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LOK SABHA

THE PATENTS BILL, 1965

(Report of the Joint Committee)

(Presented on the 1st November, 1966)

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NEW DELHI
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JOINT/SELECT COMMITTEE REPORTS PRESENTED TO LOK SABHA DURING THE YEAR 1966.

(Volume II)

Sl. No.	Title
5.	The Patents Bill, 1965 - Report of the Joint Committee. (Presented on the 1st November, 1966)
	-do- Evidence (Volume I)
	-do- Evidence (Volume II)
6.	The Representation of the People (Amendment) Bill, 1966 - Report of the Joint Committee (Presented on the 1st November, 1966)
7.	The Seeds Bill, 1966 - Report of the Select Committee (Presented on the 4th November, 1966)
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COMPOSITION OF THE COMMITTEE

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares
4. Shri Ramchandra Vithal Bade
5. Shri Panna Lal Barupal
6. Shri Dinen Bhattacharya
7. Shri Bibhuti Mishra
8. Shri P. C. Borooah
9. Sardar Daljit Singh
10. Shri Basanta Kumar Das
11. Shri V. B. Gandhi
12. Shri H. K. V. Gowdh
13. Shri Kashi Ram Gupta
14. Shri Prabhu Dayal Himatsingka
15. Shri Madhavrao Laxmanrao Jadhav
16. Shri Mathew Maniyangadan
17. Shri M. R. Masani
18. Shri Braj Behari Mehrotra
19. Shri Bibudhendra Mishra
20. Shrimati Sharda Mukerjee
21. Shri P. S. Naskar
22. Shri Chhotubhai M. Patel
23. Shri Naval Prabhakar
24. Shri R. Ramanathan Chettiar
25. Shri Sham Lal Saraf
26. Shri A. T. Sarma
27. Dr. C. B. Singh
28. Dr. L. M. Singhvi
29. Shri P. Venkatasubbaiah

30. Shri K. K. Warior
31. Shri Balkrishna Wasnik
32. Shri Ram Sewak Yadav

Rajya Sabha

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*34. Shri T. Chengalvaroyan
35. Shri Babubhai M. Chinai
36. Shri Vimalkumar M. Chordia
*37. Shri R. S. Doogar
38. Shri D. P. Karmarkar
39. Shri B. T. Kulkarni
40. Shri P. K. Kumaran
*41. Shri Shyamnandan Mishra
42. Shri Dahyabhai V. Patel
43. Shri Mulka Govinda Reddy
**44. Shri D. Sanjivayya
*45. Shri M. R. Shervani
46. Dr. M. M. S. Siddhu
*47. Shri Dalpat Singh
48. Shri R. P. Sinha.

LEGISLATIVE COUNSELS

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Department, Ministry of Law.*
2. Shri R. V. S. Peri Sastri, *Deputy Legislative Counsel, Legislative Department, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D., (Patents).*
2. Dr. A. Joga Rao, *Controller General of Patents, Designs and Trade Marks.*
3. Shri B. N. Atrishi, *O.S.D.*
4. Shri R. V. Pai, *Joint Controller of Patents, Designs and Trade Marks.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

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REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* to amend and consolidate the law relating to patents was referred, having been authorised to submit the report on their behalf, present their Report, with the Bill as amended by the Committee, annexed thereto.

2. The Bill was introduced in Lok Sabha on the 21st September, 1965. The motion for reference of the Bill to a Joint Committee was moved in Lok Sabha by Shri T. N. Singh, Minister of Heavy Engineering and Industry in the Ministry of Industry and Supply on the 22nd November, 1965. The motion was discussed and adopted on the 25th November, 1965 (Appendix I).

3. Rajya Sabha discussed, and concurred in, the said motion on the 10th December, 1965 (Appendix II).

4. The message from Rajya Sabha was published in the Lok Sabha Bulletin, Part II, dated the 13th December, 1965.

5. The Committee held thirty sittings in all.

6. The first sitting of the Committee was held on the 11th December, 1965, to draw up a programme of work. The Committee, at this sitting, decided that a Press Communique be issued advising associations, public bodies and individuals who were desirous of presenting their suggestions or views or of giving evidence before the committee in respect of the Bill, to send written memoranda thereon by the 12th January, 1966.

7. Seventy memoranda/representations on the Bill were received by the Committee from different associations/individuals as mentioned in Appendix III.

8. At its seventh sitting, the Committee also decided to form Study Groups to visit some of the modern pharmaceutical units etc. with up-to-date laboratory facilities, in different regions of the country, for an on-the-spot study of their working in so far as it had a bearing on the provisions of the Patents Bill.

9. The Committee divided itself into several groups and visited 30 Pharmaceutical Units, Research Institutes and Drug Farms etc.

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*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 21st September, 1965.

situated at Bombay, Baroda, Poona, Calcutta, Chandigarh, Lucknow and Jammu including the Patent Office at Calcutta (Appendix IV). At these places, the members of the Study Groups of the Committee saw the working of various Pharmaceutical Units and Research Institutes/Laboratories etc. The members elicited information regarding patents and the likely impact of the proposed Patents legislation on their working.

10. At their 2nd to 8th and 10th to 25th sittings held on the 27th to 29th and 31st January, 1st to 3rd February, 23rd April, 1st, 2nd, 4th to 8th and 11th to 15th July, 12th, 26th and 27th August, 1966, respectively, the Committee heard the evidence given by 43 Associations/individuals (Appendix V).

11. The Committee have decided that the evidence given before them should be printed in two volumes and laid on the Tables of both the Houses.

12. The Report of the Committee was to be presented by the first day of second week of the Fourteenth Session of Lok Sabha. As this could not be done, the Committee requested for extension of time upto the 1st August, 1966, which was granted by the House on the 16th February, 1966. As the Report could not be presented on the extended date, the Committee again requested for further extension of time upto 1st November, 1966, which was granted by the House on the 28th July, 1966.

13. The Committee considered the Bill clause-by-clause at their 26th to 29th sittings held from the 5th to 8th October, 1966, respectively.

14. The Committee considered and adopted their Report on the 31st October, 1966.

15. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

16. *Clause* 1 *and Enacting formula.*—This clause has been amended to enable the Government to appoint different dates for the commencement of different provisions of the Act. This appears necessary, as the Central Government in view of the additional responsibilities cast on the patent office under the Bill, may not bring all the provisions thereof into force at one and the same time and may bring them into force at different stages so as to enable the patent office to gear up its machinery for the additional functions.

Amendment to the enacting formula is of a drafting nature.

17. *Clause* 2: (i) *Sub-clause* (1) (*g*).—The definition of 'food' leaves it to be determined by notification as to what would be treated as 'food' for the purposes of the Act. The Committee feel that the definition should be self-contained and that it is not proper to confer such uncanalised powers on the Government. The definition has been amended accordingly.

(ii) *Sub-clause* (1) (*l*) (*iv*).—This sub-clause has been amended to make the definition of 'medicine or drug' more practical. The retention of the words "to the extent to which they are used" would have made the implementation of the provisions of the legislation relating to medicine or drug extremely difficult as the extent to which a chemical is used as an intermediate for a drug or for other purposes, such as dyes or plastics, etc. is constantly changing.

(iii) *Sub-clause* (1) (*m*).—It is considered necessary that existing patents should also be brought generally under the purview of the proposed legislation. Accordingly the definition of "patent" has been modified.

(iv) *Sub-clause* (1) (*r*).—The amendment made in this clause is consequential to the amendments made in clause 74 which now seeks to recognise the existing Patent Office for the purposes of the new Act.

Other amendments made in clause 2 are of a consequential or drafting nature.

18. *Clause* 3 (*e*).—Amendment made in this clause is of a drafting nature.

19. *Clause* 5.—It has been strongly represented to the Committee that it should be made clear in this clause that the substance or product manufactured by a patented process or method should be protected under the proposed legislation. Although clause 47 (1) (b) seeks to give such protection to the Patentee doubts were expressed that clauses 5 and 47 (1) (b) may be held to be inconsistent with each other. In view of the Government policy that patent protection should extend to the products made through the patented process the clause has been amended to make this position clear.

20. *Clause* 7: (i) *Sub-clause* (2).—The clause has been amended in order to avoid the inconvenience which might be caused to the applicant making an application by virtue of an assignment of the right to apply for a patent in obtaining affidavit from the assignor

or his legal representative. It is felt that the existing practice of requiring proof of the right to make the application would be sufficient.

(ii) *Sub-clause* 4.—The amendment is of a clarifying nature.

21. *Clause* 11, *sub-clause* (8).—The sub-clause has been amended so that post-dating of an application for a patent or of a complete specification under clause 9(4) and proviso to clause 17(1) and antedating of such application or complete specification under Explanation to clause 16(3) are taken into account for purposes of determining the priority date of each claim of a complete specification.

22. *Clause* 12, *new sub-clause* (2).—The Committee feel that some time-limit should be fixed in the Act itself within which the examiner must complete the investigation of the application and the specification relating thereto and submit his report thereon to the Controller General of Patents. In the opinion of the Committee, a period of eighteen months is ordinarily sufficient for the purpose. The clause has been amended accordingly by adding a new sub-clause thereto.

23. *Clause* 15, *sub-clause* (2).—This clause required the Controller to refuse an application claiming to be a convention application if it was filed in contravention of Chapter XXII which deals with the international arrangements providing for reciprocity as to patent protection. The Committee feel that refusal of such application under the aforesaid circumstances should not be obligatory and such applications should be treated as any other application for a patent. The sub-clause has been amended accordingly.

24. *Clause* 17.—Amendment of this clause is of a drafting nature.

25. *Clause* 21, *sub-clauses* (2) *and* (3).—A redraft of these two sub-clauses in simplified language has been incorporated in the clause.

26. *Clause* 22.—Amendment merely seeks to substitute the correct cross-reference.

27. *Clause* 25: (i) *sub-clause* (1) (*a*).—The clause has been amended to enable the assignee of a person from whom an invention is wrongfully obtained to contest an application for the grant of patent in respect of that invention or part thereof. Sub-clause (1) (a) has been amended accordingly.

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(ii) *Sub-clause* (1) (d) *Explanation.*—The Committee feel that importation of a product into India for the purpose of reasonable trial or experiment should not be construed as amounting to knowledge or use within the meaning of this sub-clause. The Explanation to the sub-clause has accordingly been modified.

Other amendments in the clause are of a consequential or drafting nature.

28. *Clause* 27.—Amendments made in this clause are of a drafting nature.

29. *Clause* 31.—The Committee feel that the person who derives title from the true and first inventor should be put in the same position as the true and first inventor in regard to anticipation by public display etc. sought to be provided for in this clause. The clause has, therefore, been amended accordingly.

30. *Clause* 36.—The Committee feel that the period of nine months within which the first review of the secrecy directions in respect of an invention relevant for defence purposes, should be reckoned not from the date of the filing of the application for the patent but from the date of the issue of such directions; otherwise in certain cases the period of nine months from the date of application may expire by the time the directions are given and in many cases review may become necessary within a short period after the issue of the directions. The clause has, therefore, been amended accordingly.

A new sub-clause (2) has also been added in order to make it obligatory on the part of the authorities concerned to communicate to the applicant the result of every reconsideration of the secrecy directions.

31. *Clause* 37.—Amendment made in this clause is of a drafting nature.

32. *Clause* 39.—This clause lays down that a resident in India cannot apply for patents outside India unless a minimum period of eight weeks has expired after the application for a patent for the same invention has been made in India. The Committee feel that this period of eight weeks should be reduced to six weeks so that minimum time is lost in getting patents outside India. The clause has been amended accordingly.

33. *Clause* 42.—Amendments made in this clause are of a drafting nature.

34. *Clause* 43.—The clause has been amended in order to indicate clearly that the period within which a request for the sealing of a patent may be made under sub-clause (2) thereof shall not be extended by more than three months in the aggregate.

35. *Clause* 45, *sub-clause* (3).—The change is of a drafting nature.

36. *Clause* 48.—It was urged that under this clause, as it existed, the Government might exercise its power to notify dispensaries, hospitals and other medical institutions freely and thereby deprive the patent-holder of the vast majority of his customers in this country only to benefit private or commercial dispensaries, hospitals etc. at the expense of the patent-holders.

The Committee feel that Government must have regard for public service being rendered by a dispensary, hospital or other medical institution before notifying it under the provisions of this clause. Keeping this in view the clause has accordingly been amended. Other amendment in this clause is of a consequential nature.

37. *Clause* 50, *sub-clause* (3).—The amendment is of a drafting nature.

38. *Clause* 51, *sub-clause* (4).—The amendment made in this sub-clause is of a drafting nature.

39. *Clause* 53: (i) *sub-clause* (2).—The Committee consider it rather harsh to reduce the period of validity of the patents in force on the commencement of the new Act, in the field of food, medicine or drug, to 10 years from the date of the patent under Act 2 of 1911. The Committee feel that it would be more appropriate to restrict the period of validity of such patents to the remaining period of their life or 10 years from the commencement of the new Act, whichever is shorter. The sub-clause has been amended accordingly.

(ii) *Sub-clause* (D).—The sub-clause has been amended to provide for extension of the grace period for payment of renewal fee upto the maximum period of six months instead of three months. This grace period of six months is also in consonance with the corresponding provisions of the Paris Convention for the protection of industrial property.

(iii) Other amendments in this clause are of a drafting or consequential nature.

40. *Clauses* 57 *and* 59.—Since the Bill contained no provision for the amendment of an application for patent as in section 17 of the

existing Act 2 of 1911 and since the provisions of clause 78 are available for correcting clerical errors only, the clauses have been amended accordingly to provide for the amendment of an application for patent also. Other amendments in the clause are of a drafting nature.

41. *Clause* 60.—The Committee feel that an application for restoration of a patent which has lapsed due to failure to pay renewal fee must be made as early as possible. The Committee are of the opinion that a period of one year should be sufficient to enable a patentee or his legal representative to apply for restoration of his lapsed patents. The interested parties must be vigilant about their own interests and take action to protect them at the earliest opportunity. The period of three years as was provided for in this clause would result in uncertainty and would only put a premium on lethargy of the patentees. The clause has accordingly been amended to reduce this period from three years to one year. The language used in the clause has also been recast to bring out more clearly the underlying intention.

42. *Clause* 61.—The amendments are of a drafting nature.

43. *Clause* 62.—The Committee feel that protection to persons who may have begun to avail themselves of patented inventions after the lapse of the patent for non-payment of renewal fee should be made available only upto the date on which the application for restoration of the patent has been advertised and not for the use of such inventions after that date. The Clause has been amended accordingly.

44. *Clause* 64: (*i*) *sub-clause* (1).—The Bill does not contain any provision for making a counter claim for the revocation of a patent, by the defendant in a suit for infringement of a patent, as provided for in section 26(*1*) of the Indian Patents and Designs Act, 1911. In the absence of such a provision the defendant in an infringement suit will have to proceed separately for getting the patent revoked. This is likely to increase litigation and cause much harassment by the patentees. The clause has accordingly been amended on the lines of section 26(1) of the Act 2 of 1911.

(*ii*) *Sub-clause* (1) (*e*) *and* (*f*).—The Committee feel that it would be unfair to apply the ground of knowledge, use or publication in places other than India for purpose of revocation of patents granted under the Indian Patents and Designs Act, 1911. These provisions have been amended accordingly.

(*iii*) *Sub-clause* (1) (*n*).—This provision has been amended to bring it into conformity with clauses 39 and 118.

(*iv*) *Sub-clause* (2).—The Committee feel that the importation of a product into India for the purpose of reasonable trial or experiment should not be construed as amounting to knowledge or use within the meaning of sub-clause (1) (*e*) and (*f*). Sub-clause (2) has accordingly been amended.

(*v*) Other amendments made in the clause are of a drafting nature.

45. *Clause* 68.—The Committee feel that the period of three months plus three months extension of time for filing an application for registration of the deed of assignment of patent rights etc. would be too short a period having regard to the wide relationship which Indian Companies have with foreign patentees. A total period of twelve months from the date of execution of the date of assignment will be reasonable. The clause has been amended accordingly.

46. *Clause* 69, *sub-clause* (3).—The amendment is of drafting nature.

47. *Clause* 74.—This amendment seeks to recognise the existing Patent Office established under Act 2 of 1911 for purposes of the new Act instead of providing for establishing the Office *de novo*. This will make for continuity in the working of the existing Patent Office.

48. *Clause* 77.—The Committee feel that it is necessary to provide for fixing of some time-limit within which applications for review of Controller's decisions or for setting aside orders passed *ex-parte* should be made. The clause has been amended accordingly.

49. *Clause* 82.—This amendment is of a drafting nature.

50. *Clause* 84: (*i*) *Sub-clauses* (1), (2) *and* (5).—The Committee feel that while considering applications for granting a compulsory licence the Controller should also take into account the price at which a patented article is sold in the country.

(*ii*) *Sub-clause* (7).—The Committee feel that appeals from the decisions of the Controller should lie to the High Court instead of the Central Government. Accordingly, sub-clause (7) has been omitted and necessary amendment has been made in clause 116(2).

51. *Clause* 85.—The omission of sub-clause (*iii*) will ensure expeditious disposal of applications for compulsory licence, because if

each such application is to be referred to the Central Government it would delay matters.

52. *Clause* 86.—The amendments are of the same nature as the amendments to sub-clauses (1), (2) and (5) of Clause 84 above.

53. *Clause* 87.—The amendments are of a consequential nature and are intended to bring the clause into conformity with the provisions of clause 5 as amended.

54. *Clause* 88.—The Committee feel that there should be no bar on the holder of a licence from the patentee in applying to the Controller for the grant of a licence of right. This brings the clause in conformity with clause 84(2).

55. *Clause* 89.—(*i*) The Committee feel that application for revocation of patents for non-working should be disposed of expeditiously. For this purpose it is necessary to incorporate a new sub-clause [*vide* sub-clause (4)] stipulating that such application should be disposed of by the Controller ordinarily within one year.

(*ii*) Other amendments to the Clause are similar to the amendments made in clause 84 (1), (2) and (5).

56. *Clause* 91.—This amendment is of a drafting nature.

57. *Clause* 93.—The Committee feel that the decisions of the Controller should be subject to appeal to the High Court and not to the Central Government. Sub-clause (6) has been amended accordingly.

58. *Clause* 95.—This amendment is intended to clarify that the authorisation to import patented articles under the clause may, in appropriate cases, be made subject to a condition as to payment of royalty and other remunerations to the patentee.

59. *Clause* 96: (*i*) *Sub-clause* (2).—The Committee feel that the applicant for a licence under a related patent should show that his invention has made a substantial contribution to the establishment or development of commercial or industrial activities in India. The sub-clause has been amended accordingly.

(*ii*) *Sub-clause* (5).—The Committee feel that appeals from the decisions of the Controller under this clause should lie to the High Court instead of the Central Government. Accordingly, sub-clause

(5) has been omitted and necessary amendment has been made in clause 116(2).

60. *Clause* 97.—The Committee feel that appeals under this clause should lie to the High Court instead of the Central Government. Accordingly, sub-clause (3) has been omitted and the necessary amendment has been made in clause 116(2).

61. *Clause* 99.—This amendment is of a drafting nature as the words proposed to be deleted are superfluous.

62. *Clause* 100.—The proposed amendments are of drafting or clarifying nature.

63. *Clause* 104.—The Committee feel that where a counterclaim for revocation is made by the defendant in a suit for infringement, then the suit along with the counterclaim should be transferred to the High Court for decision. The clause has been amended accordingly.

64. *Clause* 107.—A number of witnesses in their evidence given before the Committee had strongly stressed that provision should be made in the Bill to the effect that when a person, other than the patentee of a patented process, manufactured a product covered by the patented process or imported that product, the onus of proof that the product was manufactured by a process other than the patented process should be on that person. The proposed amendment is intended to secure this purpose.

65. *Clause* 116.—The original clause in the Bill provided that appeals from the decisions and orders of the Controller regarding grant of compulsory licences etc. should lie to the Central Government. The Committee feel, as mentioned earlier, that such appeals should lie to the High Court and the clause has been amended accordingly.

66. *Clause* 117.—The Committee feel that in the disposal of appeals much time should not be taken and are of the opinion that the appeals should be decided expeditiously. Keeping in view this objective a time limit of one year within which all appeals should ordinarily be disposed of, has been proposed.

67. *Clause* 126.—The Committee feel that the constitution of a body like the Chartered Institute of Patents in the U.K. should be considered. This may take some time. Meanwhile as a first step it would be sufficient to provide that the basic qualification for a

patent agent should be a degree of a University and the passing of a suitable test. The Committee also feel that any person who has been practising as a patent agent on the 1st November, 1966 (*i.e.*, the date of the presentation of the Report) should be permitted to enrol himself as a patent agent if he has filed five complete specifications before that date. The Committee also feel that no special benefit should be conferred under this clause on a person who has served in the office of the Controller of Patents as Examiner of patents or in any higher capacity. The clause has been amended accordingly.

68. *Clause* 131.—The amendment is necessary because there is no provision for suspending a patent agent in the proposed legislation.

69. *Clause* 140.—The Committee feel that a period of three months is too short a period to permit negotiations with overseas patentees and regarding the collaboration agreements in India for bringing the existing contract in conformity with the provisions of this clause. It is, therefore, considered that a period of one year for this purpose would be reasonable.

70. *Clause* 159.—*Sub-clause* (2) (*xiii*) has been omitted as being unnecessary in view of the amendments made in clause 116.

71. *Clause* 161.—The Committee feel that in the case of a patent granted in pursuance of this Clause the period of the patent should be reckoned from the date on which an application is made for revival of the application for such patent under the clause as the applicant is not responsible for the non-acceptance of the application for a patent within the time specified for the purpose in the Indian Patents and Designs Act, 1911.

