LINCOLN AND THE PATENT SYSTEM: INVENTOR, LAWYER, ORATOR, PRESIDENT

Jeffrey M. Samuels[*] *& Linda B. Samuels*[**]

INTRODUCTION 646
I. LINCOLN'S INTEREST IN TECHNOLOGY AND MECHANICS 647
II. LINCOLN THE PATENTEE 648
III. LINCOLN THE PATENT LITIGATOR 650
IV. LINCOLN THE PUBLIC LECTURER 666
V. LINCOLN AS PRESIDENT 670
CONCLUSION 674

[*] J.D., Albany Law School, 1975; David L. Brennan Professor of Law and Director of the Center for Intellectual Property Law and Technology, The University of Akron School of Law.
[**] M.P.A., State University of New York at Albany, 1971; J.D., University of Virginia School of Law, 1975; Professor, Business Legal Studies, George Mason University.

> "The patent system . . . secured to the inventor, for a limited time, the exclusive use of his invention; and thereby added the fuel of *interest* to the *fire* of genius, in the discovery and production of new and useful things."[1]

INTRODUCTION

The bicentennial of Abraham Lincoln's birth provides an appropriate occasion to revisit the ideas and contributions of our sixteenth President.[2] Of particular interest to patent lawyers is Lincoln's extensive interest in, and involvement with, the U.S. patent system as inventor, lecturer, lawyer, and President.[3]

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[1] *See* Second Lecture on Discoveries and Inventions (Feb. 11, 1859), *in* 3 THE COLLECTED WORKS OF ABRAHAM LINCOLN, 356, 363 (Roy B. Basler et al. eds., 1953) [hereinafter COLLECTED WORKS].

[2] Commemorations of Lincoln's life were held on President's Day 2009 throughout the United States as well as in the months leading up to the bicentennial and the months following. For example, in Washington D.C., President Obama, who was sworn into office using Lincoln's bible, visited the Lincoln Memorial and the gala reopening of Ford's Theatre, the site of Lincoln's assassination. Exhibits about Lincoln's life are or were on display at the National Portrait Gallery, the Smithsonian American Art Museum, the Library of Congress, the American History Museum, and Ford's Theatre. Ford's Theatre hosted walking tours, presentations and reenactments about Lincoln throughout the winter and spring. Seminars by prominent Lincoln historians were presented at the National Archives. Lincoln's summer White House is restored and open to the public under the auspices of the National Trust for Historic Preservation. Outside of Washington D.C., the Lincoln Museum in Springfield, Illinois reopened a few years ago with new exhibits and the Gettysburg battlefield is being restored to its original appearance. It is estimated that approximately 1,000 books about Lincoln will be published in connection with the bicentennial and a multitude of information can be found online.

[3] A number of books and articles have been written about Lincoln's life as a lawyer. *See, e.g.*, DAN W. BANNISTER, LINCOLN AND THE ILLINOIS SUPREME COURT, (Barbara Hughett ed., 1995); BRIAN DIRCK, LINCOLN THE LAWYER (2007); JOHN J. DUFF, A. LINCOLN: PRAIRIE LAWYER (1960); JOHN P. FRANK, LINCOLN AS A LAWYER (1961); ALLEN D. SPIEGEL, A. LINCOLN, ESQUIRE: A SHREWD, SOPHISTICATED LAWYER IN HIS TIME (2002). Other books, though not primarily focused on Lincoln's law practice, devote substantial space to the topic. These include: ALBERT J. BEVERIDGE, ABRAHAM LINCOLN: 1809–1858 (1928); STEPHEN B. OATES, WITH MALICE TOWARD NONE: THE LIFE OF ABRAHAM LINCOLN (1977); and JOHN W. STARR, JR., LINCOLN & THE RAILROADS (1927). Many histories of Lincoln's life mention his patent. Historians commenting on Lincoln's writing and speeches often discuss his "Lecture on Inventions and Discoveries." *See* First Lecture on Inventions and Discoveries (Apr. 6, 1858), *in* 2 COLLECTED WORKS, *supra* note 1, at 437, 437; Second Lecture on Inventions and Discoveries (Feb. 11, 1859), *supra* note 1, at 356. A recent monograph concentrates on Lincoln as an inventor. *See generally* JASON EMERSON, LINCOLN THE INVENTOR (2009). However, except for one article that was published in 1938 in *The Journal of the Patent Office Society*, to our knowledge no one previously has written on Lincoln's involvement with the patent system. *See generally* Harry Goldsmith, *Abraham*

Lincoln clearly understood the importance of the patent system in promoting technological advance, which he believed to be important to the nation's economic growth. He spoke eloquently on the subject, patented an invention, and participated in numerous patent-related lawsuits during the years he practiced law.

I. LINCOLN'S INTEREST IN TECHNOLOGY AND MECHANICS

Lincoln's interest in technology and mechanics began in his youth.[4] One of his law partners, William H. Herndon, commented that Lincoln "evinced a decided bent toward machinery or mechanical appliances, a trait he doubtless inherited from his father who was himself something of a mechanic and therefore skilled in the use of tools."[5] As a young man, Lincoln worked as a surveyor in New Salem, Illinois.[6] His skills were so highly regarded that he was frequently asked to resolve boundary disputes.[7]

Lincoln avidly studied books about science and math.[8] While riding circuit as a lawyer, Lincoln reportedly kept a volume by Euclid in his bag and often would critically examine farm implements found at the home where he spent the night.[9] According to biographer A.J. Beveridge, upon obtaining a copy of the *Annual of Science* and then buying the entire series, Lincoln commented:

> I have wanted such a book for years, because I sometimes make experiments and have thoughts about the physical world that I do not know to be true or false. I may, by this book, correct my errors and save time and expense. I can see where scientists and

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Lincoln, Invention and Patents, 20 J. PAT. OFF. SOC'Y 5 (1938). Mr. Goldsmith was an Examiner, Division 43, of the U.S. Patent Office. *Id.*

[4] *See* Goldsmith, *supra* note 3, at 6. Lincoln worked hard on his family's farm and was hired out by his father to work on neighboring farms. KENNETH J. WINKLE, THE YOUNG EAGLE: THE RISE OF ABRAHAM LINCOLN 18–19 (2001).

[5] Abraham Lincoln Online, Lincoln's Love of Inventions, http://showcase.netins.net/web/creative/lincoln/education/patent.htm (last visited Mar. 26, 2010) (internal quotation marks omitted).

[6] Robert L. Wilson, *Letter to WHH (Feb. 10, 1866)*, *in* HERNDON'S INFORMANTS: LETTERS, INTERVIEWS, AND STATEMENTS ABOUT ABRAHAM LINCOLN 201, 201 (Douglas L. Wilson & Rodney O. Davis eds., 1998) [hereinafter HERNDON'S INFORMANTS].

[7] *Id.*; *see* Goldsmith, *supra* note 3, at 6. Lincoln worked at ten or more jobs while living in New Salem. GEOFFREY C. WARD, LINCOLN AND THE LAW: LINCOLN'S LAW OFFICES 4 (1978).

[8] Goldsmith, *supra* note 3, at 6.

[9] *Id.*; EMERSON, *supra* note 3, at 8.

> philosophers have failed . . . or can see the means of their success and take advantage of their brains, toil, and knowledge. Men are greedy to publish the successes of [their] efforts, but meanly shy as to publishing the failures of men. Men are ruined by this one sided practice of concealment of blunders and failures.[10]

From this statement it can be surmised that Lincoln understood the scientific process and the value of finding out what does and does not work as a path to further understanding of scientific applications.

II. LINCOLN THE PATENTEE

Lincoln is the only U.S. president to apply for and receive a patent.[11] It was issued by the U.S. Patent Office in 1849.[12] Lincoln's patent covered a device to lift boats over shoals.[13] His interest in inventing a way to lift boats over obstacles was rooted in life experience with the pitfalls of river navigation.[14] For example, farmers in New Salem, where Lincoln grew up, found it costly to reach the markets in St. Louis and New Orleans.[15] They either hauled their produce and livestock to the Illinois River or all the way to St. Louis, because only flatboats could navigate the Sangamon River and "only during the spring thaw."[16]

In April 1831, Lincoln, his stepbrother John D. Johnston, his cousin John Hanks, and the merchant Denton Offutt, set off on a journey from Sangamo Town, Illinois to New Orleans on a crude flatboat.[17] At New Salem, before the boat could get to the Illinois River, it was stranded on the dam of a pond.[18] As the boat took on water, Lincoln directed the cargo to be unloaded in order to right the boat, secured an auger from the local cooper shop, and

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[10] Goldsmith, *supra* note 3, at 7 (internal quotation marks omitted) (providing A.J. Beveride's depiction of Lincoln's interaction with Herndon involving the *Annual of Science*).

[11] EMERSON, *supra* note 3, at 27.

[12] Bouying Vessels over Shoals, U.S. Patent No. 6,469 (filed Mar. 10, 1849) (issued May 22, 1849); EMERSON, *supra* note 3, at 18; Goldsmith, *supra* note 3, at 6.

[13] EMERSON, *supra* note 3, at 18; Goldsmith, *supra* note 3, at 6.

[14] *See* EMERSON, *supra* note 3, at 2; *see also* JESSE W. WEIK, THE REAL LINCOLN: A PORTRAIT 242 (1923). At seventeen, Lincoln worked on an Ohio River ferry. At nineteen, Lincoln was hired by a merchant to float produce to New Orleans, via the Ohio and Mississippi rivers. WINKLE, *supra* note 4, at 20.

