

the proposed quite logical nuisance of royalty rights on scientific discoveries.

[208] 6. *So-called immoral inventions*, chiefly ones frankly for gambling or cheating, or for contraception, even though the last has been approved by the courts and by most of our citizens.

[209] 7. *Inventions lacking utility* are declared by the statute to be barred from patent. But this is usually overruled by the common law which has changed "useful" to "operable", with the result that useless inventions are patented in considerable numbers. The best evidence is that still 40% of inventions being patented are never used.¹³² Senator Kefauver would have required for a drug patent proof of serious improvement.²³⁰ There have been fantastic things patented in earlier years. But today almost all our patents on useless and never-used inventions are taken because of a rational hope that they will prove useful; or else to protect from possible competition a better method owned (§ 169); or are usable for "fencing in" a rival working a different basic method, by foreclosing his possible lines for improving it. Patent attorneys say, with sincerity and truth, that it is very hard, and usually impossible, to predict which inventions will prove useful. But if a psychoanalyst were engaged to investigate their minds, he might discover a subconscious bias in favor of abundant patenting. Most countries sort out later the useful from the useless patents, by taxing them all at yearly rising rates, with the desirable result that 95-98% of the patents have been abandoned before their full term had run.¹⁴⁶ We shall discuss this reform later (§ 492 and ftN 480.1), and the rare but particularly antisocial type of useless patent called the *dragnet* type (§ 288-91). This is on a vaguely defined and scarcely worked out invention, not operable in economic reality, which some sharp fellow files on in a hurry, as soon perhaps as scientific developments have indicated a possibility there. He hopes that others will work out ways to make the invention practical, whereupon he will either appropriate their work, or force them to buy a license. When his patent is granted and published (which he tries to delay), he has done one social service, of advertising the new possibility; but he deprives all others of most of their motive for working it out.

[210] 8. Miscellaneous reasons for nonpatentability, such as faulty procedure, undue delay, new uses of known devices, etc., would make up a long and intricate catalog, of importance in the patent business but of no interest for the purposes of this book. If the reader be curious, he can find many books expounding the patent law, by writers more competent for that.²³² Suffice it for present purposes that the vast majority of ideas useful toward invention, scientific or amateurish, such as are brought forth in both laboratories and suggestion systems, are not directly helped by the patent system. They are either legally barred for any of the reasons in our eight classes, or economically excluded, or rendered of slight value, through any of the five reasons following. Most often both legal and economic reasons would rule out patenting.²³³

²³³ Some foreign countries exclude from patentability foods, medicines, chemical compounds, or other classes; but we see no reasons for such distinctions on sweeping bases. All patents have their values, and their social costs. Cf. P. J. Federico: *Pats. for New Chem. Compounds*; in JPOS 21: 544-9, 1939.