Patent Litigation and Abraham Lincoln

The Abraham Lincoln School of Patent Litigation:
Plain English, Simple Exhibits & Uncommon Humor

As Presented to the American Intellectual Property Law Association in Washington D.C.
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Executive Summary

In this article, the author challenges the assumption that patents are too complex to be understood by the layperson. Agreeing with federal judges who demand simplicity, the author suggests ways to marshal the evidence into simple compelling arguments.

Introduction

This article discusses the challenges of litigating high technology cases before lay judges and juries. First, let us look at technology cases from the perspective of the courts which render judgments. In the courts' own words:

> In patent cases, it is useful to state the basic issue in simple terms; as the obfuscation introduced by reams of documents and masses of exhibits, not to mention mounds of expert testimony, all too often muddies the waters so badly that no amount of aeration could make them clear enough for anyone to understand. * * * [I]t is sometimes beneficial in patent cases to strip away the shroud of jargon and technology in order to see the legal issues involved.
> *Aghnides v. F.W. Woolworth Company*, 335 F. Supp. 370, 372, 379 (D. Md. 1971), aff'd mem., 475 F.2d 1339 (4th Cir. 1973).

The courts have asked for simple presentations of patent cases. But instead, they say, we continue to present hopelessly complicated cases.

Why don't we simplify our cases?

I believe there are two reasons. One is that we are not brutally honest in our evaluation of cases. The other is that we have not mastered the art and the discipline of presenting a simple case.

My search for a model of honesty, clarity, and effective advocacy led me to Abraham Lincoln. What can we learn from this country lawyer?

I. Be Honest

Lincoln's reputation as a lawyer rested first on the universal belief in his absolute honesty. David H. Donald, Lincoln 149 (1995). Lincoln became known as "Honest Abe" -- or, often, "Honest Old Abe" -- the lawyer who was never known to lie.

Both judges and juries trusted Lincoln, and this alone was important to Lincoln's success. Credibility is just as important to us today in patent cases:

> [T]he Court candidly admits that it is guided by the maxim "actions speak louder than words." * * * [The] words involve the hyper-technical and intricate lingo and issues of patent law. The Court considers that it has expertise in discovering truth based on the actions of interested litigants. However, the Court humbly confesses that its expertise in ascertaining truth from technical patent documents and the even more technical arguments is not as glowing.
> *Rexnord, Inc. v. The Laitram Corporation and Intralox, Inc.*, 628 F. Supp. 467, 472-73 (E.D. Wis. 1986).

Credibility is important, but many honest people couldn't begin to present a case. There must be something more to explain Lincoln's courtroom victories.

Lincoln's honesty led him to concede weaknesses in his case. By conceding weak points, Lincoln simplified his case. He stripped away the varnish and emphasized the strong points of his case. This was a key to his successful advocacy.

And this is the first reason why we present complicated cases. It is because we aren't as honest as Lincoln. We don't turn away enough bad cases. We don't urge settlement of enough weak cases. We don't eliminate enough weak issues.

Our cases are so deeply mired in disputes about weak and secondary issues that we cannot bring our strong points into the light of day.

A. Straight Talk

Lincoln was honest with his clients. If a case had no merit, Lincoln turned the client away:

> You are in the wrong of the case and I would advise you to compromise, . . . do not bring a suit on the facts of your case, because you are in the wrong. D. Donald, *Lincoln 97* (1995), quoting Herndon.

Lincoln urged settlement of weak cases:

> I do not think there is the least use of doing anything more with your lawsuit. I not only do not think you are sure to gain it, but I do think you are sure to lose it. Therefore the sooner it ends the better.
> William H. Herndon, *Life of Lincoln* 263 (DaCapo Press 1983) (1888).

Do we deliver such frank advice to our clients?

B. Concede Weak Points

Lincoln proved his honesty by conceding weak points. "Where most lawyers would object, Lincoln would say he 'reckoned' it would be fair to let this in, or that; and sometimes, when his adversary could not quite prove what Lincoln knew to be the truth, he 'reckoned' it would be fair to admit the truth to be so-and-so." Id. at 269, quoting Leonard Swett.

