Genre and the New Rhetoric


Williams, R. (1976) Keywords: A Vocabulary of Culture and Society. New York: Oxford University Press.


Chapter 5

Systems of Genres and the Enactment of Social Intentions

Charles Bazerman

"A theory of language is part of a theory of action". (John Searle)

In this chapter I want to build upon what we already know about genres and connected sets of genres, what we know about intertextuality and systems of intertextually-linked documents, what we know about speech acts and writing as forms of social action, and what we know about individual micro-acts and social macro-structure. I want to do this to present a vision of how people create individual instances of meaning and value within structured discursive fields and thereby act within highly articulated social systems. The action is accomplished through performance of genres that have highly specific, systematically contextual requirements and well-defined consequences for further generically-shaped social acts.

That is, I wish to present a vision of systems of complex located literate activity constructed through typified actions – typified so that we are all to some extent aware of the form and force of these typified actions. As we become more informed and involved with these typified literate actions, we come to share a more precise set of functional meanings and consequential relations through the kinds of texts. By using these typified texts we are able to advance our own interests and shape our meanings in relation to complex social systems, and we are able to grant value and consequence to the statements of others.

From the viewpoint of the mythical outside observer, I want to present a system of a complex societal machine in which genres form important levers. From the viewpoint of the participant in society, which we all are, I want to identify how the genres in which we participate are the levers which we must recognize, use and construct close to type (but with focused variation) in order to create consequential social action. This machine, however, does not drive us and turn us into cogs. The machine itself only stays working in-so-far as we participate in it and make our lives through its genres precisely because the genres allow us to create highly consequential meanings in highly articulated and developed systems.

I will pursue this project through the example of the patent, choosing particulars from the latter half of the nineteenth century; this choice of materials is a consequence
of historical work I am currently doing on Edison's light. Despite major rewritings of the US patent law since then, the outlines of the patent system and the genre remain largely the same. Further, although the legal system and regulatory network of government organizations, institutions, agencies, and creates mechanisms exist for the production and use of explicit characteristic genres in perhaps a more determined and articulate way than in other domains of life, it gives insight into the way other less explicit socio-scientific systems work. What We All Know About Patents

As a textual form we all can recognize a patent, despite some minor adjustment of the form over time. A patent, usually in a printed document, describes an invention, identifies its inventor and declares particular aspects of the invention as original (the claim); it further carries some official designation of the patent granting entity, a patent number and a date from which the patent begins. In the nineteenth century United States, the patent typically included one or more technical drawings, signed by the inventor and two witnesses. The first page of text was headlined by "United States Patent Office," with headings identifying the inventor and the name of the invention, followed by the "specification of Letters Patent," dated XXXX. The text then opens in the form of a letter to all whom it may concern, followed by the boilerplate formulaic opening paragraph:

Be it known that XXXX, of XXXX, have invented a new and improved XXXX; and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawing and to the letters of reference marked therein.

A general elaboration of the invention and its improvements over prior art is followed by a detailed description of the invention and its operation, typically introduced by a formula such as "To enable those skilled in the art to fully understand and construct my invention, I will proceed to describe it." The description is usually centered on the illustration through reference to the drawings. The description is concluded with a legal claim which, in the form of a sentence, is to be read by a court to determine if the patent holder is infringing on the patent. If the court determines that the description is not clear or if the claim is not properly understood, the patent may be invalidated.

The overall method of presenting the patent is to provide a detailed and comprehensive description of the invention, its operation, and its improvements over prior art. This is followed by a legal claim which is to be interpreted by a court to determine if the patent holder is infringing on the patent. The court's interpretation of the claim is based on the description provided in the patent, and the description is to be read by a court to determine if the patent holder is infringing on the patent. If the court determines that the description is not clear or if the claim is not properly understood, the patent may be invalidated.

The account of patents I have just given and the analysis to follow is consistent with standard public beliefs about patents. Indeed, even if we recognize the value of patents in providing incentives for innovation and in promoting economic growth, we also recognize the importance of a balance between the need for innovation and the need to protect the public interest. The system of patents is a complex one, involving a variety of stakeholders, and one that requires careful consideration and ongoing examination.
Gene and the New Rhetoric

features, let us say, of 14 lines, iambic pentameter, certain stanzaic patterns, and corresponding rhyme schemes, only gain generic force of the kind sonnet in so far as they are recognized and then attached to that tradition. The same text, of course, also may be attached to other kinds, superordinate or subordinate or independent of the kind sonnet, that may be recognized prior to or after or totally independently of the attribution of sonnetness (e.g., poem, rhymed stanzaic verse, lyric, Petrarchan, pedantic, complaint).

Since what I say about patents will contain no scandal about patents, it will only elaborate further and lay out the consequences of what we already know in recognizing a particular text as a patent, and will thereby help us understand the force of genre and its place within structured human activities.

Genre as Typified Utterance and Intention

Genre theory as elaborated by Carolyn Miller (1984), John Swales (1990) and myself (1988) has been concerned with the development of single types of texts through repeated use in situations perceived as similar. That is, over a period of time individuals perceive holisms in circumstances that encourage them to see these as occasions for similar kinds of utterances. These stylized utterances, often developing standardised formal features, appear as ready solutions to similar appearing problems. Eventually the genres sediment into forms so expected that readers are surprised or even uncooperative if a standard perception of the situation is not met by an utterance of the expected form.

Moreover, the genres, in so far as they identify a repertoire of actions that may be taken in a set of circumstances, identify the possible intentions one may have. Thus they embody the range of social intentions toward which one may orient one's energies. The existence of a patent system and the existence of recognized forms of patent applications are conditions for the intention to obtain a patent, and therefore to apply for one. The existence of a recognized patent system and typified forms of communication as actions within that system are also necessary for others (such as patent examiners, patent judge, competing inventors and manufacturers) to recognize you as seeking or desiring to acquire a patent. That is, the intention, the recognition of the intention, the achievement of the intention with the co-operation of others, and the further actions of others respecting that achievement (that is treating the realized intention as real and consequentially) all exist in the realm of social fact constructed by the maintenance of the patent system and the communicative forms (genres) by which it is enacted.

