tion,[304] to keep up with the influx, without making much progress on the backlog of 207,000 applications awaiting decision. In addition the examiners managed to do some other necessary work, on much needed and postponed reclassification of patents, study of the industry and literature in each man's field, the court decisions, and improvement of procedure. Three days is no great time for reading, understanding, searching the prior art, writing back objections, reconsidering, and granting or refusing an average application. Some would take much less time, some much more. In former years, when the extant literature was far less, the output per examiner was higher, 3.2-fold more in 1915.[303] An earlier writer noted that an examiner was expected to turn out 25–30 actions a week; [305] another that he was judged more by the number of his actions than by their quality.[306] A corporation's counsel said they expected no more than half a day's time for a Patent Office action, but they would spend 4 or 5 days searching an average case themselves, and 10–20 days on litigated patents.[307] The working problems of the Patent Office have been thoroughly examined in Geniesse's Study 29.[308] On each application the examiner must supposedly search out all pertinent parts of the 8 million American and foreign patents on file, plus the whole libraries of technical literature, in numerous languages, and cover all practice known but unpublished, then make sound judgments on each claim, numbering dozens perhaps in one application, and on every other word and drawn element of it. The wonder is that he can do as well as he does, and that courts pretty well uphold him on the significance of the prior art which he did find and cite in the file wrapper,[309] and that the Office finally grants only 52% of the applications. Dissatisfied inventors can file several appeals to force issue of a patent, which are answered by higher examiners or even the courts. In all of these the first decision the applicant wins gives him his patent; the public has no appeal. And doubts are to be resolved in favor of the applicant.

[296] If this is a good system of law, we ought to have more of it. Every patent case is essentially a lawsuit, the *Inventor* v. *People of the U.S.*, in which the inventor demands that a 17-year monopoly be granted him, in return for claimed services. How would it be if in all civil suits the defendant were limited to an average 24 man-hours for the whole preparation and pleading of his case, while the complainant could use all the time, talent, and appeals his money could buy?

[297] With our patents being granted under these rules, is it any wonder that when some are sued on to a conclusion by a *regular* court, with its great effort and fair success at being just to both sides, half the time the patent is found unwarranted? (In half the remainder it is held insufficient to cover the art whose monopoly was attempted. This last impugns not the Patent Office but the patent system, being a waste.)

[298] Frost says "We do not know what the patent mortality in the courts will be when the Patent Office is current in its work, the classification problem is overcome, and the workload of the examiners is reduced from its present high level." [310]

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[309] Federico finds that in 34/40 cases of an invalidated pat., material not cited by the Pat. Office was referred to by the court. Ladd, N 271, p. 357, n. 15. Frost, N 221, pp. 57 and 58.