But Lincoln did more than prove his honesty. He proved his case:

> When the whole thing was unraveled, the adversary would begin to see that what [Lincoln] was so blandly giving away was simply what he couldn't get and keep. By giving away six points and carrying the seventh he carried his case, and the whole case hanging on the seventh, he traded away everything which would give him the least weight in carrying that. Any man who took Lincoln for a simple-minded man would very soon wake up with his back in a ditch. *Id.* at 269-70.

Instead of conceding weak points and reaching agreement on at least some of the issues, the currently prevailing practice seems to be to "dispute everything, yield nothing, and talk by the hour." As observed by the Honorable A. David Mazzone in a famous patent case:

> Experts of national repute were presented by both sides to render their opinions . . . [which] were predictably, and discouragingly, widely disparate on almost every point. * * * [C]ounsel had years to prepare their assignments and their witnesses. * * * The only surprise was that despite sharing all of the evidence that was ultimately produced at trial among all of the experts, the parties' positions were irreconcilably apart in every area. It was necessary to forge an independent course in technical, complicated areas in an effort to reach a principled result.
> *Polaroid Corporation v. Eastman Kodak Company*, 16 USPQ2d 1481, 1483 (1990).

The court awarded Polaroid damages of $909,457,567.00. One cannot help but wonder if Kodak might have preserved its credibility and proved a lower quantum of damages by conceding Polaroid's better points.

II. Marshal the Facts Into an Honest, Compelling Story

> To one not overly familiar with the mysteries of patent law, the trial of a patent infringement suit must be a baffling ritual indeed. More often than not, the evidence -- testimonial, documentary, and demonstrative -- is so voluminous that it could fill a bottomless pit.
> *Aghnides*, 335 F. Supp. at 370.

> We mean well, of course, when we introduce "reams of documents," "masses of exhibits," and "mounds of expert testimony" to prove our cases. But have we mastered our material, or are we being controlled by it? Many people suppose that there is only one way of telling the truth, and that, given honesty, no art is required to make a frank and fair statement of matters in dispute; but this is a popular delusion. "A truth which is badly put," says Mr. Wells in his "Mankind in the Making," "is not a truth, but an infertile, hybrid lie," and every lawyer of experience knows that not one man in a thousand can make facts speak for themselves. Certainly the average practitioner does not master his material. He is controlled by it, and presents his cause in such a manner as to necessitate contradiction, invite confusion, or challenge belief.
> Frederick T. Hill, *Lincoln the Lawyer* at 208-09 (1906).

This is the second reason why we present complicated cases. We have not mastered the art and the discipline of presenting a simple case. Consider Lincoln's approach:

> His logical mind marshaled facts in such orderly sequence, and he interpreted them in such simple language, that a child could follow him through the most complicated cause, and his mere recital of the issues had the force of argument.
> *Id.* at 208.

It's easier said than done, but shouldn't this be our goal? To marshal facts in an orderly sequence and to interpret them in simple language until the "mere recital of the issues" has the force of argument.

Pioneer inventions can be explained, with some effort, in simple terms. It is more difficult to explain in layman's terms the relatively minor advances in a crowded and highly technical art. See *Williams Co. v. United Shoe Machinery Corp.*, 316 U.S. 364, 375-76 (1942) (Black, dissenting) (contrasting Alexander Graham Bell's simple patents on pioneer inventions, on the one hand, with complicated patents on cobbling improvements, on the other).

A. Eliminate Weak And Unnecessary Arguments

Let us consider more specifically the courts' frustration in dealing with rampant issues. In the words of the Honorable Howard T. Markey:

> Embittered in battle below, the parties request this court to resolve over 25 issues and subissues. The trial court is directly charged with 11 reversible errors. Couched in accusatory and turgid terminology, the briefs set forth numerous bits and pieces of conflicting testimony and documentary evidence, from which we are asked to draw a plethora of factual inferences . . . [This court has been required to make] a searching review of an entire 4000 page record . . . .
> *E.I. du Pont de Nemours & Company v. Berkley & Company, Inc.*, 620 F.2d 1247, 1256-57 (8th Cir. 1980).

