

ciples, or that have been already made by someone else and are accessible. Patents for an idea found by luck may seem inappropriate by our rule, since a lucky chance should not need nor deserve rewarding. But we should remember, first, that some element of luck enters into all inventions (say the inventor *happened* to think of something) save those attained by strictly logical reasoning such as any skilled man would follow, from premises known to be pertinent to the desired end; and such an invention would not be patentable anyway. Secondly, in years of attention to reported inventions by accident, we have observed that the lucky accidents usually happen to the right people, those working longest, hardest, and with the most equipment, even if sometimes directed toward a different invention. The same accident, if it could ever happen to "a man on the street", would probably be meaningless to him, and certainly would never lead him to make and perfect an invention.¹⁹⁸ In short, invention by luck is a regular by-product of inventive talent, effort, and facilities, and hence needs the same reward stimulus as its companion joint-product types of invention. (§ 473.)

[163] Since Economics does not talk about justice, the economic theory of patents cannot include giving the inventor his rights, or a just reward. This science's only aim is the welfare of the community, in our case chiefly through the stimulation of invention. But economics is not sufficient to answer all problems, and we shall note later various considerations of law, technology, sociology, philosophy, etc., that must be invoked if we are to complete our basis for action.

[164] Under Economics there are, furthermore, certain minor motives for granting patents, for us to consider. There is the service of PUBLICITY, our second justification, spreading the ideas to all the world by the printed descriptive patent, even if the invention be never put in practice. This is surely important; but if the invention is good it will doubtless be practiced by someone, and we have seen that except for a few chemical and other processes it is impossible to practice a good invention long in secret. It is also possible, and often done despite the law, to write patents most obscurely,¹⁹⁹ and to leave out essential details, such as *which* catalyst is best, among many listed as usable. Again, the purpose of patenting calls for *delaying* publicity, until one's application is filed, or longer.²⁰⁰ And after patent filing there are long delays in the American Patent Office, averaging three or four years today, adding up to a delay of several years, usually, between the making of an invention and the publication of its patent. There are many other ways to publish ideas besides patents, above all the scientific and trade journals. If these usually allowed a delay of several years between achievement and publication, we should think they needed waking up. The prompter use of these and other media by patentees, is indeed one of the chief publicity services of the

¹⁹⁸ A patent attorney, Eyre, said: "The law as it has been applied and interpreted now sanctions a combination of drawings, specification and claims that is a masterpiece of concealment of what the applicant thinks he has invented and wants to protect. Mainly because of this fact, the system has become unnecessarily complex, technical and artificial." (See N 289, second page.)

W. L. McKnight says that disclosures must be full and correct or the patent is invalid, and incomplete disclosure is one of the first defenses of an infringer. However, only about 1% of patents are ever sued on, so that the incompleteness could be established; the cause of patent invalidations is almost always unconsidered prior art, says Frost (N 221, p. 61); and the 99% unlitigated patents are important. McKnight quoted C. E. Barnes: The Patent System from an Inventor's Point of View; *PTCJRE* 5: 68.