

weakened this particular misuse of patents. Some companies, despite court disfavor, refuse to license single patents, demanding package deals. Levinstein said "To remove the mass of bogus, bluff, blocking, paper patents, valueless but with a menace grinning through the paper mask, would be a wonderful relief to small firms."^{298, 299}

[286] *Fencing* patents we prefer to define as patents designed to "fence in" a competitor's natural lines of development, so that he will be blocked or hampered in improving his methods. Blocking patents might be a better term. Probably a rare abuse, it was still charged and punished against the Hartford-Empire bottle trust in 1938.²⁹⁹ Such fencing patents, usually economically indefensible, merge indistinguishably into the partly or wholly justifiable defensive patents discussed in § 170, covering inventions the patentee is not using, but might wish to later, or which no one ought to use, because they are inferior methods.

[287] Indeed, almost every type of patent shades into each other type, because the whole subject of inventions and patents is most nebulous. All we can do by way of categorizing it is to point to groups or areas especially well denoted by our used adjective. With definitions so vague and overlapping, of course all statistics are impossible.

[288] Our next group of adjectival types of Improper Patents are some particularly near each other, which have been called the "dragnet," "umbrella," "shotgun," "forestalling," and "nuisance-value" patents. By these we imply a "half-baked" invention, not really operative and practical, but near enough to it to get by the Patent Office and perhaps the courts, on which a nimble fellow or firm applies for a patent as soon as some development, perhaps a scientific discovery, or his own work, indicates it might someday provide, after great efforts, the basis for a practical and important invention. Kahn²²⁴ defines a "dragnet" patent as one to sweep up interferences and later developments. I.e., it will enable a fight with any other earlier or later rival applicant whose patent is not yet granted; and the application, whose acceptance will be carefully delayed, may perhaps be amended to take in later developments by others or himself, by asserted correction, despite the law's attempt to bar this. Hamilton calls a "trap" patent one that forces disclosures by others, which the trapper will then claim.³⁰⁰

[289] A "forestalling," "scarecrow," "shotgun," or "umbrella" patent would lack these particular elements of fraud, yet be still a patent on what is not yet a usable invention, but which may contain disclosures of value in the big task of making the invention practical. The most notorious example of a "forestalling" patent was Selden's on the gasoline automobile, skillfully kept in the Patent Office for 17 years by its patent lawyer contriver, until the new auto industry had grown ripe for plucking. There had been steam automobiles for a century, and the world had no need of Selden to tell it that a gasoline engine with clutch, etc., could be substituted for a steam engine: the world went ahead on the same unaware of his application in ambush. Probably such an easy substitution of engines would not be patentable nor upheld today, as Frost says; but this famous patent of 1895 stuck until a court struck it down by bad law in 1911.³⁰¹ It had by accident great and probably beneficent effects that are still with us, in the