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The Bible and patent law

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From time to time, one may find publications that seek to explore the influence that the Bible may have had on patent law. A classic example is Exodus 20:15: "*You shall not steal*." Another sometimes-cited example is Deuteronomy 27:17: "*Cursed is he who removes his neighbor's landmark*." Of course, Matthew 5:39 would not be the guiding principle of most patent litigant's defense strategies: "[…] *whoever strikes you on your right cheek, turn to him the other also*." However, another passage in Matthew (Matthew 7:17–18) has made some inroads into patent case law: "*17. Even so, every good tree produces good fruit* […]. *18. A good tree can't bear evil fruit, neither can a corrupt tree bear good fruit.*" This was the basis for the development of the "fruit of the poisonous tree" doctrine, which will be briefly discussed below.

There may be cases where the defendant infringed a patent during the development of a product, method or process which, as such, does not infringe that patent. When such use is not covered by the "experimental use exemption" or other exemptions, such as the "Bolar exemption", the question arises as to whether the patent owner should be able to claim so-called "reach-through" royalties based on the downstream turnover generated by a non-infringing product, process or method that would not have been available to the defendant but for the infringement. A classic example is a non-infringing product that has been developed using a research tool protected by a patent. The logic is that "but for the infringement" the downstream profits would not have been obtained. This logic was followed by the U.S. courts in *Monsanto v. Dupont*, which resulted in the latter being ordered to pay approximately $1 billion in damages to the former for having used a patented soybean line during the development of a commercial product.

In a way, this seems also to have been the logic that inspired the English courts in the Dyson case (2001), in which the court ordered a post-expiry "springboard" injunction to prevent the defendant from benefiting from the infringing use made before Dyson's patent expired. In a nutshell, the defendant was ordered to refrain from launching after the patent expired for a period equal to the remaining term of the patent when the infringing use had begun. Interestingly, the concept of a "springboard" injunction was also accepted by the Court of Appeal of Barcelona (Section 15) in a judgment from 13 December 2004.

Lastly, one might also trace some parallels between the "poisonous tree" doctrine and the logic behind contributory infringement. Although contributory infringers are not "direct" infringers, they are certainly the poisonous tree that may bear the fruit of "direct" patent infringement.

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This entry was posted on Wednesday, February 24th, 2021 at 6:11 pm and is filed under Infringement, Patents, Spain
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