

= Statute of Monopolies =

The Statute of Monopolies was an Act of the Parliament of England notable as the first statutory expression of English patent law . Patents evolved from letters patent , issued by the monarch to grant monopolies over particular industries to skilled individuals with new techniques . Originally intended to strengthen England 's economy by making it self @-@ sufficient and promoting new industries , the system gradually became seen as a way to raise money ( through charging patent @-@ holders ) without having to incur the public unpopularity of a tax . Elizabeth I particularly was a great abuser of the system , issuing patents for common commodities such as starch and salt . Unrest eventually persuaded her to turn the administration of patents over to the common law courts , but her successor , James I , was even more abusive . Despite a committee established to investigate grievances and excesses , Parliament made several efforts to further curtail the monarch 's power . The result was the Statute of Monopolies , passed on 25 May 1624 .

The statute repealed some past and future patents and monopolies but preserved exceptions : one of these was for patents for novel inventions . Seen as a key moment in the evolution of patent law , the statute has also been described as " one of the landmarks in the transition of [ England 's ] economy from the feudal to the capitalist " . Even with the statute in force , it took over a century for a comprehensive legal doctrine around patents to come into existence , and James I 's successor Charles I regularly abused the patents system by ensuring that all cases relating to his actions were heard in conciliar courts , which he controlled . The English Civil War and the resulting English Restoration finally curtailed this system of abuse . The statute is still the basis for Australian law , and until the United Kingdom began following the European Patent Convention in 1977 , was also a strong pillar of the United Kingdom 's intellectual property law .

= = Background = =

Historically , English patent law was based on custom and the common law , not on statute . It began as the Crown granted patents as a form of economic protection to ensure high industrial production . As gifts from the crown , there was no judicial review , oversight or consideration , and no actual law developed around patents . This practice came from the guilds , groups who were controlled by the Crown and held monopolies over particular industries . By the 14th century the economy of England was lagging behind that of other European nations , with the guilds too small to control industrial production successfully . To remedy this , Edward II began encouraging foreign workmen and inventors to settle in England , offering " letters of protection " that protected them from guild policy on the condition that they train English apprentices and pass on their knowledge . The first recorded letter of protection was given in 1331 . The letters did not grant a full monopoly ; rather they acted as an extended passport , allowing foreign workers to travel to England and practice their trade . An exceptional example ( considered the first full patent in England ) was issued to John of Utynam on 3 April 1449 , granting him a monopoly . Overseas , the practice of granting full industrial patents and monopolies became common in Italian states by the 1420s .

Over the next century , the granting of full industrial patents became a more common practice in England ; the next record is a letter from 1537 to Thomas Cromwell , Henry VIII 's private secretary , from Antonio Guidotti , a Venetian silk @-@ merchant . Guidotti had persuaded a group of Venetian silk @-@ makers to practice in England , and wanted the king to grant him letters patent protecting their monopoly to grow silk for 15 or 20 years . This was granted , and Henry 's son Edward VI followed up with a grant of letters patent to Henry Smyth , who hoped to introduce foreign glassworking techniques into England . This process continued after Elizabeth I came to the throne , with formal procedures set out in 1561 to issue letters patent to any new industry , allowing monopolies . The granting of these patents was highly popular with the monarch , both before and after the statute of Monopolies , because of the potential for raising revenue . A patentee was expected to pay heavily for the patent , and unlike a tax raise ( another method of raising Crown money ) any public unrest as a result of the patent was normally directed at the patentee , not the monarch .

Over time , this became more and more problematic ; instead of temporary monopolies on specific , imported industries , long @-@ term monopolies came about over more common commodities , including salt and starch . These " odious monopolies " led to a showdown between the Crown and Parliament , in which it was agreed in 1601 to turn the power to administer patents over to the common law courts ; at the same time , Elizabeth revoked a number of the more restrictive and damaging monopolies . Even given a string of judicial decisions criticising and overruling such monopolies , James I , Elizabeth I 's successor , continued using patents to create monopolies . Despite the Committee of Grievances , a body chaired by Sir Edward Coke that abolished a large number of monopolies , a wave of protest occurred at the expansion of the system . On 27 March 1621 , James suggested the House of Commons draw up a list of the three most objectionable patents , and he would " give Life to it , without alteration " , but by this time a statute was already being prepared by Coke . After passing on 12 May 1621 it was thrown out by the House of Lords , but a statute of Monopolies was finally passed by Parliament on 25 May 1624 .

= = Act = =

= = = Sections 1 ? 5 = = =

Section 1 said that :

all Monopolies , and all Commissions , Grants , Licences , Charters and Letters Patents heretofore made or granted , or hereafter to be made or granted , to any Person or Persons , Bodies Politick or Corporate whatsoever , of or for the sole Buying , Selling , Making , Working or Using of any Thing within this Realm , or the Dominion of Wales ... or of any other Monopolies , or of Power , Liberty or Faculty , to dispense with any others , or to give Licence or Toleration to do , use or exercise any Thing against the Tenor or Purport of any Law or Statute ... and all Proclamations , Inhibitions , Restraints , Warrants of Assistants , and all other Matters and Things whatsoever , any way tending to the Instituting , Erecting , Strengthening , Furthering or Countenancing of the same or any of them ... are altogether contrary to the Laws of this Realm , and so are and shall be utterly void and of none Effect , and in no wise to be put in Use or Execution .

