 1888 did not affect the chemical industry at all and the revised version of 1907 again excluded the anti-innovative protection of substances. Substance protection was eventually granted in 1976. The Swiss industry positions expressed in this composite text show that strict patent protection is not necessarily conducive to the development of a national economy or a branch of industry and that Swiss industry as a whole benefited from weak patent protection for many years. Sometimes less is indeed more.

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⁸ Über den Schutz der Erfindungen durch Verleihung des Monopols. Dr. J. Sulzer. 1882 (*Regarding the protection of inventions by awarding a monopoly*)