

We have noted in ¶ 263 a 41% decline since 1940, in suits filed, and some longer data in table 2.

[270] 10. *Interfering with the natural flow of economic effort.* Those interferences are infinitely numerous, and probably important in total. Economists know that the working life of a nation is a moving equilibrium like that of a ship, in which every movement of weights within, and every force from without, affects the angles, immersion, speed, etc., of the whole ship. Each economic effect has in turn further effects ramifying *ad infinitum*, but quickly passing the limits for profitable discussion.

[271] We have already mentioned in this chapter several interferences from patents, especially their royalty taxation of novelty by adding to the sales price the cost of making and introducing the invention, thereby discouraging its use and favoring the old way (point 6); the deterrence of inventors without a spare million or two for fighting patent suits, away from difficult, serious inventions that need patent protection (point 3; not to mention from great fundamental ones); a probable net loss from invention for circumvention of a patent (¶ 180,1); and fostering great and ruthless corporations and lasting industrial monopolies (point 7). Interferences needing to be taken up here are first—

[272] 11. *The encouragement of secrecy.* Secrecy is usually thought of as a substitute for patents, i.e., a consequence of their nonuse. But this is a too limited frame of thought, contemplating only commercial inventing, and the alternatives to patent it or not. Such simple commercial secret working is by no means the only alternative to patents. Moreover, it is usually a nonexistent alternative, as we said in ¶ 148 and ¶ 164—it is almost always impossible to *use* an invention of any importance, and keep it long secret. The commonest today of all the substitutes for the patent system is of course invention at government behest. This and almost all the other substitutes eliminate secrecy, or reduce it compared to the patent system. Of course military inventing hides itself from the enemy and the public, because otherwise the profit of the work were lost. But it is not hid much from those Americans who need most to know about it because they are working on related military devices.

[273] Furthermore, a patent is supposed to eliminate secrecy by making it unnecessary; but publication is insured only when and if the patent is granted, and many years may precede this, while the invention is being worked out, and then put through our clogged Patent Office, perhaps with further delay contrived by the attorney, during all of which time the discovery of one's ideas by outsiders might invite costly and perhaps successful interference proceedings, or simply enable free rival working until the patent issues.²⁷⁰ A bad example is that of the first flyable airplane. For 2 or 3 years after their first flights of December 1903 the Wright brothers discouraged publicity, accepted the world's incredulity and indifference, worked quietly, progressed slowly, and got their patent issued only in May 1906. One of them was quoted as explaining, as to why the world heard little of them for 5 years after their first flight, "We decided that we would be absolutely lost if our patent became known before we had \$200,000