

other personnel, the activities of inventors and executives spent on patents, the litigations and all else that goes with patents as an effective means of acquiring and preserving a *private, commercial ownership* of inventions (or more accurately, the legal right to exclude others from them by infringement suits), for commercial purposes, transferable for some such period as 17 years.

[127] From this definition it would follow that nominal patents owned by the Government,¹⁵⁸ or licensed to it as almost the only user, 2.45% of all in nominal force in 1954 and 3.9% of those being granted, are not part of the patent system, though they have connections with it, and some have commercial uses not sold to the state. A patent gained commercially and then sold or licensed to the Government might have served a commercial purpose; yet it now falls under eminent domain and a sort of award or compulsory license system. The foregoing 1954 data, from Forman, show 897 patents issued to the Government in that year, and 597 assigned to it. In 1956 Sagen-dorph¹⁵⁹ says there were 21,000 or more patents owned by or licensed to the U.S., or at least 2.8% percent of all. Partly to be counted out, as not held in the commercial, profit-maximizing manner, would be about 780 patents owned by universities and 280 by foundations¹⁶⁰ Next come patents subject to compulsory license by court order, 4.9%,¹⁶¹ or ordered free to all, 1.2%,¹⁶¹ since on these the nominal owner, the patentee, has no ultimate right left, over who shall be licensed, nor full right as to the terms. Such patents were part of the patent system while the invention was a-making and until the court order, but not after that. We might count them as two-thirds in the patent system, and one-third out, or 2.4% out. We have mentioned private patents on which the Government has a license (on its own terms) and supplies the principal market; they include all military, defense, and atomic inventions and some others. Further to be listed are trade association patents, purely defensive patents, and all recognized as invalid or impotent, perhaps a fifth of all, although only 1% have been fully litigated, with three-fourths of these knocked out.²² Finally, there are the numerous unused patents which nobody ever wanted except the misguided inventor and his attorney (§ 116). It is so hard to count these, and to say whether they are a part of the patent system, that we shall ignore them. They were doubtless commoner in past times than now.

[128] All in all, rough calculation indicates that around a third of our 590,000 patents in nominal force are not part of the patent system according to our definition. They really should not be counted when we talk about the magnitude of the system, because the patent system implies the commercial ownership of inventions, which those nominal patents do not give. They usually impose no serious restrictions on the use of the inventions, nor give any important reward to the patentees, although they may serve more or less of various useful purposes. The percentage in 1880 of patents not part of the patent system may have been smaller than today. There were no Government nor compulsory-licensed patents then, and less of trade association, university, purely defensive or known invalid patents, but more of the useless type.