Crucially , this rendered all past , present and future patents and monopolies null and void . Patents were normally divided into three categories ; patents for a particular invention , patents exempting a patent @-@ holder from legislation , and patents for a particular trade or industry . Section 1 , however , for the first time discussed a new category of patents ; those " of Power , Liberty or Faculty " . These patents were normally used in relation to penal laws , to " farm out " the business of administering to criminals and dispensing justice to private companies and individuals . The statute , in a break from previous law , emphasised that this power lay only within Parliament . Section 2 provided that all future patents granted should be determined by the common law , and not otherwise , while Section 3 emphasised that companies and individuals now or in the future in possession of patents should not be allowed to exercise them . Sections 4 and 5 provided that if anyone was interfered with 40 days after the Statute of Monopolies was passed due to a patent or monopoly , any goods seized or persons imprisoned would be returned to their owners and released respectively .

= = = Sections 6 ? 9 = = =

The most important part of the statute is Section 6 , which lays out the exceptions to the rules preventing any kind of monopoly or patent . It stated that the previous provisions :

shall not extend to any letters patents ( b ) and grants of privilege for the term of fourteen years or under , hereafter to be made , of the sole working or making of any manner of new manufactures within this realm ( c ) to the true and first inventor ( d ) and inventors of such manufactures , which others at the time of making such letters patents and grants shall not use ( e ) , so as also they be not contrary to the law nor mischievous to the state by raising prices of commodities at home , or

hurt of trade , or generally inconvenient ( f ) : the same fourteen years to be accounted from the date of the first letters patents or grant of such privilege hereafter to be made , but that the same shall be of such force as they should be if this act had never been made , and of none other ( g ) .

Essentially , this established a wide area in which patents could be granted , on the condition that monopolies lasted no longer than 14 years . These patents would apply to any new " manner " of " manufacture " , with " manufacture " referring both to the creation of an object , and the design for that object . Section 7 provided that the Act did not prejudice or overrule any previous statutory measures , while Section 8 provided that the restoration to Parliament of the power to administer penal law did not in any way infringe upon the right of the king , Court of King 's Bench , Court of Common Pleas or other criminal courts to order someone 's imprisonment . Section 9 provided that the rejection of letters patent and licenses did not extend to corporations over towns , such as the City of London Corporation .

= = Significance = =

The statute is worded " strongly and broadly " , and other than the exceptions mainly repeated the existing common law . The statute has long been considered a key moment in patent law ; Chris Dent , writing in the Melbourne University Law Review , identifies it as " a significant marker in the history of patents " with continuing importance , although it is neither the start nor end of patent law . Despite the statute , the courts did not develop a comprehensive and coherent legal doctrine for patent law for more than a century after the statute came into force . Not only is it highly important within patent law , it also played a large role in economics ; G. A. Bloxam , writing in the Journal of Industrial Economics , identifies the passage of the Statute of Monopolies as " one of the landmarks in the transition of [ England 's ] economy from the feudal to the capitalist " .

As well as being significant in relation to patent law , Whig historians have also identified it as the first infringement upon the monarch 's Royal Prerogative , and one of the first occasions in which the self @-@ confident House of Commons overruled the king , eventually leading to the English Civil War . Chris R. Kyle , writing in the Journal of Legal History , notes that this is not the case ; not only did the Statute of Monopolies only restate the previous common law , leading to no infringement upon the Royal Prerogative , James I was in the later stages of the bill supportive of its principles . James I was not opposed to the motion ; during the 1621 session of Parliament , he voided several monopolies ( included those for silver thread and inns ) , and both James and the Privy Council were active during the passage of the bill to ensure it was supported .

The statute required extensive judicial action to make it work , particularly on the interpretation of Section 6 . Sir Edward Coke , in his Institutes of the Lawes of England , wrote that

[ N ] ew manufacture must have seven properties . First , it must be for twenty @-@ one years or under . Secondly , it must be granted to the first and true inventor . Thirdly , it must be of such manufactures , which any other at the making of such letters patent did not use ... Fourthly , the privilege must not be contrary to law ... Fifthly , nor mischievous to the state , by raising the prices of commodities at home . In every such new manufacture that deserves a privilege , there must be *urgens necessitas et evidens utilitas* . Sixthly , nor to the hurt of trade ... Seventhly , nor generally inconvenient .

The subject was also discussed in Bircot 's Case , where it was decided that an inventive improvement to an existing industry or invention was not a new " material " , and could not be patented ; such an improvement was described as " to put but a new button to an old coat " . Hasting 's Case confirmed that a patent would not be issued , even for a new " material " , that was extremely close to an old one , something originally laid down in Matthey 's Case . The statute did not stop the monarch issuing such patents in return for money ; after James I 's death , Charles I continued issuing them and avoided having to obey the law by having any cases heard in the conciliar courts , such as the Star Chamber . In response to this abuse and others , the Star Chamber was abolished by the Habeas Corpus Act 1640 . After the English Restoration , these activities largely ceased because of the dominant power of Parliament and the Bill of Rights 1689 , which completely abolished the king 's ability to disobey or alter statute .

The Statute of Monopolies dominated patent law for centuries ; it was received into the laws of many common law jurisdictions and still forms the basis for the modern patent laws of those countries : for example , the patent law of Australia is dominated by the Patents Act 1990 , which states that one test for if something is patentable is if it relates to " a manner of manufacture within the meaning of section 6 of the Statute of Monopolies " .

In England and Wales , some sections of the statute are still technically in force , although the Statute Law Revision Act 1863 , Patents , Designs and Trade Marks Act 1883 , Statute Law Revision Act 1948 , Administration of Justice Act 1965 and Statute Law ( Repeals ) Act 1969 repealed most of the legislation . In practice however , with the Patents Act 1977 ( which brought the United Kingdom into line with the European Patent Convention ) , the statute has been implicitly repealed within England and Wales .