Patent History: The Nexus of System, Genre and Intentions

The mutual development of the patent genre, patent intentions, and the social system of patent grant can be seen historically. Patents in Renaissance England were simply a designation of a monopoly privilege granted by the Crown, for any benefit or favor to the state embodied in the monarch. Thus a king might grant a patent for the importation of salt, or the colonization and exploitation of a newly discovered or conquered piece of the Americas. Thus earliest patents were realized textually through the traditional forms of petition to the Crown and royal grant.

Such Crown privileges were of course open to abuse arising from the coaction of the royal pleasure and the good of the state and its citizens. In England during the middle of the seventeenth century, in repugnance against the widespread abuses of James I and Charles I, all forms of state granted monopoly were outlawed by Parliament except for the single temporary monopoly granted to the inventor of a new good, under the belief that invention would advance the economic well-being of the country. A temporary monopoly was thought to encourage both invention and the sharing of knowledge to be exploited by all once the short monopoly period expired. Moreover, since invention created new value, a monopoly was not sequestrating a previously open part of the economy, but was only granting temporary privilege for a value that would not have existed without the invention. Thus the association of invention with the idea of national economic well-being and with the granting of limited privileges developed together within a newly emerging belief in market economy. Copyright then emerged as a subset of patents as a way of protecting the interests of printers (only later of authors).

Once the idea of privilege dependent on specific value to the state emerged, it became necessary to create a mechanism whereby individuals might request this privilege and present their claim to it for evaluation. In England this led to a registration procedure followed by litigation in the courts when the patent was contested. This system remained in effect until 1852. In the Anglo-American colonies patents were granted on an individual basis by courts and local legislatures. The framers of the United States Constitution were concerned to regularize and limit this practice, so they made patents and copyrights a federal responsibility under Article 1, section 8 granting Congress the power to promote the progress of useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. The first patent bill was signed by President Washington in April 1790, placing responsibility for approving patents on three cabinet members: Secretaries of State and War, and the Attorney General. They were charged with determining that the invention or discovery [be] sufficiently useful and important. The application was to include a specification and drawing, and if possible a model. However, the form of the application was not further determined by the law.

Because of an 1836 fire in the patent office, we only have a limited number of reconstructed files of the earliest patents. The earliest application that is currently in the patent records dates from 1700, and consists of a petitionary letter from William Pollard addressed directly to Secretaries Jefferson and Howe and Attorney General Randolph. The letter gives a detailed account of Pollard's difficulties in obtaining a model of Awkwright's spinning machines and his failure to create a working model of it until he determined certain improvements which he wishes to patent. He also provides many financial details of the spinning industry in Boston to establish the value of the machine. The details of the machine and its operation appear to be only
present in a drawing that was attached, but is no longer in the patent record. Thus in this earliest extant application, the rhetorical emphasis was on the deserving character of the petitioner and the great economic value to behalf the United States; the specific technical improvement is purely secondary and unargued. That is the presentation follows the legally designated criteria of usefulness and importance rather than novelty.

The actual patent, from the example of the one granted Francis Bailey in 1791, is a signed certificate with a seal of the United States and signed by both the President and the Attorney General. It looks much like a traditional diploma. The specifications of the invention are mentioned only in a single sentence which also identifies Bailey as the inventor and attests that 'the said Invention appears to be useful and important.' The rest of the document consists of reference to the law, the date of issuance, testimony of the act of approval and signing, certification of the document etc. The meeting of criteria and that of granting the privilege remain at the forefront of the document.

During the three years this law was in operation 55 patents were approved, but the burden of evaluating the applications was too much a drain on the time of the cabinet officers. In 1793 the law was revised to become simply a registration system with no evaluative procedures. The application, from the examples on file, turned to a description of the invented object, cross-referenced to a drawing. Models (not necessarily working) were also to be provided to the patent office. The grant consisted only of official testimony that the papers were filed and the fees paid. Since no check was made of prior art and the putative inventor had to make no case beyond presenting the object and paying fees, many lawsuits developed. Apparently within the litigation, two crucial issues emerged: the identity of the actual inventor and what exactly was being claimed as novel in the patent. Thus, in order to provide legal standing for these issues, by 1830 patent applications typically had two new elements—the formal opening identifying the putative inventor and a closing statement identifying the claim.

In 1830 a new patent law was passed, reintroducing examination and establishing a patent office with examiners to carry out this task. This law establishes the system still in effect in US patent laws. New regulations from later law, most extensively in 1870 and 1892. The form of the patent in effect at Edison's time was first specified in the 1836 legislation and was followed in practice. Moreover the procedures and criteria for examining inventions (including inventions) were established both by the law and the practices of the newly formed patent office. These examination procedures and criteria focused the task of the application, which rhetorically was aimed at passing through procedures and criteria to gain approval.

Patent Applications and Grants as Speech Acts

The two related and evolving genres we have been considering—the patent application and the patent grant, or patent patent—may be seen as classic speech acts as described by Austin and Searle. These documents have recognized a stable illocutionary force within the legal system as directives (requesting or applying is an attempt to direct another's behaviour) and declarations (announcing or declaring a thing is so, making it so)—that is why the early patents looked like diplomas or marriage certificates; moreover, they are surrounded by rules of proper utterance. The movement towards formalization of language and textual appearance as well as of the rules surrounding their adequacy only reinforces the recognition that they are aimed at achieving certain acts, are surrounded with particular conditions which must be fulfilled for their perfection or achievement, and that they attempt to meet those criteria by making explicit and easily locatable precisely how they attempt to meet each of the conditions or criteria of perfection.

Indeed speech acts of the most familiar sort are frequently carried out by the most familiar of utterances: 'I bet you,' 'With this ring I thee wed,' 'I hereby declare this bridge to be open.' Although many of the rules surrounding such acts as betting are left informal and implicit, except to the linguistic analysts, many other speech acts are surrounded by formal regulations: making contracts, changing names, requesting a rebate for electric batteries.

