ments in effect transfer the determination of priority of invention from the Patent Office to the rival parties themselves. Such private agreements often contain stipulations which restrain trade. One party is awarded the patent, and as a condition of surrendering their claims, the other parties are guaranteed licenses, and may even begin to pay royalties before the patent is issued. The agreements usually contain restrictive provisions under which the parties agree not to sell to outsiders, not to sell the drug in bulk powder form (which might get into the hands of non-licensed dealers who could tablet and bottle it and sell it at low prices), and to accept other limitations on their marketing practices. In addition, all of the parties to such agreements will almost invariably sell at identical prices.[10]

Most of the other proposed reforms would alleviate abuses in drug marketing. Although the use of brand names is not outlawed, reforms in generic names would be a step in the right direction. The requirement that the FDA pass on the efficacy as well as on the safety of drugs is a very reasonable one, but one which was bitterly fought by some drug firms during the original hearings on administered prices. In the absence of such a requirement, drugs which are not clearly harmful, and for which various physicians have written "testimonials" supporting a new drug application, may be allowed on the market, at which point the market success of the drug depends (at least for a while) more on the skill of the sales department than on the intrinsic therapeutic merits of the compound. Several physicians testified at the hearings that not a few drugs currently on the market are absolutely useless.[11] The sixth provision is aimed at one of the many paradoxes in drug marketing. Drug makers are required by FDA regulations to print up a leaflet describing the uses, dosages, and side effects of each prescription drug, but the leaflet need only be included in the drug package, which goes to the pharmacist, who, having no use for it, throws it away. The physician, to whom such information is of the most vital importance, has no ready access to this information, but must routinely rely on advertisements and detailmen. Distribution of all such material to physicians is obviously an imperative necessity. Finally, the provisions for licensing all drug makers and for requiring more adequate inspection of drug plants is intended to insure the quality of all drugs, generic and brand name, and thus hopefully to reduce the effectiveness of generic drug disparagement and increase the physician's willingness to prescribe by generic name.

B. Senate hearings on S. 1552

The hearings on S. 1552 were held between July 1961 and February 1962. The battle lines were rather tightly drawn up on most issues.[12] In the medical profession, the American Medical Association (AMA) betrayed dedicated opposition to every section of the bill upon which they took an official position; on the other hand, of the eleven medical educators who appeared either individually, or as representatives of such groups as the American Public Health Association, ten favored the proposed reforms and an eleventh expressed opposition to the patent provisions, an area perhaps not strictly within his professional competence. Other physicians appeared in their capacities as administrators of hospitals or health insurance plans, and indicated general approval. Ten patent attorneys and other patent spokesmen testified; nine of them, including representatives of the American Bar Association, The National Association of Manufacturers, the American Patent Law Association, *etc.*, found little or no virtue in any part of the bill. The tenth, an attorney from a small town in a mid-western state, and representing only himself, regisitered substantial agreement with the aims of the bill. The Pharmaceutical Manufacturers Association opposed most of the bill's provisions, but showed limited agreement in some areas; other drug industry witnesses were not nearly so favorable.

Testimony was given by two economics professors. One appeared at the request of the Subcommittee as an expert on the economics of patents, and gave testimony to the effect that the patent provisions of S. 1552 would probably not cause

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[10] *Report on S. 1552*, op. cit., p. 45.

[11] See, for example, *Hearings, op. cit.*, Part 1, p. 285.

[12] Battle lines were also drawn up within the Subcommittee itself, the majority (often represented by Kefauver alone) in favor of reform, and the minority (represented by Dirksen and Hruska) apparently concerned with obstruction of the proceedings and harrassment of witnesses favorable to the bill. Hruska in particular was adept at the latter, not scrupling to insinuate Communist leanings in those with whom he disagreed. See *Hearings, op. cit.*, Part 3, pp. 1410–1411.