

erned by the general principles of law, has come in practice to be denominated a license restriction, thus, by the change of form, under the doctrine announced in the cases referred to, bringing the matters covered by the restriction within the exclusive sway of the patent law. As the transformation has come about in practice since the decisions in question, the conclusion is that it is attributable as an effect caused by the doctrine of those cases. And, as I have previously stated, it is a matter of common knowledge that the change has been frequently resorted to for the purpose of bringing numerous articles of common use within the monopoly of a patent when otherwise they would not have been embraced therein, thereby tending to subject the whole of society to a widespread and irksome monopolistic control.

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I pass by the English decisions relied upon with the remark that it is not perceived how they can have any persuasive influence on the subject in hand in view of the distinction between State and national power which here prevails and the consequent necessity, if our institutions are to be preserved, of forbidding a use of the patent laws which serves to destroy the lawful authority of the States and their public policy. I fail also to see the application of English cases in view of the possible difference between the public policy of Great Britain concerning the right, irrespective of the patent law, to make contracts with the monopolistic restriction which the one here recognized embodies and the public policy of the United States on that subject as established, after great consideration, by this court in *Miles Medical Co. v. Park & Sons Co.* (220 U. S., 373). See especially on this subject the grounds for dissent in that case expressed by Mr. Justice Holmes, referring to the English law, on page 413.

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But even if I were to put aside everything I have said and were to concede for the sake of argument that the power existed in a patentee, by contract, to accomplish the results which it is now held may be effected, I nevertheless would be unable to give my assent to the ruling now made. If it be that so extraordinary a power of contract is vested in a patentee, I can not escape the conclusion that its exercise, like every other power, should be subject