

CHAPTER 7

THE BASIC MERITS AND FAULTS OF THE PATENT SYSTEM

[230] Although most of the virtues and shortcomings of the patent system have been earlier noticed, especially in the two previous chapters, it should be worth while to list them all in a new conspectus *ad hoc*, with further discussion of aspects not treated before and not commonly appreciated. Even then we should not finish the subject, but leave that to our later chapter 10, covering remedies suggested.

A. THE ECONOMIC JUSTIFICATIONS RECAPITULATED

In chapter 5 (§ 156 ff.) the sound, rational, economic reasons for patents were listed as:

[231] First and chiefly, ENCOURAGEMENT for making useful inventions that might have been not found, or not soon enough, without the prospect of a patent (or some other reward). This purpose and protection covers all the many and great developmental expenses that beset invention, the procuring of capital, etc. The economist Schumpeter said "The introduction of new methods of production and new commodities is hardly conceivable with perfect—and perfectly prompt—competition from the start. And this means that the bulk of what we call economic progress is incompatible with it."²⁴²

[232] Second, worldwide PUBLICITY for the new ideas, and for such other bits of technology as are described along with the inventor's contributions. But patent publication is years late, and often incomplete and obscure.

[233] Third, the DEFENSIVE purpose, for a minor aid in fighting off the attack of someone who would get a patent on the same idea. But there are other, simpler and cheaper ways for an inventive firm to defend itself (§ 167, 168, and 504).

[234] Fourth, to PREVENT INFERIOR patented inventions from being used in competition with a patented best method. This again is a negative merit of patents, in that they can sometimes be used to remedy an evil which would not exist without them (§ 169, 170).

[235] Fifth, to CONTROL quality in the product, or a way of doing business, or otherwise to protect the public interest, oftenest with medicines.

[236] Sixth, to HONOR the inventors and measure their achievements.

[237] Seventh, to CONCENTRATE PRODUCTION, for enough of the advantages of large-scale production, according to the nature of the case.