[15] WINKLE, *supra* note 4, at 45.

[16] *Id.*

[17] EMERSON, *supra* note 3, at 2.

[18] *Id.*

then drilled a hole in the bow to let the water escape.[19] This effort was successful and the boat proceeded to New Orleans with its cargo.[20]

Seventeen years later, in 1848, upon completing his first session in Congress, Lincoln returned home to Springfield on a steamboat, the *Globe*, which traveled the Great Lakes after visiting Niagara Falls.[21] While on the Detroit River, the Globe came upon another steamboat, the Canada, which had run aground.[22] According to Herndon:

> [t]he captain [of the Canada] ordered the hands to collect all the loose planks, empty barrels and boxes and force them under the sides of the boat. These empty casks were used to buoy it up. After forcing enough of them under the vessel she lifted gradually and at last swung clear of the opposing sand bar.[23]

These experiences prompted Lincoln to invent a device that would enable boats to be lifted over sand bars and other obstacles. Lincoln worked at the shop of a Springfield mechanic, Walter Davis, to develop a working model.[24] The invention used inflatable air chambers attached to each side of a vessel with a system of sliding spars or shafts, ropes and pulleys to fill the chambers with air.[25] When the keel of the vessel grates against the sand or obstruction, the bellows are filled with air and, thus buoyed up, the vessel would float over the shoal.[26] A major advantage of the invention was that the vessel's cargo did not have to be unloaded before the chambers were inflated.[27]

Upon returning to Washington, Lincoln showed his model to patent attorney Z.C. Robbins to determine its patentability.[28]

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[19] *Id.* at 3.

[20] *Id.* at 3–4.

[21] *Id.* at 4.

[22] *Id.*

[23] WILLIAM H. HERNDON & JESSE W. WEIK, HERNDON'S LIFE OF LINCOLN 239 (World Publishing Co. 1949) (1930).

[24] EMERSON, *supra* note 3, at 6. Apparently, two models were prepared. *Id.* at 33. One is at the Smithsonian; the location of the other, which was discovered in the attic of Lincoln's Springfield home, is currently unknown. *Id.* "The model is about eighteen or twenty inches long, and looks as if it had been whittled with a knife out of a shingle and a cigar box." 2 IDA M. TARBELL, THE LIFE OF ABRAHAM LINCOLN 20 (1909).

[25] EMERSON, *supra* note 3, at 5.

[26] 2 TARBELL, *supra* note 24, at 20–21.

[27] EMERSON, *supra* note 3, at 5.

[28] 2 TARBELL, *supra* note 24, at 21. Mr. Robbins stated: "After a friendly greeting he placed his model on my office-table and proceeded to explain the principles embodied therein that he believed to be his own invention, and which, if new, he desired to secure by letters-patent." *Id.* (internal quotation marks omitted).

Robbins, who was knowledgeable about the construction of flat-bottomed steamboats, concluded that Lincoln's invention was patentable.[29] Lincoln directed Robbins to file a patent application for a device for "Buoying Vessels over Shoals."[30] The application, which contained only one claim, was filed with the U.S. Patent Office on March 10, 1849.[31] The application recited, in part:

> Be it known that I, Abraham Lincoln, of Springfield, in the County of Sangamon, in the State of Illinois, have invented a new and improved manner of combining adjustable buoyant air chambers with a steamboat or other vessel for the purpose of enabling their draught of water to be readily lessened to enable them to pass over bars, or through shallow water, without discharging their cargoes . . . .[32]

The application was readily allowed and Patent No. 6,469 was issued to Lincoln on May 22, 1849, approximately ten weeks after filing.[33] Like most patented inventions, however, Lincoln's was never commercialized.

III. LINCOLN THE PATENT LITIGATOR

From 1837 until his inauguration as the sixteenth President of the United States, Lincoln practiced law.[34] By all accounts, he

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[29] *Id.*

[30] *Id.*; EMERSON, *supra* note 3, at 18.

[31] EMERSON, *supra* note 3, at 18.

[32] *Id.* at 58.

[33] *Id.* at 18.

[34] Lincoln was self-educated. WINKLE, *supra* note 4, at 74. Lincoln did not attend any college or law school or "read law" in a law office. WARD, *supra* note 7, at 6. He learned by studying law books while living in New Salem and learned once on the job. FRANK, *supra* note 3, at 10. Starting with Blackstone's *Commentaries on the Laws of England*, Lincoln studied for about three years before becoming a lawyer. WARD, *supra* note 7, at 6. In advising an aspiring lawyer who asked to "read" in his office, Lincoln remarked, "It is but a small matter whether you read *with* anybody or not. I did not read with anyone. Get the books, and read and study them till, you understand them and their principal features . . . ." FRANK, *supra* note 3, at 10. Not going to law school was not unusual, but not "reading" with a practitioner was. *See* WARD, *supra* note 7, at 6. Lincoln was sworn in as an "Attorney and Counselor at Law" on March 1, 1837. DUFF, *supra* note 3, at 3. Lincoln practiced for about a year in New Salem. Six weeks after he helped pass the law which made Springfield the state capitol of Illinois, he relocated there to live and work. FRANK, *supra* note 3, at 1. First, he moved to Springfield to join the established practice of John Todd Stuart (a cousin of Lincoln's future wife, Mary Todd) as an equal partner. *Id.* at 35; DIRCK, *supra* note 3, at 25; ALLEN C. GUELZO, ABRAHAM LINCOLN: REDEEMER PRESIDENT 81 (1999). In April 1841, the partnership with Stuart terminated and Lincoln partnered with Stephen T. Logan. DIRCK, *supra* note 3, at 27; DUFF, *supra* note 3, at 76, 78. In December 1843, the Logan partnership was dissolved and Lincoln partnered with William H. Herndon. DIRCK, *supra* note 3, at 29;

had a vibrant, robust, and wide-ranging practice.[35] There are

DUFF, *supra* note 3, at 111; GUELZO, *supra*, at 105. Lincoln's practice was based in Springfield. *See* FRANK, *supra* note 3, at 2. However, after the Eighth Judicial Circuit was formed in 1839, Lincoln traveled the counties that comprised the circuit, as did other experienced lawyers, accompanying Judge David Davis as he "travelled from county-seat to county-seat" during the fall and spring. 1 WILLIAM E. BARINGER, LINCOLN DAY BY DAY: A CHRONOLOGY 1809–1865, at x (Earl Schenck Miers ed., 1960); 1 TARBELL, *supra* note 24, at 241. On many occasions, Lincoln substituted for Judge Davis. GUELZO, *supra*, at 161. While President, Lincoln appointed Judge Davis to the Supreme Court of the United States. In many of the towns visited, Lincoln "partnered" or "associated" with local attorneys on an ad hoc basis. FRANK, *supra* note 3, at 16. A number of the lawyers whom Lincoln met on the circuit later became his political backers. *Id.* at 22. Lincoln was admitted to practice before the federal courts on December 3, 1839. DUFF, *supra* note 3, at 222. "Lincoln was one of the foremost lawyers in practice before the Illinois Supreme Court in the 1840s and 1850s, both from the standpoint of the number and importance of the cases he handled, and the percentage of cases which he won." *Id.* at 243. Lincoln was a talented lawyer in that he "attracted clients and instilled confidence in juries," was able to zero in on the "heart of a matter" with "brevity," used "restrained and effective verbal expression" a "peculiarly retentive mind" and a hard worker. FRANK, *supra* note 3, at 97–98. Lincoln was involved in 333 cases before the Illinois Supreme Court from 1838–1861, which are reported in the *Illinois Reports*. BANNISTER, *supra* note 3, at ix.

[35] Lincoln used the earnings from his law practice to support himself and his family and to finance his political ambitions. FRANK, *supra* note 3, at 2. Lincoln charged "modest" fees, but he had a "volume" practice. *Id.* at 170; WARD, *supra* note 7, at 17. This income reached $5,000 per year in the late 1850s. WARD, *supra* note 7, at 17. Lincoln spent much more time practicing law than he did as a politician and elected official. *See* FRANK, *supra* note 3, at 2. Early on, Lincoln was a "country lawyer" and he mostly was involved in trial and appellate work, both in state and federal court. *Id.* at 6–7. Lincoln's papers include "Notes for a Law Lecture," dated July 1, 1850. *Id.* at 3. His lecture touched upon issues relating to public speaking and legal ethics:

> Extemporaneous speaking should be practiced and cultivated. It is the lawyer's avenue to the public. However able and faithful he may be in other respects, people are slow to bring him business if he cannot make a speech. And yet there is not a more fatal error to young lawyers than relying too much on speech making. If anyone, upon his rare powers of speaking, shall claim an exemption from the drudgery of the law, his case is a failure in advance.
>
> Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, in waste of time. As a peace-maker the lawyer has a superior opportunity of being a good man. There will be business enough . . . .
>
> The matter of fees is important, far beyond the mere question of bread and butter involved. Properly attended to, fuller justice is done to both lawyer and client. An exorbitant fee should never be claimed. As a general rule never take your whole fee in advance, nor any more than a small retainer. When fully paid beforehand, you are more than a common mortal if you can feel the same interest in the case, as if something were still in prospect for you, as well as for your client. And

5,173 cases in the Lincoln law practice database, including "more than 400 appeals before the Illinois Supreme Court" and "340 cases in the federal district and circuit courts."[36] Lincoln has been characterized as "an outstanding appellate lawyer" based on a review of cases before the Illinois Supreme Court.[37] Lincoln particularly enjoyed matters involving mathematical and mechanical problems.[38] During the years Lincoln practiced law,

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> when you lack interest in the case the job will very likely lack skill and diligence in the performance. Settle the amount of fee and take a note in advance . . . .
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> There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. Let no young man choosing the law for a calling for a moment yield to the popular belief—resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation rather than one in the choosing of which you do, in advance, consent to be a knave.

