

court buildings budgeted to other agencies of Government, taking the 3.2% as the percentage attributable²⁶⁷ to patent litigation amongst all other court business; so we estimate²⁶⁸ \$74,000 as the yearly cost for court quarters. Next we must add in the value of the time and office space and assistance of the inventor and his executives and assistants, whenever occupied with getting or defending or getting around a patent, or when being sued for failure to get around it. Perhaps we should estimate this at a quarter of the gross bill of the attorneys, viz., \$23,400,000. Finally should be added serious items on which no estimates have been found, the costs for expert witnesses, travel, transcription, etc., not ascribed to the attorney's own office, or gross income.

[264] The grand total of the direct costs of the patent system now adds up to at least \$140 million *per annum*, without inclusion of the unestimated items, making \$220 per year for each patent nominally in force because issued in the last 17 years, or \$3,000 for each patent issued in the 1961 fiscal year. It is quite a price to pay. To be sure, our major items are shaky estimates; (§ 12) if the reader have better information, let him correct them. And these are only the direct costs; if we were to count in all the indirect costs, mentioned elsewhere in this chapter, and also the benefits, the total would be quite impossible to calculate, and might be greater, or less, than the above estimate of the direct costs alone.

[265] Though quite a price, these direct costs of patenting are probably justified in most cases, *unless* we can envisage a better method, such as we shall offer later, for dealing with that portion of invention, estimated in at about a fifth, which is still motivated by the patent system.

[266] Since patent litigations are particularly protracted and expensive²⁶⁹ as we have seen,²³⁴ the Science Advisory Board,²⁷⁰ D. L. Ladd,²⁷¹ former Commissioner, and others have protested their cost. Greenawalt²⁷² cited the case of Carson, a poor inventor who at first lost all cases; then getting the backing of wealth, he won all cases, and \$4,000,000; but it cost him 85% of this to get it, and 9 years. Again and again we read protests that patent litigation, and the threat of it, and the necessity of being ready for it if one is to retain control of a good invention, favor the great corporation, and force a small opponent to bankruptcy or to selling his patent on the big fellow's terms. *Fortune* said²³⁴ that a patent suit is one of the most expensive forms of litigation, and that "a big corporation, working from a base containing as many as 10,000 patents, can usually, if it wishes, find a basis on which to pursue almost any competitor. More time, money, and energy have sometimes gone into this kind of warfare than ever went into the original technologic development." "The average time from the grant of the patent to the decision of the court of appeals was 10 years, 7.5 months."²⁷³ MacLaurin, also protesting, says "Nearly 40% of the total patent suits in the [electric] industry on which we could obtain information lasted over 2 years. As an extreme case, on the regenerative circuit Armstrong and De Forest submitted their patent applica-

²⁶⁹ Although there are no patent suits between automobile companies, GM was involved in 124 with others during 1924-37, costing \$2,526,010 (without judgments), although only 18% of them went through to judgment, an average cost of about \$20,000 per case. TNEC Hearings, N 299, at pp. 365, 700.

²⁷³ *An Analysis of Pat. Litigation Stat*, staff rept. of the Subcommittee on Pats., etc., of the Senate Committee on the Judiciary, pursuant to S. Res. 240; 1961, 30 pp.