72. *Clause* 162.—This amendment is intended to secure that the renewal fee payable in respect of patents, under the existing Act would continue to be governed by the provisions of the existing Act. It is also intended to ensure that the suits and proceedings instituted prior to the commencement of the new Act should be disposed of under the provisions of the old Act of 1911.

73. *The Schedule.*—The amendments made are of a formal or consequential nature.

74. The Joint Committee recommend that the Bill as amended be passed.

NEW DELHI;
The 31st October, 1966.
Kartika 9, 1888 (S).

S. V. KRISHNAMOORTHY RAO,
Chairman,
Joint Committee.

MINUTES OF DISSENT

I

We are constrained to append this minute of dissent to the report of the Joint Committee on the Patents Bill, 1965, because we are strongly of the opinion that all foreign patents should be abrogated.

There is no doubt that the patent system as now prevailing in the country has failed miserably to stimulate Indian inventions or encourage the development and exploitation of new inventions for industrial uses in India.

The law relating to patents now on the Statute Book was enacted in 1911 and it is a relic of the British system to exploit India and after independence since 1948 the need for a more purposive patent law was widely felt. The Government appointed the Committee known as Patents Inquiry Committee which gave its interim report in 1949 and suggested an immediate amendment of the Indian Patents and Designs Act of 1911 to counteract the abuse of patents by foreign firms. This was given effect to in 1950 by an amendment of the said Act. The final report of the said Committee came in 1950 but the bill to amend the patent law further was introduced only in 1953 and even that was allowed to lapse on the dissolution of the First Lok Sabha. The Government was so lethargic on this issue that instead of bringing the previous Bill again in the Second Lok Sabha, they appointed another Committee in 1957 known as Ayyangar's Committee and after a long delay this new Bill was introduced in Lok Sabha in 1965. This shows how the Government is proceeding in this vital matter at snail's pace and allowing foreign firms to abuse the ust of patents for their own advantage.

A study of the subject would reveal that the majority of foreigners who have taken out patents do not manufacture their patented products in this country. These patents are used by them only to prevent the Indian manufacturer from going into production of these products.

It is rightly remarked by Justice Ayyangar that "It would not be an exaggeration to say that the industrial progress of the country is considerably stimulated or retarded by its patent system according as to whether the system is suited to it or not" (Report on the

Revision of the Patents Law "Justice N. Rajagopala Ayyangar P. 9). And as Michel observes by patent systems are not created in the interest of the inventor but in the interest of the national economy. The rules and regulations of the patent systems are not governed by civil or common law but by political economy". (Michel on Principal National Patent Systems, Vol. I p. 15).

The object of granting patents for new inventions ought to be to benefit industry and commerce. For this purpose it should not only encourage inventions but promote industry and benefit the consumer. Our present law is an obstacle to our scientists and manufacturers alike. This is evident from the fact that all representatives of the foreign firms have opposed the main provisions of the proposed Bill and the Indian firms have welcomed it.

In abrogating the patents law there is only one danger that of profiteering by businessmen bringing cheap and sub-quality medicines in the market. But this can be checked by Drug Control Laws. If in the last eighteen years our patent laws had compelled the foreign firms to work their patents or suffer their revocation and to make maximum use of Indian raw materials and not merely import penultimate product for merely bottling or packing it here, our pharmaceutical industry would have made tremendous progress.

How and to what extent the existing patent law has proved disastrous for Indian research is evident from the Haffkine Institute case. This Institute was prevented by a foreign firm from manufacturing sulpha-drug by its own patented process while that foreign firm enjoys the protection of importing penultimate product of the drug. What a loss of foreign exchange to our nation? There is also the case of Bengal Chemicals which is contested by foreign firms although the Bengal Chemicals were granted its patent by the Government of India on the process of CHLOPARO-PANJUIDE. One witness before the Committee went so far as to say that he apprehended that there would be economic and political pressure by foreign firms on the Government of India to abandon even the present modest Bill and if they succeeded it would spell disaster for India's Pharmaceutical industry.

Another strong argument for abolition of patents is that monopolies have been created by these foreign firms and the poor consumers of India are bled white by very high prices for their drugs This is evident from the statements of the witnesses before the Committee wherein they have cited the vast differenee of International prices and Indian prices of imported drugs. A witness stated

that some time ago Liberium—a tranquillizer—introduced in the Indian market by a Swiss firm, which was importing the same during the year 1963-64 at about Rs. 5555 per kilogram C.I.F.; but the same material is said to have been imported by a firm in Delhi at C.I.F. price at about Rs. 312 per kilogram. Another firm in India has been charging in this country for Vitamin B 12 Rs. 230 per gram whereas the international price at which it is available in other countries is between 90 to 100 per gram. Similarly another firm which holds the patent for DEXAMATHA-ZONE was charging Rs. 60,000 per kilogram. But when warned by the Import Controller it readily cut the price to Rs. 16000. The case of Talbutamide patented by Hoechst is one more example of exorbitant prices charged by foreign firms. It is sold in India at Rs. 187 per 100 Tablets while it is available for Rs. 50 to 60 maximum elsewhere in the world. Chloramphnicol is sold here at high price. It was rightly remarked by Kefauver Committee of U.S.A. that India which does grant patents on drug products provides an interesting case example. The prices in India for the antibiotics, Auromycin and Aeromysin are among the highest in the world. In drugs it is the highest priced nation.

Still another reason for abrogation of patents in India is that there is no reciprocity in the matter. In Appendix "A" on page 302 of the Ayyangar Committee's Report it is stated that the number of patents taken by foreigners in India during 1949 to 1958 was 21,177. The report is completely silent on the patents taken out by Indians in foreign countries. It means and can be presumed that no patents or hardly any patent were taken by Indians in foreign countries. It is thus only one way traffic. Instead of imitating the developed countries we should see what is more beneficial for an under developed country like India.

As Edith Tiltor Penrose in her book *The Economics of the International Patent System* points out "No amount of talk about the economic unity of the world can hide the fact that some countries with little export trade in industrial goods and few if any inventions for sale, have nothing to gain from granting patents on inventions worked and patented abroad except the avoidance of unpleasant foreign retaliation in other directions." She wisely suggested "In view of the general desirability of facilitating the economic development of 'Backward' areas it would be good policy to permit all non-industrial countries freely to use all foreign originated inventions in industries producing for the domestic market.

We would even say that foreign inventors do not need these exploitative patent laws to go on making research. Mr. Edsel Ford of the world famous Ford Motor Company was asked in 1939 in

hearing before the U.S. Temporary National Economic Committee whether inventions would continue if there were no patents, Mr. Ford replied without a moment's hesitation "I feel quite definitely, it will be carried on". Eugene Schinder, managing partner of Crenzot Huge French Arms Industry once wrote "I am quite of the opinion that there would be very little difference in respect of rapid progress if patents were abolished. With an unrestricted system the progress might commence a little later but the progress would proceed all the faster. The inventing spirit follows his ideas not for gain but driven by an inner compulsion which will not let him rest."

To sum up in the interest of our people there should be no patent law in our country so that Indian Nationals may be free to make full use of what knowledge they have. Japan had no patent law up to World War-II. Now Japan stands in line with U.K. and U.S.A. Also in Italy the absence of patent law for food drugs and chemicals has enabled Italy to make striking progress. If we look to the history of drugs, medicines and other chemicals it would be clear that many European countries which are today highly developed had their patent law only after reaching a certain stage of development. Therefore the only sensible course for us is to abrogate the patent law completely till we develop to a high degree. No threats or pressure from any quarter should deter us from this goal. Only recently the Reserve Bank brought to light the fact that a sum of Rs. 3.86 crores was remitted abroad by 44 pharmaceutical Companies in the form of dividends between the year 1956 to 1965. This is an alarming state of affairs and it must be ended.

When the Bill was discussed clause by clause in the Committee we disagreed on the following clauses with the view taken by majority.

Clause 11(2) concerns the priority dates of claims of a complete specification. In the Notes on clauses at page 91 of the Bill clause 11 says "This clause seeks to make provision respecting the priority date for each claim of a complete specification and is based on section 5 of the U.K. Patents Act 1949, and Sections 44 and 45 of the Australian Patents Act 1952 but its scope is enlarged..." This enlargement would create many difficulties and much ambiguity. In U.K. priority dates for individual claims are not required to be indicated. The priority date is required in some cases only and not in all cases. If this clause is read with clause 12 the Controller will refer to the examiner to see whether the priority date is correct or not. The language of clause 12 is uncertain and vague. If we study carefully this clause the Controller will ask the examiner whether it is accord-

ing to the requirements of the Act and whether there is any lawful ground for objection. The word 'lawful' has no meaning. If there is any objection it can be only on legal grounds. In the Civil Procedure Code and the Criminal Procedure Code a plaint or complaint is examined and the grounds or points are specifically mentioned on which the plaint or complaint can be rejected.

Clause 48.—This clause provides that import of medicine or drug or medical equipment by the Government for its own use or the production of a patented article by the Government for its own purpose shall not be regarded as an infringement of patent rights. This gives Government vast powers and no right of appeal to the aggrieved parties is provided in the Bill. We agree that the Government should be empowered to import for its own use or for any Government dispensary but this provision may hamper local industry also. So there should be provision of appeal to High Court or relevant tribunal against the decision or order of the Government. Justice Ayyangar had recommended on page 23 of his report that some compensation might be given to the aggrieved party.

Clause 53.—Regarding the term of patents the Bill provides in this clause that in case of inventions of food medicines the period of the patent should be ten years and in case of other inventions fourteen years. In our opinion this period of patents is not desirable for grounds already mentioned in our general remarks for abrogation of Patent law. The patentee should not be permitted to exploit the consumer for such a long period. Now the conditions have changed. The means of Transport and communications have increased and also the number of qualified doctors is also fast increasing. India is such a big market that within short time the patentee will be sufficiently rewarded. Hence we strongly feel that in case of Drugs and medicines and food the period of patent should be seven years and in other cases it should be 10 years from the date of patent.

Clause 55.—This clause deals with opposition to grant of patents in certain cases. Under this clause the objection would be on the ground that the invention so far claimed in any claim of complete specification was used in India before the priority claim. So far so good. But the explanation provided to this is very detrimental to Indian inventions and beneficial to the foreign importers. The Bill provides for the patent of process only and not of product. But this explanation protects the imported product brought into India before the passing of this Bill. This is highly objectionable and strikes the very spirit of the Bill.

Clause 90.—Under this clause provision is made regarding reasonable requirements of the public deemed not satisfied. This clause is very important. It controls three clauses 84, 86 and 89 and further explains what are reasonable requirements, of the public. "If the Government wishes the foreign patentee to come and work his patent but the latter is reluctant to do so, the Government can either use the method of compulsory working or methods of compulsory licensing". (Para 263 of the Role of Patents in the Transfer of Technology to Developing Countries—Report of the Secretary General United Nations). The real issue at present in our country revolves round the position of foreign patentee. "The foreign patentees in our country are mostly exploiting our poor consumers by artificially raising prices and creating monopoly of patented articles. In revoking licences of such firms there should be no "Ifs and Buts". Hence this clause should begin with the following words "If the patentee fails to manufacture in India and supply the same on reasonable terms" etc. their patents are liable for revocation. The danger of keeping clause as it is, is that the defaulting patentee is likely to take advantage of the words "by reason of the default of the patentee" and would try to show by hair-splitting of words that there is no default on his part but that the reason of default lies in the laws of other countries in which he manufactures. We also wanted to add a new clause to the Bill and moved the amendment to the effect that a tribunal like the tribunal under Income Tax Law may be provided but we were unable to carry out our amendment. Our suggestion is that the Central Government may be notification in the Official Gazette constitute a Tribunal consisting of as many members as it deems fit. The Members of the Tribunal shall be persons who have in the opinion of the Central Government adequate knowledge and experience of (a) Law (b) Accountancy (c) Administration (d) Knowledge of Company Law. Among the personnel there should be a Judge of the High Court. The first court of Appeal should be Tribunal and the decision of the Tribunal could be made appealable to the High Court.

Clause 116.—This clause as passed by the Committee bolts the doors of the High Court in respect of certain orders issued by the Government or by the Controller. This is undemocratic. The word in this clause "no" should be deleted and the wording of this should be that an appeal shall lie to the High Court from any decision, order or directive issued under this act by the Central Government and to the Tribunal from any act or order or decision or directive made under this Act by the Controller.

Above are the main clauses on which we are not in agreement with the majority view of the Committee. Regarding provision

of licenses of right and compulsory licenses we are definitely of the view that in the existing situation of monopoly prices of drugs and medicines and food, the provision of compulsory licensing and licences of right is no remedy at all. It is only a haphazard, ineffective, and inadequate which will prove powerless to root out the menace of these foreign importers ransacking our country on the strength of our patent laws, draining away our foreign exchange earnings. If the Government want that there should be quicker industrial progress then our suggestion are:

(1) As India is in the early stages of industrial development we should abrogate the patent law for some short period and watch the results for our industry;

(2) Anybody should be allowed to start manufacturing of a product on payment of royalty. This will increase the number of manufacturers and the patentee will be benefited by receipt of royalty;

(3) If there is dispute about infringement such cases should be decided within 12 months;

(4) All foreign firms should be compelled to manufacture a product in India from beginning to end with major portion of Indian Capital and using as far as possible indigenous raw-material.

Then and then only India would progress in research, the scientists will get incentive, the poor consumers would get medicines at fair price and our nation will be spared of the needless drain of foreign-exchange.

NEW DELHI;
October 31, 1966.

RAMCHANDRA VITHAL BADE,
VIMALKUMAR M. CHORDIA.

II

We regret to find ourselves in disagreement with the majority of our colleagues in the Joint Select Committee on the Patents Bill.

It has been the practice in all countries for over a century to confer proprietary rights upon the inventor by law and to limit in certain respects what is absolutely necessary in the public interest without allowing those rights to be eroded by various types of exceptions.

The justification for conferring these rights by way of letters patent has been that inventions involve huge expenditure and, therefore, unless the inventor can see some reward, such expenditure will not be undertaken. The inventor incurs a financial risk, namely, to make it worth while for a concern or a company not only to incur expenditure on research but also to bring the invented product to the stage of commercial utility. Only if the inventor is granted by way of a proprietary right a certain period of exclusivity to exploit the patent will he undertake this risk. Only at the end of this comes the recompense or the reward to the inventor and to those who take up the invention for industrial exploitation.

Out of numerous items that are undertaken for research only a few are patented. Many of them are abandoned because their commercial exploitation is not economically feasible. It follows, therefore, that the cost of an invention which is eventually a commercial success is very high indeed and, therefore, the social and economic justification for granting patents for such inventions is abundantly clear.

We are at a loss to understand how one could hold the view that the existence of a strong patent law in underdeveloped countries discourages scientific research and development. In fact, in the United States, the faster rate of industrial and scientific development in relation to industry and applied science occurred as a result of a strong patent law. The free exchange of patents has done immense good to most countries and has resulted in a rapid rate of growth internationally in the field of industrial, scientific and technical development.

Unfortunately, there is a kind of schizophrenia to be found in regard to the granting of adequate patent protection for inventions. On the one hand, many people want scientific and industrial development; on the other hand, they get obsessed with all kinds of claptrap about monopoly, pricing, social justice and making medicines and drugs available cheaply to everybody all over the country. Yet they know, as we all know, that a strong patent law has resulted in the greatest advance in the manufacture of medicines, drugs and foods.

We are at a stage at which we want industries to apply their maximum resources to research and development but, if the Bill is passed in its present form, this purpose will not be achieved. We are of the opinion that the main purpose of the Bill, which is to stimulate inventions amongst the citizens of India and to encourage research and development for industrial and technological progress,

will not be served if the Bill is passed in the form in which it has been reported by the Committee. We feel that the Bill will not create a proper investment climate in India for the rapid growth of the industry, whether by Indian entrepreneurs or by import, where necessary, of foreign technology and investment.

A number of provisions of the Bill and in particular clauses 2(h), 3(d), 8, 48, 53, 87, 88, 93(3), 95(3), 99, 100 and 102 strike at some of the foundations of widely accepted principles in this field. In our view the basic validity of patents and their advantages are almost universally accepted and any restrictions on such rights should be governed by the principles that apply in regard to expropriatory legislation. This is in order to ensure that such measures are only taken in exceptional and clearly defined circumstances, that there is provision for full compensation and that the right of appeal to the courts of law is guaranteed. It appears to us that several parts of the present Bill run counter to these principles, tend to violate the legitimate rights of the patentee and do disservice to the general economic advancement of the country.

One issue on which we feel constrained to part company with the majority of our colleagues is that we see no justification for differentiating between various industries. There does not appear to us to be any reason for discrimination between inventions in different fields of production or enterprise. Since it is generally agreed that patent protection advances progress, we fail to understand why an important need of the consumer such as drugs and medicines should be denied the advantage of such protection and promotion.

We see no reason whatsoever why the term of sixteen years for all patents to be found in the existing law should be shortened. On the contrary, the world trend is in the opposite direction of prolonging the life of patents and, in the light of this, we are not prepared to accept any term shorter than sixteen years as the period of validity of all patents in all fields. This, in our view, should be without prejudice to the normal provisions to be found in the current Act in regard to a further extension of time in cases where the patent has not been found sufficiently remunerative.

We do not deny that there is room for carefully devised restrictions on property in patents in order to guard against a situation where an unrestricted operation of patents might, on balance, result in serious damage to the vital public interest. There is need to guard, however, against throwing the baby out with the bath water by a ready resort to measures of a kind which would deprive a whole category of patentees of their rights. What, in our view, is called for is

a process where there is an examination of each case on its merits and a careful demarcation of the limits of intermerence and of adequate compensation for the damage suffered by the patentee.

We have carefully examined the provisions of the Bill in the light of the evidence recorded, the weight of which undoubtedly was in favour of strong patent protection. In order to bring the Bill in line with the trend of expert evidence and the universally accepted principles referred to above, some clauses would require deletion while many others require substantial modification. Unless this is done, we are of the view that the Bill as reported by the Committee should not be enacted.

NEW DELHI;
October 31, 1966.

M. R. MASANI
DAHYABHAI V. PATEL

III

Although the Joint Committee have done their best to submit their Report as expeditiously as possible, I am not sure as to whether there will be time for the present Parliament to give its consideration and pass the Bill as reported by the Joint Committee, if it is treated in a routine manner. On the other hand, it is my feeling that this Bill is of great importance and time should be found to pass it in the winter Session of Parliament. Should for any reason this is not possible, I would earnestly urge that the new Parliament, after the general elections, should give this Bill highest priority.

I am confining my remarks in the following paragraphs to only a few important provisions of the Bill and I feel that such suggestions as I have to offer are necessary in the present stage of development of the Patent Law. These suggestions are in line with the main purpose of the Bill which is to stimulate inventions among citizens of India and to encourage development and exploitation of new inventions for industrial progress in the country and the flow of technology from abroad into India. I also wish to emphasise that our legislation must help achieve increased production, and such increased production would be possible only by stimulating investment and greater use of technology, both foreign and Indian.

Clause 48:

This clause allows the Central Government to use a patented invention and/or to import a product covered by a patent without such use or importation constituting an infringement of the patent and without making any provision for payment of compensation to the

patentee. The provision thus grants unlimited powers to Government. It will enable the import of pirated goods in circumstances of grossly unfair competition with the home industry. In the field of drugs, I fear that the loss of patent production over a wide field by placing the Government in a privileged position is objectionable. Indiscriminate import of drugs and medicines will completely dislocate the indigenous industry. It will cut into the rights of the patentee and also obliterate one of the purposes of the patent and the licencing provisions namely, to encourage the home industry. Further our foreign exchange situation being what it is, one has to be eternally vigilant about the use of our meagre resources. I, therefore, feel strongly that in such cases of use or importation, Government should in fairness compensate the patentee for any loss he may incur in this behalf.

Clause 53:

This clause provides that for inventions claiming a process for the manufacture of food, medicines and drugs, the term of a patent shall be ten years from the date of the patent and in respect of other clauses of inventions, the term shall be fourteen years from the date of the patent. The present Act provides for a term of sixteen years for all patents and also that the term can be extended by a further period of five years and in exceptional cases even to ten years, if the Government is satisfied that the patentee has not been sufficiently remunerated. The proposal to reduce the term of a patent to ten years in the case of patents relating to drugs and medicines is not realistic because the holder of a patent cannot derive benefit from the invention during a substantial portion of the term. When a new product is produced and patented, between the date of application for the patent and the introduction of the product in the Indian market, there is very considerable time lag because further tests, research and studies will be necessary to evaluate its efficiency, utility and adverse effects, if any. Clinical trials and tests are very difficult to carry out and the facilities are also very meagre. Considerable time elapses between the discovery of a product and its availability in the Indian market. Specific data in this behalf was furnished before the Joint Committee. The term of a patent should be such as to enable the inventor to obtain a reasonable return for the expenses incurred by him on research, tests, clinical trials and commercial development. A relatively long term is justified in the case of developing countries. Mr. Justice Ayyangar had recommended that the term of every patent shall be sixteen years from the date of the patent. I feel that wherever a patentee is able to make out a case that his patent has not

been sufficiently remunerative, there must be a provision for extending the term of the patent by two periods of three years each.

