

[203] 2. *Social inventions*, such as a way of doing business, organizing, advertising, or teaching. The French Revolutionists allowed them patents.

[204] 3. *Artistic inventions*, such as water ballet, or the idea in the *Great Train Robbery* of using the kinetoscope to present a drama. But there are the related and allowed design patents and copyrights.

[205] 4. *Reinventions*, or old inventions, unless the earlier version was unknown to the later inventor, had never been published in print, and had never been used in this country, or had been abandoned before use. A reinvention may be as useful as any new one, like the corrugated firebox rescued by Fox.²²⁷ So some large companies make a practice of looking over their unused patents;²²⁸ American Viscose found 25 profitmakers among 1,000 of its unused patents. One result was a 25% jump in employees' ideas submitted for patent. Yet surely one's own patent portfolio were not so likely a place to discover forgotten but usable inventions, as the dusty records of other companies, libraries, and countries.

[206] 5. *Inventions too logical* to the suitably trained mind, versed in the whole pertinent prior art, or which required for their finding, much hard work, expense, and/or learning, rather than special ingenuity or "a flash of genius", as the Supreme Court once expressed it. (ftN 131, p. 41). The principle, largely sound, is that if an invention is fairly logical someone is bound to hit on it, so a patent reward is not needed, and would wrongly give away the people's birthright. Thus, in the hard fought case of an invaluable invention, Coolidge's ductile tungsten, for lamps and all other electrical purposes,²²⁹ the courts first upheld the patent, then struck it down and again upheld it, because Coolidge had succeeded in compacting the metallic powder by familiar methods of sintering, swaging, reheating, etc., with which he experimented so patiently that he finally succeeded right where all others had failed. We have set down in the previous chapter the No. 1 economic justification of patents, viz., that they are warranted when and only when they are a reward needed to elicit invention. By this principle the nature of the difficulty, the obstacle to invention, is immaterial; we should only ask if the patent reward might overcome it, and if any other institution would do so better. Whether the obstacle be a shortage of inventive talent, or of brilliant thinking applied to invention, or of mere patient labor or expensive laboratory investigation, or requisite scientific discoveries, or a laborious search among forgotten inventions, should make no difference as to the propriety of a patent reward, provided always that this reward would be likely to evoke needed invention, and that no other system would work better. But this is economic sense, not the patent law, which says that skillful, patient, and costly plugging away, guided by the best known principles of science, is not to be rewarded by patent. To be sure, there are cases which read as if this economic principle had been allowed.

[207] But of course there are various considerations of practical law work to be considered also. To assess the proper reward for turning up forgotten inventions, e.g., might be very difficult. Such recallings are constantly rewarded with small sums under suggestions systems (§ 94), which hardly ever use patenting. Likewise with