

B. VIRTUES OF THE PATENT SYSTEM

Patents have, especially for their No. 1 purpose above of encouraging invention, a trio of additional merits (or perhaps defects) closely intertwined: Uniformity, Automatic Valuation, and Postponed Evaluation (§ 252).

[238] For what good there is in Uniformity, our patent system grants all patents on identical terms, the most trivial improvement alongside the most genial masterstroke, the most ephemeral seated beside a fundamental idea like the voice-operated writing machine, that envisages a whole new industry, which under our present system can be realized only far in the future. Uniform treatment of inventions is sympathetic with our ideals of democracy, equality, and legalism, and with the *laissez-faire* economic philosophy, as we mentioned in the last chapter, under the Premises of the Patent System, Nos. 7 and 8. But it fits the evident needs of differing inventions right badly, and is by no means necessary. Germany grants petty patents, *Gebrauchsmuster*, with short term, low fee, and no examination, for the lowest grade of inventions; some propose this for America:²⁴³ and we formerly allowed extensions of a few worthy patents insufficiently rewarded. To say that all kinds of inventions must be patented on the same terms is rather like saying that an elephant, a goldfish, and an adder must be treated alike, because all three are animals. But it does save a world of immediate trouble, uncertainty, and possible maladministration, to treat all inventions as if their needs were the same. (See below, § 245.)

[239] A certain Automatic Valuation, or adjustment of the amount of the patent reward, to the worth of the invention, is another source and justification for uniformity of patents. The more useful the invention, the greater tends to be its reward, and in the 40% of cases¹³² where there is no utilization of the invention there is no reward received (except perhaps under our minor principles 3, 4, and 6). Thus the inventor (including his corporation) is stimulated to go on, perfect his invention and get it into use, a valuable incitement where he has something good, and one not so well provided by prizes or awards, as Ballard points out.²⁴⁴

[240] All the merits and demerits of the patent system merely *begin* with the provisions and necessary implications of the patent law. The social effects of all these must be filled out and quantified by conscientious, where possible *statistical* observation of how the law works out in practice, in the average, modal case, in the important exceptional cases, and in all the cases together. Such studies as those of Sanders and Rossman,¹³² the Patent, Trade-mark and Copyright Foundation,²⁴⁵ the Senate series, Kottke,²¹¹ and many others we cite, provide such studies of modern inventions, both those patented and the much greater number which are not. Studies need to be up-to-date, since the economic and technic *milieu* is constantly changing, although the patent law remains almost unchanged. But still there may be some use in pointing out clear implications of the patent law, where these are not clear to some of our readers.

[241] The merit of patents discussed above, their tendency to automatic adjustment of the reward to the value of the invention, with delayed evaluation, after a successful invention has begun to pay off,