Clauses 86 and 87:

Clauses 86 and 87 deal with the endorsement of a patent with the words "Licences of right". In the case of patents other than those in respect of food, medicines or drugs as well as methods or processes for the manufacture or production of chemical substances, it is only after the expiry of three years from the date of the sealing of a patent that the Central Government can make an application to the Controller for endorsement of the patent with the words 'Licences of right', on the ground that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price. In the case, however, of patents relating to food, medicines or drugs as well as methods or processes for the manufacture or production of chemical substances including alloys, optical glass, semi conductors, intermetallic compounds at present in force and patents which may be granted under the new Act, in respect of any such invention as is referred to in section 5, the patents are deemed to be endorsed with the words 'Licences of right' from the commencement of the Act in the former case and from the date of sealing of the patent in the latter case. There is, therefore, discrimination and the period of three years which is to lapse before Government can apply for the endorsement of a patent with the words 'Licences of right' has been done away with in the case of inventions relating to food, medicines or drugs and the processes for the manufacture or production of chemical substances. A patent is aimed at safeguarding the interest of the inventor against the unjustified encroachment of his rights by third persons. In the case of 'Licences of right', the advantages accrue neither to the Government nor to the general public nor to the inventor, but only to third parties, who will be enabled to make unjustified profits, though they have not contributed towards the costs of research and industrial development. Once the short period of a patent protection ends, the subject matter of the invention becomes common property. If licences are issued indiscriminately and as a matter of right to several applicants, no one will be willing to invest and risk capital in working the invention. I feel that the discrimination pointed out above should be done away with and as in the case of other inventions, inventions relatig to food, medicines or drugs and the processes for the manufacture and production of chemical substances should be liable to endorsement with

the words 'Licences of right' on an application by the Central Government, only after an initial period of three years from the date of sealing of the respective patents.

Clause 88:

This clause deals with the effect of a patent being endorsed with the words 'Licences of right' under sub-clause (5) in respect of patents in the field of food, medicines or drugs. It also provides that the royalty and other remuneration payable under a licence shall not exceed 4 per cent of the net ex-factory sale price in bulk of the patented article exclusive of taxes and commissions determined in the prescribed manner. Under the present Act, royalty is to be determined by the Controller who is directed to secure that food and medicines shall be available to the public at the lowest price consistent with the patentee's deriving reasonable advantage from the patent rights. Mr. Justice Ayyangar has also stated in his Report that it is not feasible to arrive at a uniform rate of royalty which would be reasonable for licences in respect of each and every invention and that it is not desirable to fix statutorily the maximum rate of allowable royalty. Royalty is intended to cover the expenses of research expenditure involved in the invention and also as a reasonable compensation to the inventor. It is not possible to fix a royalty rate under the law which will reasonably cover all cases. The proposed royalty of 4 per cent in return for the use of valuable patent rights on which vast sums have been expended on research, will not enable the patentee to recover even a part of his outlay, particularly in the pharmaceutical industry which is research oriented, highly competitive and requires very heavy investment in equipment, men and materials. Royalty has to be fixed having regard to the various factors including the nature of the invention and the expenditure incurred by the patentee in making the invention and developing it. In order that invention in the fields mentioned, may be stimulated amongst Indians, I feel that royalty should be determined by the parties in each case and regulated by the Controller.

NEW DELHI;
October 31, 1966.

BABUBHAI M. CHINAI

IV

In spite of the bulky evidence produced and the time consumed by the Joint Select Committee and in spite of strenuous efforts of

Members of the Committee, the Bill as it has emerged shows a very confused attitude on the part of the majority in the Committee towards the mass of evidence which had suggested specific changes in regard to very important clauses, such of them, as related to period of patents, compulsory licence, licence of rights, rate of royalty and powers of Government to use patent etc. The witnesses opposed the provisions of certain clauses, such as clauses 48, 53, 84, 85, 86, 87 and 88, in regard to which I shall deal in detail later on. However, there was unanimity between all the witnesses and the Members of the Joint Select Committee on clauses regarding appeals. Accordingly these clauses have been amended to provide for appeals to High-Court instead of to the Central Government. This is a welcome change brought about by the Committee. Certain other minor changes are also welcome.

An initial mistake has been committed by the Government, which has created more confusion and has resulted in stress having been laid on patents for food, drugs and medicines, while patents for machinery and other articles, have in importance, gone into the back-ground. When Government as a policy measure, had decided to differentiate between one category of articles and others in respect of period, compulsory licence, licences of right and royalties etc., the proper course would have been to bring forward two separate Bills for them. This means there should have been one Bill for foods, drugs and medicines and the other for machinery and such other articles. May be that both could have been entrusted to one and the same Joint Select Committee. This I write on the strength of evidence that has come forward and importance given to drugs and medicines by all concerned. In my opinion if a separate Bill for machinery etc. would have been there, evidence of quite a different nature and in a fairly good amount, if not equal to that produced by the drugs industry, would have come forward. Excepting one or two witnesses from Ahmedabad, nobody else came forward to give adequate evidence in respect of textile and other machinery. What-ever information could be gathered from those witnesses it has led me to the conclusion that we have not been fair to those industries, whose patent period is fixed for 14 years. It may be argued that invitation for giving evidence before the Joint Committee was equaly extended to those industries also; but the psychological atmos-phere created had proved otherwise and hence my contention and argument should hold good. In the absence of sufficient evidence not having come forth, one may be inclined to believe that every-thing provided in the Bill suited those industries. At a later stage, it may come to be realised that this was not so.

I now come to the subject of patents relating to drugs, medicines and food. Ours is a developing country and as such our patents policy in respect of these should be governed by the following factors:

A. It should encourage research and inventions within the country.

B. It should stimulate a speedy growth of the patented drugs and medicines in the country both in the public and private sectors together with the growth in respect of un-patented medicines or of those whose patents have lapsed.

C. The standard of quality of the drugs and medicines be strictly maintained and availability of these be made easy and at reasonable prices.

In what manner the Patents Law of the country be formulated, keeping in view a period of next 20 or 25 years before us, to attain the above mentioned objective with due incentive to the industry, must be the concern and responsibility of all well-wishers of the country. To attain these objectives, I believe, the following steps are necessary:—

1. To create conditions and take steps where by Research Institutes may be speedily developed on a large scale both in the private and public sectors.

2. To create conditions whereby foreign collaboration with know-how and patents crystallised on research carried in outside countries, be encouraged to come in on a fairly large scale, keeping in view the country's best interests in regard to availability of useful drugs and medicines with due incentive to the collaborators and patentees.

3. To create conditions for proper rewarding of our scientists.

From my point of view, the above quoted conditions can be created in the following ways:—

1. The period for patents based on research done within the country and of those which are outcome of outside research needs to be different. It should be longer in case of Indian research based patents, may be whether such patents are a result of research in public sector or private sector, with or without foreign collaboration. While determining the period of patent following main factors need to be taken into account:—

A. In how much time the industry is expected to be developed as research-based industry, and develop to a stage where research expenditure can be expected to become part and parcel of the regular industrial production.

B. In public sector industry or in Government Research Institutes, research is to be confined to laboratory and pilot plant stage or it is to be taken up for full commercial exploitation mainly on its own and commercial exploitation is to be or not to be handed over to any third party as holders of licences of rights. The same should apply to private-sector which may run its own research institutes on the same footing as those of public sector. India is far more backward in research establishment and can be expected to reach a competitive standard in this respect in next 20 or 25 years. Period of Patent should therefore be fixed keeping in view this main factor.

C. In case of patents, based on foreign research, the period should be judged and fixed having in view not the research expenditure side, as it forms part and parcel of a highly organised industry outside this country, but on the factors such as capital investment, period required to put through the drugs in the market, after it has passed through formalities of clinical tests etc. and expected return on capital after the drug is put in the market, as also the extent which the drug is expected to be kept in use. The period should be sufficient to give a patentee place of operation in the market for atleast five years after the drug having been introduced in the market.

Keeping in view all the above considerations, I am of the emphatic view that if patents are a result of research within the country, the period of ten years from the date of patent is insufficient, and to remedy this there should be a right of renewal for another four years after the ten year period is over.

2. As for other patents, whose inventions have been done outside the country, but which are granted for exploitation within our country ten years period is reasonably sufficient, as the main consideration is to put the drugs on economic footing in the market and this can be accomplished within this period. However, to accomplish all this, it is very essential that the industry in all its aspects is fully run by the patentees. But Government seems to have no faith in this way of running the industry. So also the majority view of the Committee seems to have developed the idea not to differentiate between the two types of patents as explained above, but to try to treat a lower period of patents as in the best interests of the people.

The majority view has not remained satisfied mainly confining to the question of period, but they have maintained in their original forms clauses 87 & 89 of the Bill, which not only cut at the very root of the base of the Patent Law theory, but will from its very inception reduce the patentee (whether in public or private sector), to a mere agent of the holder of licences of rights created by clause 87 and that too according to clause 88 on a mere payment of royalty (never exceeding 4 per cent of bulk sales) to the patentee. The matter does not end here and in the case of patents granted before the commencement of this Act this clause shall be applicable, from the date of commencement of the Act, while on future patents it shall be applicable from the date of sealing of the patent. It is further put in that the Controller has not to go into the financial and technical capability of the applicant for licences of rights.

To me it is very clear that the majority view of the Committee Members has not been able to realise the serious consequences of clauses 87 & 88 as put in the Bill. When one goes a little deeper into the matter, one comes to the following conclusions:—

(1) That if these clauses are accepted as they are, our public sector research based patents will never be possible to be worked on a commercial scale on their own within the country. The example of Pimpri is there. The invention of Hamycine will not be able to be worked by them independently even for the shortest period after this Bill is passed into an Act. According to clause 87, any person can get a licence of right, on a royalty, which will be less than 4 per cent, payable to the Hindustan Antibiotics. Further their negotiations with America and other countries, by which they expect to get 7 per cent royalty from them is going to get serious set back. This means that the research based industry will merely work as invention agent of holders of licences of rights, and under circumstances the scientists and other staff employed will not have fair chance of becoming adequately experienced and rewarded.

(2) No foreign collaborator will come forward to start research-based drug industry in the Country as he is not expected to risk huge amounts for such holders of licences of rights who will reduce the foreigner as mere collector of royalties on his research.

(3) Foreign patent holders, will not be coming forth enthusiastically for patents, which are results of inventions done outside India, as they have been uptil now, for securing patents for drugs which require huge investments, as from the very day of sealing of the

patent, they will be exposed to become mere agents of the holders of licences of right, and as such they will not be able to make any reasonable earning by entering into the market on their own. Their faith in Government which is very essential in matters of patents, as they are a reciprocal entity, will be badly shaken as the clauses as they are will affect old patents also. In this respect the Government has been so careless as not even to bring forth an explanatory note giving grounds on the basis of which they can justify such application on old patents. Unless it is proved that there are a very large number of patents the product of which is in heavy demand and there are persons capable of becoming holders of licences of rights possessing required know-how, putting in of such a clause will be grossly detrimental to the interests of the growth of the industry.

As a result of all this only such patents will be taken in future, the products of which may be expected to be produced with medium-sized capital investment and with easy marketing possibilities. Such patentees will be on the look out for an applicant of licences of rights who can along with royalty pay for know-how and on getting a good amount for this will not care to put the products from their own factories into the market. Under such conditions our country will have a set back and may remain a third rate country in the production of medicines.

(4) As licences of rights can be granted from the date of sealing of the patent, on practical grounds no applicant can come forward unless he has stolen the know-how while the patent was in process of being granted and he is fully in know of the process and its possibilities. The Controller too will be faced with serious difficulties. The assessment for possible sale of the drugs cannot be made unless it is put in the market for some time. As such no data will be available to the Controller regarding the parties on the basis of which rates of royalties can be fixed. The financial and technical capacity cannot be questioned by the Controller and as such this may result in creating other problems of malpractices etc.

Having all these factors in view, the only remedy is to amend clauses 87 & 88 suitably. In my opinion clause 87 should be amended as follows:—

A. It should not be applicable to old patents.

B. In came of new patents it should not apply to patents, which are result of research carried out in any research institute in India , otherwise we will never be able to put our research on sound footing.

C. In case of other patents, the right should not accrue from the date of sealing of the patent but after three years from the date of sealing of the patent only as within this period everything will be clear to all parties concerned.

As for royalty the rate should be a maximum of 6 per cent and not 4 per cent as envisaged in the Bill. The reasons are that in certain cases there may be necessity for giving higher rates. It should also be borne in mind that holder of licences of right is a sort of a middle man with no risk or little risk while the patentee bears all initial risks. As a matter of fact more protection is needed to be given to such patentees. Giving more benefits to a middleman than to the originator has never been heard of. It is also totally forgotten that scientist is the backbone of the original patentee and his chances of being rewarded adequately will go down if the concern wherein he works is reduced merely to a royalty collecting concern from the very day the patent is sealed and that too at a low rate of always less than 4 per cent.

There is another clause 48, which should either be deleted or suitably amended. Sub-clauses (a) (b) (c) of this clause empower the Government to make use of patents for their own purposes without compensation. This may be applicable in case of emergency such as declaration of war or epedemics but not otherwise. When our future policy is for expansion of public sector, whose products we can always use in such situations and when for outside invented patents we are providing for production by holders of licences of rights, even in an emergency such a step is not expected to be required. The clause as it stands will only scare away the patentees with no real benefit to the Government.

Evidence had also been forthcoming for abrogation of patents in case of foods, drugs and medicines. But the plea put forward was mainly that prices will go down and there will be increased availability of drugs. But abrogation under present conditions can only lead to production of sub-standard drugs endangering the health of the people. As a matter of fact to relate prices of drugs with patents is a very wrong notion. Prices have very little to do with patents. Unpatented standard quality drugs fetch more prices than even patented or low quality unpatented drugs. The example of Sandoz Ltd., is there. They produce no patented drugs. Even their distilled water is of such high standard that it is taken for Defence requirements at nigher prices. About 80 per cent of drugs produced in the country are unpatented or those whose patents have lapsed. Therefore prices have nothing to do with patents. Hence abrogation on this ground is

un-called for and will lead to malpractices and deterioration. Abrogation can be proper only when highly developed research institutes come up and develop in the country on a fairly large scale. In that case research Institutes can mainly be taking the inventions upto Pilot Projects and then hand over to large and medium sized, or small size institutions or firms as the case may be for commercial exploitation such enterprises will be free from research expenditure side of it and can be made to work as other industries work. But such conditions are not there in the country at present and are not expected to be in the near future.

A section of the evidence had pleaded for a seven year patent only. As a matter of fact they were those who actually pleaded for abrogation in one breath and for seven years period in the other. They also pleaded for licences of rights from the very date of sealing even when the period is only seven years. If their view is accepted it will clearly amount to total negation of patent in the name of patent. The net result of it will be reversing the entire process of growth of the industry. Members of the Committee who agreed with such a view for seven years probably did so without going into the economics of working of patents. Similarly foreign evidence pleaded for 16 to 20 years period for patents, which if accepted will create foreign monopolies, retarding growth and research in this country. Such a view is not suitable for a developing country like ours.

I now sum up my case as follows:—

Clauses 53, 87 & 88 as they stand at present are very detrimental to the growth of the drug industry in the country. The net result of these will be that research will be out of question in the private industry while research based public sector will work merely as invention agents for holders of licences of right. For outside patents progress will be confined to medium sized industries with very slow growth. To put things right my above quoted suggestions are summed up as follows:—

1. Indian research based patents must be for ten years from the date of patent with further right of renewal for another four years.

2. Patents for outside inventions and applied for working within India, should have a period of ten years only.

3. There should be no licence of right in case of Indian research-based patents. The patentee should be allowed to work it fully for the whole period of the patent.

4. In case of other patents licence of right should start only after three years from the date of sealing of such patents.

5. Royalty payable should be upto 6 per cent in place of 4 per cent.

6. The Controller should have the power to enquire into the financial and technical capacity of applicant for licences of rights with power to refuse in case these are not found suitable. There should be set rules for guiding the controller in this respect.

7. Clause 48 (a) (b) & (c) should be applicable in case of emergencies like war and epidemics. In other cases compensation should be paid to patentee.

All the above suggestions from (1) to (7) require amendments of clauses 48, 53, 87 & 88.

I had moved amendments more or less on the above lines, but these were not accepted. I, however, would have been badly failing in my duties if I had not brought forward all my objections views and suggestions in the form of this note of dissent. My proposals are aimed at development of the drug industry in the best interests of the people, without injuring the interests of the patentees and thereby safeguarding the required growth essential for the country. It should be viewed from this angle only. A very important factor which should also not be ignored and should be given very heavy weight for consideration is that our Bill provides for process patents and products out of the patented process only are protected. Therefore even when a patent is for ten years with right of renewal for four years in case of research-based industries and merely ten years in other cases, there are always possibilities for holders of such patents to face competition in case a new process is evolved to produce same type of products in another way. Thus the monopoly period, which is always disturbed by endorsing patent with licences of rights, will further be liable to be facing competition in other ways. As such proper safeguards as suggested by me are all the more essential to place the industry on sound but reasonably competitive lines with due safeguards for research possibilities etc. for a coming period of 20 to 25 years. This cannot be accomplished by passing the Bill in its present form particularly in regard to clauses 48, 53, 87 and 88 of the Bill.

NEW DELHI;
October 31, 1966.

KASHI RAM GUPTA.

V

The law relating to patents has been in force in India for a very long period. But so far it has not achieved its main purpose of stimulating inventions among Indians and encouraging the development and exploitation of new inventions for industrial progress in

this country. On the other hand the patent law in India has only afforded protection for foreigners for establishing monopoly right for selling their products at fancy prices in India. If the total number of patents granted in India since the introduction of this law is considered it will be found, that more than 90 per cent were granted to foreigners. In advanced countries, the position is quite the reverse; foreigners hold only a small percentage of the patents granted.

According to knowledgeable sources, the need for, as well as the aims and achievements of any law in any country, are decided by the social and economic conditions prevailing and the collective needs of the people therein. For the patent law to be advantageous to a country, there are three basic requisites:—

(a) the level of scientific and technological research should be such that inventions beneficial to the people can flow freely;

(b) the technological potential as well as current industrial activity should offer ample scope for developing the inventions into large scale production of goods; and

(c) the general economic and social conditions prevailing should be able to provide means for initiating new industries and assure a popular demand for the goods produced.

The countries in which the above three conditions do not exist to the full extent are usually classed as "backward" or "under-developed" and the patent law usually work to the disadvantage of such countries.

It has been pointed out by many that countries like Italy, Japan and USSR after long period of experiment without patent law, had to enact or are enatcing patent laws in their respective countries. These gentlemen only forget to mention that, these countries after freely using and copying the advanced scientific knowledge and technical know-how, without any hindrance of patent rights, have reached a stage where they are in a position to offer many inventions of their own to the world at large. And it is to obtain a price for their inventions that they have enacted or enacting Patent laws.

It will take some more years for India to reach that scientific and technological level to stand comparison or offer competition with other advanced countries. It is our considered view that freedom from Patent restrictions, and the facility to use all known processes and know-how and to make all known products through various

other process, will accelerate the development of India into an advanced country.

Even in America, the extensive development of chemical industries date from the time, when, during World War I, the United States Government confiscated the German patents and allowed American manufacturers to use them.

In the conditions obtaining in India today, it is in our best interest, to take advantage of the collective experiences of the advanced countries, modifying them to suit our local conditions. In this effort, the patent law will only offer effective brakes and hence the necessity of doing away with patent law altogether. May be, after a decade or two, it may become necessary for us to enact a patent law; but not now.

The argument that patent protection affords incentive for individual inventors is rather old and does not hold water in the modern world. Modern scientists work in laboratories owned by large corporations or by State and every invention is the result of the labourers of a team or group. In India especially, all the fundamental research work is done in centres owned or financed by the government. So the question of compensating the individual inventor does not arise at all.

Having failed in this prime objective, it was still open to us to provide that life saving drugs, foods and beverages, pesticides and insectisides, be made non-patentable. The Bill fails in this respect also.

The drug prices in India are in many cases, the highest in the world while the living standard of the people is the lowest; as was established by the American Senate Inquiry headed by Senator Kefauoer. While trying to develop our own drug industry, we could have imported drugs from wherever we can get them at the cheapest rate and made them available to our people. And our own industry also would develop unhindered by foreign patent monopolies.

In India we are in the grip of a permanent food crisis. We import large quantities of food from America at the cost of hard earned foreign exchange and much self respect. Development of agriculture is therefore an urgent necessity. In view of this pesticides and insecticides also should have been made non-patentable, so that they are available at cheap rates to the producers of our food crops.

In these days when preparations like Ovaltine, Horlicks are used by all people irrespective of whether they are babies or invalids or

old, food or beverages as a whole should have been taken out of the pale of patent law.

Although clause 5 stipulates that "the patent shall be granted only in respect of claims for the method or process of manufacture and in respect of claims for the substances when produced by such mehods or process", yet in Clause 107(2), it is stated that "any substance of the Chemical composition or constitution as the first mentioned substance shall be presumed, unless the contrary is proved, to have been made by the aforesaid patented method or process." Thus clause 107 almost concedes patent protection for substance and defeats one of the main objects of the Bill by putting the onus on the defendant to prove that his process is different.

The term of patents has been provided as ten years from the date of patent for drugs or food and 14 years for other inventions.

The term of 10 years for drugs is too long. In modern times, many a new drug becomes obselete within three or four years and as patented drugs are sold at 17 to 20 times the cost of production, the period of 10 years is too long for drugs. This should be reduced at least to 7 years in the case of drugs and 10 years in the case of other inventions. The provision regarding the existing patents are also excessive.

Royalty payable to the original patentee in case when a license is granted for the use of patent should not, it is provided, exceed four percent. The tendency in our country is to make the ceiling rate the minimum. Hence the ceiling rate should be only 2 per cent.

More than 90 per cent of our patents are held by foreigners, and this royalty and other charges will be a huge drain on our foreign exchange.

According to Reserve Bank of India Bulletin (November, 1964) the foreign firms had since 1958 invested Rs. 5 crores and had by 1964 already taken out of the country Rs. 4.9 crores in foreign exchange in the form of royalties, charges of technical aid and profits.

Most of the leading scientists who are working in our national institutes have expressed views that are similar or very near to those expressed above. But our government has been influenced more by the views of foreign monopolies and their Indian collaborators than by those of people who are interested in genuine development of our national industry. This is the tragic situation today.

NEW DELHI;
October 31, 1966.

