

the custom of other countries which accept any person or corporation that is rightful owner of the invention. This would comport with the fact that today the corporations which order and pay for inventions are their authors in a truer sense than any one or two or three of their employees who work them out, and that it is an arbitrary and disputable decision as to just which men and how many should be named today, and a sometimes misused fact that the refusal of one of them to cooperate (for whatever reason) may block action.⁵¹² SAB, NAM, American Bar Association in part.⁵¹² Others disagree, seeking prestige for the inventor.

[520] (23) VARIABLE TERMS. We examined in ¶ 245 the strong but baseless tradition that all patents must be alike in all their privileges and requirements. If inventions were dimes there would be point in this; but they are infinitely variable, hence their needs and capacities vary. Other countries provide some flexibility by petty patents (10), taxation (1), limiting the term of improvement patents to their basic one; and defensive patents are proposed (11). We formerly allowed term extensions for some patents, but whether by rule or by private bills in Congress this proved unsatisfactory. Meier⁴⁵⁷ and others have proposed longer terms for fundamental inventions, coupled with compulsory license. Hamilton and Stedman approve variable terms (ft. N 247, p. 82). Our chapter 8 showed how the fundamental inventions, the greatest of all, receive little help from patents, which almost always run out before the profits start; perhaps longer terms, handled by a patent administrator, (18q would help. Semipublic patent pools would do better (ch. 11). Proposals for a choice between a normal patent and a cheap and quick one unexamined for novelty, are taken up in ¶ 502.

[521] (24) COMMERCIAL PATENTS ON GOVERNMENTAL INVENTIONS. It is a debated question⁵¹⁴ whether we should follow the custom of the Defense Department and NSF in allowing the commercial laboratories which made military inventions to patent them for civilian uses, with a free license to the Government, or follow the custom of other departments in barring such patents, or should provide for compulsory licensing, or should have a flexible rule. The patents concerned are not very numerous, because while military invention brings great civil uses in the long run, it is not so important in the briefer life of patents. A PTCF study⁵¹⁵ indicated that 6% of patents came from Government contracts, and that 13% of these were worked commercially. Another study pointed to lower utilization, 7%.⁵¹⁵ The experience of a British governmental bureau to develop and exploit inventions is instructive, and not very encouraging.⁵¹⁶ The question has been often argued from a moral viewpoint, as to whether a corporation has a right to any ownership in an invention the public paid for. We would point out that the question is much more complex than that, as the subcommittee sees,⁶⁶⁸ and that economists base their recommendations not on supposed rights but on public welfare. There will usually be open and hard questions of how much the commercial laboratory contributed to the invention through previous thought and equipment, and how much through further, later development for civil uses, how far the laboratory will consent to be paid with patent prospects, and whether the consumers' stake in the invention will be helped or hindered by a commercial patent in the hands of its developer. We and many have