Spring 2012

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Ronneberg, D. T. (2012). The Wright Brothers' Patent Lawsuits. *Journal of Aviation/Aerospace Education & Research*, 21(3). <https://doi.org/10.15394/jaaer.2012.1326>

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THE WRIGHT BROTHERS' PATENT LAWSUITS

Daniel T. Ronneberg

The Wright Brothers pioneered the first sustained, powered, heavier than air, manned flight on December 17, 1903 (Garber, 1978). Some say that the Wrights' invention and innovation brought the "aerial age" into being (Douglas, 2003, p. 367). Having invented something truly unique and accomplishing it before anyone else, the Wrights took prompt action to protect their invention by filing patent applications in the United States, France, Germany and Great Britain (Johnson, 2004). Once these patent applications were accepted, the Wrights spent significant amounts of time and money defending their patents (Johnson, 2004). Ultimately, the Wrights recovered little in return for their herculean efforts, and further developments of the airplane by the Wrights languished as they sought to protect what they had wrought. A student of aviation history might ask if the Wrights were "right" or "wrong" to devote so much effort to protecting their patents, when ultimately, they recovered so little, at such a great expense. This paper contends that they were ultimately right.

Invention

It is undisputed that the Wright Brothers obtained much information from other inventors such as Lilienthal, Chanute, and Langley (Brady, 2005). However, the Wrights made significant advances and unique discoveries that allowed their airplane to fly on December 17, 1903, when all others had failed before them. The Wrights developed a horizontal operating rudder (an elevator), wing warping, and integrated rudder controls to offset drag (Johnson-Laird, 2005). Additionally, the Wrights researched and invented the propeller, theorizing that airfoils operating in the horizontal plane could be used to push (or pull) an airplane through the air—and they developed an efficient model that performed to the test specifications from their wind tunnel experiments (Garber, 1978). Finally, the Wrights were able to "put it all together" and successfully fly their airplane as the first sustained, powered, heavier than air, manned flight.

Patent Applications

Following the Wrights' 1902 glider flights and the subsequent control system used on all later powered airplanes, the Wright Brothers applied for a patent that was eventually granted in 1906 (Patent, 2002). The patent made no mention of power, but focused almost exclusively on the three-axis control system which became the basis of all

other, later, and competing airplanes (Patent, 2002). Immediately following their successful flight in 1903, Augustus Herring sent a letter to the Wrights insisting that they share in the invention of the aircraft, since Herring claimed that he was the inventor of the Chanute-Herring glider, which had some similarities to the Wright Flyer (Kidder, 2001). The Wrights ignored this letter and proceeded with their patent application. Herring would later make the same claims to Glenn Curtiss and convinced him to build airplanes that violated the Wrights' patent.

The Wrights also filed patents in Britain and France, being granted both in 1904. The German patent was more difficult, originally rejected and then reversed through the efforts of a German lawyer, though the German courts held the patent to be very narrowly constructed (Johnson, 2004).

Early Efforts

Following the grant of the US patent, the Wright Brothers offered the patent for sale to the Aero Club of America for \$100,000 (Johnson, 2004). The Aero Club was unable to raise the necessary funds, but the Wrights had better success in England, where they agreed to award a Crown License to the British Government for 15,000 pounds plus licensing fees (Johnson, 2004). Noting that Curtis and the Aerial Experimental Association (AEA) had constructed

Wright Brothers

the June Bug aircraft and was using it for prize competitions (the Wrights had already agreed to share their technical information with the AEA as long it was used for only non-commercial and non-production purposes), the Wrights offered to negotiate the appropriate licenses so the AEA could legitimately use the Wrights' wing warping system. The AEA refused, and Curtiss' first cash prize in 1909 prompted the Wrights to file a lawsuit against the Herring-Curtiss Company (Johnson, 2004).

Patent Wars

Wright v. Herring-Curtiss ("Wright I") resulted in a strong decision for the Wright Brothers, with Judge Hazel issuing an injunction against the Herring-Curtiss Company and broadly interpreting the Wright patent. *Wright v. Herring-Curtiss*, 177 F. 257 (C.C.W.D.N.Y. 1910), rev'd 180 F. 110 (C.C.A. 2d 1910). Judge Hazel significantly found that the Wright Patent was a pioneering patent, in that the Wrights had invented a sufficiently novel, unique invention that the special legal interpretation for pioneering patents applied in their case. *Wright I*. Pioneering patents are entitled to broad interpretation because original, novel, unique patent applications may not have the same inventor patent improvements upon them. Therefore, equity dictates that the patent be interpreted as broadly as possible for such pioneering patents, when other patents are to be construed more narrowly (Johnson, 2004).