P. K. KUMARAN.
K. K. WARIOR.
DINEN BHATTACHARYA.

VI

While appreciating that the Joint Select Committee had made some very valuable improvements in the Patents Bill, 1965, we regret we still have to record our minute of dissent and to recommend further amendments in the Bill incorporating certain fundamental changes. Before we refer to the specific clauses of the Bill on which we differ from the decisions of the Committee, we would like to deal with certain fundamental concepts of the patents system.

Patents are statutory grants which, in return for the disclosures of an invention, confer on the inventor for a limited time the exclusive privileges of working an invention and selling the invented product. The theory on which the patent system is based is that the opportunity of acquiring exclusive rights in an envention stimulates research and technical progress. Further it induces an inventor to disclose his discoveries instead of keeping them as a trade secret and offers a regard for the expense of developing inventions to the stage at which they are commercially practicable. Lastly, it provides an inducement to invest capital in new lines of production. The history of industrial development seems, on the whole, to have justified this theory. Patents are not created in the interests of the inventor but in the interest of the national economy.

It has been well established that patents are a form of industrial and intellectual property. Therefore, a grantee of a patent must be secured the enjoyment of his patent rights subject to reasonable restrictions. If his rights are expropriated, such expropriation must be done only in the public interest and must be subject to the patentee being granted adequate compensation.

It is recognised that there is need for a more comprehensive law due to changes in economic conditions within the country and the development of technology and patent laws throughout the world. However, the main purpose of the Bill, which is to stimulate inventions amongst citizens of India and to encourage development and exploitation of new inventions for industrial progress in the country and the flow of technology from abroad into India is not likely to be achieved if the Bill is passed in the form in which it has been reported by the majority decision of the Committee.

We have examined all the evidence, which has been recorded before the Committee, of industry organisations and experts, both legal and technical, from India and abroad. The field of activity most affected by this Bill is the pharmaceutical industry, and to a certain extent, the chemical industry. It is on record that the pharmaceutical industry has developed according to the targets laid down

in the Third Five Year Plan and it has programmes of expansion in the Fourth Five Year Plan. We apprehend that the growth of this industry, particularly the inflow of foreign capital and technology, will be adversely affected unless some of the provisions of the Bill are deleted or suitably amended. We also feel that the development of research, particularly basic research in the industry, is also likely to be adversely affected.

It has been urged that the prices of pharmaceutical products are very high in India and it has been suggested that the patents system is responsible for it. After hearing the evidence we feel that it would not be correct to say that the patent system is responsible for the alleged high prices or high costs of pharmaceuticals in India. In fact, the industry organisations as also foreign experts have submitted statements before the Committee which have proved conclusively that the prices of drugs and pharmaceuticals are lower in India than in many other countries and those statements have not been controverted. There are various other contributory factors which have to be taken into account in ascertaining the costs of drugs and the prices. These factors have also been brought out in the evidence on record and in particular in the Report of the Development Council for Drugs and Pharmaceuticals 1962-63. In any case, we feel that the Government has enough powers to examine the cost structure and fix prices of drugs under various other existing statutes. The argument that the patent system gives rise to monopolies which enable the patentee to charge high prices has been taken care of under the Compulsory Licensing provisions (*viz.* clause 84) and the powers taken by the Government to make use of patented inventions as per Clause 99 and 100 of the Bill.

We wish to emphasise that our ultimate purpose is and should be to achieve increased production and that the Patent Law should be such as to be conductive to increased production, inflow of technology, increased national wealth and inventive ability and not to create a situation which retards development. For increased production, there is no getting away from the fact that we shall continue to need for some time inflow of foreign know-how, technology and investment. We cannot afford to deny ourselves the benefit of the rapid developments that are taking place in the advanced countries of the world in every field of industrial activity, including the development of new and life-saving wonder drugs.

The amendments to the Bill which we have suggested will, while creating a proper investment climate in India for the rapid growth of the pharmaceutical and chemical industries, both by Indian entrepreneurs and by import of foreign technology and investment where

necessary, also ensure that no monopolistic tendencies are allowed to be created. We consider that the provisions of the Bill under clauses 48, 53, 87, 88 and 102 should be suitably amended. In the following paragraphs, we are dealing with each of these clauses separately.

Clause 48—Patents not infringed when used by Government:

This clause allows the Central Government to use a patented invention and/or to import a product covered by a patent without such use or importation constituting an infringement of the patent and without making any provision for payment of compensation to the patentee. This clause grants unlimited powers to the Government which, if exercised, will act against the interest of the indigenous industry and is likely to hamper industrial progress and research initiative. It will amount to an expropriation of patents rights and such invasion of the 'Rule of Law' without payment of compensation is objectionable, and places the Government in a privileged position not bound by patents law. It militates against the basic objectives behind the grant of a patent as set out in clause 83, namely, to encourage inventions and the development of indigenous industry. It is particularly undesirable in that it will enable the import of "pirated goods" in circumstances of grossly unfair competition with home industry. Those who are authorised to import under this clause will continue to make big profits even if they are offering the imported products at prices lower than that charged by the inventor because by copying the invention they make use of all the scientific and promotional work of the inventor and do not incur research and development costs of their own and do not take any risks. It is certain that indiscriminate imports of drugs and medicines will in many cases completely dislocate the indigenous industry. It is on record that a recent examination in the United Kingdom has clearly demonstrated that it will open the flood gates to importation of life-saving drugs of doubtful quality and potency.

It should be remembered that the relative provisions of this clause do not find a parallel in the patent laws of any other country in the world.

The point to be considered is that when the Government has the freedom to make use of any patented invention under Clauses 99 and 100 (which will also include importation) retention of this clause seems to be totally redundant. In the U.K. also, the Government has made use of patents by importing patented articles under the relative sections of the U.K. Patents Act, 1949, which are analogous to clauses 99 and 100 of the Bill. Even Justice Ayyangar has not recommended the inclusion of such a clause in his report.

We therefore feel that with the exception of sub-clause (d) of this clause which deals with the use of patent for purpose of experiment or research, sub-clauses (a), (b) and (c) of clause 48 should be deleted.

Clause 53—*The term of a patent*:

This clause, as reported by the Committee, provides that for inventions claiming a process for the manufacture of food, medicines and drugs, the term of a patent shall be 10 years and in respect of both clauses of the inventions, the term shall be 14 years from the date of filing of the complete specifications. The existing Act provides that the term of all patents shall be 16 years and also that the term of all patents can be extended to a further period of 5 years and in exceptional cases even to 10 years if the Government is satisfied that the patent has not been sufficiently remunerative.

The term of a patent must be looked at from various points of view It is felt that the period of 10 years is not sufficient either to encourage the inflow of technical know-how or to encourage Indian scientists or entrepreneurs to undertake research, particularly basic research. The climate, it appears, is now ripe for inflow of foreign technical know-how on sufficiently large scale. The 10 years period will be a deterrent to that flow. It is recognised in all quarters that basic research must be encouraged in India. The factors which have to be taken into account are the following:

(a) Basic Research involves large capital outlays and large recurring expenditure and a long time to develop to fruition.

(b) The clinical tests and trials in India are very difficult to carry out and the facilities very meagre. Therefore, they take a longer time. Dr. Govindachari has stated in his evidence that they take even 6 to 8 years. This view was supported by Dr. Chipalkatti of the Shri Ram Institute.

(c) The availability of finance, particularly Indian finance, is difficult and it takes time to attract Indian finance to exploit a patent commercially.

(d) The time taken for converting the invention from the stage of pilot plant production to commercial production takes a much longer time in India because of many restrictions and also due to non-availability of various resources and facilities.

It is also on record that there is a considerable time-lag between the discovery of a product and its availability in the local market. Specific data in support of this statement has been furnished before the Committee. Hindustan Antibiotics of Poona took several years to discover Hamycin and Dermostatin and to manufacture just a few kilos of the product. There is no technical field where the time necessary for introducing new inventions is as long as in the pharmaceutical industry and it would therefore, be logical that in this risky and difficult domain the duration of patent should be even longer if not the same as in the field of other classes of invention. The term of a patent should be such as to enable the inventor to obtain a reasonable return for the expenses incurred on research, tests, clinical trials, and commercial development.

Reduction in the term of a patent to 10 years as decided by the Committee will surely put India out of step with the general trend of patent legislation in other countries. It is on record that out of a total number of about 80 countries, only 2 countries (Libya and U.A.R.) make a distinction between different classes of inventions in so far as the term of a patent is concerned. Further, out of 81 countries of the world, which have a patent law, only Libya and U.A.R. provide for a term of 10 years in respect of patents for pharmaceuticals but the patent laws of these two countries have provisions for renewing the term of the patent by a further period of five years.

A relatively longer term of protection is justified in the case of developing countries where the owner of the patent will generally need more time for studying the possibilities of working the patented invention in the country and for making the preparations for its working. If, after these studies and preparations, the remaining term of protection of the patent is short or inadequate for lucrative exploitation, this circumstance might substantially diminish the attractiveness which a patent should have for industrial investment in the country. The general trend throughout the world in respect of the period of a patent is 16 to 18 years. Justice Ayyangar in his report has recommended that the term of patent shall be 16 years and he did not make any distinction in the term of a patent between different classes of inventions.

The proposal to reduce the term of a patent is, in our opinion, unrealistic particularly in the case of drugs and medicines. We feel that the barest minimum period should be such as will give reasonable reward to the inventor. We therefore, strongly recommend that whenever the patentee is able to make out a case that his

patent has not been sufficiently remunerative, the term of a patent should be extended by two periods of two years each.

Lastly, we are of the view that this clause should not be made retrospective in operation. This will affect vested rights. In any case, we feel that such a step is unfair. Companies which have made investments and calculations while considering the 16 years' duration of the patents in question will incur losses if the duration is shortened.

Clause 87 *and* 88: *Licences of Rights—Ceiling on Royalties*:

Clause 87 provides that every patent in force as well as every patent granted after the commencement of the Act relating to articles of food and medicines and the processes for their manufacture shall be deemed to be endorsed with the words "Licence of Rights".

Clause 88 provides that where an endorsement "Licence of Rights" has been made, any person who is interested in working the patented invention shall be entitled to do so on application to the Controller. No appeal has been provided for except against the decision of the Controller fixing the terms of the Licence. This clause compels the Controller to grant a licence without taking into consideration the requirements to be fulfilled by the applicant for a compulsory licence under clause 84 as specified in clause 85.

According to the Notes on the Clauses, the changes in the existing law as contemplated in clause 87 and 88 are "intended to secure the proper development of the food, drugs and medicines and chemical industries in the country". We are firmly of the opinion that these purposes will, under no circumstances, be achieved if these clauses are passed as reported by the Committee and we are, therefore, in respectful disagreement with the majority report of the Joint Select Committee for the following reasons:

The enactment of these clauses will very badly affect the growth of production, particularly large-scale production, in the chemical and pharmaceutical fields. There is no justification for these clauses because what the country needs at present is increased production and every effort should be made to encourage such a step. If these clauses are enacted, they will undoubtedly retard production. The result will be that 10 or 20 persons can simultaneously apply for and obtain a compulsory licence as of right. There is no option for the Controller to refuse licences to these persons. This will drive away the enterpreneurs from risking his money and in the

end the country's economy will suffer. Can we afford this in the present state of our economy? The Controller has no authority to look into the technical and financial capacity of the applicant, neither is he obliged to ascertain whether the applicant would obtain an industrial licence under the Industries (Development & Regulation) Act. Indeed, small enterpreneurs could put up small units for which no industrial licences are required.

As we have stated before, the pharmaceutical industry in India has fulfilled the target laid down in the Third Five Year Plan and is expected to fulfill the target laid down in the Fourth Five Year Plan. It is on record that the industry has increased its production of drugs and pharmaceuticals from Rs. 10 crores in 1948 to Rs. 175 crores in 1965. By the end of the Fourth Five Year Plan, the production is expected to rise to Rs. 250 crores. Since 1948, the industry has developed from a processing and formulations enterprise into that of basic manufacture and it is exporting intermediate and finished products from raw materials which are mainly of indigenous origin. The technology employed in the manufacturing processes and research is of the same high standard as applied in other industrially advanced countries.

Perhaps the most striking features of the industry has been its rapidly decreasing dependence on foreign exchange. To sustain a production of Rs. 54 crores in 1958, the industry required foreign exchange of Rs. 9·5 crores representing an import content of approximately 18 per cent. In 1965, while the production had gone up to Rs. 175 crores the import content came down to just about 5 per cent requiring only Rs. 9 crores in foreign exchange. The industry now relies on local resources of supply for 95 per cent of its requirements of raw materials. The products being manufactured in the country cover a wide range including life-saving antibiotics, sulpha drugs, oral antidiabetics, synthetic hormones drugs of vegetable origin and several other products which were formerly imported.

The total investment (equity capital) in 1962 of the units registered with the Directorate General of Technical Development amounted to Rs. 66 crores. This investment has gone up to about Rs. 150 crores in 1965 and by the end of 1970-71 it is expected to increase to Rs. 200 crores. Pharmaceutical exports have risen from Rs. 80 lakhs in 1958-59 to Rs. 2·5 crores per annum today. If, as is to be expected from the figures set out above, the pharmaceutical industry will achieve the plan targets, we do not see any reason why clauses 87 and 88 should be enacted in a manner which

will affect the investment climate, production, indigenous research and above all, the quality of production.

The provisions of the clauses 87 and 88 introduce for the first time in the history of patent legislation a new concept of "Licences of Right" which is unheard of in the history of patent legislation. No country in the world has in its patent law such a provision. Regarding licences of right. Justice Ayyangar was of the opinion that it would be sufficient and desirable that the right to apply for endorsement "Licence of Right" should be restricted only to the Central Government as hitherto. He further observed that as inventions in the fields of drugs and medicines touch public health, it was very necessary that there should be a guarantee that persons who are permitted to work the inventions are those who are qualified to work them honestly and efficiently. We are in respectful agreement with the opinion of Justice Ayyangar.

It is often said that if the licensing provisions contemplated in clauses 87 and 88 are enacted, there will be increased production, greater competetion and the prices of medicines will come down. This is totally unwarranted assumption from the economic point of view. If, for example, one person can produce large quantities of a product, he can achieve lower cost of production than if 20 persons are allowed to manufacture the same product each in a small quantity. Besides, it is also doubtful whether the grant of indiscriminate licences of right to several persons in respect of one patented pharmaceutical will result in the manufacture of drugs and medicines of standard quality. The drugs Controller does not have adequate machinery to check the manufacture of sub-standard drugs and it is feared that if Clauses 87 and 88 are enacted, sub-standard drugs of doubtful potency may appear in the market.

Take for example the case of Hamyein discovered by the Hindustan Antibiotics Limited after several years of research and considerable research expenditure. The processes to manufacture these products are patented in India and abroad. If Clauses 87 and 88 as reported by the Committee are enacted, any person in India can apply for a compulsory licence, as of right, under the patents of Hindustan Antibiotics Ltd. Will this not affect the research work of Hindustan Antibiotics Limited adversely? Will they obtain adequate compensation for the entire research expenditure incurred if they are granted the maximum royalty of 4 per cent as proposed in Clause 88? What is more significant to note is that Hindustan Antibiotics Limited has been instructed to negotiate for the exploitation of their patents in other countries with

foreign firms and have demanded royalty of about 7½ per cent—What is sauce for goose is sauce for the gander.

Since 1965, the country has passed through an economic crisis, the major indicator of which has been the rising trend of prices. The official index of wholesale prices computed by the Economic Advisor shows a rise of nearly 50 per cent between 1963 and 1964. The pharmaceutical industry has been successful in holding the price line during these years.

Clauses 87 and 88, if enacted will erode industrial property rights and strike directly and crucially at the industry and its capacity and incentive for the discovery of new and improved medicines. They will adversely affect firms with expensive research laboratories because frequent experimental failures and the risks of obsolesence can be supported only if an invention promising commercial success is adequately protected. No one will take the risk of research and discovery unless so protected. These firms who will continue to do research work will tend to by-pass the patent system altogether and resort to secrecy.

As regards the ceiling on royalties, our submission is that in any event, royalty payments have been strictly regulated by the Government of India administratively from time to time and that for the last 4 years royalty has not been allowed to exceed 5 per cent. Further payment of royalties to the Patent holders within India can also be regulated by the Controller and by the appeal provisions ensured that it is not unreasonably high.

The framers of the Model BIRPI law have stated that a compulsory licence should only be granted subject to payment of adequate royalties compensation commensurate with the extent to which the invention is worked. They have further stated that as it is practically impossible to predict at the time of the grant of licence, of what economic value it will be to the licencee, a lump sum compensation would be haphazard and arbitrary. Justice Ayyangar has also stated in his Report that it is not feasible to arrive at a uniform rate of royalty which would be reasonable for licencee in respect of each and every invention and that it is not desirable to fix statutorily the maximum rate of allowable royalty.

One cannot dispute the fact that at present the country does not possess sufficient know-how to manufacture a majority of the common and important drugs in use at present. Now, know-how is connected with patent protection, in that, it is only after the inventor has been assured that his invention has adequate protec-

tion that he will make efforts by way of further research and process development to convert a laboratory discovery into a pilot plant production and from pilot plant production to a commercial feasibility.

Not all patented products are marketed or are commercially successful. It is only when a patented product can be made capable of industrial application by the use of know-how that a patent becomes useful to the inventor. Hence the benefits derived from the successful product have to meet the research cost incurred on many commercially unsuccessful patented products. It has been proved that only one out of about 5000 chemical substances become a successful discovery. Merely granting licences of right will not compel the inventor to part with his valuable know-how if he has the fear that his invention will be made use of by any person just for the asking on payment of inadequate compensation. This argument will apply with even greater force as and when India developes its own technology and will adversely affect the Indian research work. Know-how is private property of the discoverer and patent law cannot compel him to part with it against his wishes. Indiscriminate licensing provisions will certainly enable any person to apply for a licence of right, but in the absence of adequate know-how he will not be able to achieve lower unit cost of production from higher yields or to produce drugs of the same quality as those of the inventor. There is no doubt that the flow of technological know-how from abroad will gradually diminish. This will ultimately also affect the export market of pharmaceuticals which look forward to new products made according to international standards.

The object underlying clauses 87 and 88 can be taken care of by the compulsory licensing provisions of the Bill where, in the public interest and in the interests of larger production, the Controller can grant compulsory licence and apply the tests which are necessary to ensure that the applicant is duly qualified to work the invention.

It is doubtful whether clause 87 and clause 88 as reported by the Committee will eliminate the social costs of patents. However, assuming without admitting that it is true, one should not forget that such a system will eliminate the social gains. Proposals for licence of right and ceiling on royalties have been rejected in every country where they are made.

Clause 102—*Acquisition of inventions*:

This clause gives powers to the Central Government to acquire the invention for a public purpose by notifying its intention in that behalf. It is significant to note that this clause recognises the principle that a patent is a species of intangible property and hence provides for compensation if such property is acquired for a public purpose.

We are firmly of the opinion that such complete expropriation of patent rights is undesirable in the present economic conditions of the country and there is no legitimate reason to do so. In view of the ample means provided for in the Bill under clauses 99 and 100 which enable the Government to make use of a patented invention we feel that this clause is unnecessary and should be deleted.

NEW DELHI;
November 1, 1966.

P. D. HIMATSINGKA.
DR. L. M. SINGHVI
V. B. GANDHI.
DR. C. B. SINGH.
SHAM LAL SARAF
P. C. BOROOAH

THE PATENTS BILL, 1965

(AS REPORTED BY THE JOINT COMMITTEE)

ARRANGEMENT OF CLAUSES

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CLAUSES

CLAUSES

CHAPTER VII

PROVISIONS FOR SECRECY OF CERTAIN INVENTIONS

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MISCELLANEOUS

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Bill No. 62B of 1965

THE PATENTS BILL, 1965

[AS REPORTED BY THE JOINT COMMITTEE]

[Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.]

A

BILL

to amend and consolidate the law relating to patents.

BE it enacted by Parliament in the Seventeenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (*1*) This Act may be called the Patents Act, 1966. Short title, extent and commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions and interpretation.

2. (*1*) In this Act, unless the context otherwise requires,—

(*a*) "assignee" includes the legal representative of a deceased assignee, and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person;

(*b*) "Controller" means the Controller General of Patents, Designs and Trade Marks referred to in section 73;

(*c*) "convention application" means an application for a patent made by virtue of section 135;

(*d*) "convention country" means a country notified as such under sub-section (*1*) of section 133;

(*e*) "district court" has the meaning assigned to that expression by the Code of Civil Procedure, 1908; 5 of 1908.

(*f*) "exclusive licence" means a licence from a patentee which confers on the licensee, or on the licensee and persons authorised by him, to the exclusion of all other persons (including the patentee), any right in respect of the patented invention, and "exclusive licensee" shall be construed accordingly;

(*g*) "food" means any substance intended for the use of * * * babies, invalids or convalescents as an article of food or drink; ***

(*h*) "Government undertaking" means any industrial undertaking carried on—

(*i*) by a department of the Government, or

(*ii*) by a corporation established by a Central, Provincial or State Act, which is owned or controlled by the Government, or

(*iii*) by a Government company as defined in section 617 of the Companies Act, 1956, 1 of 1956.

and includes the Council of Scientific and Industrial Research, any University established by law in India and any other institution for scientific or technical education which is financed wholly or for the major part by the Government;

(*i*) "High Court" means—

(*i*) in relation to the Union territory of Delhi and the Union territory of Himachal Pradesh, the High Court of Punjab;

(*ii*) in relation to the Union territory of Manipur and the Union territory of Tripura, the High Court of Assam;

(*iii*) in relation to the Union territory of the Andaman and Nicobar Islands, the High Court at Calcutta;

(*iv*) in relation to the Union territory of the Laccadive, Minicoy and Amindivi Islands, the High Court of Kerala;

(*v*) in relation to the Union territory of Goa, Daman and Diu and the Union territory of Dadra and Nagar Haveli, the High Court of Bombay;

(*vi*) in relation to the Union territory of Pondicherry, the High Court of Madras; and

(*vii*) in relation to any other State, the High Court for that State;

(*j*) "invention" means any new and useful—

(*i*) art, process, method or manner of manufacture;

(*ii*) machine, apparatus or other article; or

(*iii*) substance produced by manufacture,

and includes any new and useful improvement of any of them, and an alleged invention;

(*k*) "legal representative" means a person who in law represents the estate of a deceased person;

(*l*) "medicine or drug" includes—

(*i*) all medicines for internal or external use of human beings or animals,

(*ii*) all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of diseases in human beings or animals,

(*iii*) all substances intended to be used for or in the maintenance of public health, or the prevention or control of any epidemic disease among human beings or animals,

(*iv*) all chemical substances which are ordinarily used as intermediates in the preparation or manufacture of any of the medicines or substances above referred to,

but does not include insecticide, germicide, fungicide or any other substance intended to be used for the protection or preservation of plants;

(*m*) "patent" means a patent granted under this Act and includes for the purposes of sections 44, 49, 50, 51, 52, 54, 55, 56, 57, 58, 63, 65, 66, 68, 69, 70, 78, 134, 140, 153, 154, and 156 and Chapters XVI, XVII and XVIII, a patent granted under the Indian Patents and Designs Act, 1911; 5 2 of 1911.