Searle derives these rules from an analysis of the conditions that must surround the utterance of the speech act for the act to be successful. Austin initially called these felicity conditions. The contextual conditions identify such things as timing of the utterance; authority of the utterer; relationship between speaker and hearer; psychological state of speaker and hearer towards the act, the utterance and each other; the speaker and hearer's perception of the situation of utterance; the conventions of language through which the utterance is enacted, and the kinds of particulars (propositions and predications) included, guide the creation of a successful utterance.

Thus one's success in having one's assertion of a sentence accepted as a scientific truth depends on who one is, who hears, the hearer's perception of the speaker and utterance, the channel of communication, the relationship of the utterance to certain other accepted scientific claims of others, the relationship of the statement to material events that are represented (and that can be affirmed on challenge) to have occurred in the utterer's laboratory and that others have experienced and will experience in their labs, and so on. These conditions of success can be transformed into a set of constitutive, regulatory and advisory rules for making successful scientific assertions (also perceived as scientific method, values and practice).

Concerning patents, we can most simply see that if one's application for a patent passes all the conditions for a patent, then one's application for a patent will be a success, and a patent should be granted, as the illocutionary force will be complete, and the patent examiner is compelled to approve the application. If not, one can take the examiner to the appeals board or court. The appeals board or court can then enforce the fact that the illocutionary force of a perfected application will be met by the perlocutionary effect of the issuance of a grant—unless the 'course of justice is pervaded,' which only the courts themselves can determine. That is, the courts and surrounding legal bodies and procedures are engaged in interpretive actions; the identification and certification of all conditions of success or felicity conditions require interpretation—i.e., but patents are one instance in which there are procedures and institutions to match illocutionary force to perlocutionary effect—thus bearer.
the interpretive procedures to the surface and making participants accountable for their interpretations. This makes parent and other similar legal procedures different from most speech acts. In many instances, discursive forces are not even linked to an anticipated perlocutionary effect (assuming you are happy does not directly how your listener might respond); in any event, perlocutionary effect is usually up to the free choice of the hearers (as a call for help may be ignored).

Difficulties with Speech Act Theory

Before we continue with our analysis of the conditions which a patent application must meet for its success, we must rise deal with several related difficulties concerning speech act theory and its application to long, complex written documents.

The first difficulty is the importance of local circumstances to the identification, interpretation and realization of speech acts. For example, when I take the force of the statement "We have coffee, milk and juice" to be depots very much on who I am, who I am talking to, what my relationship is with them, whether I am about to go shopping or have just had coffee or am at a dinner table. Simply to put such equivocal cases in the category of "speech acts is inadequate for several reasons: first, unless we are total strangers to a situation, we always use our knowledge of local circumstances to confirm or extend or modify our view of the explicit statements; second, most statements are not fully explicit or universally invariant in their illocutionary sense; third, there are many subtle distinctions among acts and the way acts are taken that only emerge out of the interpretation of situations and fourth, there are many kinds of acts that are only conceivable within highly defined circumstances, such as underlining the credibility of a scientific argument by mentioning a piece of apparatus used in producing the result. Thus, we need an underlying understanding of the illocutionary forces of that apparatus to understand the experimental process. Although speech acts may typically be related to a few abstract categories with obvious abstract guidelines, they are thereby stripped of their locally significant aspects of their meanings. For example, which goes into convincing the local act as arising from others and which provide individuals with the subservience necessary to successfully respond to and negotiate events as they unfold in local circumstances.

Austin's awareness of the importance of local circumstances in the interpretation and enactment of speech acts, both locutionary and illocutionary, led him to withdraw from absolute formalizations in the closing two lectures of How to Do Things with Words (1962), to qualify his conclusions as only abstractions, and to caution us to examine local circumstances. Lecture 12 in particular he examines a number of examples where local factors are essential for interpretation, and within which making such statements as "Reference depends, on knowledge of the time of utterance" (p. 144) and "The truth or falsity of a statement depends not merely on the meanings of words but on what act we were performing in what circumstance" (p. 145).

Searle, however, in Speech Acts (1969) and subsequent works (Seall et al., 1980) took on the project of pursuing the formalizations to obtain an abstract calculus of meaning which incorporates reference and intention in a logically contained interpretive scheme. Local circumstances are only included as conditions that must be met for the successful completion of a speech act. For example, a person conducting a marriage ceremony must be legally qualified to do so, and the event must be carried out in a legally appropriate place and time, between people legally qualified to marry, if the events are to count as a legal marriage. In so doing, Searle helped identify some features of speech acts as they often emerge in institutionalized settings, and we will call on this analysis later. However, this analysis of general rules and conditions for speech acts is accomplished at the expense of suppressing analysis of the particularity of institutional settings within which individual act arise and of obscuring the interpretation of acts in less well defined settings.

The second difficulty is the polysemousness of speech acts. Any speech act may be used and interpreted with a variety or multiplicity of intentions and frameworks for attributing meaning. Any utterance may serve different functions for different utterers and different audiences, and these multiplicities of functions and meanings may be operating simultaneously. Moreover, the conditions of success for the utterance may become more complex depending on the expectations and meanings attributed to the utterance. In stating at a dinner party that I like vanilla ice cream, I may be playing an order, expressing delight in anticipation, revealing personal character, deferring my food against the prosaic habits of a desert-bred child, making small talk, or all of the above simultaneously. The host, my child, my neighbours who served the chocolate last week, and other guests I have just met this evening, may each interpret the sound in a variety of ways, as they may evaluate the effect and effectiveness variously according to how they understand the situation and act.

In a more subtle example, when an intimate friend tells me a dream, is it a personal revelation, a request for an interpretation, an invitation for communication, a step in the construction of a communal interpretation, a reproach, or an invitation for me to tell my own dreams? The person telling the dream may have no angle of clear intent, nor may I discern what kind of response would be invited. Perhaps, no particular force is attributable to the dream telling until after the conversation has unfolded, and even then the two parties to the conversation are likely to walk away with rather different perceptions of what has happened.

