

Patent Rights in a Free Society

This comprehensive study of the patent situation is by WILLIAM G. LEON, formerly a security analyst with a large Wall Street brokerage house, more recently a defense plant worker and now a very busy and hurried young man undergoing the strenuous course given by the Merchant Marine Officers Training School. Upon completion of the required study at the Henry George School of Social Science five years ago, Mr. Leon became a member of the faculty of that institution for adult education. He retained his teaching post until entering the Merchant Marine School a few weeks ago. Mr. Leon has contributed a number of articles to THE FREEMAN in the past several years.

★ THERE CAN BE NO patents in a free society. A patent right is a monopoly, consciously granted by the State in the hope that by bestowal of privilege on one class of producers the progress of science and the useful arts will be promoted. Any monopoly is not only unethical but a denial of natural law; the patent privilege is no exception, and has brought with it the inevitable

result of injustice, hindrance of production and progress.

It is not difficult to determine why it was thought necessary to establish our patent laws. Our land tenure system denies the producer the fruit of his toil. The patent laws are an attempt to re-encourage the naturally discouraged producers by investing them with another privilege to mitigate the effects of the more fundamental one.

The first patent law was passed in 1790. It laid down several of the cardinal principles of the present United States patent system. After enactment of the law it was found that there was a tendency toward the *discouragement* of invention. In 1836, the entire legal structure was overhauled. Administration of the law was improved, and later further revisions were made, but the expected encouragement to industry never quite occurred.

In the early years no great combinations in restraint of trade existed. The industrial revolution was still young; for the most part, this was an agricultural country; and few inventions were so fundamental in character as to give a patent owner a monopoly in an entire branch of trade.

Later on, conditions changed. The talents of inventors were directed more toward developing improvements of basic inventions and less to the discovery of completely new devices. Now, the field has become dominated by

large corporations with great laboratories and salaried scientists. These companies are empowered by the patent law to buy up and suppress inventions. Legal opinion states that a patentee is under no greater compulsion to use his invention than is the owner of a horse, an ox, or a piece of land, to employ his property.

The patent pool is the essence of the combinations that restrict production for the purpose of artificially raising prices and profit margins. Under the law each patent is entirely independent of other patents no matter how close the relationship of the articles. There is no provision for the contingency of one man having the basic and another the improvement patent. The resulting deadlocks between patent holders were broken by the pools. The formation of the pools allowed production, but at the same time created so powerful a combination that no competitor could come into the market.

The following statement, issued in 1935, expresses the view of the House of Representatives Patent Committee, "The pools and agreements form the nucleus of control in every major branch of mechanized industry. They are capable of eliminating competition, achieving absolute control of one or more fields of economic activity, crushing all opposition, suppressing innovations which might jeopardize existing capital investment, fixing prices, restraining output and barring as completely as possible any change which would adversely affect the interests involved."

Thus the independent inventor is in a poor bargaining position with the pools when he develops an innovation involving one of their basic patents. He cannot go elsewhere without incurring the threat of litigation for infringement. He is forced either to take what may be offered or to wait and attempt to better his price through the threat of withholding his patent.

The independent inventor is also faced with the commonly understood fact that a patent is only as good as the money behind it to fight it out in the courts. And on the other hand, money will help to strengthen even a weak patent by worrying competitors with the threat of possible litigation.

Thus it is clear that the effect of the patent system is contrary to its original purpose, which was to stimulate invention by protecting and encouraging the independent inventor.

In his *Economics of the Patent System* Floyd Vaughan has analyzed the chief causes for the suppression or non-use of patents. About one third, he says, are impractical, will not work. Another proportion fails for lack of financing, and still another because of the business incompetence of their owners. There is a group of patents which involves other devices already patented elsewhere, and another group which would involve too much expense in the replacement of machinery made outmoded by their introduction. And finally, patents may be deliberately withheld from use for monopoly purposes.

The extent of suppression under the patent system is indicated in the figures supplied by Representative McFarlane in Congress on March 29, 1938. He showed that as of January 1, 1936, the American Telephone Com-

pany owned 15,000 patents, General Electric had 9,000, Radio Corporation 6,000, Ingersoll Rand 1,000, International Harvester 916, International Business Machines 700. Of the 9,000 held by General Electric only 2,428 were in use. Of Harvester's total quantity only one-third were utilized.

When questioned about this state of affairs the companies concerned gave the following reasons: 1. Process out of date. 2. The industry is not ready. 3. Other processes are preferable. 4. Fear of suit. 5. The public is not ready. Congressman McFarlane interpreted the last reason to mean "... merely that these corporations have constituted themselves trustees of the public demand for the purpose of withholding improved methods and products until the public is prepared to pay the price."

Beside the above reasons, suppression is also caused by our paternalistic attitude toward labor. Labor-saving devices are withheld in order to keep men employed.

Our patent system by allowing inventions to be withheld from use, does therefore hinder production and progress rather than promote it. Is reform of the patent law perhaps the answer?

Suppression is partially avoided in foreign countries by inclusion in their patent laws of clauses requiring that the patented invention be brought into manufacture or operation within a limited period, usually three years from the date of the grant. Failure to comply results in forfeit of the patent and the obligation to pay royalties to those who may apply. The United States is probably the only country without this working clause. Several attempts have been made to insert a working clause in our law, but all have failed. The voice of privilege spoke with the tongues of the beneficiaries of monopoly—labor unions, Patent Bar Associations, even a former Patent Commissioner! The legislators were warned of economic chaos, the cause of little business was wept for by big business and the bills were killed.

A working clause is, however, a half-measure. Who is to enforce it, who is to guarantee that full economic use is made of a new invention by firms which for selfish reasons prefer a less efficient process? What is to prevent secret purchase of inventions before they reach the patent office? A working clause for patents would not remedy the patent evil any more than a use clause for land tenure would constitute land reform. A working clause, if enforceable, would temporarily spur production and raise wages, but it would also, of course, eventually raise rents, and the primary monopolist, the land owner, would at last receive the full benefit.

Patents, like tariffs, must be regarded basically as props of our monopoly economy. Their obvious defects and injustices are driving many into the collectivist camp. But a growing number of students realize that there is a glorious alternative to slavery, whether to the individual monopolist or to the state. Along with patent reform as outlined above must go the freeing of the land for use, to secure full and permanent independence for the individual.