Id. at 3–4 (quoting Notes for a Law Lecture (July 1, 1850), *in* 2 COLLECTED WORKS, *supra* note 1, at 81, 82). "Lincoln was an honest lawyer in the ethical sense . . . 'honest' in the sense of being frank, unapologetic and practical." DIRCK, *supra* note 3, at 5.

Lincoln's belief in the adversary system enabled him to take a diversity of cases without regard to their political implications. *See* WARD, *supra* note 7, at 25. Lincoln often interrupted his law practice with politics and campaigning. *See* 1 TARBELL, *supra* note 24, at 241. Lincoln's success as a lawyer came before he achieved success as a politician and the national reputation he gained from the debates with Stephen Douglas. *Id.* at 278. Though Lincoln mostly practiced in the Illinois circuit courts, "he was hardly a hick country lawyer." SPIEGEL, *supra* note 3, at viii. "In contrast, Lincoln was an incisive, determined and assertive litigator with an overwhelming caseload." *Id.* As Lincoln gained experience as a lawyer, he received referral business and practiced more in the federal courts. FRANK, *supra* note 3, at 7. Lincoln's forte seems to have been his ability to connect with jurors. *See id.* at 24. He often focused on the equities of the case and relied on his ability to persuade the jury through anecdotes and humor, based on recollections of attorney Isaac N. Arnold, who rode the circuit with Lincoln. *Id.*

[36] Mark E. Steiner, *A Docket That Reflects Then and Now*, 95 A.B.A. J. 39, 39–40 (2009). *The Law Practice of Abraham Lincoln Complete Documentary Edition* documents on CD-ROM "[m]ore than 1.5 million facts about cases and nonlitigation activities handled by Abraham Lincoln and his partners." THE LAW PRACTICE OF ABRAHAM LINCOLN COMPLETE DOCUMENTARY EDITION: USER'S MANUAL 1 (Martha L. Benner et al. eds., 2000). This CD-ROM is a result of the Lincoln Legal Papers Project, whose goal was finding, photographing, collecting, and categorizing "every available primary source on Lincoln's law practice." DIRCK, *supra* note 3, at x.

[37] BANNISTER, *supra* note 3, at xiv.

[38] 1 TARBELL, *supra* note 24, at 275.

patent law was a particularly obscure field and, because the federal courts often had jurisdiction, an area largely reserved for experienced lawyers.[39] When one searches for cases involving "patents" on www.lawpracticeofabrahamlincoln.org,[40] twenty-five cases are reported, although only a few went to trial.[41] Some of cases involved a cause of action for patent infringement; others involved actions to recover on promissory notes involving the acquisition of patent rights.[42]

In *Parker v. Hoyt*, Lincoln represented the alleged infringer of a patent on a water wheel.[43] Lincoln believed that the patented invention was based on available commonsense technology.[44] An article published in the *Chicago Daily Democrat* reported that the patent in issue "has run since the year 1829, and thousands of dollars have been obtained from men, who had not the remotest idea, when building their mills of any infringement, but who paid damages rather than go into the expense and trouble of a suit at law."[45] Lincoln's co-counsel in the case, Grant Goodrich, noted in a letter to Herndon that Lincoln "tended a saw-mill for some time, & was able in his arguments to explain the action of the water upon the wheel, in a manner so clear & intelligible, that the jury was enabled to comprehend the points and line of defense" without the least difficulty.[46] After a trial that lasted several days, the United States Circuit Court ruled in favor of Lincoln's client.[47] Once the decision was entered, the *Chicago Daily Democrat* noted that "the public will reap an advantage, and mill owners will not be subject to the prying visits of agents, nor to pay any more 'black mail' for a principle as old as the

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[39] DIRCK, *supra* note 3, at 88.

[40] This database purports to include every case that Lincoln ever was involved in when he practiced law, based on an examination of original documents. The Law Practice of Abraham Lincoln: Second Edition, http://www.lawpracticeofabrahamlincoln.org/Search.aspx (last visited Mar. 26, 2010) [hereinafter The Law Practice of Abraham Lincoln].

[41] *Id.*

[42] *See id.* Dirck argues that the politically oriented Lincoln would have viewed patent cases as a way to contribute to the Illinois economy and therefore more attractive than "contract disputes and partnership dissolutions." DIRCK, *supra* note 3, at 88–89.

[43] *See* FRED KAPLAN, LINCOLN: THE BIOGRAPHY OF A WRITER 206 (2008). The lawsuit was heard in the U.S. Circuit Court in Chicago in 1850. Goldsmith, *supra* note 3, at 19.

[44] KAPLAN, *supra* note 43, at 206.

[45] *Id.* at 207 (internal quotation marks omitted).

[46] Robert L. Wilson, *Letter to WHH (Feb. 10, 1866)*, *in* HERNDON'S INFORMANTS, *supra* note 6, at 509, 510.

[47] *Id.*

arts."[48] According to Goodrich, Lincoln "always regarded [*Parker v. Hoyt*] as one of the most gratifying triumphs of his life."[49]

In *Clark v. Stigleman et al.,* Lincoln was hired to defend an alleged patent infringer. [50] The patent related to improvements to a portable circular saw mill.[51] Lincoln reportedly argued that the patent was invalid for lack of novelty.[52] However, the court found in favor of the plaintiff and awarded $2,700 in damages.[53]

Several of Lincoln's patent cases involved agricultural machinery.[54] One case involved the alleged infringement of a patent for a harvester. In 1847, Jonathan Haines invented a harvester that made for less bulky and costly shipment of grain; his harvester was later patented in March 1849.[55] Another inventor, George H. Rugg, obtained a patent in 1852 on a harvesting and rowing machine.[56] Haines applied for a reissue patent and, while his application was pending, Rugg also applied for reissue.[57] The U.S. Patent Office compared the two patents, decided in Haines's favor on the issue of priority and awarded Haines a reissue patent.[58] Rugg appealed that decision to the U.S. District Court for the District of Columbia, which upheld the Patent Office's decision.[59]

Despite the ruling, Rugg continued to manufacture his machine.[60] Haines retained Lincoln to represent him in a suit for infringement against Rugg.[61] Following a four-day trial, the jury

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[48] *United States Circuit Court - Parker v. Hoyt*, CHI. DAILY DEMOCRAT, *available at* The Law Practice of Abraham Lincoln, *supra* note 40, http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=137697 (click on "View Documents"; then click "newspaper report: 129693").

[49] *Letter from Grant Goodrich to WHH* (Dec. 9, 1866), *supra* note 46, at 510.

[50] Clark v. Stigleman (C.C.D. Ill. 1855), *available at* The Law Practice of Abraham Lincoln, *supra* note 40, http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=137520. The suit was brought in United States Circuit Court, Southern District of Illinois. *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] In the early 1850s, nine Illinois companies, including McCormick Reaper and Deere & Co., dominated the reaper market. By 1860, more than 80,000 reapers were in operation in the Midwest and competition among manufacturers was fierce. 1856–1862: Rugg v. Haines, *in* 3 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES 248, 254–55 (Daniel W. Stowell ed., 2008) [hereinafter THE PAPERS OF ABRAHAM LINCOLN].

[55] *Id.* at 248.

[56] *Id.* at 254.

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *Id.* at 255.

held Rugg liable for infringement and awarded Haines damages in the amount of $2,300.[62] Rugg moved for a new trial but the motion was denied.[63] Rugg then filed an appeal to the Supreme Court of the United States, which heard the case on December 9, 1862.[64] Otherwise occupied, Lincoln did not participate in the appeal.[65] The Court upheld the judgment below.[66]

Ironically, the patent case that Lincoln is probably most closely associated with, *McCormick v. Manny*,[67] is one in which he ultimately made little contribution to the outcome.[68] McCormick and Manny were manufacturers of reaping machines and each owned patents on their respective machines.[69] In 1854, after Manny's machine was deemed superior to that of McCormick's, McCormick filed an infringement suit against Manny in the Northern District of Illinois, seeking an injunction and $400,000 in damages.[70] Because the outcome of this case would have an impact on other reaper manufacturers, many of Manny's competitors contributed financially to the defense.[71] There was money to hire the very best lawyers in the country.[72]

The case was originally set for trial in Chicago before Judge Thomas Drummond, who was acquainted with Lincoln.[73] McCormick was represented by New York patent attorney Edward M. Dickerson and Baltimore trial attorney Reverdy Johnson.[74] Manny entrusted Peter H. Watson, who had

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[62] *Id.* at 277–78.

[63] *Id.* at 278, 282.

[64] *Id.* at 282–83.

[65] *Id.* at 283.

[66] *Id.* at 284–85; Rugg v. Haines (U.S. 1862), *available at* The Law Practice of Abraham Lincoln, *supra* note 40, http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=137749.

[67] 15 F. Cas. 1314 (C.C.N.D. Ill. 1856) (No. 8,724), *aff'd sub nom.* McCormick v. Talcott, 61 U.S. (20 How.) 402 (1857).

[68] GUELZO, *supra* note 34, at 175; *see infra* note 91 (providing additional sources on Lincoln's involvement in *McCormick v. Manny*).

[69] 1 TARBELL, *supra* note 24, at 260.