The nature of the speech act, or the series of speech acts, is manifold and indeterminate. This indeterminacy, multiplicity and interpretive complexity may present substantial difficulties in our most spontaneous and close relations, difficulties which we sometimes only resolve by providing some simple, determinate and benign after-the-fact explanation that excuses some of the more troublesome interpretations triggered by the situational indeterminacy and multiplicity. Although such reductions to primary interpretations of acts and intentions may be fostered at highly institutionalized settings with highly typed actions, as we will examine below, the nature of the speech act, or the series of speech acts, is manifold and indeterminate.
Genre and the New Rhetoric

Speech Acts are not Generally a Language

These first two difficulties point to the power of the concept of a speech act even as they point to limitations in trying to specify the exact meaning of any particular speech act by using a generalized understanding of speech acts. The difficulties examined arise to illustrate the richness of the activity embodied by utterances within circumstances. Events are alive with new forms of life growing in the unfolding of both typical and novel utterances. Every utterance itself exists at the intersection of the typical and novel, as perceived by the participants coming to terms with each new moment. In Sassurian terms, speech acts exist precisely where language and parole meet, at the alive utterance. Any attempt to reduce speech acts to a speech system removes the activity from the act and reduces complex, interpretive, intelligent, motivated human behaviour to a static set of signs, no longer responsive to linguistic needs and creativity. When speech acts are reduced to a system of law-like typifications, employed as resources by human attempting to relate through signs, are taken in the definition and rules of the utterance. The typified speech acts then become superimposed on the act, rather than the speech acts being embedded parts of the overall activity. A less disturbing understanding of speech acts requires constant attention to events unfolding in particular circumstances with local definition and interpretation of successful activity. Perceivable regularities in speech acts, whether perceived and acted upon by the participants or the late-comer analyst, need to be seen as historically evolved resources of typified interpretation, in relation to other social regularities and institutions that help identify the nature of each social moment as enacted by the participants.

As analysis of speech activity, our task is simplified and stabilized when look to behavior in highly regularized or institutional settings that help enhance recognizable and socially accepted patterns of behavior. More than automatons, speech acts are emergent and variable. The same utterance, performed at different times and by different people, will have different effects. The same context of circumstances may produce different results from subject to subject, depending on how the participants relate to that particular context. In such cases, it is important to look for the subjective factors that influence the interpretation of the utterance. These factors may include the participants' personal relationships, their shared experiences, and their cultural background. By examining the subjective elements of speech acts, we can better understand how the same utterance can have different meanings for different people.

Below, we will examine a highly developed set of typical practices, which are not necessarily limited to verbal communication. These practices include gestures, facial expressions, and body language. Each of these elements plays a role in communicating meaning and establishing social norms. In some cases, these practices may be more powerful than verbal communication. For example, a smile can convey warmth and affection, while a frown can indicate disapproval or disagreement. By understanding these non-verbal cues, we can better interpret the intent behind a statement. The ability to decode these signals allows us to navigate social interactions more effectively.

A final difficulty with speech act theory, particularly for this study, is its application to long, complex written documents. Speech acts as envisioned by Austin and Searle are short utterances carrying out single acts. For the sake of analytic clarity, Searle explicitly excludes from consideration any but the most simple utterance (1969: 22).

Written texts characteristically contain more than one sentence. A text contains potentially many acts. Moreover, it is unclear whether middle sentences of extended discourse embody speech acts of specific illocutionary force in the way intoned sentence utterances do. At best we can imagine in a highly complex, closely tied text with a complaint reader that the text attempts to push the reader down a certain path of reaction through a series of related acts. Nonetheless, what the sum of the various acts of a text amounts to is unclear.

However, if the text is distinctly identifiable as of a single genre, it can gain a stronger force, for it is now labelled as a single kind instantiating a recognizable social act. Such is the case in the macro-speech act of the text, and each of the subacts must carry its weight. In fact the expectations of generic form are such that any missing or weakly instantiated feature of the genre may weaken the generic force. Particularly if the genre is responsive to formal regulation, a defect in any of the subacts may be reason for the failure of the work of the genre. A patent application without a representation of the object, or a declaration of originality, or a specification of claim is not a valid application and will not achieve the purpose of gaining approval. Thus a defective specification will never appear as an officially approved patent, distanced in rejoinder from the patent office. We will examine in a moment how perfection of each of a patent's sections may also be related to the satisfaction of specific conditions of success.

In a contract many acts are fulfilled, but the overall effort is bound to parties to mutual obligations and rights, including all the stipulations that are part thereof. The stipulations are meaningless - both in the sense of being non-binding and in the sense of being purposeless and unmotivated - without the perfection of the overall contractual act. Stipulations, sales, all other events that end with a bottom line, a mutual agreement and focused conjunct action among parties could have the effect of a macro-action and give to the entire process the shape of the single act. Indeed the minor actions that go into it would benefit to understand, hard to ascribe attention to, hard to see as effective acts, without the frame within the macro-act.
Many written genres seem to revolve themselves into single acts. A patent application, a tax form, a mail order for a pair of shoes, or a final examination in English Lit 202 once it has completed its work to gain the patent grant or shoes, to satisfy the IRS, to demonstrate the knowledge of the subject, can be filed away purely for the record unless someone wants to call the perfection of the document or actions into question. The text becomes dead or a black box and exists only in its own consequences. Much of scientific writing is of this character as articles only have a short shelf life (or citation life) and then gather only dust, they live through their consequences or lack thereof, unless someone wants to open up the black box of dusty knowledge. This indeed is a central premise of Lotman's Science in Action (1988).

Other texts, however, to have force must constantly be read, for they have multiple forces that are created by the reader's interaction with the text. When we read a novel or a book of philosophy many things are done to us. It is clearly reductionistic to characterize these multiple effects under a single macro-act, such as being entertained, being poetically or work of philosophy not just as having a single overall force (as scientific citations sometimes become symbols for single concepts), but as a collection of moments and gestures as well as an overall structure of arguments. These texts live not in any sense of unified consequences, but in their multiplicity of effects on the readers' minds, arising from the complex of actions realized through the text. If you were to leave such texts in a file or on a dusty library shelf they would not do their work, nor would they if we were to reduce them to simple slogans which we were to carry around in our heads. At the risk of oversimplifying, we may say that such genres exist more for the process of their interaction with the reader or the details that go into the act, rather than for the overall act itself or the after-the-fact consequences. Plays may stir up passions that lead to confessions, poems can aid in romance, theories can bring about new forms of government, and medical textbooks may provide information that will save lives; nonetheless, the Wakefield Mysterie Plays, Donne's Poems, The Communist Manifesto, The Story of the Liver remain as complexes of prongs for cognitive and affective activity - and when successful have multiple and complex effects on our beliefs, understanding and perception.

