

[123] Monopoly likewise probably tends to reduce patenting; for the more a firm approaches industrial domination, the less it needs patents to give it monopoly over the inventions used. Jewett at the TNEC hearings said patents made no difference in the telephone company's work, but helped them get more ideas from outside.¹⁵³ So the growth of monopoly would probably be a factor in the decline of patenting, until around 1900. Since that date economic studies thought to be best¹⁵⁴ conclude that monopoly has not increased.

[124] However, patents have been found very handy to further a monopoly. And a wealthy corporation may patent a dozen rival means to do something where they intend to use only the best one (ftN 152), but would like to have the rest tucked away, where they will not give a possible opening to competition, but rather form an imposing, apparently impenetrable barrier to competitors (§ 169). Patent pooling and cross-licensing arrangements have become more common, as will appear later (§ 478 ff.); and so has comity, friendly relations between companies, as in the chemical, petroleum, and auto industries. More gentlemanly and socially-minded executives are in charge; and all these factors, one would think, have probably weakened the urge to patent, to monopolize the invention for oneself. Standardization of goods, better education generally (countered by probable decline in native intelligence), higher ethical standards in the patent bar, and other likely reasons for less patenting, have been discussed elsewhere.¹⁵⁵ While we cannot explain the drop in patenting disposition with full satisfaction, we can be very sure it has taken place and in vast proportion, from the statistical as well as logical evidence.

[125] A glance at foreign patent history would show that a similar and about equally profound falling off in the ratio of patents to invention has occurred in every advanced country, and with remarkable conformity as to time. Alike in America, England (table I), France, Germany, Canada, and later in Japan, we find a steady rise of patents to about 1860, then slower to 1920, then stationary for a while, and lastly falling, with the American peak in 1929. But Stafford using a fitted curve locates our peak in 1914.¹⁵⁶ The smoothed course of patents to Americans is shown in our chart 1. Especially in other countries it is the world's invention and patenting, rather than the particular nation's, that are involved, because it has long been customary abroad to patent a worthwhile invention in several countries.⁵¹ From the similar course of patenting in the various countries it follows that the causes, whatever they are, of the great decline in the patent/invention ratio, are not particularly American, but related to modern, world culture.

PATENTS THAT ARE NOT PART OF THE PATENT SYSTEM

[126] In assessing the surprising depth of relative decline of the patent system, we must further take some account of the probably rising and considerable share, perhaps now one-third, of the patents nominally in force, which are really not part of the patent system. To distinguish them we shall require a definition of the patent system. Though the writer dislikes definitions in social science, let us offer, since we must, this one: The patent system includes all the patent laws, customary breaches of them, the folkways, patent lawyers and