[70] McCormick claimed that his patent gave his company "a virtual monopoly of all practical reaping machines as constructed at that date." *Id.* at 260–61. "McCormick kept a jealous eye on his competition, bankrupting them where he could by sharp competition . . . and driving them from the market by alleging patent infringements." GUELZO, *supra* note 34, at 175.

[71] WILLIAM LEE MILLER, LINCOLN'S VIRTUES: AN ETHICAL BIOGRAPHY 410 (2002).

[72] *Id.*

[73] *Id.*

[74] *Id.* Dickerson was a prominent lawyer. *Id.* Johnson was a famous orator and "probably argued more cases before the Supreme Court than any other attorney" at the time. *Id.* He had served as Attorney General under President Taylor, a U.S. Senator, and Minister to Great Britain. *Id.*

prosecuted Manny's patent applications and had a reputation as a good legal "fixer," to oversee the defense.[75] Watson obtained the services of Philadelphia attorney George Harding to handle the technical aspects of the case.[76] At the suggestion of Manny's in-house counsel, Ralph Emerson, Watson invited Lincoln, who was well-known and respected in the Chicago courts, to handle the closing argument.[77] Deeply in debt at the time and offered a retainer and fee upon conclusion of the case, Lincoln agreed to participate.[78] However, after visiting with Lincoln, Watson traveled to Pittsburgh to meet with Edwin M. Stanton who he retained to make the closing argument in the case.[79] Lincoln knew nothing of this and went to work on the argument.[80]

The case was unexpectedly transferred from Chicago to Cincinnati for the convenience of the presiding Justice John

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[75] SPIEGEL, *supra* note 3, at 142.

[76] MILLER, *supra* note 71, at 410. Harding and Watson were "two of the ablest and most experienced patent attorneys in the nation." *Id.*

[77] *See id.* at 411; *see also* 1 TARBELL, *supra* note 24, at 264. According to Harding:

> In those times it was deemed important in patent cases to employ associate counsel not specially familiar with mechanical questions, but of high standing in the general practice of the law, and of recognized forensic ability. If such counsel represented the defendant he urged upon the court the importance of treating the patentee as a quasi-monopolist, whose claims should be limited to the precise mechanical contributions which he had made to the art; while, on the other hand, the plaintiff's forensic counsel was expected to dwell upon the privations and labor of the patentee, and insist on a very liberal view of his claims, and to hold that defendants who had appropriated any of his ideas should be treated as pirates.

1 TARBELL, *supra* note 24, at 261. Lincoln was the third candidate invited or considered to be the local counsel. *See* MILLER, *supra* note 71, at 411. Watson was not impressed when he traveled to Springfield to visit Lincoln. *See id.* Lincoln's law office was closed, and Watson, upon reaching Lincoln's home, was greeted by Lincoln's wife from an upstairs window. *Id.* Despite his reservations, Watson thought that Lincoln might be effective in an Illinois courtroom and that he might cause hostility if he left without retaining Lincoln. *Id.* at 411–12.

[78] MILLER, *supra* note 71, at 412.

[79] 1 TARBELL, *supra* note 24, at 262.

[80] *See id.* Lincoln wrote Watson to inform him that, although he had not been sent the Bill and Answer and the depositions, he had managed to get copies of the Bill and Answer from the U.S. Circuit Court in Chicago. MILLER, *supra* note 71, at 413. Lincoln requested that he be sent "the additional evidence as fast as you can." *Id.* He also informed Watson that he had traveled to Rockford to examine Manny's machine. *Id.* Lincoln did not receive a reply and wrote to Manny on September 1, 1855 to confirm the time and place of the trial. SPIEGEL, *supra* note 3, at 142–43.

McLean of the Supreme Court of the United States.[81] Upon its transfer, Lincoln was informed by Watson that Stanton would make the closing argument.[82] Lincoln, nevertheless, was present at the trial, where it was again determined that Stanton, not Lincoln, would speak on the non-mechanical aspects of the argument.[83]

Stanton and Harding snubbed Lincoln when they first met in Cincinnati and throughout the trial.[84] McCormick's attorney, Dickerson, noted that: "Mr. Lincoln had prepared himself with the greatest care; his ambition was to speak in the case and measure words with the renowned lawyer from Baltimore. He came with the fond hope for making fame in a forensic contest with Reverdy Johnson. He was pushed aside, humiliated and mortified."[85] However, Emerson provides another view:

> [Though initially he] express[ed] . . . bitter disappointment, the hearing had hardly progressed two days before Mr. Lincoln expressed to me his satisfaction that he was not to take part in the argument. So many and so deep were the questions involved that he realized he had not given the subject sufficient study to have done himself justice.[86]

Lincoln said little about the case upon his return to Springfield.[87] According to Dickinson, though ill-treated by Stanton, Lincoln was very impressed by Stanton's advocacy and "resolved to study the law all over again."[88] When Lincoln arrived back in Springfield after the trial, he remarked to Herndon that he was "roughly handled by that man Stanton."[89] Lincoln reportedly told Herndon that he had overheard Stanton ask Harding why he had brought "that [damned] long armed Ape" from Illinois, because Lincoln did not "know anything and can do you no good."[90]

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[81] MILLER, *supra* note 71, at 412. Judge Drummond served as an associate judge at the circuit court. *Id.* Lincoln's legal reputation was limited to Illinois. FRANK, *supra* note 3, at 177.

[82] 1 TARBELL, *supra* note 24, at 262.

[83] SPIEGAL, *supra* note 3, at 143.

[84] *Id.*

[85] Sarah-Eva Carlson, *Lincoln and the McCormick-Manny Case*, 48 ILLINOIS HISTORY 30 (1995), *available at* http://www.lib.niu.edu/1995/ihy950230.html (internal quotation marks omitted).

[86] 1 TARBELL, *supra* note 24, at 265.

[87] MILLER, *supra* note 71, at 417.

[88] SPIEGEL, *supra* note 3, at 143.

[89] *Id.*

[90] *Id.* According to Spiegel, "Stanton's tactless outburst and antagonistic demands forced Lincoln to withdraw from the case." *Id.* This seems to be in partial conflict with Harding's recollections. *See* DIRCK, *supra* note 3, at 88.

According to Harding's account of events:

Mr. Lincoln was evidently disappointed at Mr. Watson's decision. Mr. Lincoln had written out his argument in full. He was anxious to meet Mr. Reverdy Johnson in forensic contest. The case was important as to the amount in dispute, and of widespread interest to farmers. Mr. Lincoln's feelings were embittered, moreover, because the plaintiff's counsel subsequently, in open court, of their own motion, stated that they perceived that there were three counsel present for defendant, and that plaintiff had only two counsel present; but they were willing to allow all three of defendant's counsel to speak, provided Mr. Dickerson, who had charge of the mechanical part of McCormick's case, were permitted to make two arguments, besides Mr. Johnson's argument. Mr. Watson, who had charge of defendant's case, declined this offer, because the case ultimately depended upon mechanical questions; and he thought that if Mr. Dickerson were allowed to open the mechanical part of the case, and then make a subsequent argument on the mechanics, the temptation would be great to make an insufficient or misleading mechanical opening of the case at first, and, after Mr. Harding had replied thereto, to make a fuller or different mechanical presentation, which could not be replied to by Mr. Harding. It was conceded that neither Mr. Lincoln nor Mr. Stanton was prepared to handle the mechanics of the case either in opening or reply. In view of these facts, Mr. Watson decided that only two arguments would be made for Manny, and that Mr. Harding would open the case for defendant on the mechanical part, and Mr. Stanton would close on the general propositions of law applicable to the case. Mr. Stanton said in court that personally he had no desire to speak, but he agreed with Mr. Watson that only two arguments should be made for defendants whether he spoke or not. Mr. Lincoln, knowing Mr. Watson's wishes, insisted that Mr. Stanton should make the closing argument, and that he would not himself speak. Mr. Stanton accepted the position, and did speak, because he knew that such was the expressed wish and direction of Mr. Watson, who controlled the conduct of defendant's case.

Mr. Lincoln kindly and gracefully, but regretfully, accepted the situation. He attended, and exhibited much interest in the case as it proceeded. He sent to Mr. Harding the written argument which he had prepared, that he might have the benefit of it before he made his opening argument; but requested Mr. Harding not to show it to Mr. Stanton. The chagrin of Mr. Lincoln at not speaking continued, however, and he felt that Mr. Stanton should have insisted on his, Mr. Lincoln's, speaking also; while Mr. Stanton merely carried out the positive direction of his client that there should be only two arguments for defendant, and that he, Mr. Stanton, should close the case, and Mr. Harding should open the

> case. Mr. Lincoln expressed to Mr. Harding satisfaction at the manner in which the mechanical part of the case had been presented by him, and after Mr. Lincoln had been elected President, he showed his recollection of it by tendering Mr. Harding, of his own motion, a high position.
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> In regard to the personal treatment of Mr. Lincoln while in attendance at Cincinnati, it is to be borne in mind that Mr. Lincoln was known to hardly any one in Cincinnati at that date, and that Mr. Stanton was probably not impressed with the appearance of Mr. Lincoln. It is true there was no personal intimacy formed between them while at Cincinnati. Mr. Lincoln was disappointed and unhappy while in Cincinnati, and undoubtedly did not receive the attention which he should have received. Mr. Lincoln felt all this, and particularly, but unjustly, reflected upon Mr. Stanton as the main cause. When Mr. Lincoln was nominated for President, Mr. Stanton, like many others in the country, sincerely doubted whether Mr. Lincoln was equal to the tremendous responsibility which he was to be called upon to assume as President. This is to be borne in mind, in view of events subsequent to the case at Cincinnati. Mr. Stanton never called upon Mr. Lincoln after he came to Washington as President. Mr. Lincoln in alluding to Mr. Stanton (both before and after his election as President) did not attempt to conceal his unkind feeling towards him, which had its origin in Cincinnati. This feeling did not undergo a change until after he met Mr. Stanton as Secretary of War.
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> The occurrences narrated show how one great man may underrate his fellow man. Mr. Stanton saw at Cincinnati in Mr. Lincoln only his gaunt, rugged features, his awkward dress and carriage, and heard only his rural jokes; but Stanton lived to perceive in those rugged lineaments only expressions of nobility and loveliness of character, and to hear from his lips only wisdom, prudence, and courage, couched in language unsurpassed in literature. But above all they show the nobility of Mr. Lincoln's character in forgetting all unkind personal feeling engendered at Cincinnati towards Mr. Stanton, and subsequently appointing him his Secretary of War.[91]