Yet even though the multiplicity of these texts, attribution of genre still helps to limit the domain and focus the character of the multiplicities offered by, or to be read out of, the text - that is, genre recognition usually limits interpretive flexibility. Genres that must be constant, new ones have continuing force, although they encompass all the traditional literary genres (which was the first concern of genre theorists) as well as many theoretical and informational genres, present special problems that extend beyond the scope of this chapter and I will exclude them from further consideration here. I do wish to point out, however, that this distinction between reducible and non-reducible genres may provide a fundamental puzzle for genre theory to address. It is also interesting to note that, at first pass, such non-reducible genres seem to fall primarily into Scarle's classes of assertive and expressive. Nonetheless, many assertive and expressive texts can be reduced to a dominant primary force when enacted within defining typifications.

Directive to Declarative: Transforming Application to Patent

To return now to the consideration of patent applications and grants as documents having single recognizable overriding illustrative force, let us examine some of the conditions that must be met by a successful application and how the various parts, or features of the text may be related to that success.

To obtain a patent you must have an idea for an object or process. This object or process must be useful. It must be novel. You must have invented it. Thus all these items must be asserted in the specification. As we have seen in Edison's time, the text of the patent opens with an identification of the inventor and the assertion of invention which is new and useful. A description of the invention follows, supported by an illustration. The object need not be working or in manufacture or profitable in the marketplace. Indeed patents are obtained early in the process before working prototypes, investments in manufacture, or marketing efforts; in the US system the patent is usually a precondition for substantial investment and publicity - a kind of insurance policy that you own the idea, will get the rewards from the investment, and do not have to worry about others finding out and competing with you in the market. However, since you do not yet have the patent, the patent requiring approval, you must cast the application in the form of a petitioner's letter, closing with some petitionary language like I claim as new and wish to secure by letters patent. . . . This petitionary format would be further framed by a cover letter, a standard form of which is given in the Scientific American Reference Book of 1881.

To the Commissioner of Patents:
Your Petitioner, a resident of xxxxx, xxxxx, prays that letters-patent be granted to him (sic) for the invention set forth in the annexed specification.
signed

These petitionary features clearly identify that the person intends the document as a request, that the petitioner intends the receiver to understand this as a request, that the petitioner desires the receiver do what is requested, that the text is communicated to the receiver who is capable of interpreting the text, that the petitioner believes that the person receiving the request (the Commissioner of Patents) is able to grant such a request, that the request is for something that the receiver would not already have done in the normal course of affairs, and all the similar social and psychological conditions that must be met for a request to be granted, of the sort that Scarsle spells out for the act of promising (1869: 37-64, 66). Within the particular regulated and typified context of the legal system, a request can become not only recognizable, but compulsorily must be taken as such by certain people structurally employed to receive requests.

The nature of the request, however, is special, a product of the particular system of which these texts are part. The request is that the receiver declare that your representation of an object or process be considered a patent. That is, the petitioner must assert that his or her idea meets the criteria of a patent so that the receiver will then declare the representation to be a patent protecting the idea. Therefore we must look into the propositions or representations embodied in the patent.
Reference and Predication Acts in the Patent Application

Searle points out that every speech act has a propositional content, and that proposition consists of acts of reference and acts of predication. This observation, which attempts to recover general truth criteria for statements within a situational and action oriented analysis of language, may be fruitless in its attempt to hold all discourse accountable to the language practices of a small group of contemporary philosophers, rather than to consider the complexity of representation making and use in the infinite variety of circumstances and interpretive procedures through which it is emitted. Nonetheless, the observation is useful when applied and given a specific interpretation in relation to a regularized course such as patents which is embedded within a set of referential practices, enforced by inspection and by application of those to the world. That is, particular inspection procedures invoked at various points in the process hold the text accountable so certain kinds of states of affairs outside the text and then certain new states of affairs in the world beyond the text are established by application of textual definitions. Moreover, the textual accountability is held tighter when the text concerns itself with only a limited set of states of affairs, when the text is expressed so as to conform with general assumptions about the way things are outside the text, and when the inspection of states of affairs produces certain representations that can be directly correlated with the textual representations. To apply this most simply with respect to patents, patents describe certain things in specialized ways, and the truth of these descriptions is tested and contestable through well defined procedures. Thus within the patent system there is a complex apparatus supporting the Searlean propositional act, giving it a specific interpretation, consequentiality and procedural mechanism for validation enforced through bureaucratic institutional rules, practices and procedures.

On one level, the act of reference of the application is to the commissioner declaring a patent and the predication is that the commissioner will do it. That would be the standard propositional content of a request. However, the commissioner's declaration is based on an evaluation (to be performed by a patent examiner) of the object or process represented in the specification and the claims predicated of that object or process. Thus the key propositions refer to the item for which patent status is sought. Because there is an examination process done by the receiver that extends beyond the representation created by the petitioner, we must consider the propositional acts in two stages — as represented and as received, and what conditions must be met in each instance for success of the patent application.

The patent refers to the self, the act of invention and the object or process which represents the invention. Thus the patent opens with an identification of the applicant, a representation of the act of invention, and details of the object. The largest part of the patent is given over to the representation of the object in the form of illustrations, description of the parts of the object in relation to the illustrations, and a description of its operation, use, and/or construction. From the point of view of the inventor, these representations rely on the writer indeed believing that these represent himself or herself, his or her actions in inventing, and most importantly the object or process he or she has conceived. The inventor need not have brought this idea to working perfection, so the reference is to an imaginative construction that the inventor is in the process of bringing into physical realization. These representations share information about the idea seeking patent status not only with the patent examiner for the purposes of evaluation, but (after the patent is granted) with others, allowing them to use the idea after the period of protection.

