

the 1922 percentage 27.4%, and 18% at the beginning of the century.¹³⁹ Assigned patents have always been considered superior to the unassigned.¹⁴⁰ It would be natural that as the proportion of inventions being patented declined, the ones omitted would be the least valid and significant. Another evidence of the progressively more serious and scientific character of patents may be found in their length, which extended 113% in 1907-53.¹⁴¹ As inventors become trained chemists and engineers, they would waste less time inventing and patenting the chimeras of a "Goldberg"; and as industrialists, patent attorneys, and everybody became better educated, one would expect less folly and pretense to be patented. The patent bar has probably improved. Karl Fenning, former Assistant Commissioner of Patents and Assistant Attorney General, testified in 1935,¹⁴² though doubtless with some exaggeration and anachronism, "Probably only one patent out of a hundred is taken by an inventor who has done anything more than answer an advertisement. You pick up the ordinary commercial journals and you will find men who are admitted to practice before the Patent Office advertising 'Can't you think of something to invent? Can't you think of some little thing? Take out a patent.' I am told that two-thirds of the patent applications filed in the U.S. Patent Office are filed by that group of attorneys. In general, that two-thirds of patents should be ruled out. They should not be considered at all." The patent lawyer Rice adds, "Such patents are of course not a real part of the patent system; they are more accurately a Government-tolerated racket."

[117] Every uneconomic or bogus patent omitted is likely to be a minor social gain, and to mark no true decline in the patent system, but only in the count of patents. And with patents of real but small social value, their omission spells but minor decline of the patent system.

[118] An excellent test of the merit of a patented invention is whether it was also patented abroad. In 1925 Americans' patents abroad were only 12.4% of those taken at home,⁵¹ while in 1950-54 Sanders calculates 55.3%, on a slightly different basis.¹⁴⁴ He also finds a rise of 11.4% in the number of inventors signing the average patent, between 1938 and 1952,¹⁴⁴ and an expanding proportion of assigned patents in which know-how was essential, from 44% to 57%, between the same years.¹⁴⁵

[119] Patents in other countries seem to be likewise improving, while declining in proportion to invention. In Germany, Britain, Switzerland, Sweden, and the Netherlands there has been a strong and steady rise since 1900 in the proportion of patents kept alive, under the foreign system of progressively rising periodic renewal fees.¹⁴⁶

[120] Still another cause for a relative shrinkage of the patent count with less decline in patent significance, might arise from wider coverage by the average patent. A corporation and any informed inventor, in deciding which inventions to patent, would certainly prefer those of wider possible application. Furthermore, a wider scope might proceed from improved science and understanding of the

¹³⁹ Jewkes, *et al.*, tell that corporate patents have similarly risen in England from 15% in 1913 to 68% in 1955. N 393, (his pp. 104-7).

¹⁴⁰ In ¶ 405 we take up and dismiss the contrary indication.