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[91] 1 TARBELL, *supra* note 24, at 262–64 (internal quotation marks omitted). For additional accounts of Lincoln's involvement in the *McCormick-Manny* case, see generally BEVERIDGE, *supra* note 3, at 575–83; DIRCK, *supra* note 3, at 88; GUELZO, *supra* note 34, at 174–76; HERNDON & WEIK, *supra* note 23, at 285–87; MILLER, *supra* note 71, at 410–18; SPIEGEL, *supra* note 3, at 142–43; and RONALD C. WHITE, A. LINCOLN: A BIOGRAPHY 212–14 (2009). Lincoln appointed Stanton as Secretary of War in January 1862. *See* ABRAHAM LINCOLN: THE OBSERVATIONS OF JOHN G. NICOLAY AND JOHN HAY 83 (Michael Burlingame ed., 2007). Stanton had served as Attorney General during the administration of James Buchanan. *Id.* Before appointing Stanton, Lincoln consulted with Harding. *Id.* Harding replied, "I have in mind only one man, but I know you

With respect to the merits of the lawsuit, the circuit court concluded that the Manny machine did not infringe the patents in suit, pointing out that the divider in Manny's machine was different in material respects from that claimed by McCormick.[92]

The Supreme Court, with one justice dissenting, affirmed the decision of no infringement, finding Manny's machine "substantially different, both in form and in combination, from that claimed by the complainant."[93] In reaching its decision, the Court found that McCormick's reaper was but an improvement on the prior art and, as such, McCormick "cannot invoke the doctrine of equivalents to suppress all other improvements which are not mere colorable invasions of the first."[94] Justice Daniel, in dissent, contended that the only proper inquiry before the Court was whether Manny's machine, "either in theory, in construction, or in operation, was the same with the improvement invented by [McCormick]," and that all other inquiries "connected with previous inventions were and must be irregular."[95]

Upon conclusion of the matter, Watson sent Lincoln a check for $2,000 for his services.[96] Lincoln, reportedly, returned the fee indicating that he did not contribute enough to deserve additional payment.[97] Watson, however, resent the check, insisting that Lincoln was entitled to it for preparing for the trial and remaining in readiness.[98] Lincoln accepted payment, splitting the fee with his law partner, Herndon.[99]

A patent claiming a so-called "atmospheric churn" provided the

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could not and would not appoint him after the outrageous way he has insulted you and behaved towards you in the Reaper case." *Id.* Lincoln reportedly replied that he simply desired "to do what will be the best thing for the country." *Id.* Stanton was present at Lincoln's deathbed and, upon Lincoln's passing, reportedly commented, "[n]ow he belongs to the ages." *See* Carlson, *supra* note 85.

[92] McCormick v. Manny, 15 F. Cas. 1314, 1317, 1321 (C.C.N.D. Ill. 1856) (No. 8,724), *aff'd sub nom.* McCormick v. Talcott, 61 U.S. (20 How.) 402 (1858). The opinion was authored by Justice McLean. *Id.* at 1316. Judge Drummond concurred.

[93] *Talcott*, 61 U.S. (20 How.) at 408.

[94] *Id.* at 405.

[95] *Id.* at 409 (Daniels, J., dissenting).

[96] Goldsmith, *supra* note 3, at 30.

[97] *Id.*

[98] *Id.*

[99] *Id.*; WHITE, *supra* note 91, at 129. The fee, the second largest Lincoln received, "helped finance his campaign against Douglas, which projected him into the national spotlight and made him presidential timber." Goldsmith, *supra* note 3, at 5. The largest fee earned by Lincoln was for work performed on behalf of the Illinois Central Railroad. 1 TARBELL, *supra* note 24, at 266.

backdrop for two other lawsuits in which Lincoln was involved.[100] The churn, which converted cream into butter faster and easier than previous devices, was invented by Willis H. Johnson.[101] In June 1848, Thomas Lewis went to St. Louis in an effort to sell the manufacturing and sales rights to the churn as a representative of the firm of Lewis, Johnson & Co.[102] Two St. Louis businessmen, Charles K. Bacon and Isaac V.W. Dutcher, purchased the rights to make and sell the patented churn in Rhode Island and Connecticut, agreeing to pay $1,600 for such rights.[103] Bacon and Dutcher paid Lewis $600 and gave him a promissory note for the balance.[104] Lewis then sold the note to Aspinall and, when Bacon and Dutcher defaulted on the note, Aspinall sued Bacon and Dutcher in St. Louis Court of Common Pleas.[105] Bacon and Dutcher defended on grounds they received no value for the note, arguing that the churn was worthless.[106]

In May 1850, a jury found in favor of the defendants.[107] Aspinall then moved for, and was granted, a new trial but the result was the same.[108]

Several years later, Aspinall contacted Elihu N. Powell regarding the matter and Powell retained Lincoln to handle the case.[109] In 1856, Lincoln brought suit on behalf of Aspinall against Lewis, Johnson & Co.[110] The case was eventually dismissed and Aspinall never recovered on the note.[111] It has been noted that Aspinall's case may have suffered because state laws differed as to whether the failure or inadequacy of a product negated the requirement to repay a debt.[112] In addition, during this period of time there were reportedly numerous fraudulent claims for improvement patents.[113] Indeed, courts in Illinois had stated that purchasers of patent rights should heed the maxim

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[100] 1856–1857: Aspinall v. Lewis, Johnson & Company, *in* 3 THE PAPERS OF ABRAHAM LINCOLN, *supra* note 54, at 193, 193.
[101] *Id.*
[102] *Id.*
[103] *Id.* at 193–94.
[104] *Id.* at 194.
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id.* at 194–95 n.5.
[109] *Id.* at 195.
[110] *Id.*
[111] *Id.* at 202–03 & n.21, 204.
[112] *Id.* at 204.
[113] *Id.*

"let the buyer beware."[114]

The partnership of Lewis, Johnson & Co. was dissolved in August 1848, and one of the partners, John B. Moffett, dissatisfied with the division of assets, which included the churn patent, retained Lincoln and Herndon to represent him in an accounting proceeding against Lewis in the Sangamon County Circuit Court.[115] It was Moffett's position that Lewis was not entitled to any commission on the sale of the patent rights.[116]

Judge Davis's decision in September 1849 disallowed Lewis's claim to a commission on the proceeds from the sales of the patent right for the churn, but allowed Lewis $1,000 as reasonable compensation for his services in making sales of the patent.[117] Additionally, Lewis was ordered to pay Moffett $1,377.41.[118]

Lewis appealed the court's decision to the Illinois Supreme Court and Lincoln continued to represent Moffett. The Illinois Supreme Court upheld the award of additional compensation to Lewis for selling the patent rights but reversed the award to Moffett of $1,377.41.[119] In so holding, the court noted that "the results [achieved by Lewis] were truly wonderful when we consider that the sales were made upon the actual exhibition of the churn when the testimony shows and all now seem to admit that the invention is really valueless."[120] Perhaps not surprisingly, Lincoln and Herndon had to sue Moffett to collect their legal fees.[121]

Lincoln's involvement with patent cases was not limited to agricultural machinery. For example, a patent was issued in 1853 to Alexander Edmunds on an ornamental design for a horological baby cradle.[122] When wound, the cradle used weights and pulleys to self-rock. The invention allowed the caretaker to wind it up, and be free to do other work while the baby was rocked.[123] The horological cradle was the subject of four cases in

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[114] *Id.*

[115] 1848–1850: Lewis v. Moffett, *in* 2 THE PAPERS OF ABRAHAM LINCOLN, *supra* note 54, at 44, 48.

[116] *Id.* at 50.

[117] *Id.* at 85, 87.

[118] *Id.* at 86–87.

[119] *Id.* at 99 n.99, 103.

[120] *Id.* at 102.

[121] *Id.* at 103.

[122] Edmunds v. Myers, 16 Ill. 207, 209 (1854).

[123] As recited in the pleadings:

> The said Edmunds professed to have invented an horological cradle which was to be rocked by machinery, with a weight, running on one

which Lincoln served the role of advocate.

