

patent system, since if invention owners feel they have their ideas essentially protected by a patent, or even by an application not yet granted, they are more willing to allow publication, and visits to their plants.²⁰¹ While good inventions can rarely be practiced long secretly, it is possible and vastly frequent to block information temporarily, especially before production begins, and in minor or latest detail improvements, rarely explained well in patents. Many and important contracts for instruction in know-how, along with the license of patents, are based on the fact that, as Melman²⁰² and Vernon²⁰³ say, "The information disclosed in patents is often not enough, taken by itself, to be of much use to the receiver." We shall speak in ¶ 274-80 of commercial competition's great countervailing *encouragement* of minor and temporary secrecy, lasting some years, in contrast to the noncompetitive systems for obtaining inventions.

[165] In sum, while patents do a great work of publishing and indexing new ideas, especially those not practiced, it is a work for which other media are at hand, and commonly much quicker, better indexed, and much more used. Furthermore, any competitive system of making and owning inventions entails a vast amount of secrecy. And an invention that can be practiced secretly, can likewise be infringed secretly, cutting the value of a patent on such.

[166] The publicity function of patents could be enormously enlarged if they were granted quickly, required to be clear and full, and if their classifications were brought up to date, cross-classified, internationalized, written in Esperanto or the new dialect Ruly English, and otherwise adapted to mechanized electronic searching, and the search apparatus made available to the public in various metropolises.²⁰⁴ The Office of Technical Services is making another good start in this informative direction, with a vast file of know-how as well as patents, indexed in 33 cities.²⁰⁵ Another good remedy proposed (¶ 502) is prompt publication of all applications, later searching and granting as definitive patents only those for which a special and considerable fee is paid.

[167] A third purpose for which patents are used is to defend a firm against other patents.²⁰⁶ E.g., Henry Ford in his later days started taking out patents, licensing them free to others.²⁰⁷ A purely defensive purpose is often claimed, but is not always so clear as here, as being the only purpose. In the case of the Government's patents, defense is said to be the main motive, as Forman explains in seeking to justify the 14,626 current patents the Government held in 1954.²⁰⁸ Davis thinks that as many as one-third of all patent applications may be for defensive purposes.²⁰⁹ So Senators O'Mahoney and Wiley introduced a bill to provide a quicker and cheaper way to satisfy a defensive purpose, and one relieving the Patent Office of its chief burden, by allowing prompt publication of an application without completion of examination nor grant, when the applicant requests this and the Commissioner approves.²¹⁰

[168] In many cases a patent called defensive is sought as a bargaining counter to force concession of licenses from other patentees. This is really a variation of the first and main motive of patents, only paying off in another way.²¹¹ Instead of using one's patent to exclude, one trades off the threat of this in order to get rid of patent barriers. While useful to the grantee, such a patent does not add sup-