In still another case, Judge Markey observed:

> The present is another appeal following a trial process plagued with a plethora of pusillanimous presentations. * * * Though the trial judge, reflecting his complete candor and considerate courtesy, noted that this was his first patent case, admitted unfamiliarity with patent jargon, and praised counsel for their "patience", the appendix reflects not even a minimal concern of counsel for simplifying and clarifying the infringement issue.*
>
> * . . . Presentation of the infringement issue on an overgrown claims jungle to a jury and judge at trial, and to this court, is an unprofessional exercise not in clarification but in obfuscation.
> *Wahpeton Canvas Company, Inc. v. Frontier, Inc.*, 870 F.2d 1546, 1551 (Fed. Cir. 1989).

Judge Learned Hand castigated lawyers for presenting multitudes of lengthy patent claims, referring to a "surfeit of verbiage which has for long been the curse of patent practice, and has done much to discredit it." *Engineering Development Laboratories v. Radio Corporation of America*, 153 F.2d 523, 527 (2d Cir. 1946). See also *Victor Talking Machine Co. v. Thomas A. Edison, Inc.*, 229 F. 999, 1001 (2d Cir. 1916); *Electrical Engineers' Equipment Co. v. Champion Switch Co.*, 23 F.2d 600 (2d Cir. 1928).

In contrast to the practice of multiplying the issues, let us consider Lincoln's practice:

> Mr. Lincoln had a genius for seeing the real point in a case at once, and aiming steadily at it from the beginning of a trial to the end. The issue in most cases lies in a very narrow compass, and the really great lawyer disregards everything not directly tending to that issue. The mediocre advocate is apt to miss the crucial point in his case and is easily diverted with minor matters, and when his eyes are opened he is usually angry and always surprised. Mr. Lincoln instinctively saw the kernel of every case at the outset, never lost sight of it, and never let it escape the jury.
> F. Hill, *Lincoln the Lawyer* 211-12 (1906).

His appellate practice was similarly focused:

> Lincoln had the major appellate practice of his time and place. His technique was consistently that of simplification; he would reduce the case to one or two matters and then sustain his position with a very limited number of citations. He had a distinctly talented eye for the case in point . . . His briefs were simply and concisely put . . . His oral arguments in the Supreme Court of Illinois . . . were extremely orderly and were probably briefer than the average of the time.
> John P. Frank, *Lincoln as a Lawyer* 169, as quoted in the *Lincoln Legal Papers*, a historical research project of the Illinois Historic Preservation Agency (modified Nov. 15, 1996); http://www.LincolnLegalPapers.org.

B. Patentese-To-English (with a Sample Translation)

Do patents really need to be translated into plain English? Let us consider claim 5 of U.S. Patent 3,694,853, entitled *Apparatus for Encasing a Product*:

> 5. Looping and conveying apparatus for use with means adapted to issue forth an elongated linked casing, said apparatus comprising:
>
> a support;
> an elongated tube-like horn extension having first and second end portions and a bore extending therethrough and therebetween for slidably receiving said casing, said second end portion having a length substantially greater than the length of said first end portion,
>
> bearing means on said support having an axis of rotation and rotatably supporting said first end portion of said horn extension, said second end portion having a longitudinal axis which is substantially straight and which is angularly disposed with respect to the longitudinal axis of said first end portion and angularly disposed with respect to said axes of rotation of said bearing means,
>
> drive means for rotating said horn extension on said bearing means; and
> a conveyor including a plurality of spaced apart hooks thereon and also including carrying means for moving said hooks along a predetermined path, said conveyor being positioned so that said hooks will pass adjacent said second end of said horn extension when being moved by said carrying means, whereupon said hooks will catch and carry away said casing at spaced points along the length of said casing as said casing passes out of said second end of said horn extension.

