

tent application to be an unfair method of competition. So to the extent they are willing to do it, they can. They have been the only ones who have done this, and of course, these are infrequent examples. There is no regular mechanism by which the true validity of patents can be watched over and ascertained right now. One of my proposals is related very closely to that point.

Senator NELSON. You mean, then, that if a company has what appears to be a new product and there is doubt in the minds of other companies that it is really patentable, in order to avoid free competition, they just do not challenge its patentability; so that it then becomes patented and some companies become licensed and then, for 17 years, there is an artificially high price paid by the consumer because there a patent has been granted, which, if challenged, would not have been granted in the first place?

Dr. SCHIFRIN. Correct. In other words, market domination by a few firms that exercise a monopolistic type of interest comes to exist, yes.

Senator NELSON. And you say there is no effective protection in behalf of the public by any public agency against this kind of occurrence?

Dr. SCHIFRIN. At present, there is not.

Senator NELSON. It rather shocks me that you could have a situation where something that may be shown to be not really patentable if challenged becomes patented and no public agency is prepared to protect the public interest.

Dr. SCHIFRIN. Well, the most careful scrutiny of a patent's validity occurs in the court, not at the Patent Office. Thus, things for which patents are issued by the Patent Office may, if contested, be found to be invalid. The patent may be found to be invalid if contested. Thus the burden is put on usually some small firm. And the small firm, as Mr. Gordon correctly pointed out, usually can't bear the expense of litigation.

Senator NELSON. And you are advocating that some mechanism to protect the public interest in this kind of instance be established?

Dr. SCHIFRIN. Yes, sir; I think an advisory panel to the Patent Office, reflecting the highest degree of expertise in the medical field should be established, and should give these patents the very careful scrutiny that would never arise otherwise.

Senator NELSON. Are you satisfied that there is no mechanism under the present law by which any Federal agency could, on its own motion, challenge the patentability of a product?

I do not mean challenge a conspiracy to monopolize or any such thing, but challenge just the patentability of a product?

FDA, Federal Trade Commission, anybody?

Dr. SCHIFRIN. I am not positive as to the interpretation that these agencies give their own enabling legislation, but I will say this: If any such organ exists, it certainly is not used rigorously, if at all.

Senator NELSON. Do you think that your proposal is feasible as a practical matter? That is, would it really put into the hands of public representatives adequate tools to protect against this specific circumstance?

Dr. SCHIFRIN. Yes, sir; because I believe that much of this expertise, and from time to time, several related important functions, have