In one case, John and George Myers brought an action for fraud against Edmunds.[124] Plaintiffs had purchased the patent rights covering many Illinois counties under the mistaken view that the patent covered the cradle itself, including the clock mechanism, not just its design.[125]

Plaintiffs prevailed in the Logan County circuit court based on misrepresentation.[126] Edmunds then appealed to the Illinois Supreme Court.[127] At that point, the plaintiffs retained Lincoln. The Illinois Supreme Court reversed, ruling in favor of Edmunds on grounds that the plaintiffs' unclean hands, in failing to appraise the court of the profits earned from selling the cradle, precluded an award of equitable relief.[128] In addition, the court stated that misrepresentation was not proved: "No witness testifies to any representation whatever being made to them."[129]

A related case had basically the same history, with the circuit court ruling in favor of plaintiffs only to have the decision reversed by the state supreme court.[130] Lincoln again represented the Myerses who sought, on grounds of fraud, to rescind an agreement entered into between Edmunds, on the one hand, and McCarthy Hildreth and William Turner, on the other hand, under which Edmunds sold his rights in the horological patent in several states to Hildreth and Turner.[131] The court pointed out that the Myerses were not in privity of contract with Edmunds, stating "[s]uppose there was fraud, the party defrauded and those injured by the fraud, could alone take advantage of it to annul the

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> or more pulleys; the cradle constituting the pendulum and which, being wound up, would rock itself until it run down, and so save the continual labor to mothers and nurses, of rocking the cradle.

BANNISTER, *supra* note 3, at 108.

[124] *Edmunds*, 16 Ill. at 207; *see* BANNISTER, *supra* note 3, at 108.

[125] *Edmunds*, 16 Ill. at 209. As recited in the pleadings:

> Edmunds has really no letters patent for said horological cradle, or for its machinery, mode of operation, or its principal of action; but your orators have discovered, by procuring a copy of the letters patent to said Edmunds a design for a cradle, and the specifications of his claim for said letters patent only claims, as the production of said Edmunds, the design and configuration of the ornaments described and set forth, forming together an ornamental design for an horological cradle.

BANNISTER, *supra* note 3, at 109 (internal quotation marks omitted).

[126] *Edmunds*, 16 Ill. at 210.

[127] *Id.* at 207.

[128] *Id.* at 212.

[129] *Id.* at 212.

[130] Edmunds v. Hildreth, 16 Ill. 214, 216 (1854).

[131] *Id.* at 214.

contract."[132]

The Myerses also retained Lincoln in two other collection cases involving the cradle patent. Edmunds sold his rights to make and sell the cradle in five states to Turner for $10,000.[133] Turner sold half his interest to John and George Myers, who gave Turner a note for the money.[134] The Myerses defaulted on the note and Turner sued in an action of assumpsit.[135] In both cases, Lincoln argued the promissory note lacked consideration because the note was given for a patent on a cradle, not on the design.[136] The circuit court ruled in favor of Turner and the Illinois Supreme Court, after having consolidated the appeals, upheld the judgments below.[137] Noting that this case grew out of the same transaction as *Edmunds v. Myers*, the Illinois Supreme Court concluded that the Myerses had failed to examine the patent carefully and that they should have heeded the maxim of "caveat emptor."[138]

Though his clients lost the cradle cases, in another promissory note case, *Roberts v. Harkness*,[139] Lincoln's client prevailed. The case involved an invention for the manufacture of bricks.[140] In obtaining rights in the invention, Harkness gave Isiah Roberts three promissory notes and Isiah Roberts assigned the notes to Henry Roberts.[141] Henry Roberts sued Harkness for nonpayment on the note and Harkness defended on grounds that the involved invention was useless.[142] Lincoln was hired to defend Harkness. The first jury failed to reach a verdict but the second jury found for Harkness.[143]

Lincoln was also involved in a number of cases involving a patent owned by Henry R. Flinchbaugh on a cast iron cemetery monument.[144] Flinchbaugh's agent, Miller, sold exclusive rights

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[132] *Id.* at 215.
[133] *Id.* at 214; BANNISTER, *supra* note 3, at 109.
[134] Myers v. Turner, 17 Ill. 179, 180 (1855).
[135] *Id.* at 180.
[136] Hildreth v. Turner, 17 Ill. 184 (1855); *Myers*, 17 Ill. at 179.
[137] *Hildreth*, 17 Ill. at 184; *Myers*, 17 Ill. at 183.
[138] *Myers*, 17 Ill. at 181.
[139] Roberts v. Harkness (Peoria Cnty. Cir. Ct. 1856), *available at* The Law Practice of Abraham Lincoln, *supra* note 40, http://www.lawpracticeof abrahamlincoln.org/Details.aspx?case=136296.
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.*
[144] Miller v. William H. Young's Adm'r, 33 Ill. 354, 355 (1864); Miller v. Whittaker, 23 Ill. 400, 400 (1860).

in the patent for most of Illinois to Whittaker in exchange for eighty acres of land and $1,000.[145] Miller then sold exclusive rights under the patent in the State of Michigan to Young for 160 acres of land.[146] Whittaker and Young commenced actions against Miller to rescind the contracts on the ground of fraud and to have the land reconveyed.[147] Whittaker argued that the patent was only for the ornamental design of the monument; that the monument was known in the United States and elsewhere and thus void; that the patent was frivolous; and that he was intoxicated at the time he entered into the contract with Miller.[148] Young's complaint largely repeated the allegations made by Whitaker, except those relating to being intoxicated at the time of the conveyance.

The circuit court ruled for Whittaker and Young.[149] Miller then retained Lincoln and Herndon and filed an appeal to the Illinois Supreme Court. The court reversed and remanded on grounds that Flinchbaugh should have been added as a defendant and that the complaint did not offer to reconvey the titles to the patent.[150] On remand, after Flinchbaugh was made a party and the offer was made to reconvey title to the patent, the circuit court again ruled for Whittaker and Young and ordered Miller to reconvey the lands.[151]

With respect to the action brought by Young, the Illinois Supreme Court reversed the trial court's decree and ordered the bill dismissed.[152] The court noted that the patent in issue was not introduced into evidence and, thus, it could not be determined if it was void, and that any representations made by Miller regarding the qualities of the patented invention were mere matters of opinion.[153] However, on procedural grounds, the court upheld the decree with respect to the action brought by Whittaker.[154] The court pointed out that, on remand, Miller failed to file a new answer and it was "unable to say that the allegations of the bill were not admitted."[155]

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[145] *Miller*, 23 Ill. at 401.
[146] *Id.* at 401–02.
[147] *Id.* at 401.
[148] *Id.*
[149] *See id.* at 400.
[150] *Id.* at 402.
[151] Miller v. William H. Young's Adm'r, 33 Ill. 355, 356 (1864).
[152] *Id.* at 357.
[153] *Id.* at 356–57.
[154] Miller v. Whittaker, 33 Ill. 386, 388 (1864).
[155] *Id.* at 387.

Lincoln's final patent case before assuming the Presidency on March 4, 1861 involved a patent on an improvement in ploughs.[156] The owner of the patent, Smith, assigned the patent to Cherry, Solomon, and Sheppard.[157] Solomon and Sheppard assigned their interest to Cherry, who in turn, assigned his interest in Morgan County, Illinois, to Dawson.[158] Dawson brought suit seeking $10,000 in damages against Henry and William Ennis, who were selling the ploughs in Morgan County.[159] Dawson retained Lincoln to represent him. The defendants argued that Owen, not Smith, was the inventor and that they had received an assignment from Owen.[160]

The court, in a decision issued five days after Lincoln took the oath of office, ruled for the defendants.[161] Dawson moved for a new trial and produced witnesses who testified that Smith was the true inventor and that Owen was "a man of bad reputation for truth and veracity."[162] The parties eventually reached an agreement and the case was dismissed.[163]

IV. LINCOLN THE PUBLIC LECTURER[164]

Lincoln's understanding of the important role of the patent system to the nation's economy was demonstrated in a series of lectures on discoveries and inventions, which he gave between 1858 and 1860.[165] These lectures were undertaken in an attempt

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[156] Dawson v. Ennis & Ennis (S.D. Ill. 1862), *available at* The Law Practice of Abraham Lincoln, http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=137538; *see* DANIEL W. STOWELL, ALMOST A FATHER TO ME 3–4 (2007), http://www.papersofabrahamlincoln.org/Briefs/Briefs84.pdf.

[157] Dawson v. Ennis & Ennis (S.D. Ill. 1862), *supra* note 156.

[158] *Id.*

[159] *Id.*

[160] *Id.*

[161] *Id.*

[162] *Id.*

[163] *Id.*

[164] See JOHN CHANNING BRIGGS, LINCOLN'S SPEECHES RECONSIDERED (2005), for an in-depth discussion of many of Lincoln's speeches. Public lectures were a popular way of educating "varied audiences seeking general knowledge and practical advice." *Id.* at 184. Knowledge of the scope of Lincoln's lectures is incomplete, although fragments of notes indicate many of the topics in which he was interested. *Id.* at 185.

[165] First Lecture on Inventions and Discoveries (Apr. 6, 1858), *supra* note 3, at 437; Second Lecture on Inventions and Discoveries (Feb. 11, 1859), *supra* note 1, at 356. There is a debate as to whether there was one lecture, which was later revised, or two lectures. Roy Basler indicates that there were two separate lectures. Second Lecture on Discoveries and Inventions (Feb. 11, 1859), *supra* note 1, at 356 n.1. However, the weight of authority supports the proposition

to boost his income after losing an election for the U.S. Senate to Stephen Douglas.[166] Self-improvement lectures were popular at that time and could be profitable to the promoters and the speaker; however, Lincoln's lectures were not.[167]

While these lectures do not rise to the grandeur and fame of the Gettysburg Address or Lincoln's Second Inaugural,[168] they shed light on Lincoln's views on human nature and economic development.[169] Though overtly non-political, they positioned Lincoln as a friend of economic progress.[170] As noted by Professor Eugene F. Miller, a "leading theme of the lecture is the way human labor, augmented by discoveries and inventions, has improved the human condition."[171] Professor Emeritus Fred Kaplan, in his recently published book, *Lincoln, The Biography of a Writer*, stated that the lecture reflected "a basic tenet of Lincoln's political philosophy: material and cultural progress through free labor and inventive genius."[172] According to Briggs, consistent with the style of the day, the lectures took a "multileveled approach."[173] They drew on the Bible, humor, and political concerns.[174]

Lincoln began a lecture by noting:

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that there "was but a single lecture whose parts had been separated following Lincoln's assassination." *See* Eugene F. Miller, *Democratic Statecraft and Technological Advance: Abraham Lincoln's Reflections on "Discoveries and Inventions"*, 63 REV. POL. 485, 488 (2001). The lecture was given in Bloomington, Illinois, in April 1858, in Jacksonville, Illinois, on February 11, 1859, and in Decatur, Illinois and Springfield, in February 1859. *See* Second Lecture on Discoveries and Inventions (Feb. 11, 1859), *supra* note 1, at 356 n.1.