(*n*) "patented article" and "patented process" mean respectively an article or process in respect of which a patent is in force;

(*o*) "patentee" means the person for the time being entered on the register as the grantee or proprietor of the patent; 10

(*p*) "patent agent" means a person for the time being registered under this Act as a patent agent;

(*q*) "patent of addition" means a patent granted in accordance with section 54;

(*r*) "patent office" means the patent office referred to in section 74; 15

(*s*) "person" includes the Government;

(*t*) "person interested" includes a person engaged in, or in promoting, research in the same field as that to which the invention relates; 20

(*u*) "prescribed" means, in relation to proceedings before a High Court, prescribed by rules made by the High Court, and in other cases, prescribed by rules made under this Act;

(*v*) "prescribed manner" includes the payment of the prescribed fee; 25

(*w*) "priority date" has the meaning assigned to it by section 11;

(*x*) "register" means the register of patents referred to in section 67;

(*y*) "true and first inventor" does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India. 30

(2) In this Act, unless the context otherwise requires, any reference—

(*a*) to the Controller shall be construed as including a reference to any officer discharging the functions of the Controller in pursuance of sub-section (2) of section 73; 35

(*b*) to the patent office shall be construed as including a reference to any branch office of the patent office.

CHAPTER II

INVENTIONS NOT PATENTABLE

What are not inventions.

3. The following are not inventions within the meaning of this Act—

(*a*) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;

(*b*) an invention the primary or intended use of which would be contrary to law or morality or injurious to public health;

(*c*) the mere discovery of a scientific principle or the formulation of an abstract theory;

(*d*) the mere discovery of any new property or new use for a known substance or of the mere new use of a known process, machine or apparatus;

(*e*) ** a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;

(*f*) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;

(*g*) a method or process of testing applicable during the process of manufacture for rendering the machine, apparatus or other equipment more efficient or for the improvement or restoration of the existing machine, apparatus or other equipment or for the improvement or control of manufacture;

(*h*) a method of agriculture or horticulture;

(*i*) any process for the medicinal, surgical, curative, prophylactic or other treatment of man or any process for a similar treatment of animals or plants to render them free of disease or to increase their economic value or that of their products.

Inventions relating to atomic energy not patentable.

4. No patent shall be granted in respect of an invention relating to atomic energy falling within sub-section (*1*) of section 20 of the Atomic Energy Act, 1962.

33 of 1962.

Inventions where only methods or processes of manufacture and substances when produced by such methods or processes patentable.

5. In the case of inventions—

(*a*) claiming substances intended for use, or capable of being used, as food or as medicine or drug, or

(*b*) relating to substances prepared or produced by chemical processes (including alloys, optical glass, semi-conductors and inter-metallic compounds),

the patent shall be granted only in respect of claims for the method or process of manufacture and in respect of claims for the substances when produced by such method or process.

CHAPTER III

APPLICATIONS FOR PATENTS

Persons entitled to apply for patents.

6. (*1*) Subject to the provisions contained in section 134, an application for a patent for an invention may be made by any of the following persons, that is to say,—

(*a*) by any person claiming to be the true and first inventor of the invention;

(*b*) by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application;

(*c*) by the legal representative of any deceased person who immediately before his death was entitled to make such an application.

(*2*) An application under sub-section (*1*) may be made by any of the persons referred to therein either alone or jointly with any other person.

Form of application.

7. (*1*) Every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in the patent office.

(*2*) Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application or within such period as may be prescribed after the filing of the application, proof of the right to make the application.

(*3*) Every application under this section shall state that the applicant is in possession of the invention and shall name the owner

claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes the person so named to be the true and first inventor.

(4) Every such application (not being a convention application) shall be accompanied by a provisional or a complete specification.

Information and undertaking regarding foreign applications.

8. (1) Where an applicant for a patent under this Act is prosecuting either alone or jointly with any other person an application for a patent in any country outside India in respect of the same or substantially the same invention, or where to his knowledge such an application is being prosecuted by some person through whom he claims or by some person deriving title from him, he shall file along with his application—

(a) a statement setting out the name of the country where the application is being prosecuted, the serial number and date of filing of the application and such other particulars as may be prescribed; and

(b) an undertaking that, up to the date of the acceptance of his complete specification filed in India, he would keep the Controller informed in writing, from time to time, of details of the nature referred to in clause (a) in respect of every other application relating to the same or substantially the same invention, if any, filed in any country outside India subsequently to the filing of the statement referred to in the aforesaid clause, within eight weeks from the date of the matter coming to his knowledge.

(2) The Controller may also require the applicant to furnish, as far as may be available to the applicant, details relating to the objections, if any, taken to any such application as is referred to in sub-section (1) on the ground that the invention is lacking in novelty or patentability, the amendments effected in the specifications, the claims allowed in respect thereof and such other particulars as he may require.

Provisional and complete specifications.

9. (1) Where an application for a patent (not being a convention application) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed the application shall be deemed to be abandoned:

Provided that the complete specification may be filed at any time after twelve months but within fifteen months from the date aforesaid, if a request to that effect is made to the Controller and the prescribed fee is paid on or before the date on which the complete specification is filed.

(2) Where two or more applications in the name of the same applicant are accompanied by provisional specifications in respect of inventions which are cognate or of which one is a modification of another and the Controller is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may allow one complete specification to be filed in respect of all such provisional specifications.

(3) Where an application for a patent (not being a convention application) is accompanied by a specification purporting to be a complete specification, the Controller may, if the applicant so requests at any time before the acceptance of the application, direct that such specification shall be treated for the purposes of this Act as a provisional specification and proceed with the application accordingly.

(4) Where a complete specification has been filed in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under sub-section (3) as a provisional specification, the Controller may, if the applicant so requests at any time before the acceptance of the application, cancel the provisional specification and post-date the application to the date of filing of the complete specification.

Contents of specifications.

10. (1) Every specification, whether provisional or complete, shall describe the invention and shall begin with a title sufficiently indicating the subject-matter to which the invention relates.

(2) Subject to any rules that may be made in this behalf under this Act, drawings may, and shall, if the Controller so requires, be supplied for the purposes of any specification, whether complete or provisional; and any drawings so supplied shall, unless the Controller otherwise directs, be deemed to form part of the specification, and references in this Act to a specification shall be construed accordingly.

(3) If in any particular case the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the acceptance of the application, but such model or sample shall not be deemed to form part of the specification.

(4) Every complete specification shall—

(a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;

(b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and

(c) end with a claim or claims defining the scope of the invention for which protection is claimed.

(5) The claim or claims of a complete specification shall relate to a single invention, shall be clear and succinct and shall be fairly based on the matter disclosed in the specification.

(6) A declaration as to the inventorship of the invention shall, in such cases as may be prescribed, be furnished in the prescribed form with the complete specification or within such period as may be prescribed after the filing of that specification.

(7) Subject to the foregoing provisions of this section, a complete specification filed after a provisional specification may include claims in respect of developments of, or additions to, the invention which was described in the provisional specification, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make a separate application for a patent.

Priority dates of claims of a complete specification.

11. (1) There shall be a priority date for each claim of a complete specification.

(2) Each claim of a complete specification shall indicate the date which the applicant considers to be the priority date of that claim.

(3) Where a complete specification is filed in pursuance of a single application accompanied by—

(a) a provisional specification; or

(b) a specification which is treated by virtue of a direction under sub-section (3) of section 9 as a provisional specification;

and the claim is fairly based on the matter disclosed in the specification referred to in clause (a) or clause (b), the priority date of that claim shall be the date of the filing of the relevant specification.

(4) Where the complete specification is filed or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in sub-section (3) and the claim is fairly based on the matter disclosed—

(a) in one of those specifications, the priority date of that claim shall be the date of filing of the application accompanied by that specification;

(b) partly in one and partly in another, the priority date of that claim shall be the date of the filing of the application accompanied by the specification of the later date.

(5) Where the complete specification has been filed in pursuance of a further application made by virtue of sub-section (*1*) of section 16 and the claim is fairly based on the matter disclosed in any of the earlier specifications, provisional or complete, as the case may be, the priority date of that claim shall be the date of the filing of that specification in which the matter was first disclosed.

(*6*) Where, under the foregoing provisions of this section, any claim of a complete specification would, but for the provisions of this sub-section, have two or more priority dates, the priority date of that claim shall be the earlier or earliest of those dates.

(7) In any case to which sub-section (*3*), (*4*), (5) and (6) do not apply, the priority date of a claim shall, subject to the provisions of section 137, be the date of filing of the complete specification.

(*8*) The reference to the date of the filing of the application or of the complete specification in this section shall, in cases where there has been a post-dating under section 9 or section 17 or, as the case may be, an ante-dating under section 16, be a reference to the date as so post-dated or ante-dated.

(*9*) A claim in a complete specification of a patent shall not be invalid by reason only of—

(*a*) the publication or use of the invention so far as claimed in that claim on or after the priority date of such claim; or

(*b*) the grant of another patent which claims the invention, so far as claimed in the first mentioned claim, in a claim of the same or a later priority date.

CHAPTER IV

EXAMINATION OF APPLICATIONS

Examination of application.

12. (*1*) When the complete specification has been filed in respect of an application for a patent, the application and the specification relating thereto shall be referred by the Controller to an examiner for making a report to him in respect of the following matters, namely:—

(*a*) whether the application and the specification relating thereto are in accordance with the requirements of this Act and of any rules made thereunder;

(*b*) whether there is any lawful ground of objection to the grant of the patent under this Act in pursuance of the application;

(c) the result of investigations made under section 13;

(d) whether the priority date of each claim as indicated by the applicant is the priority date of that claim as determined by this Act; and

(e) any other matter which may be prescribed.

(2) The examiner to whom the application and the specification relating thereto are referred under sub-section (1) shall ordinarily make the report to the Controller within a period of eighteen months from the date of such reference.

Search for anticipation by previous publication and by prior claim.

13. (1) **The examiner to whom an application for a patent is referred under section 12 shall make investigation for the purpose of ascertaining whether the invention so far as claimed in any claim of the complete specification—**

(a) **has been anticipated by publication before the date of filing of the applicant's complete specification in any specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;**

(b) **is claimed in any claim of any other complete specification published on or after the date of filing of the applicant's complete specification, being a specification filed in pursuance of an application for a patent made in India and dated before or claiming the priority date earlier than that date.**

(2) **The examiner shall, in addition, make such investigation as the Controller may direct for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, has been anticipated by publication in India or elsewhere in any document other than those mentioned in sub-section (1) before the date of filing of the applicant's complete specification.**

(3) **Where a complete specification is amended under the provisions of this Act before it has been accepted, the amended specification shall be examined and investigated in like manner as the original specification.**

(4) **The examination and investigations required under section 12 and this section shall not be deemed in any way to warrant the validity of any patent, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.**

Consideration of report of examiner by controller.

14. Where, in respect of an application for a patent, the report of the examiner received by the Controller is adverse to the applicant or requires any amendment of the application or of the specification to ensure compliance with the provisions of this Act or of the rules made thereunder, the Controller, before proceeding to dispose of the application in accordance with the provisions hereinafter appearing, shall communicate the gist of the objections to the applicant and shall, if so required by the applicant within the prescribed time, give him an opportunity of being heard.

Power of Controller to refuse or require amended applications in certain cases.

15. (*1*) Where the Controller is satisfied that the application or any specification filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may either—

(*a*) refuse to proceed with the application; or

(*b*) require the application, specification or drawings to be amended to his satisfaction before he proceeds with the application.

(*2*) If it appears to the Controller that the invention claimed in the specification is not an invention within the meaning of, or is not patentable under, this Act, he shall refuse the application.

(*3*) If it appears to the Controller that any invention in respect of which an application for a patent is made might be used in any manner contrary to law, he may refuse the application, unless the specification is amended by the insertion of such dis-claimer in respect of that use of the invention, or such other reference to the illegality thereof, as the Controller thinks fit.

Power of Controller to make orders respecting division of application.

16. (*1*) A person who has made an application for a patent under this Act may, at any time before the acceptance of the complete specification, if he so desires, or with a view to remedy the objection raised by the Controller on the ground that the claims of the complete specification relate to more than one invention, file a further application in respect of an invention disclosed in the provisional or complete specification already filed in respect of the first mentioned application.

(*2*) The further application under sub-section (*1*) shall be accompanied by a complete specification, but such complete specification shall not include any matter not in substance disclosed in the complete specification filed in pursuance of the first mentioned application.

(3) The Controller may require such amendment of the complete specification filed in pursuance of either the original or the further application as may be necessary to ensure that neither of the said complete specifications includes a claim for any matter claimed in the other.

Explanation.—For the purposes of this Act, the further application and the complete specification accompanying it shall be deemed to have been filed on the date on which the complete specification in pursuance of the first mentioned application had been filed, and the further application shall, subject to the determination of the priority date under sub-section (5) of section 11, be proceeded with as a substantive application.

Power of Controller to make orders respecting dating of application.

17. (1) Subject to the provisions of section 9, at any time after the filing of an application and before acceptance of the complete specification under this Act, the Controller may, at the request of the applicant made in the prescribed manner, direct that the application shall be post-dated to such date as may be specified in the request, and proceed with the application accordingly:

Provided that no application shall be post-dated under this sub-section to a date later than six months from the date on which it was actually made or would, but for the provisions of this sub-section, be deemed to have been made.

(2) Where an application or specification (including drawings) is required to be amended under clause (b) of sub-section (1) of section 15, the application or specification shall, if the Controller so directs, be deemed to have been made on the date on which the requirement is complied with or where the application or specification is returned to the applicant, on the date on which it is re-filed after complying with the requirement.

Powers of Controller in cases of anticipation.

18. (1) Where it appears to the Controller that the invention so far as claimed in any claim of the complete specification has been anticipated in the manner referred to in clause (a) of sub-section (1) or sub-section (2) of section 13, he may refuse to accept the complete specification unless the applicant—

(a) shows to the satisfaction of the Controller that the priority date of the claim of his complete specification is not later than the date on which the relevant document was published; or

(b) amends his complete specification to the satisfaction of the Controller.

(2) If it appears to the Controller that the invention is claimed in a claim of any other complete specification referred to in clause (b) of sub-section (1) of section 13, he may, subject to the provisions hereinafter contained, direct that a reference to that other specification shall be inserted by way of notice to the public in the applicant's complete specification unless within such time as may be prescribed,—

(a) the applicant shows to the satisfaction of the Controller that the priority date of his claim is not later than the priority date of the claim of the said other specification; or

(b) the complete specification is amended to the satisfaction of the Controller.

(3) If it appears to the Controller, as a result of an investigation under section 13 or otherwise,—

(a) that the invention so far as claimed in any claim of the applicant's complete specification has been claimed in any other complete specification referred to in clause (a) of sub-section (1) of section 13; and

(b) that such other complete specification was published on or after the priority date of the applicant's claim;

then, unless it is shown to the satisfaction of the Controller that the priority date of the applicant's claim is not later than the priority date of the claim of that specification, the provisions of sub-section (2) shall apply thereto in the same manner as they apply to a specification published on or after the date of filing of the applicant's complete specification.

(4) Any order of the Controller under sub-section (2) or sub-section (3) directing the insertion of a reference to another complete specification shall be of no effect unless and until the other patent is granted.

Powers of Controller in case of potential infringement.

19. (1) If, in consequence of the investigations required by the foregoing provisions of this Act or of proceedings under section 25, it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent shall be inserted in

the applicant's complete specification by way of notice to the public, unless within such time as may be prescribed—

(*a*) the applicant shows to the satisfaction of the Controller that there are reasonable grounds for contesting the validity of the said claim of the other patent; or

(*b*) the complete specification is amended to the satisfaction of the Controller.

(*2*) Where, after a reference to another patent has been inserted in a complete specification in pursuance of a direction under sub-section (*1*)—

(*a*) that other patent is revoked or otherwise ceases to be in force; or

(*b*) the specification of that other patent is amended by the deletion of the relevant claim; or

(*c*) it is found, in proceedings before the court or the Controller, that the relevant claim of that other patent is invalid or is not infringed by any working of the applicant's invention;

the Controller may, on the application of the applicant, delete the reference to that other patent.

Powers of Controller to make orders regarding substitution of applicants, etc.

20. (*1*) If the Controller is satisfied, on a claim made in the prescribed manner at any time before a patent has been granted, that by virtue of any assignment or agreement in writing made by the applicant or one of the applicants for the patent or by operation of law, the claimant would, if the patent were then granted, be entitled thereto or to the interest of the applicant therein, or to an undivided share of the patent or of that interest, the Controller may, subject to the provisions of this section, direct that the application shall proceed in the name of the claimant or in the names of the claimants and the applicant or the other joint applicant or applicants, accordingly as the case may require.

(*2*) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for a patent except with the consent of the other joint applicant or applicants.

(*3*) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the benefit of an invention unless—

(*a*) the invention is identified therein by reference to the number of the application for the patent; or

(b) there is produced to the Controller an acknowledgment by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made; or

(c) the rights of the claimant in respect of the invention have been finally established by the decision of a court; or

(d) the Controller gives directions for enabling the application to proceed or for regulating the manner in which it should be proceeded with under sub-section (5).

(4) Where one of two or more joint applicants for a patent dies at any time before the patent has been granted, the Controller may, upon a request in that behalf made by the survivor or survivors, and with the consent of the legal representative of the deceased, direct that the application shall proceed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the Controller may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it should be proceeded with, or for both those purposes, as the case may require.

Time for putting application in order for acceptance.

21. (1) An application for a patent shall be deemed to have been abandoned unless within fifteen months from the date on which the first statement of objections to the application or complete specification is forwarded by the Controller to the applicant or within such longer period as may be allowed under the following provisions of this section the applicant has complied with all the requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application.

Explanation.—Where the application or any specification or, in the case of a convention application, any document filed as part of the application has been returned to the applicant by the Controller in the course of the proceedings, the applicant shall not be deemed to have complied with such requirements unless and until he has re-filed it.

(2) The period of fifteen months specified in sub-section (1) shall, on request made by the applicant in the prescribed manner and before the expiration of the period so specified, be extended for a further period so requested (hereafter in this section referred to as the extended period), so, however, that the total period for complying with the requirements of the Controller does not exceed eighteen months from the date on which the objections referred to in sub-section (1) are forwarded to the applicant.

(3) If at the expiration of the period of fifteen months specified in sub-section (1) or the extended period—

(a) an appeal to the High Court is pending in respect of the application for the patent for the main invention, or

(b) in the case of an application for a patent of addition, an appeal to the High Court is pending in respect of either that application or the application for the main invention,

the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the said period of fifteen months or the extended period, as the case may be, be extended until such date as the High Court may determine.

(4) If the time within which the appeal mentioned in sub-section (3) may be instituted has not expired, the Controller may extend the period of fifteen months, or as the case may be, the extended period, until the expiration of such further period as he may determine:

Provided that if an appeal has been filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then, the requirements may be complied with within the time granted by the Court.

Acceptance of complete specification.

22. Subject to the provisions of section 21, the complete specification filed in pursuance of an application for a patent may be accepted by the Controller at any time after the applicant has complied with the requirements mentioned in sub-section (1) of that section, and, if not so accepted within the period allowed under that section for compliance with those requirements, shall be accepted as soon as may be thereafter:

Provided that the applicant may make an application to the Controller in the prescribed manner requesting him to postpone acceptance until such date (not being later than eighteen months from the date on which the objections referred to in sub-section (1) of section 21 are forwarded to the applicant) as may be specified

in the application, and, if such application is made, the Controller may postpone acceptance accordingly.

Advertisement of acceptance of complete specification.

23. On the acceptance of a complete specification, the Controller shall give notice thereof to the applicant and shall advertise in the Official Gazette the fact that the specification has been accepted, and thereupon the application and the specification with the drawings (if any) filed in pursuance thereof shall be open to public inspection.

Effect of acceptance of complete specification.

24. On and from the date of advertisement of the acceptance of a complete specification and until the date of sealing of a patent in respect thereof, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of advertisement of acceptance of the complete specification:

Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been sealed.

CHAPTER V

Opposition to grant of patent

Opposition to grant of patent.

25. (1) At any time within four months from the date of advertisement of the acceptance of a complete specification under this Act (or within such further period not exceeding one month in the aggregate as the Controller may allow on application made to him in the prescribed manner before the expiry of the four months aforesaid) any person interested may give notice to the Controller of opposition to the grant of the patent on any of the following grounds, namely:—

(a) that the applicant for the patent or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;

(b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim—

(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or

(ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;

(c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete

specification published on or after the priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;

(*d*) that the invention so far as claimed in any claim of the complete specification was known or used in India before the priority date of that claim.

