

port of invention, because they are for individuals, not laboratory teams, and because they pay *after* victory is won, instead of long before, when the support is most needed.

[463] 13. COMPULSORY LICENSE of patents, which we found to be back of something less than 1% of American invention and research, is an institution essentially different from the patent system, though it employs patents. It does not grant exclusive control to the patentee, and it determines the price and other terms by Government action, in default of private agreement. It is generally advocated by liberals who are outsiders to patenting, and opposed by conservatives and insiders. Its legislative history has been told in the 12th study⁴¹⁵ of the present series, a long history of proposed legislation, always defeated in its proposals to allow private firms to sue for a license. But recently we have seen wholesale grantings of such license by courts in antitrust judgments, as detailed in other reports,⁴⁵⁰ and with recent legislation that any invention wanted by the Federal Government, or relating to atomic energy, be subject to compulsory license. Court orders for free licensing, in effect canceling the patents, and compulsory license decrees affecting future as well as present patents, are particularly objected to, as discouraging invention.⁴⁵¹

[464] Compulsory license laws and proposals are quite various, and always restricted in application. By international custom and regulation licensing may not be imposed upon a foreign patentee until at least 3 years after issue. Some firm must usually demand a license, on the basis of some allowed reason, usually that the patent is not currently worked sufficiently in the complainant's country, or prevents economic use of another patent, or has been misused monopolistically, or lies in certain fields, such as all food and drug patents in some countries, or atomic energy or Government need in the U.S. These last and monopolistic misuses are the only grounds here. What court or Government office will judge these issues and determine the royalty rate and the licensee(s), and reopen its decision from time to time as business conditions change, and who will sue infringers, and on what principles all these acts shall be decided and quantified, are other problems variously met and to be met.

[465] To decide what should be the policy of the U.S., among all these possibilities, aspects, and details, is a problem of extraordinary difficulty, which Congress has been wrestling with for half a century, without reaching any decisions of importance except as to Government-wanted patents, while the courts have proceeded in shaping up their own law for the attack on monopoly. To plan or to reject such a law is beyond the competence of the present writer; but he thinks the following observations to be sound and useful.

[466] Compulsory license by general rule, of patents deemed misused or unsuitable for private monopoly, is in the statutes of every industrial nation save the U.S.⁴⁵² and has been for many years. So there is a vast fund of experience available, assembled by Neumeyer, Federico, and others,⁴⁵³ on which we ought chiefly to base any American legislation along such lines, even though some allowance must be made for differing legal and customary conditions in the various countries. The chief upshot of all this experience is simply: *compul-*

⁴⁵² We include France, which has a law also found in many countries, but losing favor and scarcely enforced, for Revocation of unworked patents.