

in engineering, and moreover are usually on the newest, least familiar, most advanced frontiers of those sciences, like solid-state physics and high-polymer chemistry. So it should be obvious to anyone, who will think for a moment on his own incapacity in most of the newest scientific fields, that a lifetime spent on law does not qualify for understanding them all. And indeed this has been obvious to many of those considering patent reform, but not to the judges nor Congress, who have so far been content with the ancient principle that a judge is a man of learning, intelligence, and honor, and therefore competent to understand and settle all quarrels, if the opponents will but present their respective experts, who will explain to him the strange matters, from their opposing points of view. The unpleasant facts are shrugged off, that rival experts were hired who agreed to support the respective opposite claims, and that they are paid high fees to win by whatever means of didactics or bluff, and that their principal task is not to explain technology, but to convince the untaught judge that certain "inventive" ideas were or were not original, or did or did not require a flash of genius or luck beyond the powers of professional competence, at a certain date probably 10 or 20 years back, in a profession the judge knows nothing about.

[511] Three mild remedial measures have been suggested. One is for courts to refer back to the Patent Office for advisory opinions on the technical questions raised. (NPPC,⁵⁰³ Stedman,⁵⁰¹ Bush⁵⁰²). They do now pretty well follow the Office's original decisions, on possible anticipations which the Office had the luck to find. A second suggestion is for experts, "assessors," to be appointed in some manner by the Government or court, instead of as partisans. Recommended by the subcommittee,⁵⁰³ and by Bush,⁵⁰¹ NPPC and Stedman.⁵⁰¹ The last suggestion is to encourage arbitration of patent disputes.⁵⁰⁴

[512] (15) A SINGLE COURT OF PATENT APPEALS, instead of using all nine circuit courts and occasionally three others, would be another means for improving patent litigation, especially if the judges for this court were men of some slight scientific competence, beside having court experts as above. For another matter, it would prevent conflicting decisions and further appeal. TNEC, NPPC, NAM, Bush,⁵²⁰ and the subcommittee.⁵⁰³ It is appropriate to further centralize our institutions, as the means of transportation and communication improve. The opposition claims a single court would become too technical and rule-bound.⁵⁰⁵

[513] Regarding (14) and (15) Stedman observes:⁵⁰¹ "In other fields than patents we have met this type of situation [complication and abstruseness], once it became sufficiently acute, by setting up specialized tribunals—tax courts, labor boards, customs courts, workmen's compensation tribunals, FTC, ICC, and so on—tribunals which are subject to court control but which take care of a large proportion of the controversies."

[514] (16) GOVERNMENT INTERVENTION IN PATENT SUITS, where the public interest is concerned, to attack, e.g., either industrial monopoly or the validity or scope of patents, was proposed in Senate bills of 1942. The NAM opposed⁵⁰⁶ them, saying that the Government can intervene now as *amicus curiae*.

[515] (17) ABOLITION OF INTERFERENCE procedure, especially if opposition be invited (3). Instead of our peculiar American institu-