Explanation.—For the purposes of this clause, an invention relating to a process for which a patent is claimed shall be deemed to have been known or used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

(*e*) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (*b*) or having regard to what was used in India before the priority date of the applicant's claim;

(*f*) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;

(*g*) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;

(*h*) that the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;

(*i*) that in the case of a convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title;

but on no other ground.

(*2*) Where any such notice of opposition is duly given, the Controller shall notify the applicant and shall give to the applicant and the opponent an opportunity to be heard before deciding the case.

(*3*) The grant of a patent shall not be refused on the ground stated in clause (c) of sub-section (*1*) if no patent has been granted in pursuance of the application mentioned in that clause; and for

the purpose of any inquiry under clause (*d*) or clause (*e*) of that sub-section, no account shall be taken of any secret use.

In cases of "Obtaining" Controller may treat application as application of opponent.

26. (*1*) Where in any opposition proceeding under this Act—

(*a*) the Controller finds that the invention, so far as claimed in any claim of the complete specification, was obtained from the opponent in the manner set out in clause (*a*) of sub-section (*1*) of section 25 and refuses the application on that ground, he may, on request by such opponent made in the prescribed manner, direct that the application shall proceed in the name of the opponent as if the application and the specification had been filed by the opponent on the date on which they were actually filed;

(*b*) the Controller finds that a part of an invention described in the complete specification was so obtained from the opponent and passes an order requiring that the specification be amended by the exclusion of that part of the invention, the opponent may, subject to the provisions of sub-section (*2*), file an application in accordance with the provisions of this Act accompanied by a complete specification for the grant of a patent for the invention so excluded from the applicant's specification, and the Controller may treat such application and specification as having been filed, for the purposes of this Act relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the earlier applicant, but for all other purposes the application of the opponent shall be proceeded with as an application for a patent under this Act.

(*2*) Where an opponent has, before the date of the order of the Controller requiring the amendment of a complete specification referred to in clause (*b*) of sub-section (*1*), filed an application for a patent for an invention which includes the whole or a part of the invention held to have been obtained from him and such application is pending, the Controller may treat such application and specification in so far as they relate to the invention held to have been obtained from him, as having been filed, for the purposes of this Act, relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the earlier applicant, but for all other purposes the application of the opponent shall be proceeded with as an application for a patent under this Act.

Refusal of patent without opposition.

27. If at any time after the acceptance of the complete specification filed in pursuance of an application for a patent and before the grant of a patent thereon it comes to the notice of the Controller otherwise than in consequence of proceedings in opposition to the

grant under section 25, that the invention, so far as claimed in any claim of the complete specification, has been published * * before the priority date of the claim—

(*a*) in any specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;

(b) in any other document in India or elsewhere, * *

the Controller may refuse to grant the patent unless, within such time as may be prescribed, the complete specification is amended to his satisfaction:

Provided that the Controller shall not refuse to grant the patent on the ground specified in clause (*b*) if such publication does not constitute an anticipation of the invention by virtue of sub-section (*2*) or sub-section (*3*) of section 29.

Mention of inventor as such in patent.

28. (*1*) If the Controller is satisfied, upon a request or claim made in accordance with the provisions of this section,—

(*a*) that the person in respect of or by whom the request or claim is made is the inventor of an invention in respect of which application for a patent has been made, or of a substantial part of that invention; and

(*b*) that the application for the patent is a direct consequence of his being the inventor;

the Controller shall, subject to the provisions of this section, cause him to be mentioned as inventor in any patent granted in pursuance of the application in the complete specification and in the register of patents:

Provided that the mention of any person as inventor under this section shall not confer or derogate from any rights under the patent.

(*2*) A request that any person shall be mentioned as aforesaid may be made in the prescribed manner by the applicant for the patent or (where the person alleged to be the inventor is not the applicant or one of the applicants) by the applicant and that person.

(*3*) If any person [other than a person in respect of whom a request in relation to the application in question has been made under sub-section (*2*)] desires to be mentioned as aforesaid, he may make a claim in the prescribed manner in that behalf.

(*4*) A request or claim under the foregoing provisions of this section shall be made not later than two months after the date of advertisement of acceptance of the complete specification or within

such further period (not exceeding one month) as the Controller may, on an application made to him in that behalf before the expiration of the said period of two months and subject to the payment of the prescribed fee, allow.

(5) No request or claim under the foregoing provisions of this section shall be entertained if it appears to the Controller that the request or claim is based upon facts which, if proved in the case of an opposition under the provisions of clause (*a*) of sub-section (1) of section 25 by the person in respect of or by whom the request or claim is made, would have entitled him to relief under that section.

(6) Subject to the provisions of sub-section (5), where a claim is made under sub-section (3), the Controller shall give notice of the claim to every applicant for the patent (not being the claimant) and to any other person whom the Controller may consider to be interested; and before deciding upon any request or claim made under sub-section (2) or sub-section (3), the Controller shall, if required, hear the person in respect of or by whom the request or claim is made, and, in the case of a claim under sub-section (3), any person to whom notice of the claim has been given as aforesaid.

(7) Where any person has been mentioned as inventor in pursuance of this section, any other person who alleges that he ought not to have been so mentioned may at any time apply to the Controller for a certificate to that effect, and the Controller may, after hearing, if required, any person whom he may consider to be interested, issue such a certificate, and if he does so, he shall rectify the specification and the register accordingly.

CHAPTER VI

ANTICIPATION

Anticipation by previous publication.

29. (1) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published in a specification filed in pursuance of an application for a patent made in India and dated before the 1st day of January, 1912.

(2) Subject as hereinafter provided, an invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published before the priority

date of the relevant claim of the specification, if the patentee or the applicant for the patent proves—

(*a*) that the matter published was obtained from him, or (where he is not himself the true and first inventor) from any person from whom he derives title, and was published without his consent or the consent of any such person; and

(*b*) where the patentee or the applicant for the patent or any person from whom he derives title learned of the publication before the date of the application for the patent, or, in the case of a convention application, before the date of the application for protection in a convention country, that the application or the application in the convention country, as the case may be, was made as soon as reasonably practicable thereafter:

Provided that this sub-section shall not apply if the invention was before the priority date of the claim commercially worked in India, otherwise than for the purpose of reasonable trial, either by the patentee or the applicant for the patent or any person from whom he derives title or by any other person with the consent of the patentee or the applicant for the patent or any person from whom he derives title.

(3) Where a complete specification is filed in pursuance of an application for a patent made by a person being the true and first inventor or deriving title from him, an invention claimed in that specification shall not be deemed to have been anticipated by reason only of any other application for a patent in respect of the same invention made in contravention of the rights of that person, or by reason only that after the date of filing of that other application the invention was used or published, without the consent of that person, by the applicant in respect of that other application, or by any other person in consequence of any disclosure of any invention by that applicant.

Anticipation by previous communication to Government.

30. An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to the Government or to any person authorised by the Government to investigate the invention or its merits, or of anything done, in consequence of such a communication, for the purpose of the investigation.

Anticipation by public display, etc.

31. An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of—

(*a*) the display of the invention with the consent of the true and first inventor or a person deriving title from him at an

industrial or other exhibition to which the provisions of this section have been extended by the Central Government by notification in the Official Gazette, or the use thereof with his consent for the purpose of such an exhibition in the place where it is held; or

(*b*) the publication of any description of the invention in consequence of the display or use of the invention at any such exhibition as aforesaid; or

(c) the use of the invention, after it has been displayed or used at any such exhibition as aforesaid and during the period of the exhibition, by any person without the consent of the true and first inventor or a person deriving title from him; or

(*d*) the description of the invention in a paper read by the true and first inventor before a learned society or published with his consent in the transactions of such a society;

if the application for the patent is made by the true and first inventor or a person deriving title from him not later than six months after the opening of the exhibition or the reading or publication of the paper, as the case may be.

Anticipation by public working

32. An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that at any time within one year before the priority date of the relevant claim of the specification, the invention was publicly worked in India—

(*a*) by the patentee or applicant for the patent or any person from whom he derives title; or

(*b*) by any other person with the consent of the patentee or applicant for the patent or any person from whom he derives title;

if the working was effected for the purpose of reasonable trial only and if it was reasonably necessary, having regard to the nature of the invention, that the working for that purpose should be effected in public.

Anticipation by use and publication after provisional specification.

33. (*1*) Where a complete specification is filed or proceeded with in pursuance of an application which was accompanied by a provisional specification or where a complete specification filed along with an application is treated by virtue of a direction under sub-section (*3*) of section 9 as a provisional specification, then, notwithstanding anything contained in this Act, the Controller shall not refuse to grant the patent, and the patent shall not be revoked

or invalidated, by reason only that any matter described in the provisional specification or in the specification treated as aforesaid as a provisional specification was used in India or published in India or elsewhere at any time after the date of the filing of that specification.

(2) Where a complete specification is filed in pursuance of a convention application, then, notwithstanding anything contained in this Act, the Controller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated, by reason only that any matter disclosed in any application for protection in a convention country upon which the convention application is founded was used in India or published in India or elsewhere at any time after the date of that application for protection.

No anticipation if circumstances are only as described in sections 29, 30, 31 and 32.

34. Notwithstanding anything contained in this Act, the Controller shall not refuse to accept a complete specification for a patent or to grant a patent, and a patent shall not be revoked or invalidated by reason only of any circumstances which, by virtue of section 29 or section 30 or section 31 or section 32, do not constitute an anticipation of the invention claimed in the specification.

CHAPTER VII

PROVISIONS FOR SECRECY OF CERTAIN INVENTIONS

Secrecy directions relating to inventions relevant for defence purposes.

35. (1) Where, in respect of an application made before or after the commencement of this Act for a patent, it appears to the Controller that the invention is one of a class notified to him by the Central Government as relevant for defence purposes, or, where otherwise the invention appears to him to be so relevant, he may give directions for prohibiting or restricting the publication of information with respect to the invention or the communication of such information to any person or class of persons specified in the directions.

(2) Where the Controller gives any such directions as are referred to in sub-section (1), he shall give notice of the application and of the directions to the Central Government, and the Central Government shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defence of India, and if upon such consideration, it appears to it that the publication of the invention would not so prejudice, give notice to the Controller to that effect, who shall thereupon revoke the directions and notify the applicant accordingly.

(3) Without prejudice to the provisions contained in sub-section (1), where the Central Government is of opinion that an invention in respect of which the Controller has not given any directions under sub-section (1), is relevant for defence purposes, it may at any time before acceptance of the complete specification notify the Controller to that effect, and thereupon the provisions of that sub-section shall apply as if the invention were one of the class notified by the Central Government, and accordingly the Controller shall give notice to the Central Government of the directions issued by him.

Secrecy directions to be periodically reviewed.

36. (1) The question whether an invention in respect of which directions have been given under section 35 continues to be relevant for defence purposes shall be re-considered by the Central Government within nine months from the date of issue of such directions and thereafter at intervals not exceeding twelve months, and if, on such re-consideration it appears to the Central Government that the publication of the invention would no longer be prejudicial to the defence of India it shall forthwith give notice to the Controller accordingly and the Controller shall thereupon revoke the directions previously given by him.

(2) The result of every re-consideration under sub-section (1) shall be communicated to the applicant within such time and in such manner as may be prescribed.

Consequences of secrecy directions.

37. (1) So long as any directions under section 35 are in force in respect of an application—

(a) the Controller shall not pass an order refusing to accept the same; and

(b) notwithstanding anything contained in this Act, no appeal shall lie from any order of the Controller passed in respect thereof:

Provided that the application may, subject to the directions, proceed up to the stage of the acceptance of the complete specification, but the acceptance shall not be advertised nor the specification published, and no patent shall be granted in pursuance of the application.

(2) Where a complete specification filed in pursuance of an application for a patent for an invention in respect of which directions have been given under section 35 is accepted during the continuance in force of the directions, then—

(a) if, during the continuance in force of the directions, any use of the invention is made by or on behalf of, or to the order of the Government, the provisions of sections 100, 101 and 103

shall apply in relation to that use as if the patent had been granted for the invention; and

(*b*) if it appears to the Central Government that the applicant for the patent has suffered hardship by reason of the continuance in force of the directions, the Central Government may make to him such payment (if any) by way of solatium as appears to the Central Government to be reasonable having regard to the novelty and utility of the invention and the purpose for which it is designed, and to any other relevant circumstances.

(*3*) Where a patent is granted in pursuance of an application in respect of which directions have been given under section 35, no renewal fee shall be payable in respect of any period during which those directions were in force.

Revocation of secrecy directions and extension of time.

38. When any direction given under section 35 is revoked by the Controller, then, notwithstanding any provision of this Act specifying the time within which any step should be taken or any act done in connection with an application for the patent, the Controller may, subject to such conditions, if any, as he thinks fit to impose, extend the time for doing anything required or authorised to be done by or under this Act in connection with the application, whether or not that time has previously expired.

Residents not to apply for patents outside India without prior permission.

39. (*1*) No person resident in India shall, except under the authority of a written permit granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless—

(*a*) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and

(b) either no directions have been given under sub-section (*1*) of section 35 in relation to the application in India, or all such directions have been revoked.

(*2*) The Controller shall not grant written permission to any person to make any application outside India without the prior consent of the Central Government.

(*3*) This section shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India.

Liability for contravention of section 35 or section 39.

40. Without prejudice to the provisions contained in Chapter XX, if in respect of an application for a patent any person contravenes any direction as to secrecy given by the Controller under section 35 or makes or causes to be made an application for the grant of a patent outside India in contravention of section 39, the application for patent under this Act shall be deemed to have been abandoned and the patent granted, if any, shall be liable to be revoked under section 64.

Finality of orders of Controller and Central Government.

41. All orders of the Controller giving directions as to secrecy as well as all orders of the Central Government under this Chapter shall be final and shall not be called in question in any court on any ground whatsoever.

Savings respecting disclosure to Government.

42. Nothing in this Act shall be held to prevent the disclosure by the Controller of information concerning an application for a patent or a specification filed in pursuance thereof to the Central Government * *, for the purpose of the application or specification being examined for considering whether an order under this Chapter should be made or whether an order so made should be revoked.

CHAPTER VIII

GRANT AND SEALING OF PATENTS AND RIGHTS CONFERRED THEREBY

Grant and sealing of patent.

43. (*1*) Where a complete specification in pursuance of an application for a patent has been accepted and either—

(*a*) the application has not been opposed under section 25 and the time for the filing of the opposition has expired; or

(*b*) the application has been opposed and the opposition has been finally decided in favour of the applicant; or

(c) the application has not been refused by the Controller by virtue of any power vested in him by this Act;

the patent shall, on request made by the applicant in the prescribed form, be granted to the applicant or, in the case of a joint application, to the applicants jointly, and the Controller shall cause the patent to be sealed with the seal of the patent office and the date on which the patent is sealed shall be entered in the register.

(*2*) Subject to the provisions of sub-section (*1*) and of the provisions of this Act with respect to patents of addition, a request under this section for the sealing of a patent shall be made not later than the expiration of a period of six months from the date of advertisement of the acceptance of the complete specification:

Provided that—

(*a*) where at the expiration of the said six months any proceeding in relation to the application for the patent is pending before the Controller or the High Court, the request may be made within the prescribed period after the final determination of that proceeding;

(*b*) where the applicant or one of the applicants has died before the expiration of the time within which under the provisions of this sub-section the request could otherwise be made, the said request may be made at any time within twelve months after the date of the death or at such later time as the Controller may allow.

(*3*) The period within which under sub-section (*2*) a request for the sealing of a patent may be made may, from time to time, be extended by the Controller to such longer period as may be specified in an application made to him in that behalf, if the application is made and the prescribed fee paid within that longer period:

Provided that the first mentioned period shall not be extended under this sub-section by more than three months in the aggregate.

Explanation.—For the purposes of this section a proceeding shall be deemed to be pending so long as the time for any appeal therein (apart from any future extension of that time) has not expired, and a proceeding shall be deemed to be finally determined when the time for any appeal therein (apart from any such extension) has expired without the appeal being brought.

Amendment of patent granted to deceased applicant.

44. Where, at any time after a patent has been sealed in pursuance of an application under this Act, the Controller is satisfied that the person to whom the patent was granted had died, or, in the case of a body corporate, had ceased to exist, before the patent was sealed, the Controller may amend the patent by substituting for the name of that person the name of the person to whom the patent ought to have been granted, and the patent shall have effect, and shall be deemed always to have had effect, accordingly.

Date of patent.

45. (*1*) Subject to the other provisions contained in this Act, every patent shall be dated as of the date on which the complete specification was filed.

(*2*) The date of every patent shall be entered in the register.

(3) Notwithstanding anything contained in this section, no suit or other proceeding shall be commenced or prosecuted in respect of an infringement committed before the date of advertisement of the acceptance of the complete specification.

Form, extent and effect of patent.

46. (1) Every patent shall be in the prescribed form and shall have effect throughout India.

(2) A patent shall be granted for one invention only:

Provided that it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

Rights of patentees

47. (1) Subject to the other provisions contained in this Act, a patent granted, whether before or after the commencement of this Act, shall confer upon the patentee—

(a) where the patent is for an article or substance, the exclusive right by himself, his agents or licensees to make, use, exercise, sell or distribute such article or substance in India;

(b) where a patent is for a process of manufacturing an article or substance, the exclusive right by himself, his agents or licensees to use or exercise the process in India and of using or selling in India articles or substances made by such process and of authorising others so to do.

(2) The rights conferred on the patentee by this section shall be exercisable only subject to the provisions of any other law for the time being in force.

Patent rights not infringed when used for certain purposes.

48. Notwithstanding anything contained in this Act,—

(a) the importation by or on behalf of the Government of any patented machine, apparatus or other article for the purpose merely of its own use, or

(b) the importation by or on behalf of the Government of any patented medicine or drug for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which, the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette, or

(c) the making of a patented machine, apparatus or other article or the use of a patented process or the making of an article by the use of the patented process by or on behalf of the Government for the purpose merely of its own use or by persons on its behalf who may be specially authorised for the purpose, or

(*d*) the making or use of a patented machine or apparatus or other article or the use of a patented process or the use of an article made by the use of the patented process, machine or apparatus for the purpose merely of experiment or research, including the imparting of instructions to pupils,

shall not be deemed to constitute an infringement of the rights conferred on the patentee by this Act in respect of a patent granted, whether before or after the commencement of this Act.

Patent rights not infringed when used on foreign vessels, etc., temporarily or accidentally in India.

49. (*1*) Where a vessel or aircraft registered in a foreign country or a land vehicle owned by a person ordinarily resident in such country comes into India (including the territorial waters thereof) temporarily or accidentally only, the rights conferred by a patent for an invention shall not be deemed to be infringed by the use of the invention—

(*a*) in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof, so far as the invention is used on board the vessel and for its actual needs only; or

(*b*) in the construction or working of the aircraft or land vehicle or of the accessories thereof;

as the case may be.

(*2*) This section shall not extend to vessels, aircraft or land vehicles owned by persons ordinarily resident in a foreign country the laws of which do not confer corresponding rights with respect to the use of inventions in vessels, aircraft or land vehicles owned by persons ordinarily resident in India while in the ports or within the territorial waters of that foreign country or otherwise within the jurisdiction of its courts.

Rights of co-owners of patents.

50. (*1*) Where a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent.

(*2*) Subject to the provisions contained in this section and in section 51, where two or more persons are registered as grantee or proprietor of a patent, then, unless an agreement to the contrary is in force, each of those persons shall be entitled, by himself or his agents, to make, use, exercise and sell the patented invention for his own benefit without accounting to the other person or persons.

(*3*) Subject to the provisions contained in this section and in section 51 and to any agreement for the time being in force, where two or more persons are registered as grantee or proprietor of a patent, then, a licence under the patent shall not be granted and a share in the patent shall not be assigned by one of such persons except with the consent of the other person or persons.

(4) Where a patented article is sold by one of two or more persons registered as grantee or proprietor of a patent, the purchaser and any person claiming through him shall be entitled to deal with the article in the same manner as if the article had been sold by a sole patentee.

(5) Subject to the provisions contained in this section, the rules of law applicable to the ownership and devolution of movable property generally shall apply in relation to patents; and nothing contained in sub-section (1) or sub-section (2) shall affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or their rights or obligations as such.

(6) Nothing in this section shall affect the rights of the assignees of a partial interest in a patent created before the commencement of this Act.

Power of Controller to give directions to co-owners.

51. (1) Where two or more persons are registered as grantee or proprietor of a patent, the Controller may, upon application made to him in the prescribed manner by any of those persons, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, the grant of licences under the patent, or the exercise of any right under section 50 in relation thereto, as he thinks fit.

(2) If any person registered as grantee or proprietor of a patent fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so registered, the Controller may, upon application made to him in the prescribed manner by any such other person, give directions empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(3) Before giving any directions in pursuance of an application under this section, the Controller shall give an opportunity to be heard—

(a) in the case of an application under sub-section (1), to the other person or persons registered as grantee or proprietor of the patent;

(b) in the case of an application under sub-section (2), to the person in default.

(4) No direction shall be given under this section so as to affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or of their rights or obligations as such, or which is inconsistent with the terms of any agreement between persons registered as grantee or proprietor of the patent.

Grant of patent to true and first inventor where it has been obtained by another in fraud of him.

52. (*1*) Where a patent has been revoked on the ground that the patent was obtained wrongfully and in contravention of the rights of the petitioner or any person under or through whom he claims, or, where in a petition for revocation, the court, instead of revoking the patent, directs the complete specification to be amended by the exclusion of a claim or claims in consequence of a finding that the invention covered by such claim or claims had been obtained from the petitioner, the court may, by order passed in the same proceeding, permit the grant to the petitioner of the whole or such part of the invention which the court finds has been wrongfully obtained by the patentee, in lieu of the patent so revoked or is excluded by amendment.