The Wrights were dealt a blow when Curtiss appealed and won on a technicality. In *Wright II*, the Court of Appeals reversed Judge Hazel's injunction and returned the case for further proceedings and additional evidence. *Wright v. Herring-Curtiss. (Wright II)*, 180 F. 110 (C.C.A. 2d 1910). Returned to Judge Hazel, the Wrights again were victorious when they cured the defects pointed out by the Circuit Court of Appeals, and Judge Hazel again ruled strongly in their favor in *Wright III*. *Wright v. Herring-Curtiss. (Wright III)*, 204 F. 597; 1913 U.S. Dist. LEXIS 1676. (D.C.W.D.N.Y. 1913), aff'd 211 F. 654 (C.C.A. 2d 1914).

Curtiss again appealed to the Circuit Court of Appeals, and in an unusual *Per Curium* (by the Court opinion, only rarely issued when the court is unanimous agreement and seeks to make a statement that the appeal is particularly frivolous or meritless) decision, upheld Judge Hazel's decision completely in *Wright IV*. *Wright v. Herring Curtiss. (Wright IV)*, 211 F. 654; 1914 U.S. App LEXIS 1776. (C.C.A. 2d 1914).

Subsequently the Herring-Curtiss Company went bankrupt before the Wrights were able to collect any damages, and Glenn Curtiss sued Augustus Herring for

fraudulently representing that he had superior patents to the Wrights and failing to produce any evidence or the disputed patents. Herring died prior to Curtiss recovering anything from him (Johnson, 2004).

The Wrights sued other aircraft exhibitionists and were also successful, such as in the Paulhan case. *Wright v. Paulhan*, 177 F. 261; 1910 U.S. App LEXIS 5303. (C.C.S.D.N.Y. 1910). The Paulhan case was unique because Judge Learned Hand, a famous federal judge who was well known for the quality of his jurisprudence and the clarity of his opinions, penned the opinion. Many of Judge Hand's rulings are still good law today and are regularly taught in law schools across the country. Judge Hand fully endorsed Judge Hazel's interpretation of the Wrights' pioneering patent and vindicated the Wrights, particularly in light of their decision to protect their patent through litigation (Johnson, 2004).

Conclusion

Ultimately, one only possesses the rights that he can successfully defend. The Wrights, through their own innovation and genius, self-funded and outspent, did what no others before them could do. They rightly expected to profit from their incredibly unique invention and they took the legal steps to protect their invention. While many argue that the tactics the Wrights employed to defend their patent were misguided, evidence certainly exists that the Wrights attempted to share information, compromise, license their patent, and in multiple cases, grant unlimited license for what, in retrospect, appears to be a very fair price.

Litigation is expensive and messy, and though the Wrights recovered little financially from their patent lawsuits, they really had few other options. Their financial dealings and legal wrangling certainly did detract from further development of the airplane, at least at the Wrights' company. But once engaging in this type of hindsight, the analysis should be completed—the Wrights' invention changed the world and formed the basis of a multi-billion dollar industry. The Wrights' patent claims were upheld time and time again, more than once by some of the best legal minds at the time. There is no question that the Wrights were "legally right." Unfortunately, there is often a difference between what is right and the quality of justice that one receives from the Courts.

The Wright Brothers defended their invention to their own financial detriment and to the detriment of developing the airplane much further because they had to. They defended their intellectual property, and yet at some point they must have realized that even as they won, their victory was rather hollow. One only possesses the rights that

he can successfully defend. The Wright Brothers were
“right” to defend theirs. →

Daniel Ronneberg is the Federal Aviation Administration assistant principal operations inspector for SkyWest Airlines. A USAF veteran (Maj), E-3 Aircraft Commander, and Air Force Academy graduate, he earned his J.D. from the University of Denver, MAS from Embry-Riddle, and is currently working on his Ph.D. in Aviation. He was previously a CRJ-900 line check airman and ALPA grievance chairman at Mesaba Airlines. He is licensed to practice law in Oklahoma, Colorado, and the District of Columbia.

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