

Mr. SHNITZER. No. I think in this case I am talking about 5 or 10 percent of the price which would have been paid initially to the patent holder or to his licensee.

Senator NELSON. Is that not what I said?

Mr. SHNITZER. Possibly you did. It was not my interpretation.

Senator NELSON. I want to be clear in my own mind. Are you saying that if the price of this product were \$100 in the United States, and \$50 in Europe, in these lawsuits the exclusive licensee in this country, would be paid 5 or 10 percent of that differential, which is \$50.

Mr. SHNITZER. No. I am saying of the hundred. In other words, he would be paid—again, as I say, this is a subjective determination. I have not made any analysis of the amounts recovered by the plaintiffs and I am sure it would vary in this—

Senator NELSON. Five or 10—

Mr. SHNITZER (continuing). Percent of the \$100.

Senator NELSON. Of the \$100.

Mr. SHNITZER. Yes.

Senator NELSON. Which would amount to a relatively small percentage of the differential.

Mr. SHNITZER. Yes, sir; in the sample—in the illustration you gave.

Senator NELSON. In the illustration I gave at 10 percent, he would get paid \$10.

Mr. SHNITZER. Yes.

Senator NELSON. Is that right?

Mr. SHNITZER. Yes, sir.

Senator NELSON. So, the Government would save \$40, is that correct?

Mr. SHNITZER. I would say so.

Senator NELSON. You ought to try it more often.

Mr. STAATS. Mr. Chairman, we have been talking about negotiated procurements where patents are involved but in the area where patents are not involved, where the patent has expired or no patent is held, we also have some uncertainty as to the application of the truth-in-negotiation law, that is, Public Law 87-653, because that law exempts any item where there is a catalogue price which is offered in substantial quantities to the public.

The law has a cutoff of \$100,000 currently but here again, is an area where the law has not been finally settled as to the extent to which the Government would be entitled to have information on the supplier's costs.

The truth-in-negotiations law, as you undoubtedly know, went to the situation of negotiated contracts in excess of \$100,000 where the Government as a part of the negotiation could require the contractor to supply his costs, his known costs.

Now, that has not been applied in the case of procurement of drugs irrespective of the patent question because of the fact that they do have catalogue prices and these drugs are offered in substantial quantities to the public.

I thought I should bring this point out because here is an area of substantial negotiated procurement where the 1962 legislation apparently—I say apparently, because it has not been fully tested—does not apply.