

[299] To this confession that a cure for patent invalidity cannot be guaranteed, the present writer would add his conviction that while there could be some amelioration, cure is quite impossible under anything like the present laws, fees, and appropriations, which give all advantages to the applicant. One might even say that since the present system produces patents about 58% invalid and 18% not infringed,³¹¹ and we cannot hope much to improve this, it is not so very different from the "registration system" of France and the less industrial countries, which grant patents automatically on application, except that ours costs much more at the start, and delays patents.

[300] Perhaps the best solution were a combination of the registration and the examination systems, such as Zangwill proposes and the Netherlands plans doing (§ 502). Provisional patents would be issued at once on application, but would lapse after a few years, say seven, unless, at any time sooner, anyone paid a sizable fee for a "thorough" search. This would be conducted by an international office, and would produce shortly either a positive patent or a rejection. Preferably also, this patent be good in Canada, the Common Market and other countries of the Western alliance, not just in one. The main treatment of our recommendations anent patents is left to our 10th chapter (§ 485-522).³⁰⁰

[301] 14. *Delayed grant.* This shortcoming of American patents is one oftenest complained about, because it is a conspicuous departure from our normal and commonsense rule that when a service is asked of Government, it should be granted or refused at once, not years later. To be sure, our whole legal system, except for arrestees watched over by *habeas corpus*, is full of delays; but this is an *obiter dictum*, not an excuse. The average patent granted today spends more than three years in the Patent Office.³¹² The Office has long been pleading for more men, higher salaries to retain the experienced, and higher fees to pay for them, and did obtain some help in fiscal 1956, resulting in a 55% greater rate of disposal than the previous year, and a reduction of the backlog pending by 4,300, to 217,000, (201,000 in 1961). The goal is stated as a backlog of 100,000, "at which the work of the Patent Office could be maintained in substantially current condition", former Commissioner Watson reported. But that would be about twice the annual grants, wherefore it would still take about 2 years to grant the average successful patent, although the Patent Office worked on it only an average three days. Mechanized searching, and reclassification of past patents, are hopes for future speeding up and higher quality, if funds will be provided.¹²¹ (§ 498-505).

[302] A large part of the delay is from tardy replies by the applicant, or by his deliberate contrivance, in order to postpone the end of the patent,³¹³ or to keep his idea secret, or to involve rivals in interference proceedings, as was said anent "dragnet" patents (§ 288). Something has been done of late to require quicker replies by the applicant.³¹⁴ So a long proposed and probably excellent reform would be the Twenty Year Law, by which a patent would be limited to 20 years from the date of application, or 17 from date of grant, whichever term were shorter, unless the Office had been responsible for the delay (§ 499).