

miliar one, the patent system. But there are the possibilities of devising still other, new and better means, of which one will be examined and proposed: the development of patent pooling by making semipublic, nonmonopolistic *trade associations* the chief sources of invention and holders of (nominal) patents, mostly but in no case fully to replace the other 14 existing institutions for the support and direction of commercial invention. All 17 systems will be briefly or more fully described, with some of their subvarieties, measurement be attempted of their present extent, comparison made of their principles and their efficiencies, and some attempt made to show what fields each is best for, which ones are advancing and which retreating, and which offer the best hopes for the future, and most merit fostering. In a word, we shall make a novel attempt to *appraise* the patent system and its alternatives, even if we cannot go far in proving our valuations. Since all of us concerned with invention or patents *must* act, must daily throw our weight toward one system or another, it seems worthwhile to seek even a first, partial, inconclusive appraisal of the rival supports for invention, rather than to continue choosing without comparison or appraisal.

[4] It is because we see that the patent system has alternatives, actual, growing, and already outranking it, that we do not follow the dogged, not very hopeful conclusion of William H. Davis, chairman of the Patent Survey Committee 2 decades ago. Patents are inevitable for the present, he said, and (ignoring our actual rival institutions) "The present administration of our system is so encumbered with delays and frustrations that its every virtuous aspect and every vicious aspect are entangled in and distorted by these inefficiencies—so much that I think we waste time in theoretical discussion of its virtues and vices under present conditions. The most that we can do, I believe, is to try to define standards for an effective patent system, and then devote our energies to bringing our system up to those standards."¹ Even if we should not envisage the patent substitutes that we can and are turning to, this is rather pessimistic advice, since the same doctrine has been advocated for a century past, during which the patent system has acquired no marked improvements, unless by court antitrust action, and seems to be falling further behind in utilization, promptness, validity and legal favor, in spite of all efforts at reform by the Patent Office, Congress, commissions, and the courts. Davis' recommendation that we thoroughly reform the patent system before we inquire what sort of a system we want for securing invention, advocates a course that has been failing right along. Should we not rather examine whither we are actually faring, and how we might steer best, among the various actualities and possibilities? Such is the purpose of this book.

[5] While thus comparing the means for securing invention, we should also make some distinctions of the kinds of invention. We shall especially single out for attention a most important, valuable kind of invention which yet is much neglected today, because neither patents nor any of our present 16 rival means gives it any serious early support, in most cases that fall outside the military. This forgotten treasure is *fundamental civil invention*—the basic new starts like television, the home radio-printed newspaper, the helicopter, jet propulsion, flexible glass, a prefabricated house, voice-operated type-