

ECONOMIC EXCLUSIONS FROM PATENTING

[211] American patents cost from \$60 up in official charges, plus attorney's fees ranging from thousands, to nothing for handling it yourself, but averaging perhaps \$300. Next must be added the considerable cost of time by the inventors and executives cooperating with the attorney(s), and possibly expensive proceedings in Interference with another patent not yet granted, or in prosecuting appeals for a grant. But all this is only the beginning, to get the domestic patent. To protect the invention abroad, more or less of the foregoing must be done over again in each country of interest, and promptly.

[212] To protect the patented invention, in the minority of cases where it turns out worth protecting, will next require constant vigilance as to possible infringers, perhaps secretive, a selling job if there are to be licenses, the teaching of know-how both when a license is conveyed, and later as to improvements, the maintenance of some secrecy perhaps, as to details; constant effort to keep one's patented art up-to-date and advancing, by making, buying or appropriating improvements from all possible sources, such as practice and patents abroad; and finally the prosecution of infringement suits, which is one of the most expensive forms of litigation.²³⁴ Our next chapter will be the place for statistics and thoughts on this subject. (§ 261 ff.) Suffice it here that patents, and especially their defense and active use by suing infringers, are so expensive and risky a weapon, that almost all inventions and inventors are economically debarred from their use, if not also debarred legally.

[213] Four other classes of invention, important, related to each other, and partly overlapping, should be noticed here, and discussed in detail in later chapters—classes of invention in which patents are allowed, where inventing is little encouraged nor paid for, by patents or any other of our institutions. Indeed, in the second to fourth of these classes the lack of support amounts almost to prohibition of invention, in practical effect. These four next classes are:

[214] Second, *Fundamental inventions*, like the helicopter, print-reading machine, electricity directly from heat, soilless agriculture. Such inventions are so big and difficult, that they take so long to develop from the stage of first patented conceptions to successful and important use, that the 17-year patents on the fundamental ideas will have all run out by the time remunerative use arrives, and there can remain in force only the more recent patents on improvements, not indispensable nor very important, made by other men and belonging usually to companies other than the pioneers. Intelligent inventors and corporations, perceiving the odds they face, against ever being repaid, even after many years, for their great expenses in developing a fundamental invention, almost always avoid such difficult quests. So the fundamental inventions, the most precious of all, are left in almost total neglect, assuring the slowness of their development, the evil compounding itself, and the basic patents a mockery. We shall explain and prove this abundantly later, in chapter 8.

[215] Third, *Custom-barred inventions*. This is a field that could be very great and beneficent, but is almost zero today, because inventions in it meet not only no reward or encouragement, by patents or otherwise, but their success is practically prohibited, by deaf, im-