The propositional act, however, also consists of predications as well as reference. It is not enough to represent yourself as having invented or conceived of the object, but you must also claim that the object is new, it is useful, and it instantiates some particular form of useful novelty. Thus the patent of the 1870s typically had some such language near the beginning as appears in patent number 98, 469:

This invention relates to certain improvements in chandeliers designed for use in public and private apartments.

The object of this invention is to obtain a chandelier, which will cause the light emitted from its jets to be more generally diffused throughout the apartment than hitherto, and at the same time . . . and the means by which this object is accomplished, are . . .

First, by the use of two or more burner-rings specially arranged in relation to a series of reflectors . . .

Then the patent chose with a specification of the claim:

I do not claim, broadly, or descriptive of the ring or hoop j, the double reflector . . .

1 do claim as new, and desire to secure by Letters Patent . . .

The burner rings B C, two or more, having different diameters, and placed one above the other . . .

From Speaker's Sincere Statement to Examiner's Approval

The inventor in making a patent application represents himself or herself, therefore, as having of a certain date the idea for a particular kind of device or process, that he or she believes this idea is workable and useful, and that it is an improvement of a substantial kind and therefore is an invention, and that moreover the novel improvement can be characterized within specific claims. The applicant may always be in bad faith concerning any of these representations, but in forwarding the application the inventor must present himself or herself as sincere in these representations. It is up to the patent examiner to evaluate these representations as accurate and inaccurate, and therefore give public, legal approval to the validity of these representations, turning the individual's belief about his or her ideas into a form of public certification and knowledge.

The procedures for evaluation, whereby illusory force (embodiment intent to obtain a patent) is converted to a state of belief on the examiner's part that will compely compel the desired peculationary effect (of actual issuance of that patent),
however, are quite specific and limited and only attend to certain aspects of the representations of the application. The inventor's representation of name and geographical location are accepted on the oath of the inventor. The date of filing is a matter of record of receipt and a matter again of oath of signing. There is no procedure for determining whether the idea is workable, beyond obvious violations of physical laws (so that perpetual motion machines are not patented); the workability is left to the construction of the product development. Indeed, if the idea is unworkable the patent will be of no financial value and will be abandoned, making the patent monopoly most and insigificant.

This is an important point. The patent is a monopoly only of a potential. The reference is only to an idea, a projection of a future product. The patent is of no meaning or value if that potential does not become realizable or is not realizable. The patent examiner has no way of knowing and no obligation to determine the future prospects of this idea. Similarly the question of the usefulness of the patent is left unexamined, because that is left to the marketplace. Since the patent monopoly is not more if no one wishes to use or purchase the patent, there is no reason to examine the usefulness - nor is there any prior-to-the-fact way of determining it.

Since we are not dealing with actual already-produced objects the representation is only of an idea. The idea itself is embodied in the patent description, so that there is no further examination of whether there is an idea here or whether this is the idea the inventor had. This situation provides a loophole that left open the possibility of submitting defective or incomplete representations of the object to stimulate competitors, because the examiner would have no way of knowing the completeness of the idea. This is also the loophole that tempted the possibility of emendation and reuse of corrected patents, under the notion that the inventor actually had the correct or full idea, but the representation on paper was not fully clear or accurate. The fully visual rejection or evaluation of patents on the description of the idea is on the grounds of lack of clarity or specificity, that is, it remains vague as to what the patent-seeking idea is.

The forms of examination in patent office practice are actually only intertextual. The patent descriptions and claims are compared to the file of existing patents and to other representations of the curious way of the art, such as textbooks and encyclopedias. Thus only the novelty of the claim is examined, leaving agnostic even the question of whether this novelty is an improvement (for improvement is equivalent to the usefulness of the novelty). The most sensitive item for novelty is the claim - specifically how broad it can be given the object or process described in the application and given the history of prior claims. This claim, however, in terms of ownership is precisely the most crucial matter, for it will define the extent of the rights that the inventor will own as a result of the issuance of the patent.

Intention and Intersubjectivity

The intentions to obtain a patent monopoly require the fulfillment of the genre of application through meeting in appropriate textual form (primarily of a representational kind) the success conditions of that speech act of request for a status. That is, the inventor has to represent the idea as patentable. The actual grant of the patent requires the intention of the examiner to fulfill his or her duty by applying appropriate examination procedures to determine the success of these representations of the idea as meeting the criteria of patentability. Only certain aspects of the representation come under systematic scrutiny, however, and even that is a kind of scrutiny that is contrary to the kind of scrutiny by which the patent is conceived (except of course that the inventor and surrogates - patent agent and/or attorney - try to anticipate the examination procedure by patent searches and clever formulation of claims). That is, the inventor tries to solve problems and claim turf. The examiner is not concerned about the solution of problems, he examines whether turf is already occupied, and tries to limit turf claimed to those specific novelties insinuated in the idea representation.

What the inventor and examiner do agree on is that what is sought is patent status - with its monopoly privileges. If and when the patent is approved, they both have, collaborated in the creation of the patent and they both agree on the kind of thing, or status that has been achieved. They have created new value, a new property to be owned - and that property is a license to attempt to make money from a particular technology. Intentions meet over this status which is created by the speech act of declaration.

Multiple Participation in the Creation of the Patents

Thus we have a clarification of the curious multivocality of the patent text which we discussed earlier; that is, that the patent consists of text written by the applicant before the grant as though the patent were already granted and text by the patent office validating this before-the-fact text as an after-the-fact accomplishment. There is a collaboration and most obvious heteroglossia in the text. And there is a confusion of two contiguous speech acts of directive and declarative into a new act of assertion. That is, when we read patents as made available in the archives, we read them as informational - that s patent exists, that it is a claim as a novelty, and that it was invented by person z at time t.