It may be helpful to translate claim 5 into plain English before discussing it further. The courts found such a translation useful:

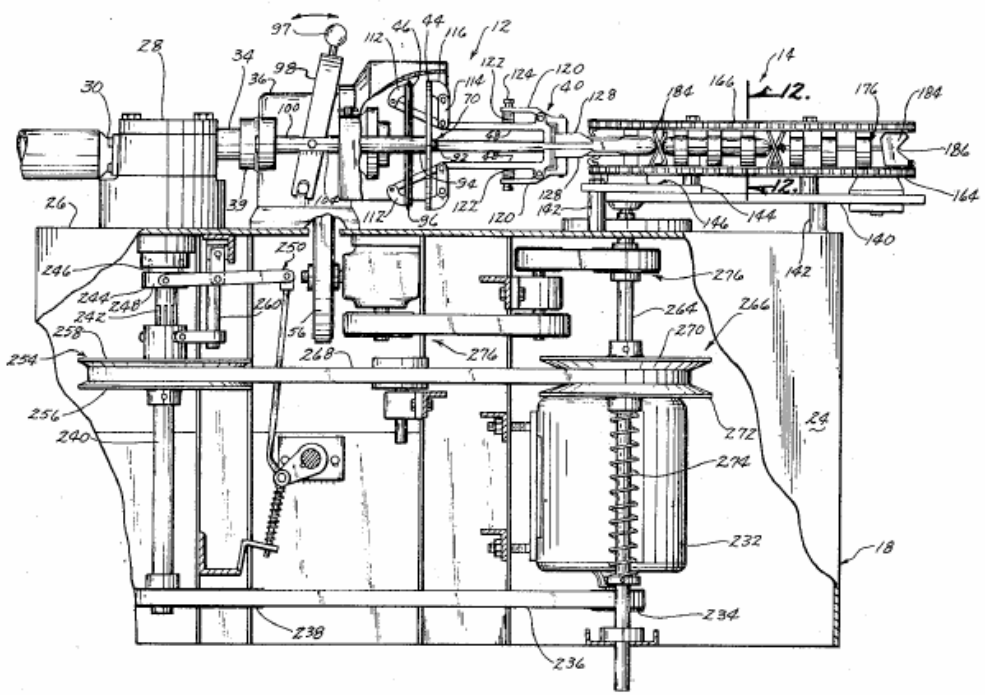
> Though the special language of patentese has labeled the subject of [U.S. Patent 3,694,853] as "an apparatus for encasing a product," it is simply (or not so simply) a sausage-stuffing machine.
> *Townsend Engineering Co. v. HiTec Co. Ltd*., 1 USPQ2d 1987, 1987 (N.D.Ill. 1986), aff'd, 829 F.2d 1086 (Fed. Cir. 1987).

The district court continued by translating the key elements of the claim:

> In plain English, for literal infringement on Claim 5 the Auto Wienker looper horn must consist of two parts, one part of which is (1) substantially longer than the other part and (2) substantially straight. In addition the horn must be rotated by a bearing means that supports the shorter part of the horn. Finally the longer part of the horn must be set off at an angle from the shorter part.
> *Id.*, 1 USPQ2d at 1989.

But perhaps the real secret of explaining the claimed sausage-stuffer is to provide a simple illustration, in this case, a plainly labeled patent drawing:

U.S. Patent 3,694,853 - Figure



For purposes of providing illustrations in briefs, it is useful to remove the numerous reference numerals and lead lines from patent drawings; only the critical features are identified, and they are called out by name.

1. More From The Courts

Perhaps no other practice has incurred the wrath of the courts so much as the use of complicated technical language, or "patentese":

> [T]he inquiry must be one of substance, not mere technical expression [or] the sterile precision of claim jargon. The law contemplates [that relevant prior art publications have been] written, not in patentese, but in ordinary language with here and there an occasional comma or a period as a breathing spot.
> *Bros Incorporated v. W.E. Grace Manufacturing Company and William E. Grace*, 351 F.2d 208, 213 (5th Cir. 1965). See Aghnides, 335 F. Supp. at 379 ("beneficial in patent cases to strip away the shroud of jargon and technology in order to see the legal issues involved").

