III. (*a*) It should further be provided that where a patentee has more than one patent which may be relevant, an applicant for a compulsory licence, after filing his application in respect of all relevant patents known to him, may serve notice on the patentee giving him full and precise particulars of his manufacture or process and calling upon the patentee to give him particulars of any other patents which he may possess and which he considers would be infringed by the manufacture, sale, or use of the said manufacture or process. On such information being given to the applicant by the patentee the applicant should have the right to amend his application for compulsory licence to include such other patent or patents as the patentee has notified the applicant to be relevant. Similarly, the patentee should have the right to have included in the application any other of his patents which he contends are relevant to the quantum of royalty.

(*b*) If the patentee refuses or neglects to advise whether there are any further relevant patents, then whilst any compulsory licence granted by the Commissioner in respect of the patent or patents relative to which the application was made is in force, the patentee shall not be entitled to take action for an injunction, damages, or account of profits in respect of any other patent or patents held by him when the request for particulars thereof was made to him by the applicant for a compulsory licence.

IV. Where a compulsory licence is sought in respect of patents belonging to more than the one patentee, the Commissioner should be empowered, if he thinks fit, to order that the cases be heard together, and to apportion any royalties fixed by him between the respective patentees in such proportions as he thinks proper. This suggestion is, we think, self-explanatory and requires no further elaboration.

V. (*a*) If on an application for a compulsory licence the Commissioner decides that such a licence shall be granted, he may, in considering the quantum of royalty or other terms of the licence, consider as a relevant issue, but without actually determining it, the possible validity or invalidity of the patents or any of them, and for that purpose evidence directed to such an issue should be admissible before the Commissioner.

(*b*) The suggestion that the Commissioner or the Court (on appeal) should take into consideration, without actually determining it, the question of possible invalidity, is one that has not been arrived at without much anxious consideration. This proposal, at first sight, might not appear to be in accordance with the legal conception that a licensee cannot challenge the validity of the licensor's title. The matter is stated in *Terrell on Patents* (8th Edition), at p. 259, as follows :—

> This principle is frequently put in another way, *i.e.*, that an assignee or licensee is estopped from denying the validity of the patent. There is not, however, an absolute estoppel in all cases and in all circumstances . . . but only an estoppel which is involved in and necessary to the exercise of the licence which the licensee has accepted.

(*c*) It is to be noted, however, that in the case of an application for compulsory licence the licensee has not accepted a licence the terms and conditions of which have been fixed. He is merely applying to the Commissioner for a licence upon such terms and conditions as the Commissioner may fix. Inasmuch as the applicant for a compulsory licence is seeking a licence under an existing property right which he is not prepared to challenge in the Courts, it seems only equitable that he should pay a reasonable royalty even in those cases in which he brings evidence establishing a strong *prima facie* case of invalidity, but we think that the Commissioner should be permitted to give some weight to that evidence when assessing the *quantum*. The amount of royalty which the Commissioner fixes is in the ultimate a charge which must be passed on to the public, and we think that the amount of royalty should depend on all the circumstances of the case, including the relevance of the prior art.

VI. (*a*) We are of opinion that in all cases under the "working" sections of the Act, and when revocation of a patent is not in issue, an appeal to the Supreme Court should be final. It is our view that inasmuch as in the vast majority of cases no question