This creation of the status of invention (and inventor, as the person to own the patent and receive the benefit of the patent) has a curious historical effect in that it reinforces the folk belief that inventions are discrete acts occurring at discrete time by discrete people. The history and sociology of technology have been trying to remove us from this belief in heroic isolated individuals and isolated events creating new and unanticipated novelty. Most detailed examinations of cases and experiences of people involved in the creation of novelties indicate a much murkier, more fluid and interactive situation among multiple actors and multiple ideas. Nonetheless, the legal framework, because it must assign ownership of discrete ideas to discrete individuals based on priority, requires that these discrete items be declared as a result of the patent process. Having created and assigned discrete ownership of discrete property, the law then prepares the individual to take that value.
Genre and the New Rhetoric

into other discourse circulation systems within which property provides an important counter or playing chip such as the financial or industrial worlds. Thus, having a patent, Edison or any other inventor can begin to negotiate with inventors to back the development of a product or with corporations to produce or licence or purchase the patent.

Indeed much of the work of legal procedures is to declare that some murky real world event has a certain rubric of legal status, so that it can then have standing in the technical symbolic procedures of law and regulation. The legal proceedings when finished will then be consequential for other spheres of endeavour in which one participates. This is why key legal proceedings serve to define a sequence of events leading up to an exchange of physical violence as a case of third-degree assault committed by an employee so as to distribute legal blame, legal punishment and financial liability, with consequences for one's reputation and one's financial standing. Similarly, zoning laws define different classes of land and zoning boards become sites of contention over how a particular parcel should be labelled and therefore how it can be used. Small law and government are primarily realms of symbolic exchange following spatial contextual and adjudicative rules, all events that come under the purview of law and regulation must be translated into that realm and assigned values, rights and statuses - the legal consequences of which in turn become translated back into other kinds of activities.

Legal Systems and Systems of Genres

Of course, legal activity entails far more than a single document or even just a small cluster of documents. Every court ruling requires courts of documents and statements. Every law requires volumes of proceedings, negotiations, letters, studies. Every patent requires a thick file of correspondence, forms, documents, appeals and possibly court judgments with all the documents and statements that are part of that. These documents are all in well defined genres which are closely related to each other. Each letter to the Commissioner of Patents is responded to by a potentially limited range of responses in well defined genres. Every form on every court proceeding is contained out of a limited range of genres. Every witness is translated into a witness genre, to help you navigate the world of genres to file the right papers at the right time, to object at a particular moment, to know when you are wasting your breath - that is to know the legal moves or manoeuvres. In turn, the moves of others, whether examiners, judges, legislators or opponents in a court case can be met with only a limited number of appropriate moves by yourself. Moreover, each of these moves or acts or genre utterances has identifiable conditions of success, so an objection or application or appeal can be ruled on (accepted or rejected) by the appropriate official.

What we have, in essence, is a complex web of interrelated genres where each participant makes a recognizable act or move in some recognizable genre, which then may be followed by a certain range of appropriate generic responses by others. The sequence of generic responses results at particular junctures in certain laws, ratings, declarations, etc. that offer stabilised meanings that can then be used to assign values, punishments, obligations, etc. with impact on extra-legal life. Unless these ratings, laws, etc. are challenged in some legally appropriate way, the judgments will stand.

The challenge to the judgment, if it comes, is likely to come in a form that questions whether some aspect of the performance of the speech act of the judgment does not meet a condition of success. Thus a law may be challenged as unconstitutional, for one of the conditions of success is that all laws of the land must be in conformity with the supreme law of the land. A deed may be challenged if clear title to the land has not been ascertained through the records of ownership. A patent may be challenged on the grounds that the claim is improperly formed, that the representation of the inventor is inaccurate, that the presumptive novelty was not novel, but rather essentially instantiated in earlier patents, that fraud was involved in the original application, etc. That is, the challenge attempts to undo the speech act which has resulted in the declaration.

Patent litigation is a highly specialized discourse domain with specific moves and specific norms governing the success of these moves. The maintenance of a valuable patent (remembering that low value patents are of interest to few and certainly not to the court) requires navigating one's way through all the challenging discourses to maintain the integrity of the patent declaration. In the wake of the extensive litigation ever patents, not only have the court procedures become typified, but new rules have been adopted to clarify procedures and rule out certain forms of inappropriate challenges, thereby focusing the discourse even further.

In late twentieth-century United States, the speech/symbolic acts that constitute participation in the legal system (and particularly the subculture of patent law) are highly regularized and regulated, but these acts are also recreated every time they are re-enacted within our current understandings. Lawyers never stop looking for new angles, new strategies, new interventions that transform the acceptable moves to unexpected outcomes, that cut out opposing moves by the other side and open pathways to more favourable lines of action. Thus the participations that constitute legal practice continue to evolve. Yet every potential lawyer, in order to play the game, must learn the forms of currently available moves through extensive education and apprenticeship activities. The United States has a legal system that is relatively stable, but not ossified because it only resists in its constantly recreated strategically motivated instantiations. This is, of course, what Goulding's (1984) concept of stratification is all about.

Systems of Genre

To understand the implications of this picture of legal participation through generic acts for the theory of genre, I would like to introduce the notion of systems of genre. These are interrelated genres that interact with each other in specific settings.
Gene and the New Rhetoric

Only a limited range of genres may appropriately follow upon another in particular settings, because the success conditions of the actions of each require various states of affairs to exist. That is, a patron may not be invited unless there is an application. An infringement of this rule cannot be a valid patent. An affidavit about the events in a laboratory on a certain date will not be sworn unless a challenge to the patent is filed. The intervention of each of the follow-up genres with its attendant macro-speech act, if successful, will have consequences for other genres and speech acts to follow.

In domains structured more loosely than the law, the sequencing and consequences of actions may be harder to discern, nor may the discretionary force: persuasionary effect link be compulsive, therefore allowing a wider array of consequent actions. Nonetheless, the nature of activities may such as to establish a limited set of genres and acts that may appropriately follow in each situation. So handbooks in college courses describing writing assignments are typically followed by questions and answers about the constraints of assignments, advisable procedures and the appropriateness of various ideas for project papers. Thus if all goes according to plan student papers, following the genre constraints established by the handout, are handed in. Then teacher responses is returned, concluding in some evaluation encapsulated in a grade. We usually hope that settles the matter, but the reasons a writer will turn up in our offices with certain genres of arguments and hard luck stories, some of which we might be susceptible to, but others which are rule as illegible. If any are followed by letters of application, which are in turn followed by phone calls setting up interviews, and so on.

