

to Schering of unconditional interim royalties of 3 per cent of sales, for a period of 3 years, in exchange for the right to make prednisone and prednisolone and market it only in finished dosage form. The royalties were 'interim' in the sense that they could be collected by Schering until an interference was declared at the Patent Office, after which time they would simply accrue, but would not be paid to Schering until and unless a patent was issued to Schering. Parke, Davis signed a largely similar agreement in 1957, and CIBA followed in 1958. Such licenses were granted on the basis of patent applications, rather than on patents held.²⁰ The president of Schering defended the practice on the grounds that this was the only way to insure that all parties involved would be licensed to continue production, no matter who was awarded the patent.²¹ This is an admission that failure to pay Schering interim royalties might jeopardize the granting of a license if Schering did obtain the patent, and the size of the interim royalty is a measure of the degree to which the other companies considered Schering's patent claims to be superior to theirs. All of the cross-licensing agreements (except with Upjohn) provided for the sale of prednisone and prednisolone to third parties in finished dosage form only, thus preventing bulk sales of the finished powder to competitors who might tablet the powder and sell it, either generically or under their own brand names, at their own prices. Upjohn, although not bound by such a restriction, has in fact made no sales of bulk powder except to Schering.²² Schering's president saw nothing unusual in the interim royalty feature. Merck's president disagreed in principle, but conceded that there was probably nothing illegal about it.²³

From the very beginning, the wholesale prices of both prednisone and prednisolone charged by Schering, Merck, Upjohn, Pfizer, CIBA and Parke, Davis have been identical, at \$17.90 per bottle of one hundred 5-milligram tablets.²⁴ The sixth party to the interference, Syntex, requested a license under Schering's process in 1955. A Schering spokesman is said to have refused because Syntex had a reputation 'for knocking the pants off prices'.²⁵ Syntex then began to make sales of prednisone bulk powder (i.e. the finished product in bulk powder form) in the United States in late 1956. Schering

²⁰ Data taken from cross-licensing agreements submitted to the Subcommittee by Schering, *ibid.*, Part 14, pp. 7918-20.

²¹ Testimony of F. C. Brown, *ibid.*, Part 14, p. 7928.

²² *Report*, *op. cit.*, p. 151.

²³ *Hearings*, *op. cit.*, Part 14, p. 8096.

²⁴ Data from *American Druggist Blue Book*, as reported in the *Hearings*, *ibid.*, Part 14, p. 7884.

²⁵ *Ibid.*, Part 14, p. 7920. Reference is to a remark allegedly made by Irving Jurov of Schering (who disavows the phrase) and reported in *Fortune*, August 1958.