We delude ourselves if we believe that we can require the courts to accept our complicated presentations at face value. In some cases, the courts will reject our efforts as hopelessly confused:

> Propositions which in an ordinary patent cause would be understood the moment they were stated are here confused by a jargon of terms of art and diagrams which convey no meaning to the uninitiated. * * * We mention these facts to emphasize the incongruity of a system which requires the submission of such questions to a tribunal composed wholly of lawyers. * * * It will serve no useful purpose, even if we were able to do so, to follow counsel and experts through the maze of contradictory assertions and conclusions drawn from the descriptions and drawings of the . . . patents . . . . The decree is affirmed.
> *Westinghouse Electric & Mfg. Co. v. Columbia Meter Co.*, 200 F. 584, 584-587 (2d Cir. 1912).

> The record before the Court regarding defendant's allegedly infringing activities is sparse and obscure and the parties' submissions are phrased in such turgid and convoluted prose that they are anything but informative.*
>
> * The Court is not persuaded that patent law mandates the abandonment of clear and plain English.
> *Scripps Clinic and Research Foundation and Revlon, Inc. v. Genentech, Inc.*, 231 U.S.P.Q. 978, 979 (N.D. Cal. 1986).

> In such a waste of abstract verbiage . . . it takes the scholastic ingenuity of a St. Thomas with the patience of a yogi to decipher their meaning, as they stand.
> *Victor Talking Mach. Co. v. Thomas A. Edison, Inc.*, 229 F. 999, 1001 (2d Cir. 1916). (Judge Learned Hand).

> Judges trained in the law are confronted with baffling devices applying esoteric principles of all branches of higher mathematics and science. * * * To the problem of understanding the substantive nature of the patented device or method may be added the further, if not more basic, one of communication: just what do these words -- often a long, prolix combination with a liberal sprinkling of adverbs and almost no punctuation -- of this claim mean?
> *Thermo King Corporation and White's Trucking Service, Inc. v. et al.*, 292 F.2d 668, 675 (5th Cir. 1961).

In other cases, the court will make its own translation of technical terms. In the words of Judge Giles S. Rich:

> [The claimed] "alcohol having at least one hydrogen atom attached to the carbon atom bearing the hydroxyl substituent to the corresponding carbonyl compound," * * * means, in plain English (the use of which is often prevented by Patent Office practice), a primary or secondary alcohol.
> *In Re Sarett*, 327 F.2d 1005, 1006 (CCPA 1964).

In the words of Circuit Judge Rubin:

> Stripped of patent jargon and stated in plain language, claim 11 describes a garbage truck with an attached forklift mechanism.
> *Ebeling v. Pak-Mor Manufacturing Company*, 683 F.2d 909, 912 (5th Cir. 1982).

Thus, notwithstanding the rule that all elements of a claim are material, *Markman v. Westview Instruments, Inc*., 52 F.3d 967, 988 (Fed. Cir. 1995)(in banc), aff'd, 517 U.S. 370 (1996), the courts have embraced efforts to translate patent claims into plain English. See, e.g., *Unique Concepts, Inc. v. Brown*, 939 F.2d 1558, 1562 (Fed. Cir. 1991)(applying the "all elements rule" and relying on the "plain language" of the claim); and *Young Dental Mfg. Co. v. Q3 Special Products, Inc.*, 112 F.3d 1137, 1142 (Fed. Cir. 1997) (translating "bore" into "plain English").

2. Lincoln's Writing

In his early cases Lincoln often wrote excessively legalistic and wordy legal documents, perhaps because of his close attention to form books and his desire to avoid technical errors. D. Donald, *Lincoln* at 72 (1995). As Lincoln honed his skills, he learned to "marshal the facts" to speak for themselves. Lincoln's writing was so adapted to the facts of each case that it has been questioned whether his writing even has a "style." F. Hill, *Lincoln the Lawyer* at 210 (1906). Any evaluation of Lincoln's writing must recognize his "lucidity of expression, persuasive clarity, and convincing simplicity." *Id.* at 209.

