

treatment of a patent than the present average 24 hours of professionals' time (§ 295), and would certainly eliminate from the applicants those who had least faith in the profit of patenting certain inventions, and those who had least money. This will at once arouse sympathy for the poor, garret inventor; but our statistical evaluation of his product (§ 396-41) left us with no admiration for it. In any case a doubling or trebling of the fees would cause but a minute rise in the total costs of getting and defending a patent, and still less in the multitudinous costs of making and exploiting a successful invention.

[492] Particularly attractive is the plan of levying additional and progressively higher fees from time to time during the life of the patent, with the result that the great bulk of patents would be abandoned before expiry, when the inventor's hopes for them had appeared to be ill-founded, perhaps the patent found invalid, or when the invention had been worked but was now obsolete. In all cases the revelation and publicizing of the invention would have been accomplished, and the initial fees, covering say the first 5 years, would be kept low, to encourage abundant patenting; but the dead underbrush would be cleared from the path of progress. As Federico's statistics in Study 17 show,⁴⁸⁶ this system is followed in every industrial country save Canada and our own, with the result that from 95% to 98% of patents have been abandoned before expiry in the leading countries, and only a third are kept alive as long as 10 years. The percentages kept are rising.⁴⁸⁶ At the request of the subcommittee a draft bill was proposed,⁴⁸⁰ and later at the request of the Patent Office a bill was introduced,^{480.1} providing for higher fees, plus maintenance fees if the patent were to be kept in force to the end of its term. But an inventor or his heir who still held the patent, and who declared it had never yielded so much as the maintenance fees, could be excused from paying these for 13 years. We know of no reason why a patent with two so black marks against it (no assignment and no profit) should be automatically accorded favored treatment, unless it were a basic new start. Maintenance taxes have also been recommended by SAB, NPPC, Dr. Bush, the National Patent Council, and the Patent Office Society, and opposed by the American Patent Law Association.^{480.1}

[493] (2) The UTILITY Requirement.⁴⁸¹ (§ 209). Despite the law which says patentable inventions must be useful, the Office consents to mere operability. The British Science Guild⁴⁸² points out that in their country and all others save our own, granting patents to the first applicant encourages the hasty patenting of a new idea, perhaps a "scarecrow" or "nuisance" patent (§ 288-91) rather than the time-consuming, careful development of the idea to a really useful state. This must be borne in mind when considering the abolition of Interferences (sec. (17) below). Senator Kefauver's original bill,²⁸⁰ based on observed abuses, would have refused patents on drugs unless

^{480.1} The minimum fees would be raised to about \$100, plus maintenance charges of \$50, \$100, and \$150 if the patent were to be kept in force after the 5th, 9th, and 13th years, respectively, according to Senate bill 2225 proposed by Chairman McClellan and the Patent Office. The proposed fees, lowered by the subcommittee, unwisely, we think, would recoup only 74% of present Office costs. Senate Subcommittee on Patents, etc., *Hearing of Sept. 4, 1962, on S. 2225, Patent Office Fees*, 157 pp., pp. 3-5. With charts and international comparisons; and the subcommittee's Rept. N 558.