[166] Goldsmith, *supra* note 3, at 13.

[167] *Id.* at 9. Low attendance resulted in low receipts for the lectures. *Id.*

[168] BRIGGS, *supra* note 164, at 192. Until recently, most of the historians writing about Lincoln were either dismissive or negative about these lectures. *Id.* Herndon was quite negative about the speeches and Lincoln's ability as a lecturer. *Id.* at 193–94. Lincoln may have been less than enthusiastic about lecturing. *Id.* at 194. However, in 1865, Lincoln stated that he hoped to finish and print the lecture. *Id.* at 196.

[169] *Id.* at 199. These lectures must be considered in the context of lectures by George Bancroft, which optimistically argued that the inevitability of human progress would make slavery obsolete and Wendell Phillips's more pessimistic argument that, though human progress was inevitable, it was necessary to destroy slavery and American's "materialistic self-centeredness." *Id.* at 199–202.

[170] GUELZO, *supra* note 34, at 173. Each new technological development spurred others on an ever shortening time frame. *Id.*

[171] Miller, *supra* note 165, at 495.

[172] KAPLAN, *supra* note 43, at 286.

[173] BRIGGS, *supra* note 164, at 197.

[174] *Id.* at 203. By drawing from the Bible and other sources with which the audience would be familiar, Lincoln connected with his audience. *Id.* at 206.

> All creation is a mine, and every man, a miner.
>
> The whole earth, and all *within* it, *upon* it, and *round about* it, including *himself*, in his physical, moral, and intellectual nature, and his susceptibilities, are the infinitely various 'leads' from which, man, from the first, was to dig out his destiny.
>
> . . . .
>
> Man is not the only animal who labors; but he is the only one who *improves* his workmanship. This improvement, he effects by *Discoveries* and *Inventions*.[175]

According to Lincoln, observation, reflection, and experimentation are the keys to discoveries, inventions, and improvements. "His lecture emphasizes strongly the advantages of inventive, productive labor and its capacity to improve the human condition."[176] Lincoln further noted that useful inventions and discoveries are facilitated by speech and writing, the latter of which Lincoln described as "the great invention of the world."[177] In addition to speech and writing, Lincoln cited the art of printing and the introduction of patent laws in England in 1624 as those inventions and discoveries that facilitated all others.[178] Before patent laws, Lincoln declared:

> Any man might instantly use what another had invented; so that the inventor had no special advantage from his own invention. The patent system changed this; secured to the inventor, for a

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[175] EMERSON, *supra* note 3, at 61–62.

[176] Miller, *supra* note 165, at 496.

[177] KAPLAN, *supra* note 43, at 288 (internal quotation marks omitted). Kaplan attributes this to a revision made between April 1858 and February 1859. *Id.* While what has survived of the original lecture "was a boring enough, encyclopedia-derived and Bible-illustrated treatment of 'improvements' in spinning and weaving and harvesting and water power and steam power and the like," the revisions shifted to a discussion of these great inventions. MILLER, *supra* note 71, at 45–46. Professor Briggs states:

> The discoveries lecture was an opportunity to present the history of technology and exploration primarily in terms of the verbal arts–literacy being, paradoxically, the cause and effect of the emancipation of the mind. The story of the emergence of literacy in America became, in Lincoln's formulation, a commentary on the strengths and fallibilities of technological revolutions that needed, and helped to secure, the institutions and attitudes that led to self-government.

BRIGGS, *supra* note 164, at 197.

[178] *See* GUELZO, *supra* note 34, at 173. According to Guelzo, placing patent laws at the "apex" of progress was an "odd element." *Id.* at 174. However, it is a manifestation of his understanding that technological progress had replaced land as the main standard of wealth. *Id.* Furthermore, Guelzo states that, "*Discoveries, Inventions*, and *Improvements* were the real capital of the transatlantic markets, and the protection of those ideas through patent laws provided as fundamental a legal sanction for the new industrial age as the notion of contract itself." *Id.* (internal quotation marks omitted).

> limited time, the exclusive use of his invention; and thereby added the fuel of *interest* to the *fire* of genius, in the discovery and production of new and useful things.[179]

As noted by Kaplan:

> Concerned, as a lawyer, with legal structures that protected property and provided the incentive inherent in ownership, [Lincoln] believed patent laws to be essential to securing the relationship among ideas, language, and communication. Legal title, whether to land or to an invention, promotes individual labor and new ideas, creates wealth and stability, and spreads civilization through the language of contracts.[180]

Lincoln's *Lectures on Inventions and Discoveries* obliquely related technological advance to the issue of slavery.[181] Technological advance can be misused and Lincoln noted that the age of invention was tied to the creation of slavery.[182] According to Professor Miller, "Lincoln argues in 'Discoveries and Inventions,' the concentration of knowledge and capital favors rule by a few. Advancing technology tends to break this monopoly by spreading enlightenment, fostering economic independence, and giving all laborers the opportunity to rise in life."[183] Professor Briggs points out:

> Lincoln examines those currently prospering arts of literacy that are the greatest of all inventions, and suggests that the emancipation of all mankind comes gradually—by means of insight, good fortune, the development of free institutions, and the struggle to overcome the belief that literacy is beyond one's reach. The productive habits, inner resources, and political heritage of the inventor make the difference.[184]

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[179] Second Lecture on Discoveries and Inventions (Feb. 11, 1859), *supra* note 1, at 363. "[T]he fuel of *interest*" is the motivator, but proprietary protection was necessary to spark "the *fire* of genius." GUELZO, *supra* note 34, at 174 (second internal quotation marks omitted). "THE PATENT SYSTEM ADDED THE FUEL OF INTEREST TO THE FIRE OF GENIUS – LINCOLN" is carved on to the west entrance of the Herbert C. Hoover building that houses the U.S. Department of Commerce, in Washington D.C. *See* U.S. Department of Commerce, Photographic Services, 100th Anniversary: Inscriptions and Reliefs, http://www.commerce.gov/opa/photo/DOC_100/100yrs/images/209.jpg (last visited Mar. 26, 2010). In 1925, "[t]he Patent Office was transferred from the Department of the Interior to the Department of Commerce by Executive Order of April 1 in accordance with the Act of February 14, 1903 (32 Stat. 830)," and was housed in the Department of Commerce building for many years. U.S. Department of Commerce, Milestones, http://www.commerce.gov/About_Us/Milestones/index.htm (last visited Mar. 26, 2010).

[180] KAPLAN, *supra* note 43, at 292.

[181] *See* BRIGGS, *supra* note 164, at 210.

[182] *Id.* at 218.

[183] Miller, *supra* note 165, at 513.

[184] BRIGGS, *supra* note 164, at 210.

Professor Jon D. Schaff summarizes Lincoln's views on this topic as follows:

> Technology and education are dual thrusts against slave power. Technology gives man the ability to become more efficient, lessening his dependence on others for his well-being. He liberates himself from the drudgery of mere manual labor that forms the foundation of agrarian slave society. Discoveries and inventions mean that we are no longer dependent upon the land as a source of wealth. Our wealth comes from ingenuity rather than toiling on the land.[185]

Professor Miller points out, however, that while Lincoln recognized that technological advance has "emancipating tendencies, it has the potential also to reinforce old forms of mastery and to create new ones."[186] To promote the former and guard against the latter, Lincoln, according to Miller, developed a moral teaching that called for the application of the principle of "natural right" to "[set] limits to our dealings with one another."[187] Miller notes that "[s]lavery violates natural right, but so does any system—economic, social, or political—that denies to individuals, including rich ones, their right to themselves or to the fruit of their labor."[188]

Thus, the arguments advanced in Lincoln's *Lectures on Inventions and Discoveries* may be considered in the context of the more controversial issue of slavery. When so viewed, the lectures suggest that discoveries and inventions, and laws that promote such, have a moral as well as economic dimension.

V. LINCOLN AS PRESIDENT

Though Lincoln's patent was never commercialized, its issuance was well-known and provided fodder for political commentary during his presidency. The December 1, 1860 issue of *The Scientific American*, in an article published after Lincoln's election to the Presidency, commented: "We hope the author of it will have better success in presiding as Chief Magistrate over the people of the entire Union than he has had as an inventor in introducing his invention upon the western waters, for which it

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[185] JON D. SCHAFF, TECHNOLOGY, LABOR AND SLAVERY: LINCOLN'S LECTURES ON DISCOVERIES AND INVENTIONS 22 (2006).

[186] Miller, *supra* note 165, at 514. The invention of the cotton gin, for example, led to the growth of slavery. Goldsmith, *supra* note 3, at 5.

[187] Miller, *supra* note 165, at 514 (internal quotation marks omitted).

