

All the rival institutions for supporting invention save these costs if they dispense with patents (even if they incur some other costs instead), and those others that use patents avoid their costs largely, since they do not struggle much over rights. But of course each system rival to patents involves its own costs.

[262] To enumerate the costs of the patent system, there are first the various Patent Office fees, amounting to at least \$60 per patent, \$6,863,000 per year, and the running expenses of the Office connected with patents, estimated at \$14,430,000 additional to the fees.²⁵⁷ Then there is the interest cost and running of expenses for the pertinent Patent Office quarters, which we guess at \$900,000 per year.²⁵⁸ Next come the expenses for an attorney, etc., amounting to \$620 for a typical simple invention.²⁵⁹ There are about 5,200 patent attorneys and agents,²⁵⁹ both free professionals and the corporation-employed. After dropping a fourth of these, on the guess that they are otherwise occupied or retired, let us estimate their bills, or gross income, at \$24,000 per active man yearly, for their personal earnings plus their staffs, offices, travel, etc.,²⁶⁰ on the assumption that they are like the non-salaried general lawyers reporting to a Government questionnaire. This would bring their gross bill to about \$94 million.

[263] The patent attorneys draw up and prosecute the patents, sometimes by suits and appeals to force their issue, and in perhaps 2.5% of applications by particularly costly interference proceedings between rival applicants,²⁶¹ next by detecting and threatening infringers, and finally by suits against them. These numbered a few more than 731 filed in fiscal 1956,²⁶¹ including 642 in the district courts, only 59% as many as in 1940; and there were 76 appeals to the Circuit Courts,²⁶² and 13 cases entered in the Court of Claims. Juries are seldom used.²⁶³ Patent suits take more time and fighting²⁶⁴ than any other class of civil suit except antitrust and Taft-Hartley; 4.57 times as many hours as the average civil case, at least among 8 tried and 20 otherwise terminated cases filed in 28 district courts in a 1955 study.²⁶¹ Their average time for a case was 11.6 hours, 53% in court and the rest in chambers; but the 8 cases that went to trial, one with a jury, averaged 30 hours, two-thirds of this in court. About 5 hours make a court day, and a separate count²⁶⁵ by days of the 114 patent cases completed in the district courts shows a modal length of 2 days, but a mean average of about 4.4 days, for a single suit in the lowest court. While only 11.4% of the cases went through with a trial,²⁶³ all the cases in the time study occupied, in court and chambers, 3.64% of these district courts' time.²⁶⁶ On the assumption, rough but usable, that the same percentage holds in the remaining Federal courts,²⁶⁷ we get \$1,120,000 as the judicial salaries and other court expenses budgeted to the courts and attributable to patent litigation. To this we must add a "guesstimate" of the rental value and operating cost of the

²⁵⁷ Of the 680 cases terminated, 3.7% were dismissed for want of prosecution, 0.7% by default judgment, consent judgments before trial were 19.4%, during or after trial 0.6%, consent dismissals 57.9% before trial and 0.6% during or after, and 0.8% were other cases, before coming to the contested judgments: judgment by decision of court before trial 4.7%, after nonjury trial 10.9%, no directed verdicts, judgment by court during jury trial 0.1%, and judgments on jury verdict 0.4%. Only 4.4% of the private patent cases used juries. From the judicial report cited, p. 223.

²⁵⁸ Mayers cites \$25,000 as a typical cost to each party. N 22. A former Comr. indicated a higher cost. Cf. also Petro, *ftN* 9, his p. 352.

²⁵⁹ Amounts obligated, omitting the Supreme Court and fees for jurors and commissioners, whence the above 3.64% is reduced to 3.2%. *ftN* 263, its p. 299.