(*2*) Where any such order is passed, the Controller shall, on request by the petitioner made in the prescribed manner grant to him—

(*i*) in cases where the court permits the whole of the patent to be granted, a new patent bearing the same date and number as the patent revoked;

(*ii*) in cases where the court permits a part only of the patent to be granted, a new patent for such part bearing the same date as the patent revoked and numbered in such manner as may be prescribed:

Provided that the Controller may as a condition of such grant require the petitioner to file a new and complete specification to the satisfaction of the Controller describing and claiming that part of the invention for which the patent is to be granted.

(*3*) No suit shall be brought for any infringement of a patent granted under this section committed before the actual date on which such patent was granted.

Term of patent.

53. (*1*) Subject to the provisions of this Act, the term of every patent granted under this Act shall—

(*a*) in respect of an invention claiming the method or process of manufacture of a substance, where the substance is intended for use, or is capable of being used, as food or as a medicine or drug, be ten years from the date of the patent; and

(*b*) in respect of any other invention, be fourteen years from the date of the patent.

(*2*) Notwithstanding anything contained in the Indian Patents and Designs Act, 1911, or in the patent granted thereunder, the term of every patent granted under that Act in respect of an invention claiming a substance or the method or process of manufacture in

2 of 1911.

respect thereof, where the substance is intended for use, or is capable of being used as food or as medicine or drug shall be—

(*a*) ten years from the commencement of this Act, or

(*b*) sixteen years from the date as of which the patent was sealed under the Indian Patents and Designs Act, 1911, whichever is less: 2 of 1911.

Provided that where at the commencement of this Act any such patent is in force by reason of an extension granted under the Act aforesaid, the patent shall cease to have effect on the expiration of the period of such extension.

(*3*) A patent shall cease to have effect notwithstanding anything therein or in this Act on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within the prescribed period or within that period as extended under this section.

(*4*) The period prescribed for the payment of any renewal fee shall be extended to such period, not being more than six months longer than the prescribed period, as may be specified in a request made to the Controller if the request is made and the renewal fee and the prescribed additional fee paid before the expiration of the period so specified.

CHAPTER IX

PATENTS OF ADDITION

Patents of addition.

54. (*1*) Subject to the provisions contained in this section, where an application is made for a patent in respect of any improvement in or modification of an invention described or disclosed in the complete specification filed therefor (in this Act referred to as the "main invention") and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.

(*2*) Subject to the provisions contained in this section, where an invention, being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the Controller may, if the patentee so requests, by order, revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date as the date of the patent so revoked.

(*3*) A patent shall not be granted as a patent of addition unless the date of filing of the complete specification was the same as or later than the date of filing of the complete specification in respect of the main invention.

(*4*) A patent of addition shall not be sealed before the sealing of the patent for the main invention; and if the period within which,

but for the provisions of this sub-section, a request for the sealing of a patent of addition could be made under section 43 expires before the period within which a request for the sealing of the patent for the main invention may be so made, the request for the sealing of the patent of addition may be made at any time within the last mentioned period.

Term of patents of addition.

55. (1) A patent of addition shall be granted for a term equal to that of the patent for the main invention, or so much thereof as has not expired, and shall remain in force during that term or until the previous cesser of the patent for the main invention and no longer:

Provided that if the patent for the main invention is revoked under this Act, the court, or, as the case may be, the Controller, on request made to him by the patentee in the prescribed manner, may order that the patent of addition shall become an independent patent for the remainder of the term for the patent for the main invention and thereupon the patent shall continue in force as an independent patent accordingly.

(2) No renewal fees shall be payable in respect of a patent of addition, but, if any such patent becomes an independent patent under sub-section (1), the same fees shall thereafter be payable, upon the same dates, as if the patent had been originally granted as an independent patent.

Validity of patents of addition.

56. (1) The grant of a patent of addition shall not be refused, and a patent granted as a patent of addition shall not be revoked or invalidated, on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to any publication or use of—

(a) the main invention described in the complete specification relating thereto; or

(b) any improvement in or modification of the main invention described in the complete specification of a patent of addition to the patent for the main invention or of an application for such a patent of addition;

and the validity of a patent of addition shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

(2) For the removal of doubts it is hereby declared that in determining the novelty of the invention claimed in the complete specification filed in pursuance of an application for a patent of addition regard shall be had also to the complete specification in which the main invention is described.

CHAPTER X

AMENDMENT OF APPLICATIONS AND SPECIFICATIONS

Amendment of application and specification before Controller.

57. (*1*) Subject to the provisions of section 59, the Controller may, upon application made under this section in the prescribed manner by an applicant for a patent or by a patentee, allow the application for the patent or the complete specification to be amended subject to such conditions, if any, as the Controller thinks fit:

Provided that the Controller shall not pass any order allowing or refusing an application to amend an application for a patent or a specification under this section while any suit before a court for the infringement of the patent or any proceeding before the High Court for the revocation of the patent is pending, whether the suit or proceeding commenced before or after the filing of the application to amend.

(*2*) Every application for leave to amend an application for a patent or a specification under this section shall state the nature of the proposed amendment, and shall give full particulars of the reasons for which the application is made.

(*3*) Every application for leave to amend an application for a patent or a specification under this section made after the acceptance of the complete specification and the nature of the proposed amendment shall be advertised in the prescribed manner.

(*4*) Where an application is advertised under sub-section (*3*), any person interested may, within the prescribed period after the advertisement thereof, give notice to the Controller of opposition thereto; and where such a notice is given within the period aforesaid, the Controller shall notify the person by whom the application under this section is made and shall give to that person and to the opponent an opportunity to be heard before he decides the case.

(*5*) An amendment under this section of a complete specification may be, or include, an amendment of the priority date of a claim.

(*6*) The provisions of this section shall be without prejudice to the right of an applicant for a patent to amend his specification to comply with the directions of the Controller issued before the acceptance of the complete specification or in the course of proceedings in opposition to the grant of a patent.

Amendment of specification before High Court.

58. (*1*) In any proceeding before the High Court for the revocation of a patent, the High Court may, subject to the provisions contained in section 59, allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise, as the High Court may think fit, and if in any proceedings for revocation the High Court decides that the patent is invalid, it may allow the specification to be amended under this section instead of revoking the patent.

(2) Where an application for an order under this section is made to the High Court, the applicant shall give notice of the application to the Controller, and the Controller shall be entitled to appear and be heard, and shall appear if so directed by the High Court.

(3) Copies of all orders of the High Court allowing the patentee to amend the specification shall be transmitted by the High Court to the Controller who shall on receipt thereof cause an entry thereof and reference thereto to be made in the register.

Supplementary provisions as to amendment of application or specification.

59. (1) No amendment of an application for a patent or a complete specification shall be made except by way of disclaimer, correction or explanation, and no amendment thereof shall be allowed, except for the purpose of correcting an obvious mistake, and no amendment of a complete specification shall be allowed the effect of which would be that the specification as amended would claim or describe matter not in substance disclosed in the specification before the amendment, or that any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.

(2) Where after the date of advertisement of acceptance of a complete specification, any amendment of the specification is allowed by the Controller or by the High Court,—

(a) the amendment shall for all purposes be deemed to form part of the specification;

(b) the fact that the specification has been amended shall be advertised in the Official Gazette; and

(c) the right of the applicant or patentee to make amendment shall not be called in question except on the ground of fraud.

(3) In construing the specification as amended, reference may be made to the specification as originally accepted.

CHAPTER XI

Restoration of lapsed patents

Applications for restoration of lapsed patents.

60. (1) Where a patent has ceased to have effect by reason of failure to pay any renewal fee within the prescribed period or within that period as extended under sub-section (4) of section 53, the patentee or his legal representative, and where the patent was held by two or more persons jointly, then, with the leave of the Controller, one or more of them without joining the others, may, within one year from the date on which the patent ceased to have effect, make an application for the restoration of the patent.

(2) The provisions of sub-section (1) shall also apply to patents granted before the commencement of this Act, subject to the modification that for the reference to the prescribed period or to sub-section (4) of section 53, there shall be substituted a reference to the period prescribed therefor under the Indian Patents and Designs Act, 1911 or to sub-section (2) of section 14 of that Act.

(3) An application under this section shall contain a statement, verified in the prescribed manner, fully setting out the circumstances which led to the failure to pay the prescribed fee, and the Controller may require from the applicant such further evidence as he may think necessary.

Procedure for disposal of applications for restoration of lapsed patents.

61. (1) If, after hearing the applicant in cases where the applicant so desires or the Controller thinks fit, the Controller is *prima facie* satisfied that the failure to pay the renewal fee was unintentional and that there has been no undue delay in the making of the application, he shall advertise the application in the prescribed manner; and within the prescribed period any person interested may give notice to the Controller of opposition thereto on either or both of the following grounds, that is to say,—

(a) that the failure to pay the renewal fee was not unintentional; or

(b) that there has been undue delay in the making of the application.

(2) If notice of opposition is given within the period aforesaid, the Controller shall notify the applicant, and shall give to him and to the opponent an opportunity to be heard before he decides the case.

(3) If no notice of opposition is given within the period aforesaid or if in the case of opposition, the decision of the Controller is in favour of the applicant, the Controller shall, upon payment of any unpaid renewal fee and such additional fee as may be prescribed, restore the patent and any patent of addition specified in the application which has ceased to have effect on the cesser of that patent.

(4) The Controller may, if he thinks fit as a condition of restoring the patent, require that an entry shall be made in the register of any document or matter which, under the provisions of this Act, has to be entered in the register but which has not been so entered.

Rights of patentees of lapsed patents which have been restored.

62. (1) Where a patent is restored, the rights of the patentee shall be subject to such provisions as may be prescribed and to such other provisions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by contract or otherwise to avail themselves of, the patented invention between the date when the patent ceased to have effect and the date of the advertisement of the application for restoration of the patent under this Chapter.

(2) No suit or other proceeding shall be commenced or prosecuted in respect of an infringement of a patent committed between the date on which the patent ceased to have effect and the date of the advertisement of the application for restoration of the patent.

CHAPTER XII

SURRENDER AND REVOCATION OF PATENTS

Surrender of patents.

63. (1) A patentee may, at any time by giving notice in the prescribed manner to the Controller, offer to surrender his patent.

(2) Where such an offer is made, the Controller shall advertise the offer in the prescribed manner, and also notify every person other than the patentee whose name appears in the register as having an interest in the patent.

(3) Any person interested may, within the prescribed period after such advertisement, give notice to the Controller of opposition to the surrender, and where any such notice is given the Controller shall notify the patentee.

(4) If the Controller is satisfied after hearing the patentee and any opponent, if desirous of being heard, that the patent may properly be surrendered, he may accept the offer and, by order, revoke the patent.

Revocation of patents.

64. (1) Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement of this Act, may, on the petition of any person interested or of the Central Government or on a counter-claim in a suit for infringement of the patent, be revoked by the High Court on any of the following grounds, that is to say—

(a) that the invention, so far as claimed in any claim of the complete specification, was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in India;

(b) that the patent was granted on the application of a person not entitled under the provisions of this Act to apply therefor:

Provided that a patent granted under the Indian Patents and Designs Act, 1911 shall not be revoked on the ground that the applicant was the communicatee or the importer of the invention in India and therefore not entitled to make an application for the grant of a patent under this Act;

of 1911.

(c) that the patent was obtained wrongfully in contravention of the rights of the petitioner or any person under or through whom he claims;

(*d*) that the subject of any claim of the complete specification is not an invention within the meaning of this Act;

(*e*) that the invention so far as claimed in any claim of the complete specification is not new, having regard to what was known or used in India before the priority date of the claim or to what was published in India or elsewhere in any of the documents referred to in section 13:

Provided that in relation to patents granted under the Indian Patents and Designs Act, 1911, this clause shall have effect as if the words "or elsewhere" had been omitted; 2 of 1911.

(*f*) that the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step, having regard to what was known or used in India or what was published in India or elsewhere before the priority date of the claim:

Provided that in relation to patents granted under the Indian Patents and Designs Act, 1911, this clause shall have effect as if the words "or elsewhere" had been omitted; 2 of 1911.

(*g*) that the invention, so far as claimed in any claim of the complete specification, is not useful;

(*h*) that the complete specification does not sufficiently and fairly describe the invention and the method by which it is to be performed, that is to say, that the description of the method or the instructions for the working of the invention as contained in the complete specification are not by themselves sufficient to enable a person in India possessing average skill in, and average knowledge of, the art to which the invention relates, to work the invention, or that it does not disclose the best method of performing it which was known to the applicant for the patent and for which he was entitled to claim protection;

(*i*) that the scope of any claim of the complete specification is not sufficiently and clearly defined or that any claim of the complete specification is not fairly based on the matter disclosed in the specification;

(*j*) that the patent was obtained on a false suggestion or representation;

(*k*) that the subject of any claim of the complete specification is not patentable under this Act;

(*l*) that the invention so far as claimed in any claim of the complete specification was secretly used in India, otherwise than as mentioned in sub-section (*2*), before the priority date of the claim;

(*m*) that the applicant for the patent has failed to disclose to the Controller the information required by section 8 or has furnished information which in any material particular was false to his knowledge;

(*n*) that the applicant contravened any direction for secrecy passed under section 35 or made or caused to be made an application for the grant of a patent outside India in contravention of section 39;

(*o*) that leave to amend the complete specification under section 57 or section 58 was obtained by fraud.

(*2*) For the purposes of clauses (e) and (*f*) of sub-section (*1*),—

(*a*) no account shall be taken of secret use; and

(*b*) where the patent is for a process or for a product as made by a process described or claimed, the importation into India of the product made abroad by that process shall constitute knowledge or use in India of the invention on the date of the importation, except where such importation has been for the purpose of reasonable trial or experiment only.

(*3*) For the purposes of clause (*l*) of sub-section (*1*), no account shall be taken of any use of the invention—

(*a*) for the purpose of reasonable trial or experiment only; or

(*b*) by the Government or by any person authorised by the Government or by a Government undertaking, in consequence of the applicant for the patent or any person from whom he derives title having communicated or disclosed the invention directly or indirectly to the Government or person authorised as aforesaid or to the Government undertaking; or

(*c*) by any other person, in consequence of the applicant for the patent or any person from whom he derives title having communicated or disclosed the invention, and without the consent or acquiescence of the applicant or of any person from whom he derives title.

(*4*) Without prejudice to the provisions contained in sub-section (*1*), a patent may be revoked by the High Court on the petition of the Central Government, if the High Court is satisfied that the patentee has without reasonable cause failed to comply with the request of the Central Government to make, use or exercise the patented invention for the purposes of Government within the meaning of section 99 upon reasonable terms.

(*5*) A notice of any petition for revocation of a patent under this section shall be served on all persons appearing from the register to

be proprietors of that patent or to have shares or interests therein and it shall not be necessary to serve a notice on any other person.

Revocation of patent or amendment of complete specification on directions from Central Government in cases relating to atomic energy.

65. (*1*) Where at any time after acceptance of a complete specification, the Central Government is satisfied that an application for a patent or a patent is for an invention relating to atomic energy for which no patent can be granted under sub-section (*1*) of section 20 of the Atomic Energy Act, 1962, it may direct the Controller to refuse to proceed further with the application or to revoke the patent, as the case may be, and thereupon the Controller, after giving notice to the applicant or, as the case may be, to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may refuse to proceed further with the application or may revoke the patent. 33 of 1962.

(*2*) In any proceedings under sub-section (*1*), the Controller may allow the applicant for the patent or the patentee to amend the complete specification in such manner as he considers necessary instead of refusing to proceed with the application or revoking the patent.

Revocation of patent in public interest.

66. Where the Central Government is of opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the patentee an opportunity to be heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked.

CHAPTER XIII

REGISTER OF PATENTS

Register of patents and particulars to be entered therein.

67. (*1*) There shall be kept at the patent office a register of patents, wherein shall be entered—

(a) the names and addresses of grantees of patents;

(b) notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extensions, and revocations of patents; and

(c) particulars of such other matters affecting the validity or proprietorship of patents as may be prescribed.

(*2*) No notice of any trust, whether express, implied or constructive, shall be entered in the register, and the Controller shall not be affected by any such notice.

(*3*) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Controller.

(4) For the removal of doubts, it is hereby declared that the register of patents existing at the commencement of this Act shall be incorporated in, and form part of, the register under this Act.

Assignments, etc., not to be valid unless in writing and registered.

68. An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and the application for registration of such document is filed in the prescribed manner with the Controller within six months from the execution thereof or within such further period not exceeding six months in the aggregate as the Controller on application made in the prescribed manner allows: * *

Provided that the document shall, when registered, have effect from the date of its execution.

Registration of assignments, transmissions, etc.

69. (1) Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as a mortgagee, licensee or otherwise to any other interest in a patent, he shall apply in writing in the prescribed manner to the Controller for the registration of his title or, as the case may be, of notice of his interest in the register.

(2) Without prejudice to the provisions of sub-section (1), an application for the registration of the title of any person becoming entitled by assignment to a patent or a share in a patent or becoming entitled by virtue of a mortgage, licence or other instrument to any other interest in a patent may be made in the prescribed manner by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.

(3) Where an application is made under this section for the registration of the title of any person the Controller shall, upon proof of title to his satisfaction,—

(a) where that person is entitled to a patent or a share in a patent, register him in the register as proprietor or co-proprietor of the patent, and enter in the register particulars of the instrument or event by which he derives title; or

(b) where that person is entitled to any other interest in the patent, enter in the register notice of his interest, with particulars of the instrument, if any, creating it:

Provided that if there is any dispute between the parties whether the assignment, mortgage, licence, transmission, operation of law or any other such transaction has validity vested in such person a title to the patent or any share or interest therein, the Controller may refuse to take any action under clause (a) or, as the case may be,

under clause (*b*), until the rights of the parties have been determined by a competent court.

(*4*) There shall be supplied to the Controller in the prescribed manner for being filed in the patent office copies of all agreements, licences and other documents affecting the title to any patent or any licence thereunder authenticated in the prescribed manner and also such other documents as may be prescribed relevant to the subject-matter:

Provided that in the case of licences granted under a patent, the Controller shall, if so requested by the patentee or licensee, take steps for securing that the terms of the licence are not disclosed to any person except under the order of a court.

(*5*) Except for the purposes of an application under sub-section (*1*) or of an application to rectify the register, a document in respect of which no entry has been made in the register under sub-section (*3*) shall not be admitted by the Controller or by any court as evidence of the title of any person to a patent or to a share or interest therein unless the Controller or the court, for reasons to be recorded in writing, otherwise directs.

Power of registered grantee or Proprietor to deal with patent.

70. Subject to the provisions contained in this Act relating to co-ownership of patents and subject also to any rights vested in any other person of which notice is entered in the register, the person or persons registered as grantee or proprietor of a patent shall have power to assign, grant licences under, or otherwise deal with, the patent and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the patent may be enforced in like manner as in respect of any other movable property.

Rectification of register by High Court.

71. (*1*) The High Court may, on the application of any person aggrieved—

(*a*) by the absence or omission from the register of any entry; or

(*b*) by any entry made in the register without sufficient cause; or

(*c*) by any entry wrongly remaining on the register; or

(*d*) by any error or defect in any entry in the register;

make such order for the making, variation or deletion, of any entry therein as it may think fit.

(*2*) In any proceeding under this section the High Court may decide any question that may be necessary or expedient to decide in connection with the rectification of the register

(3) Notice of any application to the High Court under this section shall be given in the prescribed manner to the Controller who shall be entitled to appear and be heard on the application, and shall appear if so directed by the court.

(4) Any order of the High Court under this section rectifying the register shall direct that notice of the rectification shall be served upon the Controller in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

Register to be open for inspection.

72. (1) Subject to the provisions contained in this Act and any rules made thereunder, the register shall at all convenient times be open to inspection by the public; and certified copies, sealed with the seal of the patent office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

(2) The register shall be *prima facie* evidence of any matters required or authorised by or under this Act to be entered therein.

CHAPTER XIV

PATENT OFFICE AND ESTABLISHMENT

Controller and other officers.

73. (1) The Controller General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 4 of the Trade and Merchandise Marks Act, 1958, shall be the Controller of Patents for the purposes of this Act.

43 of 1958

(2) The Central Government may appoint as many examiners and other officers and with such designations as it thinks fit for the purpose of discharging, under the superintendence and directions of the Controller, such functions of the Controller under this Act as it may from time to time authorise them to discharge.

Patent office and its branches.

74. (1) For the purposes of this Act, there shall be an office which shall be known as the patent office.

(2) The patent office provided by the Central Government under the Indian Patents and Designs Act, 1911, shall be the patent office under this Act.

2 of 1911.

(3) The head office of the patent office shall be at such place as the Central Government may specify, and for the purpose of facilitating the registration of patents there may be established, at such other places as the Central Government may think fit, branch offices of the patent office.

(4) There shall be a seal of the patent office.

Restriction on employees of patent office as to right or interest in patents.

75. All officers and employees of the patent office shall be incapable, during the period for which they hold their appointments, to acquire or take, directly or indirectly, except by inheritance or bequest, any right or interest in any patent issued by that office.

Officers and employees not to furnish information,

76. An officer or employee in the patent office shall not, except when required or authorised by this Act or under a direction in writing of the Central Government or the Controller or by order of a court,—

(*a*) furnish information on a matter which is being, or has been, dealt with under this Act or under the Indian Patents and Designs Act, 1911; or 2 of 1911.

(*b*) prepare or assist in the preparation of a document required or permitted by or under this Act or under the Indian Patents and Designs Act, 1911, to be lodged in the patent office; or 2 of 1911.

(c) conduct a search in the records of the patent office.

CHAPTER XV

Powers of Controller generally

Controller to have certain powers of a civil count.

77. (*1*) Subject to any rules made in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:— 5 of 1908.

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(*d*) issuing commissions for the examination of witnesses or documents;

(*e*) awarding costs;

(*f*) reviewing his own decision on application made within the prescribed time and in the prescribed manner;

(*g*) setting aside an order passed *ex parte* on application made within the prescribed time and in the prescribed manner;

(*h*) any other matter which may be prescribed.

