of the large firms has been the enhancement of their individual and collective profitability by preserving and expanding those sectors of the market where effective competition does not prevail. This goal is sought in these ways—(1) by making sure that the new drugs that replace older ones, particularly unpatented ones, are protected by patents—even though their patentability might not stand close examination.

Mr. GORDON. You stated before, Dr. Schifrin, that there is a sort of gentleman's agreement among the large firms in the drug industry that, "you won't question my patent and I will not question your patent." Is that a fair summary of your position?

Dr. SCHIFRIN. That does not summarize my entire position.

Mr. GORDON. I mean in the existing situation.

Dr. SCHIFRIN. That is part of the existing situation, Mr. Gordon.

The second way in which the large firms try to enhance situation "A" is by avoiding patent interference suits, which are fairly frequent in the chemical technology industries because of parallel research by the specializing firms, through often elaborate cross-licensing agreements. These agreements, over and above the price fixing that not infrequently has accompanied them, are enacted to avoid the possibility that a party losing an interference suit may challenge the patentability of the discovery.

Mr. GROSSMAN. Dr. Schifrin, could I ask you to be specific about this? You stay that these agreements were made "over and above price fixing that not infrequently has accompanied them."

That is a strong allegation. Could you be specific about this frequent price fixing?

Dr. SCHIFRIN. Well, in recent years, two of the most successful drugs that have been developed, commercially successful and quite important with therapeutic significance, have been meprobromate, the tranquilizer, and tetracycline, the broad spectrum antibiotic. In the case of meprobromate, Carter had the patent. Wyeth had the detail men, et cetera. Carter entered into a licensing agreement with Wyeth for them to also be able to sell meprobromate and to promote it very extensively. Thus for many years the only two meprobromates on the market were Equanil and Miltown. Price fixing in these two companies was found by the courts in recent years and compulsory licensing of meprobromate resulted from that case.

The second of these two examples I use is tetracycline. Just recently, of course, the Federal court found that there was a Sherman Act violation as a result of price fixing. The Federal Trade Commission case that I cited earlier tied the price-fixing agreement very closely to the cross-licensing agreement that brought the five sellers into the market.

Mr. GROSSMAN. I am aware of those cases. You used the words "not infrequently." That is why I wondered if you had other examples and whether the Justice Department has prosecuted either civilly or criminally on price fixing frequently.

Dr. SCHIFRIN. I have a list—at one time, I did compile a list of such cases. They go back to 1940 and I would be glad to provide that information at a later time. It is just a matter of finding the appropriate footnotes.