145. While we think that the amendments made in regard to compulsory licences and "licences of right" by the sections of the British Act of 1949 which we have considered have met a number of the objections which were set forth in evidence before us, we consider that those amendments are still deficient in the following respects: —

Firstly, no satisfactory procedure is provided whereby an applicant for a compulsory licence can conveniently bring before the Comptroller a number of patentees holding among them a number of patents in respect of which compulsory licences are sought.

Secondly, there is no provision whereby the Comptroller, in considering an application for a compulsory licence, can take into consideration the extent or scope of the claims and their validity or invalidity. The basis, of course, upon which the Commissioner proceeds at present in dealing with such applications is to assume that the patents are, in fact, valid, and the question whether or not a compulsory licence or "licence of right" should be granted, the terms thereof, and the royalty to be paid by the licensee, are normally fixed, therefore, on the basis that in fact the patents are valid. Theoretically, the reason for this assumption is sound, inasmuch as, if the applicant for a compulsory licence were of the opinion that the patent was invalid, his remedy would be to take the necessary steps to apply for revocation of the patent. From a practical viewpoint, however, the position is somewhat different, for the following reasons:—

(*a*) As was contended by counsel for the Radio Manufacturers' Federation, where compulsory licences are sought in respect of a number of patents owned or controlled by different patentees it is obviously scarcely possible for each and every relevant, or allegedly relevant, patent to be first of all litigated by way of revocation or kindred proceedings to test its validity, and then for a subsequent application for a compulsory licence to be made in respect of each patent held valid by the Court. The cost of and delay in such a procedure would be out of all reason.

(*b*) Even where only one patent is involved the applicant for a compulsory licence may prefer to proceed on the assumption of validity of the patent rather than go to the expense and delay of a petition for revocation.

(*c*) Even if such an applicant were prepared to go to the expense of such a petition he may have been advised that it is uncertain whether every claim in the specification would be declared invalid. It is to be remembered that an applicant for revocation might succeed in showing the invalidity of some claims and fail in respect of others, leaving the way still open to the patentee to apply for leave to amend his specification by excluding the claims declared invalid and limiting the specification to the claims held valid. Even if all claims in the specification were held to be invalid it is in some cases not impossible for the patentee to seek and obtain amendment.

Thirdly, the cost of litigation and the prospect of appeals, even as far as to the Privy Council, must be a powerful deterrent from making any attempt to question the validity of a patent.

Fourthly, there is the possibility of an injunction being granted or applied for against the applicant for a compulsory licence whilst his applications are pending before the Commissioner. It will be obvious that no application for compulsory licence or subsequent order would be of any avail to a manufacturer who, before his application is determined, may be prevented by injunction from carrying on his business.

146. The difficulties which we have pointed out in paragraph 145 hereof were emphasized before us by counsel for the Radio Manufacturers' Federation. A further matter alleged as tending to an abuse of monopoly was that as a result of the failure of the Patent Office in the past to examine radio patents, a number of patent applications