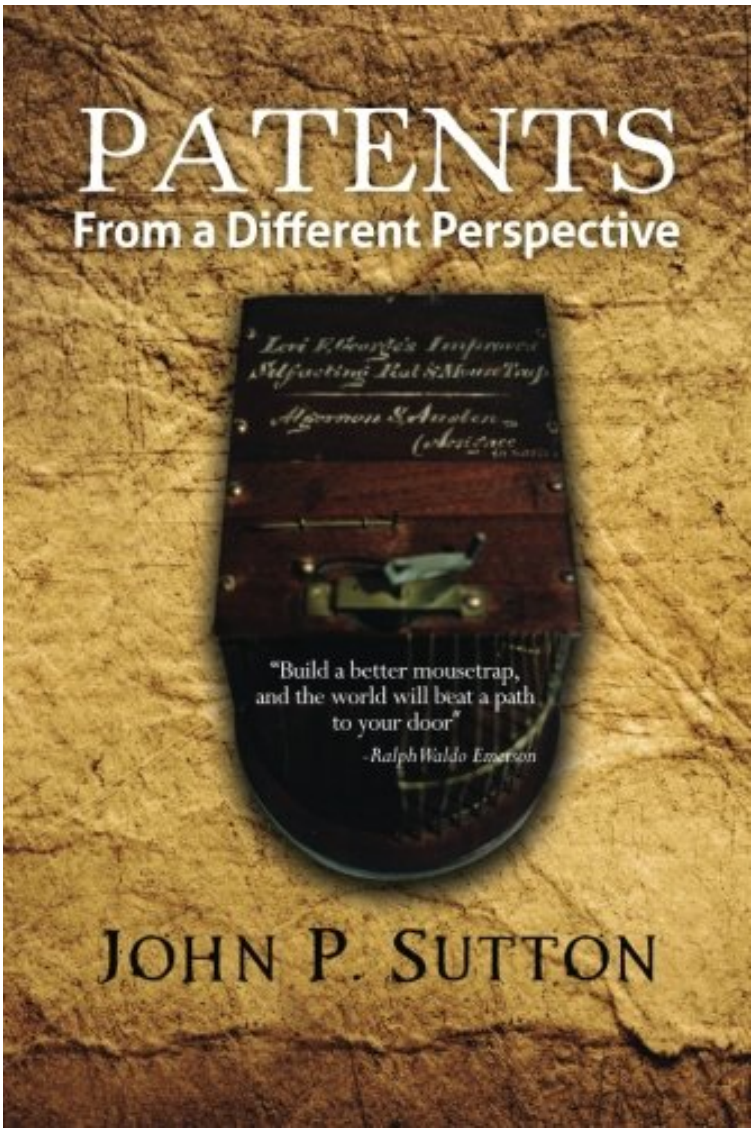
Patents from a Different Perspective: Supreme Court Reviews of Decisions of the Specialist Patent Courts

John P. Sutton



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John P. Sutton : Patents from a Different Perspective: Supreme Court Reviews of Decisions of the Specialist Patent Courts before purchasing it in order to gage whether or not it would be worth my time, and all praised Patents from a Different Perspective: Supreme Court Reviews of Decisions of the Specialist Patent Courts:

The book was created to discuss why the specialist patent courts fail to abide by the various federal rules, and precisely how the Supreme Court has sought to correct the notorious difference between the patent office assessment of patentability and the patent court assessment of patentability of an invention first identified in the 1966 Graham case. I have been close to that issue for nearly half a century, and the book is my analysis of the problem. The book explores many instances where the lack of judicial experience with rules of procedure, of evidence, and of law lead to questionable decisions. The judicial experience of trying cases as an advocate is also lacking in many of the patent court judges. I certainly did not have that experience when I was a law clerk just out of law school, but I have had experience in the nearly half-century since then. It is clear from the 33 cases where the Supreme Court has reviewed patent court decisions that the Supreme Court has a different perspective on patents from that of the specialist patent courts. Most writings about patents come from the perspective of (1) the Patent and Trademark Office; (2) the Court of Appeals for the Federal Circuit; (3) patent applicants; (4) patent owners; or (5) advocates of a political position respecting patents. These perspectives are not helpful in determining what the law is regarding patents. The judicial department of government has the duty to say what the law is (Marbury v. Madison, 5 U.S. 137, 178 (1803)). The political departments of government (executive and legislative) have responsibilities in administering the patent law, but not in saying what the law is. The Supreme Court is head of the judicial department, and it is the perspective of the Supreme Court, not the Federal Circuit, that ultimately controls what the law is. The Supreme Court has reviewed patent decisions by the two specialist patent courts of appeal (the Court of Customs and Patent Appeals and the Federal Circuit) a total of 33 times since 1966. All 33 of these cases are studied in this book. The book shows that the decision of the patent court has been overturned in two thirds of the cases reviewed. Even when the patent court decision is affirmed, the reasoning is often criticized by the Court. The book approaches the development of patent law from the perspective of the Supreme Court, and shows that the writings from the usual perspectives are not accurate assessments of what the law is. No other writing views patent law from this perspective. In a few cases, the book criticizes the Supreme Court decision on appeal as deviating from earlier Supreme Court precedents. In those cases, the reasons for the assertion that the Court erred are given, recognizing, as it must, that the perspective of the Supreme Court is final, not because it is infallible; it is infallible only because it is final (Jackson, J., Brown v. Allen, 344 U.S. 443 (1953)).