

any interested party could at any time for \$200 call for a "thorough" search and issue of a normal patent, or a rejection, as found justified. Frost<sup>492</sup> finds a similar proposal interesting. The Netherlands is preparing to install such a system: those published applications which in 7 years no one has paid for examining and issuing or refusing, would be abandoned.<sup>493</sup> The Common Market is also considering the idea, with a 5-year unexamined limit. Since few patents ever attain importance, here is one good way of alleviating the patent law's fault of treating all inventions alike (§ 245), although they differ so vastly.

[503] (10) PETTY PATENTS<sup>243</sup> (§ 238) are another way for answering this need. They would be similar to the *Gebrauchsmuster* of Germany, granted at once, without examination and cheaply, for short terms, on inventions recognized by their author as minor. Woodward<sup>243</sup> proposes and White<sup>494</sup> considers several kinds of patents, and Bush<sup>495</sup> at least two. SAB, Bone, Stedman.<sup>496</sup>

[504] (11) DEFENSIVE PATENTS SUBSTITUTE. Davis<sup>497</sup> says that perhaps as many as one-third of all patents are taken for defensive purposes, i.e., to have a more perfect legal base for blocking a patent attack by others, than could be won by merely publishing or publicly using their own invention (§ 167, 8). For such a limited purpose it should not be necessary to use the full normal time of the Patent Office. Davis<sup>497</sup> suggests simply permitting that an application be abandoned and published right after filing, thus publishing the invention for \$30, and obtaining the right to enter interference proceedings if appropriate should another claim the invention.<sup>498</sup>

[505] Various means of speeding issue in the Patent Office are discussed in Geniesse's Study 29,<sup>308</sup> and there have been proposals to reform interference procedure, especially by issuing one patent immediately, instead of waiting to settle the priority.

### c. Proposals for Combating Abuses of Patents

[506] All proposals for our first purpose, Improving the Quality of Patents, would serve this purpose too, as would also sections (6), (16) and (18).

[507] (12) COMPULSORY LICENSE has been considered in the previous chapter, section 13, ¶ 463ff.

[508] (13) MONOPOLY. On this matter we would only call attention to the proposal of Langner (ft. N 180, p. 54), that a defendant in a suit for infringement be permitted to plead monopoly tactics by the patentee, as justification for a free or compulsory license, and that the Department of Justice might intervene to help him. This would formalize present practice.

### d. Proposals for Improving and Lightening Litigation

[509] All means for improving the quality of patents, as in our first group, should help in the present purpose, as should also sections (11), (18), (19), (22) and (23).

[510] (14) COURT EXPERTS. Judges are trained in law; patents likely to be sued on are 41% in chemistry and electricity,<sup>499</sup> and the rest

<sup>499</sup> A bill which passed the Senate would establish a file of general technical information, to be paid for by users, and would provide a convenient substitute for purely defensive patents, even if not fully as good. S. 868, passed Oct. 9, 1949, and Representative Crosser's H.R. 1711, of 1950, not passed.