

115. We are of the opinion that, apart from the provisions which we shall later suggest should be adopted in New Zealand to assist in the control of undesirable restrictive practices in regard to patents, a more general enactment should be envisaged under which monopolies and restrictive practices generally could be reviewed in wider and more general terms than is possible under any Patents Act. A finding or report under such Act should have substantially the same effect under New Zealand patent law as has a report of the Monopolies and Restrictive Practices Commission under the British Patents Act of 1949.

116. We do not think that all the provisions of the British Monopolies and Restrictive Practices (Inquiry and Control) Act of 1948 are necessarily suitable to New Zealand, nor do we think that we should in this report attempt to envisage such provisions as may be suitable to New Zealand. It is sufficient if we observe that there may be cases in which patents, trade-marks, or designs are only elements in a monopolistic scheme which may be contrary to the public interest. The Patents Acts as such were never intended to provide for investigation of such wide-embracing monopolies, and any attempt to investigate them under the Patents Act might result in only a partial consideration of a single aspect, prevent the matter from being considered in proper perspective, and fail to give a person aggrieved the relief to which he might be found entitled if the matter were considered as a whole under such an enactment as we have suggested.

117. We understand that in the United States the Sherman Anti-trust Act provides, as one of its objects, legislative power to investigate monopolies considered to be prejudicial to the public interests, and in some cases at least the powers under that Act have been used to investigate the incidence of patents in creating or maintaining such monopolies or assisting so to do.

118. The suggestion which we have made in paragraph 115 is, of course, supplementary to the "working" and other relevant provisions of the Patents Acts, and we shall now consider the "working" provisions of the Patents, Designs, and Trade-marks Act, 1921-22, and amendments.

119. As has been pointed out by the Swan Committee in its second interim report, paragraphs 14 *et seq.*, the obligation to "work" an invention was not specifically imposed upon the patentee by the Statute of Monopolies, but first appeared in the British Act of 1883. Although a number of countries have in their respective Patents Acts provisions which necessitate working of the invention within a prescribed time, such an obligation is not universal. Possibly the best-known exception is the United States of America, where a patent, having once been granted, is subject to no working requirements, nor, in fact, is the continuance of the grant subject to the payment of any renewal fees. In the majority of countries, however, working requirements of different degrees of severity are imposed.

120. At the present time the New Zealand "working" requirements substantially follow those incorporated in the British Patents Acts prior to 1949. The deficiencies of the provisions in the British Acts were very carefully considered by the Swan Committee in its second interim report in paragraphs 14 to 66. The Swan Committee had also to consider evidence alleging abuse of monopoly, restrictive conditions imposed by patentees, and other users of patents to the public detriment.

121. The Swan Committee was of the opinion that the "working" provisions of the British Acts were deficient in a number of respects, and in the Appendix to its second interim report it set out a suggested redraft of section 27 of the British Act to give effect to its recommendations for strengthening the provisions to prevent abuse of monopoly rights. However, before we consider the amendments which have been made by the British Act of 1949 which, to a considerable extent, implement the recommendations of the Swan Committee, there are a few preliminary observations which we shall make, and then we shall consider certain suggestions made to us by witnesses.