we should gain from using it we would decline to use it. The third notion is that the inventor makes a voluntary bargain with the public by patenting his invention and thus revealing it promptly to the world, in return for a monopoly in it for 17 years. For he has an alternative, they say—he can practice the invention secretly, and keep all the profits the same as if he had patented it, and perhaps for longer.

[145] These three related notions are today abandoned by economists and most independent thinkers on the rationale of patents, yet are still repeatedly expounded by patent attorneys and other defenders of the system. We can quote Ballard,[178] Wigmore,[179] Langner,[180] Folk,[181] Robert E. Wilson,[182] Deller,[183] and Dienner,[184] not to mention, Justice Roberts in a Supreme Court decision,[185] Daniel Webster,[186] and the old-time philosopher Jeremy Bentham.[187]

[146] The refutation of these three ideas basic to conservative patent philosophy is very easy, and must be done over once more because of the prestige, apparent logic, and tirelessness of their propagandists. If the particular inventor gives us what we could never get without him, there could be no duplicate inventing. Yet nearly simultaneous discoveries of the same invention are so common that they are the usual rule.[188] One might cite Ogburn and Thomas' list of great duplicated inventions,[189] or better, the daily grind of the patent business. Van Deusen [190] says that two-thirds of patenting attempts are dropped before application, usually at the attorney's suggestion. Then 43% are dropped in the Patent Office stage. The reason in most of these cases is discovering that the invention has been anticipated by someone else; or that it is so logical and easy a development from the prior art that the Patent Office or courts would hold it unworthy of a patent. For they are well aware of the frequency of duplicated invention, and have a legal and commonsense doctrine that a patent monopoly should not be granted for "inventions" so easy that we should get them anyway, without patents. Of American patent applications, about 2½% are drawn into Interference proceedings, because two or more duplicating each other (at least partially) appeared in the Patent Office during the 1–5+ years that one of the patents is pending, or within one or two years thereafter. Then after issuance come court tests, from which we can calculate (from ¶ 46) that about 48% of the patents litigated to a conclusion are thrown out because of anticipation or for "want of invention", which means being too easy, logical adaptations from the prior art. Now to put together the percentages of survival above cited, viz $\frac{1}{3} \times 57\% \times 48\% = 9.1\%$. The product comes out something like 9%, surviving these tests for duplication, of the in-

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[178] A patent is *not* a private privilege carved out of the public domain. So, far from being a means of taking something from the public, a patent is a means of getting something from an individual and giving it to the public. . . . He may, if he chooses, keep it a secret and practice it to his own profit." Wm. R. Ballard, gen. pat. atty. for AT&T, quoted by Folk (ftN *181*), from *Bell Tel. Mag.*, Nov. 1941.

[179] A patent "takes nothing from the public, but gives it something it did not possess before." Lawrence Langner: We Depend on the Inventor; *Atl. Mo.*, July 1942, p. 22.

[181] Geo. E. Folk, long chief pat. atty. for AT&T and patent defender for the Nat. Asn. of Mfrs., in his *Pat. & Indus. Progress*, quotes Ballard as above. 303 pp., 1942. p. 79.

[182] "A patent right however covers something discovered or created by the individual and is a natural monopoly as long as he can keep it secret." Research & Pats. (N 201). p. 178. Dr. Wilson is an eminent chemist and late Chmn. of Std. Oil Co. (Ind.).

[183] "The inventor takes nothing from the public; on the contrary he gives the public something which he has discovered." A. W. Deller: An Inquiry into the Uncertainties of Patentable Inv. and Suggested Remedies; *JPOS* 38:152–79, 1956, p. 158.

[184] "There is no inherent sin in the patent monopoly, because it takes no existing thing from anybody." Jn. A. Dienner: Discussion of Davis & Vaughan in *Am. Ec. Rev. Proc.* 38:251–7, 1948, p. 257.