

said, under the first principle of patents (§ 171), that a patent is often necessary to warrant a firm's carrying through an expensive development, for commercial uses. There is little use in paying an additional patent bonus for work already paid for and done. Our real main problem is the future, the work still to be done of developing and marketing the invention for its possible civilian uses. Will *this* work be better done under a commercial patent, as we usually think anent the patent system, or better done without protection? Sometimes also involved are our 5th reason for patents (control of quality, § 172), or our 7th (needful concentration of production, § 175-7).

[522] (25) OBJECTIVE TESTS FOR INVENTION. These have been asked for by many, including SAB. But we agree with Stedman,⁵¹⁷ Abramson,⁵¹⁷ and Edwards' special study of the problem for the Senate,⁵¹⁸ that objective tests cannot possibly cover such varied and unforeseen activities as invention, and that "The test of invention is not whether the contribution is useful—utility is [correction: should be] a *sine qua non* of patentability in any event—but whether it represents something which would not likely have become available to the public, at least for a long time, but for efforts inspired by the patent system and its rewards." We have argued elsewhere¹⁹¹ and in § 111, 160-3, that what must be somehow paid for may be a flash of genius, deep learning, hard work, or luck, the last occurring normally only as a byproduct of the first three.

[523] 17. SECRECY, has been considered above with 15, Know-how (§ 482-4).

18. MONOPOLY and Big Business are great problems which we leave to more competent students, save for our remarks in § 158,9.