

brought suit for infringement under the process patent, and Syntex retaliated by suing both Schering and Merck for infringement of its 1951 product patent. Schering thought enough of the validity of the Syntex patent to agree in 1958 to pay Syntex a lump sum paid-up royalty in return for a release from all claims, present or future, under the 1951 patent.²⁶ Merck made a similar agreement with Schering at about the same time.²⁷ However, the bulk powder price structure for prednisone and prednisolone had already begun to deteriorate by the time such agreements were accomplished. When Syntex began to make its 'uncontrolled' bulk shipments into the United States, Pfizer early in 1957 violated the terms of its cross-licensing agreement with Schering and made bulk sales of its own powder to third parties, meeting Syntex's low price. Merck soon followed suit, but Upjohn continued to sell in bulk only to Schering.²⁸ This competition in the bulk market steadily forced bulk prices downward, from levels which were initially quite low in relation to the wholesale price of the tableted and bottled powder. The bulk prices charged by Syntex declined from \$10.01 per gram in the first quarter of 1957 to \$2.36 per gram in the third quarter of 1959. Merck and Pfizer are said to have met Syntex's price; after they entered the market at lower prices they made sales at Syntex's expense, and the records show that sales by Syntex declined, despite the great reduction in its price.

In March 1959 Schering and Syntex made an agreement, under the terms of which Schering agreed, in the event that it was awarded the prednisone patent, to license Syntex (1) to make prednisone and sell it in bulk form to pharmaceutical manufacturers for use as a chemical intermediate in the manufacture of products other than prednisolone, or of those so closely related to prednisone or prednisolone as to constitute their equivalents, and to pay a 6 per cent royalty on such sales; (2) to make and sell prednisone in finished form under its own label at a 6 per cent royalty rate; and (3) to sell prednisone in bulk to licensees of Schering, who in turn would pay royalties directly to Schering. If Syntex were to be awarded the patent, Schering would receive a license to make and sell prednisone at a royalty rate of 3 per cent.²⁹

This agreement contrasts with those made by Schering with Merck, Pfizer, Upjohn, CIBA and Parke, Davis. The latter agreements provided for immediate cross-licensing, the payment of a

²⁶ Testimony of F. C. Brown, *ibid.*, Part 14, pp. 7921-2.

²⁷ Text of Merck-Schering agreement, *ibid.*, Part 15, pp. 8364-9.

²⁸ *Ibid.*, Part 14, p. 8095.

²⁹ Text of agreement submitted by Schering to Subcommittee, *ibid.*, Part 15, pp. 8878-9.