In each case to achieve our ends we must successfully hold up our ends of the generic exchanges. That is we must successfully identify the generic interlace appropriate for our needs at each point and successfully fulfill the conditions that will constitute the perfected act. If we can write the right letter, fill out the necessary forms, or appear intelligent and cooperative at the interview, if we can make a well-defined assignment, or answer student questions satisfactorily, or produce grades that we can then pass upon challenge, we get into various kinds of trouble. This notion of systems of genres extends the concept of genre set first presented it. Devlin's analysis of tax accountants' work (1991). The genre set represents the full range of tasks tax accountants must produce in the course of their work. These genres have typically patterned relationships with the texts of others. Texts accounts produce only a limited number of kinds of documents which are relation, but diverse. An opinion letter to a client is distinct from a letter to the taxing authorities, even though they all have the same subject matter and are framed within the tax code and the specifics of the client's tax situation. By contrast we may say that for each genre that exists in the world teacher, police officer, host carrier, philosopher there are only a limited number of genres in which each needs to perform to carry out the full range of that status. The genre set represents, however, only the work of one side of a multiple person interaction. That is, the tax accountants' letters usually refer to the tax code, the rulings of the tax department in this case, the client's information and interests, and these references are usually presented in highly anticipatory ways appropriate to the genre of the letter, but the genre set is only the tax accountant's participations, as intertextually linked to the participations of the other parties. The system of genres would be the full set of genres that instantiate the participation of all the parties - that is the full file of letters from and to the client, from and to the government, from and to the accountant. This would be the full interaction, the full event, the set of social relations it has been enacted. It embodies the full history of speech acts, the intensional occurrences, but attending to the way that all the interest is instantiated in generic forms establishing the current act in relation to prior acts.

Generic Rhetoric

By identifying the current text to be produced as a speech act in generic form, and thus requiring the fulfillment of certain attendant felicity conditions or conditions of success, we give a new kind of precision to rhetorical aims and means as we step outside the traditional rhetorical realms of political and forensic oratory. Moreover, in considering generic speech acts in structured relation to prior generic speech acts that have been successfully performed (or that we wish to treat as successful, or the success of which we wish to challenge, or the failure of which we wish to capitalize upon, etc.) we give a new precision to the notion of rhetorical situation. By considering the ways in which generic utterances open up pathways to certain consequent speech acts and close off other pathways, we give a new precision to the concept of fairies, or timeliness. By gaining a grasp of how entire discourse systems operate through generic turns, we can locate ourselves, our potential speech acts and the criteria our utterances should seek to meet; we can start to understand what we can achieve rhetorically at any moment, and what we cannot, and how. By identifying how representations realized within speech acts are interactive with and accountable to other representations within the generic system and states of affairs that extend beyond discourse but drawn into the discourse at various junctures in the system of generic activity, we can see how our discourse activity is bound to the symbolic and non-symbolic environment.

Through an understanding of the genres available to us at any time we can understand the roles and relationships open to us. An understanding of generic discourse will let us know whether it is ours to ask or answer, to argue or clarify, to declare or request. We can find system in speech acts without reducing them to a system and without excluding evolution, novelty, and the multiplicity of human life. We can follow Austin's caution not to believe too much our simplifying, investigatory abstractions and to look to local circumstances for the meaning of acts. We can avoid Searle's attempt to bind the particularities of action to general principles from which the particularities have been abstracted out and in which the acts have been turned to a logical calculus, while still learning from Searle how rigorous systems of action may be realized. Understanding of the way genres structure social relations could be highly conservative in that discourse would urge repeating only the familiar, reproducing old dramas, prompting only reappearances of the old songs at the familiar moments.
Gene and the New Rhetoric

It can also give us the understanding to lead old hopes and expectations down familiar
seeming garden paths, but that lead to new places. Only by uncovering the pathways
that guide our lives in certain directions can we begin to identify the possibilities
for new turns and the consequences of taking those turns. When we are put on the
spot, we must act, and in acting we must act generically if others are to understand
our act and accept it as valid. Without a shared sense of genre others would not
know what kind of thing we were doing: And life is mysterious enough already.

Acknowledgements

I would like to thank all the participants in the Rethinking Genre conference for their
discussion of this paper, and particularly John Dixon for his penetrating critique of
my use of Seafre in an earlier version of this paper. I would also like to thank
Charles Goodwin and the students in my fall 1992 Language Theory course for
helping me think through the puzzle John handed me.

Notes

1 For outlines of the history and operations of the patent system in Britain and the US see
Dawson (1979), Fedeleco (1982), and MacLeod (1988). See also various articles by Fedeleco in
the Journal of the Patent Office Society, and the special issue of Technology and Culture
devoted to patents (324). October 1991. A comprehensive bibliography on patents appears
in Well and Snapper (1989).

2 A further feature of the patent system at that time, the insistence of patents to correct defects,
created other opportunities to redress the object being patented and the scope of the claim.

3 Absence arising from this opportunity to redress patents on the basis of later knowledge
about composition, workability of ideas, further developments of the product and marketplace
considerations, led to the removal of the refuge option in the middle of the nineteenth century.

4 These are the five general kinds of speech acts Seafre recognizes (1979, Ch. 11). For
discussions of speech acts within the law see Kuczynski (1980) and Bowers (1989).

5 One case even suggests that in coercing property (as all property is created by legal
identification) our legal system serves to create the primary value of our society which
allows the continuation of the life of society built on those values. In a Durkheimian sense
we can see this as a sacred and sanctifying activity.

References

Press.
BOWERS, F. (1989) Linguistic Aspects of Legislative Expression, Vancouver: University of
British Columbia Press.
Affairs Press.

Press.
Society, 64, January, pp. 9-11.
Press.
KIRWIN, D. (1986) It is Hereby Performed ...: Explanations in Legal Speech Acts,
Amsterdam: John Benjamins.
Dordrecht: Reidel.
Dordrecht: Reidel.
Oklahoma Press.
Brunswick, NJ: Rutgers University Press.