

1953

**The Patent Right In The National Economy Of The United States.
By Gustav Drews.* New York: Central Book Company, Inc. 1952.
Pp. iv, 211. \$5.00.**

Adolph C. Hugin

Follow this and additional works at: <https://scholarship.law.edu/lawreview>

Recommended Citation

Adolph C. Hugin, *The Patent Right In The National Economy Of The United States. By Gustav Drews.* New York: Central Book Company, Inc. 1952. Pp. iv, 211. \$5.00.*, 3 *Cath. U. L. Rev.* 59 (1953).
Available at: <https://scholarship.law.edu/lawreview/vol3/iss1/8>

This Book Review is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Catholic University Law Review by an authorized editor of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.

BOOK REVIEW

The Patent Right In The National Economy Of The United States. By Gustav Drews.* New York: Central Book Company, Inc. 1952. Pp. iv, 211. \$5.00.

This book presents the position of our patent system in our free enterprise type of economy. It is not a book written solely for patent attorneys, and not even only for lawyers or economists, but gives a general presentation of the rights of patentees, the benefits enuring to the public, and the conflicting theories and notions concerning patents for inventions.

The author first explains away many common misunderstandings about patents and confusions which exist regarding patents, copyrights, and trade-marks. He explains the procedure which is followed in obtaining a patent for an invention and points out the different rights granted in this and other countries. A comparison is given of the duties or obligations of a patentee in different countries for preventing the forfeiture of a patent prior to its normal term. The possibility of invalidating patents in various countries is discussed, and the advantages and disadvantages of the defense of invalidity as a proper defense for an infringement of a patent are considered. These points are discussed from the overall aspects of the problems, with the legal and economic reasons for the different rules in different countries and the possible effects of the rules upon the benefits to the public, as well as to promoters of patented inventions.

The author does not give a truly unbiased view on certain aspects of patents, their historical development, and their place in our economy. An example of this is his statement "these three characteristics identify not only the patent right as it exists today in the United States, but also as it existed *when it was created in 1623 in the Statute of Monopolies in England.*" (emphasis added) This latter statement has been reiterated so often that, in spite of incontestable proof of its inaccuracy,¹ certain writers persist in its publication. An attempt is made to give both sides of controversial aspects of patents in our economy, but, more often than not, the usual patent profession view is overemphasized and the more unbiased views of trade regulation experts, such as S. Chesterfield Oppenheim² or Milton Handler,³ are omitted. At times, the text almost departs from an informative exposition to propaganda. Most of the points of controversy which are discussed have been resolved by the new Patent Act of 1952, and consequently the emphasis given them in this book, at this time, seems rather useless. A good example of this type of controversy is the "flash of genius" test for patentable inventions, first expounded by Mr. Justice Jackson in 1941,⁴ as compared to the rule that the "law looks to the facts (result), and not to the process by which it is accomplished," expressed by Mr. Justice Story in 1825,⁵ and layman, as well as by general lawyers and economists. The chapters on the value

*J.D., Ph.D., Professor of Patents, Antitrust and Unfair Trade Practices, Brooklyn Law School.

¹ *Outline of the History of the United States Patent Office*, XVIII J.P.O.S. 20 (July 1936); Stolfi, *La Proprieta Intelletuale* (1917) n. 3, 16-17; Hugin, *Private International Trade Regulatory Arrangements and the Antitrust Laws* (1949) pp. 111-112.

² Professor of Law, Michigan University Law School.

³ Professor of Law, Columbia University Law School.

⁴ *Cuno Engineering Corp v. Automotive Services Corp.*, 314 U. S. 84 (1941).

⁵ *Earle v. Sawyer*, 4 Mason 1 (U. S. C. C. Mass. 1825).

of inventions, Chapters VII and VIII, are very easy-reading and informative. Chapter IX points out that most writers labor "under various misconceptions" followed for over a hundred years. The definitely not innocuous "flash of genius" test now has been legislatively outlawed⁶ and emphasis of such points detracts from the up-to-dateness of the book. Repetition of such points, in different parts of the text, serves to mark the book as one which would have been more practical had it been published a few years ago.

From the standpoint of general information, the many technical aspects of patents is very well explained in language which could be understandable by a and that the author has made "an attempt" at impartiality. This seems to be a partial admission that the book is consciously not truly impartial, as it is not. Also it perpetuates some of the "misconceptions" which could have been presented better by reference to certain other well-known authors in the field of trade regulation. One of the most important and interesting features of the book are the three appendixes giving comments of economists, effects of inventions on war, and comparisons of various factors with patents in the United States from 1836 to 1949.

ADOLPH C. HUGIN*

* Visiting Professor of Law, Catholic University of America.

⁶ Public Law 593 § 103, 82d Cong., 2d Sess.