In the prime of his legal career, Lincoln rarely used technical language and he was a master of the homespun anecdote to illustrate his point. D. Donald, *Lincoln* at 98 (1995). See also the description of *Parker v. Hoyt* referring to Lincoln's use of "clear, simple language" to describe a patented device. *Id.* at 145.

3. Suggestions for Clear Writing

I submit that lawyers, to whom this article is addressed, already know all the elements of writing necessary to write good briefs. What is needed is discipline in marshaling facts and arguments and a willingness to use plain English and simple illustrations to convey our thoughts.

Glossaries have their uses, but they are not substitutes for plain English. One does not throw an anvil to a drowning woman and follow it with a book of instructions.

Here are a few suggestions on writing. It is useful to marshal the facts and the arguments into a logical and persuasive order. I aim for a concise statement of the issues, using an iterative process until there is a thread that flows through the issues, the facts, and the arguments. Short and simple constructions seem to work best. Edit.

There are many books and articles available to assist us in the use of plain English. First among them are dictionaries, which I find to be useful in patent cases in the following order: general-purpose, technical, and legal, see, e.g., *Merriam-Webster's Collegiate Dictionary* (10th ed. 1996); *McGraw-Hill Dictionary of Scientific and Technical Terms*

(5th ed. 1994); *Black's Law Dictionary* (5th ed. 1979). A thesaurus is helpful to find just the right word, see, e.g., *The New Roget's Thesaurus in Dictionary Form* (1978).

There are many manuals on style, see, e.g., Strunk and White, *The Elements of Style* (3d ed. 1979); *The Chicago Manual of Style* (14th ed. 1993); Richard C. Wydick, *Plain English for Lawyers* (4th ed. 1988); Bryan A. Garner, *The Elements of Legal Style* (1991).

4. On the Problem of Writing Clear Patents

Should patent solicitors write patent applications in plain English? The courts certainly have appreciated such efforts, see, e.g., *Thermo King*, 292 F.2d at 675 n. 9, and articles cited.

The challenge, of course, is for the solicitor to satisfy the patent laws, rules, and regulations, as interpreted and applied by a patent examiner and, at the same time, to produce a patent which will be understandable to a court and to a jury.

Here are a few suggestions. Prefer plain English over jargon, simple construction over turgid prose. Consider the layman in the selection of drawings. Write the summary for all intended audiences, not just for the examiner. Rely primarily on the detailed description of the invention to satisfy the disclosure requirements of 35 U.S.C. § 112. Use subparagraphs in claims to make them easier to read and understand.

Finally, the abstract, given scant attention during prosecution, will be published on the first page of the patent. Consider the court and the jury when writing the abstract.

C. Use Simple Exhibits

The single greatest use for exhibits is that of illustrations in briefs. This is because the courts will make crucial determinations on, for example, claim interpretation. Generally, the courts' first and last clear chance to understand the patent will be based on written submissions.

This is true in the district court, although it may be possible to overcome poor written submissions if there is an opportunity for a hearing. It is even more true on appeal to the Federal Circuit, where oral arguments usually are only fifteen minutes per side.

The Patent Office requires drawings in all patent applications in which the invention can be so illustrated. Why should we expect the courts to settle for less?

But it may not be enough to provide the courts with unmodified patent drawings.

Lawyers may wish to remove confusing reference numerals and lead lines, see Westinghouse, 200 F. at 585 (criticizing the obscurity of patent drawings and reference numerals). The most important elements of the invention can be clearly labeled and called out by name. See modified drawing of sausage-stuffing patent at p. 7, supra.

The second greatest use of exhibits is to demonstrate the patented device and the accused device in the courtroom. This is especially helpful at trial, see Aghnides, 335 F.2d at 370 n.1 (sink provided "ocular" proof). Use of physical exhibits on appeal requires more selectivity. See Federal Circuit Rule 34(c) and (d).

