

creation of patent comity within the automotive industry (except that Henry Ford fought and beat the Selden patent).

[290] All this is not to deny that a "forestalling" patent ultimately registers in distributed print, and may really contribute, new ideas of possibly great future, which merit some kind of reward.

[291] Our last class of abusive patents, probably decreasing and not common, is the "nuisance-value" type, again overlapping those just discussed. The name implies that either the invention or its patent is of little value intrinsically, but embodies some threat, at least of an infringement suit. Such patents have been taken out in some numbers both by isolated inventors, anxious to get some money from a corporation legitimately or not, and by corporations seeking not to sell the patent, but to trade it for a license on others they want, from a rival corporation or a patent pool.³⁰²

WHY ARE SO MANY BOGUS PATENTS GRANTED?

[292] Having shown in preceding section 13 that many abusive patents are granted, largely of no validity yet of some economic effect, and having shown in ¶ 40 that three-fourths of all patents judged by a court are destroyed and having guessed that about the same 3:1 majority of all granted would be found bogus if they were sued on, we naturally ask *how and why* the Patent Office issues a product found spurious or incapable 3 times out of 4 tests, and what could be done to improve its work.

[293] The usual reasons for the inefficiencies that crop up in government do not apply. Politics, corruption, lack of education, indifference to the welfare of clients, laziness, wastefulness—from all these common vices and bad influences the Patent Office is singularly free, a veritable model to all the rest of our Federal and especially to our State and local bureaucracies, and perhaps to all the world. Politics seems not to touch the Office (unless in the choice of Commissioner) and the examiners are mostly young men with professional training in engineering or chemistry, who are also studying patent law and preparing to become patent attorneys, or in some cases to remain and advance in the Patent Office. Their average experience in this peculiar and most difficult business is perhaps 6 years. So whence chiefly derives the defectiveness of their output?

[294] It goes back to the very basis and principles of the Patent Office. This is an institution established, planned, and adapted to grant patents, not refuse them. In the Latin and the unindustrial countries the law says that practically every patent applied for shall be granted without examination for priority, "*sans garantie du gouvernement*" leaving the question of validity to be settled by the courts, in the few patents that will ever be sued on. The American system is somewhat similar; but we first make some effort to determine novelty and legality, enough so that 48% of the applications are dropped, then issue a patent which the courts are supposed to consider as *prima facie* valid, but which these receive with scant respect and commonly destroy.

[295] For proof we always want statistics; fortunately very pertinent ones are available.³⁰³ The 75,495 paid applications of fiscal 1958 were handled by about 1,053 examiner assistants and higher ranks, making 71 cases per man-year, and 24 hours for the average applica-