


“Inventions Represented by Models”

How Switzerland’s First Patent System Excluded Chemical Inventions (1888-1907)


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“Our Swiss patent statute [...] will stand among the other patent statutes like a sea-woman whose body ends with a fish's tail among ordinary human beings; it will strut around among the laws for the protection of inventions of foreign states like a centaur next to a president of the National Council or next to any other citizen of the earth who is not half a horse and half a homo sapiens but belongs entirely to the latter species.”

“Der halbirte Erfindungsschutz”, *Neue Zürcher Zeitung*, Nr. 176, 26.6.1886, p. 1.



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1. Creating the model clause



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“The protection shall not extend to chemistry, its products and application to various industries”

– proposition of the commission of the National Council, June 17, 1886

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The confederation shall have the power to enact legislation on “the protection of new designs and models [*dessins et modèles*], as well as **inventions represented by models** and that are applicable to industry”

– formulation proposed in the National Council on June 24, 1886; adopted April 1887; passed the popular vote in July 1887

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“the most essential evidence [*das wesentlichste Zeugnis*] for the invention, clearer than description and drawings, and in case of disputes, the strongest piece of evidence for the judge”

– declaration of Johann Heinrich Bühler in the commission preparing the bill for patents, October 1887



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- Evidence for the model can be provided after the patent grant



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→ yes, if the regular shape is “entirely dependant on a personal will” (1900)



Conclusion

- Plasticity of the model requirement
- Nevertheless, no patents on chemical substances or processes
 - Not due to material constraints
 - Nor to common understandings
 - But to constraints of the specific configuration of social forces