[188] *Id.*

was specially designed."[189] Similarly, an article in the April 6, 1861 issue of *Harper's Weekly*, published a little over one month after Lincoln's inauguration, noted that Lincoln "has not had the satisfaction of seeing his patent in use on the Mississippi or its tributaries."[190] *Harper's Weekly* then used Lincoln's patent as a metaphor to discuss the political situation confronting the nation and the decisions that Lincoln would be called upon to make:

> But it has fallen to his lot to be in command of a ship of uncommon burden on a voyage of uncommon danger. It devolves upon him to navigate the ship of state through shallows of unprecedented peril, and over flats of unparalleled extent. The difficulty is how to prevent her grounding and becoming a wreck.
>
> We trust that the President will set the fashion of using his own patent.
>
> He must throw some of his cargo overboard, and buoy up his craft on all sides. He need not change his voyage, or sail for a strange port. But unless he can set his air-chambers at work so as to diminish the draught of his vessel—in a word, unless he can increase her buoyancy, and bring more of her hull into God's daylight, he will run no small risk of losing her altogether.[191]

It is known that Lincoln encouraged invention during his presidency. He met with Christopher N. Spencer, inventor of the repeating rifle, tried one out and then influenced the Union Army to buy them for the troops.[192] Lincoln pressured the Navy to build the Monitor, the Union's first iron-clad warship. Previously, Union ships were made of wood and highly vulnerable to attack from Confederate vessels.[193]

During Lincoln's tenure as President, the patent laws were amended in a number of respects. Probably the most significant change was providing for a seventeen-year term of protection from the date of issuance of a utility patent.[194] In addition, the statutes were amended to give owners of design patents the option of a three-and-one-half-, seven-, or fourteen-year-term of

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[189] Jason Emerson, *President Lincoln's Patent Model*, CIVIL WAR TIMES, Feb. 2009, at 57 (quoting *The Scientific American* illustrated article from December 1, 1860).

[190] *A Presidential Patent*, HARPER'S WEEKLY, Apr. 6, 1861, at 210.

[191] *Id.*

[192] Goldsmith, *supra* note 3, at 32. "About 20,000 of these rifles in all were used throughout the war. They proved to be quite effective, particularly in the battle of Gettysburg." *Id.*

[193] *Id.* at 32.

[194] *See* Ladas & Parry, LLP, A Brief History of the Patent Law of the United States, http://www.ladas.com/Patents/USPatentHistory.html (last visited Mar. 26, 2010).

protection.[195] The patent laws were also amended to provide for the appointment of three examiners-in-chief to hear appeals from rejections; to provide for the printing of specifications and claims; and to introduce a marking or notice requirement for an award of damages.[196]

During Lincoln's tenure as President, the U.S. Patent Office faced many challenges. David P. Holloway, a former member of Congress from Indiana, presided over the Office as Commissioner of Patents.[197] Interestingly, Lincoln had first offered the position to George Harding, who had represented Manny in the infringement suit brought by McCormick.[198]

As reported in *History of the United States Patent Office*, during the first year of the Civil War receipts in the Patent Office fell from $256,000 to $137,000, while expenses decreased by only $31,000.[199] The decline in patent filings was attributable to the fact that inventors in the Confederate states were no longer filing applications and many inventors from Union states were off to war.[200] Of the applications that were filed, almost all related to machines for war.[201] Pleading poverty, Holloway discontinued the congressionally-mandated practice of printing patent specifications.[202] Because of the dismal fiscal situation, Commissioner Holloway dismissed examiners and decreased the salaries of those who remained.[203] In 1862, Congress appropriated $50,000 for the Patent Office to help with the shortage of operating funds.[204]

The question of employee loyalty to the Union became a difficult issue within the Office. For example, Lewis Bosworth, a draftsman, was accused by a fellow employee of being a Southern sympathizer.[205] Citing insufficient evidence of disloyalty, Holloway refused to dismiss or take other action against Bosworth.[206] Holloway was later investigated by the U.S. House

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195 *Id.*
196 *Id.*
197 Goldsmith, *supra* note 3, at 31.
198 *Id.*
199 KENNETH W. DOBYNS, A HISTORY OF THE EARLY PATENT OFFICES: THE PATENT OFFICE PONY 161 (1997).
200 *Id.*
201 *Id.*
202 *Id.*
203 *Id.*
204 Goldsmith, *supra* note 3, at 32.
205 DOBYNS, *supra* note 199, at 161.
206 *Id.*

of Representatives for refusing to fire known traitors.[207]

Though the work of the Patent Office continued during the Civil War, part of the building was directly used in the war effort. In early 1861, it housed the soldiers of the First Rhode Island Regiment. It was reported that the soldiers, who encamped in the model rooms, broke 400 panes of glass and stole many of the models.[208] Other troops vandalized murals.[209]

The north and west wings of the Patent Office were used as a hospital from October 1861 to January 1863.[210] Cots were placed in at least two of the large model halls to provide bedding for 800 patients.[211] Clara Barton, a Patent Office employee, became a nurse for the wounded soldiers.[212] "She was appalled by stories of how poorly the wounded were treated in the field before they could be removed to the hospitals and of the lack of supplies for the treatment of wounded."[213] Barton advertised for, collected, and distributed medical supplies for the troops.[214] While in use as a hospital, President Lincoln visited the hospitalized soldiers.[215]

In January 1863, the poet Walt Whitman volunteered in the Patent Office Hospital. He described the scene as follows:

> The vast area of the second story of that noblest of Washington buildings, the Patent Office, is crowded close with rows of sick, badly wounded and dying soldiers. They are placed in three very large apartments. I have gone there many times. It is strange, solemn, and with all its features of suffering and death, a sort of fascinating sight.[216]

Given these uses as a barracks and a hospital, it is surprising that the Patent Office, on March 6, 1865, was the site of Lincoln's second inaugural ball.[217] More than 4,000 guests reportedly attended the affair and enjoyed an extensive buffet dinner.[218]

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[207] *Id.* at 162.
[208] *Id.* at 159.
[209] *Id.*
[210] *Id.* at 160.
[211] *Id.* Up to three thousand beds were reportedly set up in the east, west, and north exhibitions galleries for the wounded from the battles of Manassas, Antietam and Fredericksburg. CHARLES J. ROBERTSON, TEMPLE OF INVENTION: HISTORY OF A NATIONAL LANDMARK 50 (2006).
[212] DOBYNS, *supra* note 199, at 160. Clara Barton's work on behalf of the wounded, on both sides of the war, led her to found the American Red Cross. *Id.* at 161.
[213] *Id.* at 160.
[214] *Id.*
[215] ROBERTSON, *supra* note 211, at 50.
[216] DOBYNS, *supra* note 199, at 163.
[217] *Id.* at 165.
[218] *Id.* at 166. An exhibit entitled "The Honor of Your Company is Requested:

CONCLUSION

Abraham Lincoln is considered by many historians to be one of our nation's greatest Presidents, if not the greatest.[219] Every school child learns that Lincoln saved the Union and freed the slaves. While much has been written about his life, Lincoln's involvement with patents has largely been overshadowed by his more well-known achievements. As we celebrate the 200th anniversary of his birth, it is appropriate to pause and reflect upon Lincoln's views on, and experience with, the patent system and on his recognition of the importance of patents to the economic and political life of the nation.

President Lincoln's Inaugural Ball," included pictures and artifacts of the inaugural ball, and it was on display through Jan. 18, 2010, at the Smithsonian American Art Museum. This museum occupies the space that was the U.S. Patent Office and where the inaugural ball was held on March 6, 1865. SMITHSONIAN AMERICAN ART MUSEUM, FACT SHEET: "THE HONOR OF YOUR COMPANY IS REQUESTED: PRESIDENT LINCOLN'S INAUGURAL BALL" (2008), http://americanart.si.edu/pr/library/2008/lincoln/lincoln_fact_sheet.pdf.

> [T]he exhibition traces events beginning with Lincoln's re-election and inauguration through his assassination and funeral a month after the ball. It also spotlights the spaces in the building where the ball events took place, including the entrance for guests at the second-floor south portico, where the exhibition is on view, and on the third floor where more than 4,000 guests danced the night away in the north wing and the east wing, which is now called the Lincoln Gallery, as they celebrated the imminent end of the grueling Civil War. The west wing, now home to the museum's Luce Foundation Center for American Art, was the venue for a sumptuous buffet supper, which ended in a riotous melee that was featured in the newspaper accounts the following day.

Id.; *see* ROBERTSON, *supra* note 211, at 57. Before leaving for the ball, Lincoln, in responding to congratulations upon his reelection from Mary Lincoln's seamstress, Elizabeth Keckly, commented: "I don't know whether I should feel thankful or not. The position brings with it many trials. . . . We do not know what we are destined to pass through. But God will be with us all. I put my trust in God." JERROLD M. PACKARD, THE LINCOLNS IN THE WHITE HOUSE: FOUR YEARS THAT SHATTERED A FAMILY 226 (2005) (internal quotation marks omitted). "The great ball closed Washington's official season, and except for a theater visit a month later, it was the last evening occasion at which the Lincolns would appear together socially outside the White House." *Id.*

[219] Surveys of historians and of presidential scholars consistently rank Lincoln as one of the greatest Presidents and many surveys rank Lincoln as the greatest President. *See, e.g.*, *Lincoln Wins: Honest Abe Tops New Presidential Survey*, CNN.COM, Feb. 16, 2009, http://www.cnn.com/2009/POLITICS/02/16/presidential.survey/index.html.