

duplication between this section and the previous one, Compulsory Licensing.

[418] Again as above (sec. 13) we are dealing with a *status* of invention, more than with a motive for it, especially since the pooling and cross-licensing are largely due to court order or to manufacturing for the Government. But long before these Government pressures had become severe, patent pooling had become prevalent—the rule in many industries—notably the automobile, aircraft, electrical, and gasoline. Vaughan²⁵⁴ listed 64 branches of manufacture that at one time or another have had patent pools, cross-licensing or patent monopolies, and to these we would add 36 others.⁴¹⁹

[419] 15. Sale of know-how:

If 1¼% of secs. 9b and 11, then in 1953-54—\$23 million, 0.41%

There can be no doubt that the sale of know-how, which could be called salable secrets plus often the training of personnel, is a large factor in manufacturing, especially in international deals, and that it is a considerable means of paying for inventions, both patented and otherwise. For the unpatented can be often protected by secrecy, (sec. 16) especially in chemical manufacturing, and by legal defenses if the purloiner broke a contract or a confidence⁴²⁰ to take away information held secret. We have told (§ 148, 164, 272-280) what delays and insufficient information may characterize patents, despite the law's requirement that they must set forth the best method known to the inventor at the time of his making application on the matters to be protected. The British *Economist* says that a company's know-how is frequently more valuable than the patents it holds; ⁴²¹ the Russians are said to be often asking for American know-how, commonly refused them by American chemists; ⁴²¹ Bergier⁴²² says that while the royalty for a patent is usually 2% of the turnover, for know-how, also, one would pay 8%. Among 180 companies questioned by the PTC Foundation⁴²³ a majority said that know-how was much more important to them for foreign licensing, than patents or trademarks; and among 15 respondents who had made 1,215 foreign license agreements covering their know-how, patents and/or trademarks, know-how was included in 24%, and was the only thing sold in 3.2%. Our Government has made numerous arrangements with NATO powers for exchange of patents and information.⁴²⁴ Sanders⁴²⁵ found the assignees of worked patents considering know-how to be essential in about half the cases, with some rise apparent in the most recent patents, those of 1952, and rising in the sequence mechanical, electrical, chemical. There was also fair agreement between the questions of whether know-how was essential to the use of the patent, and whether the inventor devoted his attention to the development of know-how because of patent protection. On this last about 21% said yes, 19% indicated that patent protection was secondary or incidental, and 61% said it was of no moment.

[420] To assess the importance of the sale of know-how, in promoting invention, is of course very difficult; but we think again that

⁴¹⁹ Further pat. pools: Calcium chloride, can, cordage, electric strong current, electron tube, enameled sanitary ware, gas (illum.), geophysical prospecting, golf ball, gypsum wallboard, hardboard, hostery (nonrun and ringless), hydrogenation, industrial furnaces, juke box, medical, mimeograph, oil cracking, dewaxing, and fractional distillation, oil burner, railway, refrigerator (elec.), salt, tabulating machines, talkie, tetraethyl lead, thermostat, tire (solid rubber), titania pigment, tobacco, trubenizing, typewriter, washing machine, wind stacker, and wiring devices.