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Vaughan: The United States Patent System. Legal and Economic Conflicts in American Patent History

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THE UNITED STATES PATENT SYSTEM. Legal and Economic Conflicts in American Patent History. By *Floyd L. Vaughan.* Norman, Okla.: University of Oklahoma Press. 1956. Pp. xvi, 355. $8.50.

This work contains a wealth of factual information on our present patent system. It is a treatise which will be found, it is believed, to be more valuable to students, executives, industrialists, manufacturers and the public in general than to the individual inventor or practicing attorney. The volume collects, in conveniently available form, the facts concerning the vast influence of patents in shaping the everyday life of the public at large.

Professor Vaughan begins with a treatment of the causes of invention, the economic reward, the history of patents, and the two salient features of present patent law, application for patent and development of invention. The subjects treated are reasonably well documented and the information, for the most part, is accurate.

The author continues by tracing the historical development and *modus operandi* of patent pools in various arts and the remedial steps taken by the government to require compliance by industry with the requirements of the Sherman and Clayton Acts.

A chapter is devoted to the problem of outright ownership by a manufacturer of all patent rights pertaining to a particular industry. The course followed by many industries is outlined and the action taken by the government against these industries, under the provisions of the Sherman and Clayton Acts, is set forth. The conclusion reached by the author, and correctly so, it is believed, is that the acquisition of the patents of one company by another or others does not *per se* violate any law.

The cross-licensing of patents among members of different industries is detailed in a most informative manner and the results of such cross-licensing are described. Decisions of the courts defining the rights of licensees are explained with particular emphasis on the legality of restricting the scope of licenses to particular fields of activity. The currently important subject of price control is treated in an informative manner. The author might well have distinguished between the invalid "tie-in" cases such as *The Victor Talking Machine v. Strauss* and *Ethyl Gasoline Corp. v. United States* and the valid "package type" situation approved in *Automatic Radio Manufacturing Company v. Hazeltine, Inc.* Also in this connection, the reader might well have been informed as to the overall picture on violations of the antitrust laws by patent license agreements. The *Report of the Attorney General's National Committee to Study the Antitrust Laws* (1955) is a consummate treatment of the patent license and the problems of tie-in clauses, package licensing, multiple patent licenses, cross license agreements, etc., documented with all pertinent United States Supreme Court decisions.

The author explains the growth of patent cartels and the manner in which foreign patents have influenced the development of industry in the United States. The influence of the patent system upon supplementary products incidental to patented products is explained, and the activities of the Federal Trade Commission with respect to trade practices understandably described.

Under the caption "Control of Supplementary Products" the author well treats the practice of many business enterprises of extending their patent monopolies to products used with their inventions, particularly non-patented products. A chronological treatment of decisions by the Supreme Court in the different arts, beginning in 1850 with the case of *Wilson v. Simpson,* is well done. The early lenient attitude of the Supreme Court, in ruling unpatented products to constitute contributory infringement of a patent employing said product has, the author emphasizes, been supplanted by a stricter interpretation of the patent monopoly, as appears from such cases as *Mercoid Corp. v. Mid-Continent Investment Co.*

A chapter is devoted to the various devices or means of avoiding the judicial appraisal of patent validity or prolongation of the patent monopoly. The devices or means which the author suggests have been used to accomplish forced validity or prolonged monopoly include patent office interferences; acceptance of validity of patents by competitors, licensees and inventors; avoidance of adjudication in case of alleged infringement; delay in the prosecution of patent application, etc. Some concrete examples are given to justify the author's position. No issue can be taken with the conclusion that "extending a patent unduly into the future violates in effect the provision (Constitution, Article 1, Sec. 8) for securing exclusive rights to inventors for limited times." It is believed, however, that many close followers of the United States Patent System will vehemently disagree with the author's position that the mechanics here outlined are responsible for keeping "thousands of defective patents alive."

Under the heading "Suppression of Patents" connoting the deliberate withholding (shelving) of the patent from manufacture, use or sale, with resultant loss to the public, six chief causes of suppression are outlined. Of these, monopoly of the patents in an industry is perhaps the most controversial. In 1908 the Supreme Court in the celebrated case of *Continental Paper Bag Co. v. Eastern Paper Bag Co.* made what the author refers to as "a plausible justification of nonuse," to wit: "that such exclusion [of competitors from practicing the invention] may be said to have been the very essence of the right conferred by the patent, as it is the privilege of any owner of property to use or not use it, without question of motive." This case has been repeatedly cited with approval by the Supreme Court and is believed to justify patent suppression except, perhaps, where public interest is affected.

The author discusses factors which have tended to discourage inventors, and especially the so-called "independent inventor." These include interferences in the Patent Office and costly litigation. Certainly, as the author contends, discouragement of the independent inventor tends to lessen invention. However, the number of interferences declared, in proportion to the number of patent applications filed, is negligible. The same comment applies to the number of patent suits compared to the number of patents issued. This means that few independent inventors are ever involved in patent interferences or patent litigation. It therefore seems relatively unimportant that an inventor has little chance of receiving enough to pay the expense of obtaining a patent and then defending it in court. It is the patentee or patent owner who initiates the patent suit, and usually this procedure is followed by an independent inventor only where there is reasonable expectation of a recovery.

The author's suggested remedies for betterment of the patent system are deserving of careful analysis. Certainly the time seems ripe for the adoption of at least some of them. Expediting the processing of applica-

tions in the Patent Office should be encouraged and effected, by additional legislation if necessary. The development of ways and means to encourage invention is in order, and the basic pattern outlined by this author is a start in the right direction. Perhaps raising the standard of invention, as suggested, to correspond more nearly to the norm of invention running through the Supreme Court's recent decisions would result in better, though fewer, patents and automatically reduce the work load of the Patent Office personnel. Worthy of consideration also is the suggested procedure for the elimination of worthless or invalid patents. Compulsory licensing, although examined many times in the past, may be worth another look, in light of present economic conditions. Increased government-financed research inventions should perhaps be encouraged, especially with inventions in or relating to the recondite arts.

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