By a "simple" exhibit, I mean the simplest exhibit that will help the judge or jury to understand an important point. A simple exhibit may be the patented device or the accused device. It may be a document or a photograph. It may be a chart, or a video tape, or an animation. It may be computerized or it may be low-tech.

The key is whether the exhibit helps to make an important point in the story of the case. If it does, it's useful. If it doesn't, it's clutter.

The Courts have remarked on the difficulty of deciding patent cases without adequate exhibits:

> If we had been shown the meter of the . . . patents, either in operation or at rest, or, if this were impracticable, if models, or at least large diagrams with the parts marked and differently colored, had been presented, it would have enabled us more readily to distinguish the salient features of the inventions. We are expected to understand the working of complicated machinery which we have never seen from the conflicting opinions of experts who differ upon many of the essential features of the methods used and the results accomplished.
> *Westinghouse*, 200 F. at 585.

Another court has been grateful for exhibits:

> Long before the current interest in demonstrative evidence as it is sometimes used (or misused) in damage suits, the patent bar, with its generally high state of professional competence and extraordinary thoroughness in preparation, has found helpful ways to make the judges' task manageable and intelligible. Large multi-colored elaborate charts, diagrams, models and other exhibits, oftentimes costly and complicated, are prepared. They are used both on examination and serve with unusual effectiveness in cross-examination of experts and others skilled in the particular field.
> *Thermo King*, 292 F.2d at 675. See also Aghnides, 335 F. Supp. at 371 (court praised demonstrations of patented and accused devices).

But contrast the minimalist use of simple exhibits with the multiplication of exhibits in a highly technical presentation:

> The trial [on damages] lasted ninety-six days. Polaroid rested its case after fifty days, calling twelve witnesses, and introducing hundreds of exhibits. It also submitted portions of the depositions of an additional seventy-three witnesses. Kodak rested its case after forty-six days, calling fifteen witnesses, introducing hundreds of exhibits, and submitting portions of the

> depositions of seventy-one Polaroid witnesses, one Kodak witness, and fourteen non-party witnesses. * * * One negative result was a highly stylized, very technical presentation.
> Polaroid, 16 USPQ2d at 1487.

Broad rules of admissibility have led to the downfall of many a patent case under the sheer weight of the evidence presented. See *Fed R. Evid.* 401; Aghnides, 335 F. Supp. at 372. Perhaps we would be more effective advocates if we were to observe a rule of importance, i.e., that no evidence will be introduced unless it is important to our case.

III. Uncommon Humor

Humor is indeed uncommon in patent cases. In the published opinions, there are 10,000 references to prior art for every reference to humor or laughter.

To be sure, the courts occasionally have derived humor from patent cases:

> What Abraham Lincoln is traditionally reported to have said applies equally to [plaintiff's claim interpretation]: "If you call a tail a leg, how many legs has a dog? Five? No, calling a tail a leg don't make it a leg."
> *Townsend Engineering*, 1 USPQ2d at 1990 n. 7.

> Indeed, this Court has frequently, in a jocular vein, accused patent counsel of throwing everything into a case, including the kitchen sink. Sure enough, a case has finally come along in which counsel have thrown in a real, functioning kitchen sink . . . .
> *Aghnides*, 335 F. Supp. at 370-71.

Lincoln was known for his sense of humor; he made effective use of stories and anecdotes to make his cases interesting and understandable. F. Hill, Lincoln the Lawyer, 217-18 (1906). "Wit and ridicule were Lincoln's weapons of offense and defense, and he probably laughed more jury cases out of court than any other man who practised at the bar." Id. at 219. Moreover, "Lincoln's humor generally freed his criticisms [of opposing counsel or witnesses] of all offense." Id. at 218.

Even if we are not as comfortable as Lincoln with the use of humor in the courtroom, perhaps we can at least emulate his efforts to bring life into otherwise dry and technical subject matter.

Conclusion

Lawyers are most effective when they eliminate weak arguments and marshal the facts to support their strongest arguments. In addition, both judges and juries appreciate the use of plain English, simple exhibits, and a sense of humor.