TABLE 1.—*English patenting, 1552–1960* [7]

Period	Patents per decade	Per million population	Period	Patents per decade	Per million population
1552–1671	26	5.1	1852–1881	25,031	1,006
1672–1761	68	11.5	1882–1901	103,974	3,113
1762–1791	359	46	1902–1911	155,118	4,432
1792–1821	929	94	1912–1921	131,675	3,150
1822–1851	3,086	200	1952–1960	207,200	4,170

[7] From Hulme, our N 6, his chart 2, condensed and supplemented by later data. Populations of England and Wales used to 1851, and of Great Britain for 1852 ff.

maintained in the following 40 years, and their period of real flourishing began in 1766, just before the epoch-making inventions of Watt and Arkwright. We may call this the best starting date for the Industrial Revolution, if not 1770. Federico says [8] that not until the mid-1700's did patents encourage invention.

[30] Search to verify novelty before granting was begun for America in 1836, and is still not used in the Latin and the backward countries, though France is starting to introduce it, cooperating in searches with the Low Countries (¶ 440). We cannot see search as of vital importance, since no country has tried to do it thoroughly, and our own examiners can give but 3 man-days, on the average, to searching the world's literature before granting or refusing a patent (¶ 295). Only a patent lawsuit, or several of them, can bring out the truth, and not always then, since litigation in this field, as elsewhere, involves some margin of error and some resolution of controversies on grounds of expedience rather than of the merits. Indeed, there may be a higher incidence of such factors in the patent field as a result of judicial failure to understand the inventions and prior art presented to them, and of the disposition of owners of doubtful patents to settle on such terms as they can get, rather than persist in litigation at the risk of having their patents declared invalid.[9] Statistics show that only 11.4% of the cases filed go through to a contested verdict. (See ftN *263*, p. 86.)

[31] The patent system spread all over the world, including colonial America, but there as in other industrially backward lands it had small importance, at least as a stimulant to native invention.[10] It was taken into the United States Constitution along with copyrights by the clause "Congress shall have power . . . to promote the Progress of Science and the Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Custom is obligatory that this clause be quoted; yet it would seem to have little significance for us, first because it was adopted without a dissenting vote, indicating that the Fathers simply meant to take over the long-existent patent and copyright systems whatever they were. Secondly, we do not lay much stress on the quoted words, because they have several times in the past been stretched

[8] As in one of the principal Bell telephone cases, as charged by the Government and never adjudicated. Sylvester Petro: Patents; in *U. of Chgo. Law Rev.* 12:80–103 & 352–420, 1944, 5 esp. p. 371; or Hamilton, N 207, pp. 87, 8. The legal history of patents in England and America may also be read at length in Hamilton, his pp. 11ff.

[9] No American invention of importance was patented until 1790, and scarce any made. The negligible contribution of the backward countries in 1923 is demonstrated in Gilfillan: Inventiveness, N 51.