

[303] The harm in dilatory granting, which in a number of patents has reached 10, 20, or even more years, lies in the chance of the above indicated abuses, delay in public information, leading to useless duplicated research, a probably too long term for the monopoly, and the occasional injury of competitors who, perhaps innocently duplicating the invention (§ 146), unaware of the secret patent application or uncertain it will be granted, have started exploitations of the idea, which may suddenly lie at a strange patentee's mercy. Some patent applicants advertise "Patent Pending" to warn off competitors; but this has no legal effect, and other patentees would rather catch competitors by a delayed-patent ambush, like Selden (§ 289).

[304] 15. *The suppression of inventions* by use of patents is a charge ever and again laid against the patent system, but one which must for the most part be rejected. We have already listed as the 4th economic justification of patents (§ 169, 170, 234) that they enable keeping an inferior method from being used, when the patent is still in force and happens to be owned by a current user of a better method. To be sure, this small merit is only that a patent may sometimes serve to remedy an evil which would not exist but for patents.

[305] But as to whether patents are sometimes used *improperly*, to suppress inventions which are good and so good that they ought to be used more now, despite any costs of thereby obsoleted capital equipment and personal skills, let us try the case first by the medieval method of oath-helpers, and then by reasoning. Our oath-helpers shall present not only the honest belief of distinguished men, but their knowledge as experts on invention, who should know better than others if this evil exists.

[306] Edison,³¹⁵ Jewett,³¹⁵ Waldemar Kaempffert, Gerard Swope,³¹⁶ F. P. Fish,³¹⁵ and various Commissioners of Patents³¹⁷ never knew of a case. The American Chemical Society asked its thousands of members to report any cases, and none were reported. The Oldfield Hearings on Compulsory License in 1912 heard 60 witnesses in 27 public hearings, but none of them claimed a case, although compulsory license is the obvious remedy for suppression.³¹⁵ Meinhardt in England doubts it.³¹⁸ In our present Senate series Frost calls the suppressed patent a myth,³¹⁹ and Bush calls it very rare but well to provide against.³²⁰

[307] Now for the reasons, first why the notorious case of the improperly suppressed patent must be mostly a myth, and then why the myth arises and persists.

[308] To patent an invention is to publish it worldwide, at least when the patent issues and insofar as the legal requirement of clear description is complied with. It cannot be patented in all countries—they are too numerous and differing in requirements and attractions. So the patented invention becomes known, and must be uncontrolled by patent in some countries. It will presumably be practiced in some of these, if very good and important, and by our hypothesis is forbidden to be made in or imported into our own land. But that would raise a scandal we would hear about. Say the Spaniards and Norwegians are enjoying a fine new electric light; but it is not allowed in America. If transportable, some would be smuggled into America despite the customs barrier; then the patentee must prosecute them, or see the scandal grow. Also every patent expires, in 17 years, where-