

CHAPTER I

A PREFACE AND CONSPECTUS

[1] Whole libraries have been written about the patent law and system, yet nowhere does one find a serious attempt to *appraise* the patent system. Many have lauded it, a very few have damned it, many have described it, proposed betterments in it, told its history, etc., but none have appraised it. To appraise a thing is to set forth judiciously how good or bad it is; and to do this *requires comparing it with its next best and possibly better, partial alternatives*, both actual and feasible. The patent system has been again and again compared with the simple abolition of patents. But that is not the next best alternative—it would be a stupid substitute, or as we commonly say, “no substitute.” If we are appraising a restaurant, we must compare with other restaurants, available or feasible, not with going hungry. And so with the patent system, to appraise it we must compare it with our other current institutions for supporting invention, and perhaps with some that might be installed.

[2] But has the patent system any alternatives? It is often thought of as our only institution for the encouragement of invention. Yet we have 15 or so rival institutions serving this end, in such abundant and approved use that, as we shall later show statistically, they have already come to motivate a much larger share of American inventing than patents do. These substitutes are: Governmental inventing, in Federal laboratories and through contracts, mostly in military lines (but civil and military uses for inventions constantly interchange); Government assistance to inventors with their own projects; manifold governmental services through libraries, education, etc.; tax benefits for earnings spent on invention; philanthropic foundations for invention; universities, whose chief contribution is in more basic research and science; trade association inventing, frequent in America, subsidized in Britain; sale of know-how; the vast field of commercial unpatented, mostly unpatentable invention, improvement, and research; employee suggestion systems, hardly ever using patents; compulsory licensing of patents by court order and setting of royalty; awards for inventions made and prizes for inventions to be made; monopolies and corporate bigness—whether good or bad these made patents less necessary to secure abundant use for one’s improvements, although industrial monopoly also adds a motive for patenting; secrecy, occasionally supported by the common law; and patent pooling, which like compulsory licensing and the others named, is essentially a rather different thing from the patent system. We define the patent system as everything that goes with the more or less exclusive, competitive ownership of inventions through patents (§ 126).

[3] These are our present and principal means for eliciting invention, already in the aggregate much more important than the one fa-