

# Black History

## The U.S. Has Always Had Black Inventors – Who Haven't Always Had Patents

By *Shontavia Johnson, Drake University*

America has long been the land of innovation. More than 13,000 years ago, the Clovis people created what many call the “first American invention” – a stone tool used primarily to hunt large game. This spirit of American creativity has persisted through the

millennia, through the first American patent granted in 1641 and on to today.

One group of prolific innovators, however, has been largely ignored by history: Black inventors born or forced into American slavery. Though U.S. patent law was created with color-blind language to foster innovation, the patent system consistently

excluded these inventors from recognition.

As a law professor and a licensed patent attorney, I understand both the importance of protecting inventions and the negative impact of being unable to use the law to do so. But despite patents being largely out of reach to them throughout early U.S. history, both slaves and free African Americans did in-

vent and innovate.

### Why patents matter

In many countries around the world, innovation is fostered through a patent system. Patents give inventors a monopoly over their invention for a limited time period, allowing them, if they wish, to make money through things like sales and licensing.

The patent system has long been the heart of

America’s innovation policy. As a way to recoup costs, patents provide strong incentives for inventors, who can spend millions of dollars and a significant amount of time developing a invention.

The history of patents in America is older than the U.S. Constitution, with several colonies granting patents years

ing patents. In 1857, the U.S. commissioner of patents officially ruled that slave inventions couldn't be patented.

### Slaves' inventions exploited by owners

During the 17th and 18th centuries, America was experiencing rapid economic growth. Black inventors were major contributors during this era – even though most

“Slave owners often took credit for their slaves' inventions

before the Constitution was created. In 1787, however, members of the Constitutional Convention opened the patent process up to people nationwide by drafting what has come to be known as the Patent and Copyright Clause of the Constitution. It allows Congress:

*“To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”*

“This language gives inventors exclusive rights to their inventions. It forms the foundation for today’s nationwide, federal patent system, which no longer allows states to grant patents.

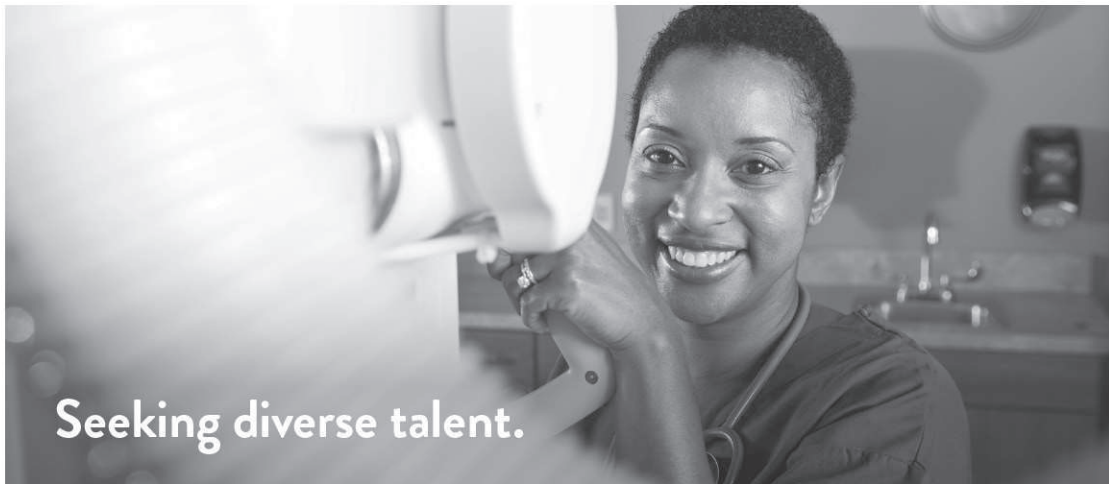
Though the language itself was race-neutral, like many of the rights set forth in the Constitution, the patent system didn't apply for Black Americans born into slavery. Slaves were not considered American citizens and laws at the time prevented them from applying for or holding property, includ-

did not obtain any of the benefits associated with their inventions since they could not receive patent protection.

Slave owners often took credit for their slaves' inventions. In one well-documented case, a Black inventor named Ned invented an effective, innovative cotton scraper. His slave master, Oscar Stewart, attempted to patent the invention. Because Stewart was not the actual inventor, and because the actual inventor was born into slavery, the application was rejected.

Stewart ultimately began selling the cotton scraper without the benefit of patent protection and made a significant amount of money doing so. In his advertisements, he openly touted that the product was “the invention of a Negro slave – thus giving the lie to the abolition cry that slavery dwarfs the mind of the Negro. When did a free Negro ever invent anything?”

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