(*2*) Any order for costs awarded by the Controller in exercise of the powers conferred upon him under sub-section (*1*) shall be executable as a decree of a civil court.

Power of Controller to correct clerical errors, etc.

78. (*1*) Without prejudice to the provisions contained in sections 57 and 59 as regards amendment of applications or complete specifications and subject to the provisions of section 44, the Controller may, in accordance with the provisions of this section, correct any clerical error in any patent or in any specification or other document filed in pursuance of such application or in any application for a patent or any clerical error in any matter which is entered in the register.

(*2*) A correction may be made in pursuance of this section either upon a request in writing made by any person interested and accompanied by the prescribed fee, or without such a request.

(*3*) Where the Controller proposes to make any such correction as aforesaid otherwise than in pursuance of a request made under this section, he shall give notice of the proposal to the patentee or the applicant for the patent, as the case may be, and to any other person who appears to him to be concerned, and shall give them an opportunity to be heard before making the correction.

(*4*) Where a request is made under this section for the correction of any error in a patent or application for a patent or any document filed in pursuance of such an application, and it appears to the Controller that the correction would materially alter the meaning or scope of the document to which the request relates and ought not to be made without notice to persons affected thereby, he shall require notice of the nature of the proposed correction to be advertised in the prescribed manner.

(*5*) Within the prescribed time after any such advertisement as aforesaid any person interested may give notice to the Controller of opposition to the request, and, where such notice of opposition is given, the Controller shall give notice thereof to the person by whom the request was made, and shall give to him and to the opponent an opportunity to be heard before he decides the case.

Evidence how to be given and powers of Controller in respect thereof.

79. Subject to any rules made in this behalf, in any proceeding under this Act before the Controller, evidence shall be given by affidavit in the absence of directions by the Controller to the contrary, but in any case in which the Controller thinks it right so to do, he may take oral evidence in lieu of, or in addition to, evidence by affidavit, or may allow any party to be cross-examined on the contents of his affidavit.

Exercise of discretionary powers by Controller.

80. Without prejudice to any provision contained in this Act requiring the Controller to hear any party to the proceedings thereunder or to give any such party an opportunity to be heard, the Controller shall give to any applicant for a patent, or for amendment of a specification (if within the prescribed time the applicant so

requires) an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Controller by or under this Act.

Disposal by Controller of applications for extension of time.

81. Where under the provisions of this Act or the rules made thereunder the Controller may extend the time for doing any act, nothing in this Act shall be deemed to require him to give notice to or hear the party interested in opposing the extension, nor shall any appeal lie from any order of the Controller granting such extension.

CHAPTER XVI

WORKING OF PATENTS, COMPULSORY LICENCES, LICENCES OF RIGHT AND REVOCATION

Definitions of "patented articles" and "patentee".

82. In this Chapter, unless the context otherwise requires,—

(*a*) "patented article" includes any article made by a patented process; and

(*b*) "patentee" includes an exclusive licensee.

General principles applicable to working of patented inventions.

83. Without prejudice to the other provisions contained in this Act, in exercising the powers conferred by this Chapter, regard shall be had to the following general considerations, namely,—

(*a*) that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay; and

(*b*) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article.

Compulsory licencees.

84. (*1*) At any time after the expiration of three years from the date of the sealing of a patent, any person interested may make an application to the Controller alleging that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price and praying for the grant of a compulsory licence to work the patented invention.

(*2*) An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent and no person shall be estopped from alleging that the reasonable requirements of the public with respect to the patented invention are not satisfied or that the patented invention is not available to the public at a reasonable price by reason of any admission made by him, whether in such a licence or otherwise or by reason of his having accepted such a licence.

(*3*) Every application under sub-section (*1*) shall contain a statement setting out the nature of the applicant's interest together with

such particulars as may be prescribed and the facts upon which the application is based.

(4) In considering the application filed under this section the Controller shall take into account the matters set out in section 85.

(5) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price, may order the patentee to grant a licence upon such terms as he may deem fit.

(6) Where the Controller directs the patentee to grant a licence he may as incidental thereto exercise the powers set out in section 93.

* * * * *

Matters to be taken into account in granting compulsory licences.

85. In determining whether or not to make an order in pursuance of an application filed under section 84, the Controller shall take into account:—

(*i*) the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention;

(*ii*) the ability of the applicant to work the invention to the public advantage;

* * * * *

(*iii*) the capacity of the applicant to undertake the risk in providing capital and working the invention, if the application were granted;

but shall not be required to take into account matters subsequent to the making of the application.

Endorsement of patent with the words "Licences of right."

86. (*1*) At any time after the expiration of three years from the date of the sealing of a patent, the Central Government may make an application to the Controller for an order that the patent may be endorsed with the words "Licences of right" on the ground that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price.

(2) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price, may make an order that the patent be endorsed with the words "Licences of right".

(3) Where a patent of addition is in force, any application made under this section for an endorsement either of the original patent or of the patent of addition shall be treated as an application for the

endorsement of both patents, and where a patent of addition is granted in respect of a patent which is already endorsed under this section, the patent of addition shall also be so endorsed.

(4) All endorsements of patents made under this section shall be entered in the register and published in the Official Gazette and in such other manner as the Controller thinks desirable for bringing the endorsement to the notice of manufacturers.

Certain patents deemed to be endorsed with the words "Licences of right".

87. (1) Notwithstanding anything contained in this Act,—

(a) every patent in force at the commencement of this Act in respect of inventions relating to—

(i) substances used or capable of being used as food or as medicine or drug;

(ii) the methods or processes for the manufacture or production of any such substance as is referred to in sub-clause (i);

(iii) the methods or processes for the manufacture or production of chemical substances (including alloys, optical glass, semi-conductors and inter-metallic compounds); and

(b) every patent granted after the commencement of this Act in respect of any such invention as is referred to in section 5;

shall be deemed to be endorsed with the words "Licences of right", in the case of inventions referred to in clause (a), from the commencement of this Act, and, in the case of inventions referred to in clause (b), from the date of sealing of the patent.

(2) In respect of every patent which is deemed to be endorsed with the words "Licences of right" under this section, the provisions of section 88 shall apply.

Effect of endorsement of patent with the words "Licences of right".

88. (1) Where a patent has been endorsed with the words "Licences of right", any person who is interested in working the patented invention in India may require the patentee to grant him a licence for the purpose on such terms as may be mutually agreed upon, notwithstanding that he is already the holder of a licence under the patent.

(2) If the parties are unable to agree on the terms of the licence, either of them may apply in the prescribed manner to the Controller to settle the terms thereof.

(3) The Controller shall, after giving notice to the parties and hearing them and after making such enquiry as he may deem fit, decide the terms on which the licence shall be granted by the patentee.

(4) The Controller may at any time before the terms of the licence are mutually agreed upon or decided by the Controller, on application made to him in this behalf by any person who has made any such requisition as is referred to in sub-section (1), permit him to work the patented invention on such terms as the Controller may, pending agreement between the parties or decision by the Controller, think fit to impose.

(5) In respect of every patent deemed to be endorsed with the words "Licences of right" under sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (1) of section 87, whether the patent was granted before or after the commencement of this Act, the royalty and other remuneration reserved to the patentee under a licence granted to any person after such commencement shall in no case exceed four per cent. of the net ex-factory sale price in bulk of the patented article (exclusive of taxes levied under any law for the time being in force and any commissions payable) determined in such manner as may be prescribed.

(6) Save as otherwise provided in sub-section (5), the provisions of sub-sections (1), (2), (4), (5) and (6) of section 93 (regarding the powers of the Controller) and of sections 94 and 95 shall apply to licences granted under this section as they apply to licences granted under section 84.

Revocation of patents by the Controller for non-working.

89. (1) Where, in respect of a patent, a compulsory licence has been granted or the endorsement "Licences of right" has been made or is deemed to have been made, the Central Government or any person interested may, after the expiration of two years from the date of the order granting the first compulsory licence or, as the case may be, the date of the grant of the first licence under section 88, apply to the Controller for an order revoking the patent on the ground that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price.

(2) Every application under sub-section (1) shall contain such particulars as may be prescribed and the facts upon which the application is based, and, in the case of an application other than by the Central Government, shall also set out the nature of the applicant's interest.

(3) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price, may make an order revoking the patent.

(4) Every application under sub-section (1) shall ordinarily be decided within one year of its being presented to the Controller.

When reasonable requirements of the public deemed not satisfied.

90. For the purposes of sections 84, 86 and 89, the reasonable requirements of the public shall be deemed not to have been satisfied—

(*a*) if, by reason of the default of the patentee to manufacture in India to an adequate extent and supply on reasonable terms the patented article or a part of the patented article which is necessary for its efficient working or if, by reason of the refusal of the patentee to grant a licence or licences on reasonable terms,—

(*i*) an existing trade or industry or the development thereof or the establishment of any new trade or industry in India or the trade or industry of any person or classes of persons trading or manufacturing in India is prejudiced; or

(*ii*) the demand for the patented article is not being met to an adequate extent or on reasonable terms from manufacture in India; or

(*iii*) a market for the export of the patented article manufactured in India is not being supplied or developed or such market capable of being created is not being created; or

(*iv*) the establishment or development of commercial activities in India is prejudiced; or

(*b*) if, by reason of conditions imposed by the patentee (whether before or after the commencement of this Act) upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, the manufacture, use or sale of materials not protected by the patent, or the establishment or development of any trade or industry in India, is prejudiced; or

(c) if the patented invention is not being worked in India on a commercial scale to an adequate extent or is not being so worked to the fullest extent that is reasonably practicable; or

(*d*) if the demand for the patented article in India is being met to a substantial extent by importation from abroad by—

(*i*) the patentee or persons claiming under him; or

(*ii*) persons directly or indirectly purchasing from him; or

(*iii*) other persons against whom the patentee is not taking or has not taken proceedings for infringement; or

(*e*) if the working of the patented invention in India on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by the patentee or the other persons referred to in the preceding clause.

Power of Controller to adjourn applications for compulsory licences, etc., in certain cases.

91. (*1*) Where an application under section 84, section 86 or section 89, as the case may be, is made on the ground mentioned in clause (*c*) of section 90 and the Controller is satisfied that the time which has elapsed since the sealing of the patent has for any reason been insufficient to enable the invention to be worked on a commercial scale to an adequate extent or to enable the invention to be so worked to the fullest extent that is reasonably practicable, he may, by order, adjourn the further hearing of the application for such period not exceeding twelve months in the aggregate as appears to him to be sufficient for the invention to be so worked:

Provided that in any case where the patentee establishes that the reason why a patented invention could not be worked as aforesaid before the date of the application was due to any State or Central Act or any rule or regulation made thereunder or any order of the Government imposed otherwise than by way of a condition for the working of the invention in India or for the disposal of the patented articles or of the articles made by the process or by the use of the patented plant, machinery, or apparatus, then, the period of adjournment ordered under this sub-section shall be reckoned from the date on which the period during which the working of the invention was prevented by such Act, rule or regulation or order of Government as computed from the date of the application, expires.

(*2*) No adjournment under sub-section (*1*) shall be ordered unless the Controller is satisfied that the patentee has taken with promptitude adequate or reasonable steps to start the working of the invention in India on a commercial scale and to an adequate extent.

* * * * *

Procedure for dealing with applications under sections 84, 86 and 89.

92. (*1*) Where the Controller is satisfied, upon consideration of an application under section 84, section 86 or section 89, that a *prima facie* case has been made out for the making of an order, he shall direct the applicant to serve copies of the application upon the patentee and any other person appearing from the register to be interested in the patent in respect of which the application is made, and shall advertise the application in the Official Gazette.

(*2*) The patentee or any other person desiring to oppose the application may, within such time as may be prescribed or within such further time as the Controller may on application (made either before or after the expiration of the prescribed time) allow, give to the Controller notice of opposition.

(*3*) Any such notice of opposition shall contain a statement setting out the grounds on which the application is opposed.

(*4*) Where any such notice of opposition is duly given, the Controller shall notify the applicant, and shall give to the applicant and the opponent an opportunity to be heard before deciding the case.

Powers of Controller in granting compulsory licences.

93. (*1*) Where the Controller is satisfied on application made under section 84 that the manufacture, use or sale of materials not protected by the patent is prejudiced by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, he may, subject to the provisions of that section, order the grant of licences under the patent to such customers of the applicant as he thinks fit as well as to the applicant.

(*2*) Where an application under section 84 is made by a person being the holder of a licence under the patent, the Controller may, if he makes an order for the grant of a licence to the applicant, order the existing licence to be cancelled, or may, if he thinks fit, instead of making an order for the grant of a licence to the applicant, order the existing licence to be amended.

(*3*) Where on an application made under section 84, the Controller orders the grant of a licence, he may direct that the licence shall operate—

(*a*) to deprive the patentee of any right which he may have as patentee to make, use, exercise or vend the invention or to grant licences under the patent;

(*b*) to revoke all existing licences in respect of the invention.

(*4*) Where two or more patents are held by the same patentee and an applicant for a compulsory licence establishes that the reasonable requirements of the public have not been satisfied with respect to some only of the said patents, then, if the Controller is satisfied that the applicant cannot efficiently or satisfactorily work the licence granted to him under those patents without infringing the other patents held by the patentee, he may, by order, direct the grant of a licence in respect of the other patents also to enable the licensee to work the patent or patents in regard to which a licence is granted under section 84.

(*5*) Where the terms and conditions of a licence have been settled by the Controller, an application may be made to the Controller by the licensee for the revision of the terms on the ground that the terms settled have proved to be more onerous than originally expected and that in consequence thereof the licensee is unable to work the invention except at a loss:

Provided that no such application shall be entertained,—

(*a*) unless the licensee has worked the invention on a commercial scale for a period of at least twelve months, or

(*b*) a second time.

(6) The decision of the Controller shall be subject to appeal to the High Court.

General purposes for granting compulsory licences.

94. The powers of the Controller upon an application made under section 84 shall be exercised with a view to securing the following general purposes, that is to say,—

(a) that patented inventions are worked on a commercial scale in India without undue delay and to the fullest extent that is reasonably practicable;

(b) that the interests of any person for the time being working or developing an invention in India under the protection of a patent are not unfairly prejudiced.

Terms and conditions of compulsory licences.

95. (1) In settling the terms and conditions of a licence under section 84, the Controller shall endeavour to secure—

(i) that the royalty and other remuneration, if any, reserved to the patentee or other person beneficially entitled to the patent, is reasonable, having regard to the nature of the invention, the expenditure incurred by the patentee in making the invention or in developing it and obtaining a patent and keeping it in force and other relevant factors;

(ii) that the patented invention is worked to the fullest extent by the person to whom the licence is granted and with reasonable profit to him;

(iii) that the patented articles are made available to the public at reasonable prices.

(2) No licence granted by the Controller shall authorise the licensee to import the patented article or an article or substance made by a patented process from abroad where such importation would, but for such authorisation, constitute an infringement of the rights of the patentee.

(3) Notwithstanding anything contained in sub-section (2), the Central Government may, if in its opinion it is necessary so to do in the public interest, direct the Controller at any time to authorise any licensee in respect of a patent to import the patented article or an article or substance made by a patented process from abroad (subject to such conditions as it considers necessary to impose relating among other matters to the royalty and other remuneration, if any, payable to the patentee, the quantum of import, the sale price of the imported article, and the period of importation), and thereupon the Controller shall give effect to the directions.

Licensing of related patents.

96. (1) Notwithstanding anything contained in the other provisions of this Chapter, at any time after the sealing of a patent, any person who has the right to work any other patented invention either

as patentee or as licensee thereof, exclusive or oherwise, may apply to the Controller for the grant of a licence of the first mentioned patent on the ground that he is prevented or hindered without such licence from working the other invention efficiently or to the best advantage possible.

(2) No order under sub-section (*1*) shall be made unless the Controller is satisfied—

(*i*) that the applicant is able and willing to grant, or procure the grant to the patentee and his licensees if they so desire, of, a licence in respect of the other invention on reasonable terms; and

(*ii*) that the other invention has made a substantial contribution to the establishment or development of commercial or industrial activities in India.

(*3*) When the Controller is satisfied that the conditions mentioned in sub-section (*1*) have been established by the applicant, he may make an order on such terms as he thinks fit granting a licence under the first mentioned patent and a similar order under the other patent if so requested by the proprietor of the first mentioned patent or his licensee.

(*4*) The provisions of sections 92 and 110 shall apply to licences granted under this section as they apply to licences granted under section 84.

* * * * *

Special provision for compulsory licences on notification by Central Government.

97. (*1*) If the Central Government is satisfied in respect of any patent or class of patents in force that it is necessary or expedient in the public interest that compulsory licences should be granted at any time after the sealing thereof to work the invention or inventions, it may make a declaration to that effect in the Official Gazette, and thereupon the following provisions shall have effect, that is to say—

(*i*) the Controller shall on application made at any time after the notification by any person interested grant to the applicant a licence under the patent on such terms as he thinks fit;

(*ii*) in settling the terms of a licence granted under this section, the Controller shall endeavour to secure that the articles manufactured under the patent shall be available to the public at the lowest prices consistent with the patentees deriving a reasonable advantage from their patent rights.

(*2*) The provisions of sections 92, 93, 94 and 95 shall apply in relation to the grant of licences under this section as they apply in relation to the grant of licences under section 84.

* * * * *

98. Any order for the grant of a licence under this Chapter shall operate as if it were a deed granting a licence executed by the patentee and all other necessary parties embodying the terms and conditions, if any, settled by the Controller. Order for licence to operate as a deed between parties concerned.

CHAPTER XVII

USE OF INVENTIONS FOR PURPOSES OF GOVERNMENT AND ACQUISITION OF INVENTIONS BY CENTRAL GOVERNMENT

99. (*1*) For the purposes of this Chapter, an invention is said to be used for the purposes of Government if it is made, used, exercised or vended for the purposes of the Central Government, a State Government or a Government undertaking or any other undertaking in a class or classes of industries which the Central Government, having regard to the interests of the general public, may notify in this behalf in the Official Gazette. Meaning of use of invention for purposes of Government.

(*2*) Nothing contained in this Chapter shall apply in the case of any such use of an invention as is deemed not to constitute an infringement of the patentee's rights under section 48. * *

100. (*1*) Notwithstanding anything contained in this Act, at any time after an application for a patent has been filed at the patent office or a patent has been granted, the Central Government and any person authorised in writing by it, may make, use, exercise or vend the invention for the purposes of Government in accordance with the provisions of this Chapter. Power of Central Government to use inventions for purposes of Government.

(*2*) Where an invention has, before the priority date of the relevant claim of the complete specification, been duly recorded in a document, or tested or tried, by or on behalf of the Government or a Government undertaking, otherwise than in consequence of the communication of the invention directly or indirectly by the patentee or by a person from whom he derives title, any use of the invention by the Central Government or any person authorised in writing by it for the purposes of Government may be made free of any royalty or other remuneration to the patentee.

(*3*) If and so far as the invention has not been so recorded or tried or tested as aforesaid, any use of the invention made by the Central Government or any person authorised by it under sub-section (*1*), at any time after the acceptance of the complete specification in respect of the patent or in consequence of any such communication as aforesaid, shall be made upon terms as may be agreed upon either

before or after the use, between the Central Government or any person authorised under sub-section (*1*) and the patentee, or, as may in default of agreement be determined by the High Court on a reference under section 103.

(*4*) The authorisation by the Central Government in respect of an invention may be given under this section, either before or after the patent is granted and either before or after the acts in respect of which such authorisation is given or done, and may be given to any person, whether or not he is authorised directly or indirectly by the applicant or the patentee to make, use, exercise or vend the invention.

(*5*) Where an invention has been made, used, exercised or vended by or with the authority of the Central Government for the purposes of Government under this section, then, unless it appears to the Government that it would be contrary to the public interest so to do, the Government shall notify the patentee as soon as practicable of the fact and furnish him with such information as to the extent of the making, use, exercise or vending of the invention as he may, from time to time, reasonably require; and where the invention has been made, used, exercised or vended for the purposes of a Government undertaking or an undertaking in a class or classes of industries notified by the Central Government under section 99, the Central Government may call for such information as may be necessary for this purpose from such undertaking.

(*6*) The right to make, use, exercise and vend an invention for the purposes of Government under sub-section (*1*) shall include the right to sell the goods which have been made in exercise of that right, and a purchaser of goods so sold, and a person claiming through him, shall have the power to deal with the goods as if the Central Government or the person authorised under sub-section (*1*) were the patentee of the invention.

(*7*) Where in respect of a patent which has been the subject of an authorisation under this section, there is an exclusive licensee as is referred to in sub-section (*3*) of section 101, or where such patent has been assigned to the patentee in consideration of royalties or other benefits determined by reference to the use of the invention (including payments by way of minimum royalty), the notice directed to be given under sub-section (*5*) shall also be given to such exclusive licensee or assignor, as the case may be, and the reference to the patentee in sub-section (*3*) shall be deemed to include a reference to such assignor or exclusive licensee.

Rights of third parties in respect of use of invention for purposes of Government.

101. (*1*) In relation to any use of a patented invention, or an invention in respect of which an application for a patent is pending, made for the purposes of Government—

(*a*) by the Central Government or any person authorised by the Central Government under section 100; or

(*b*) by the patentee or applicant for the patent to the order made by the Central Government,

the provisions of any licence, assignment or agreement granted or made, whether before or after the commencement of this Act, between the patentee or applicant for the patent (or any person who derives title from him or from whom he derives title) and any person other than the Central Government shall be of no effect so far as those provisions—

(*i*) restrict or regulate the use for the purposes of Government of the invention, or of any model, document or information relating thereto, or

(*ii*) provide for the making of payments in respect of any use of the invention or of the model, document or information relating thereto for the purposes of Government (including payments by way of minimum royalty);

and the reproduction or publication of any model or document in connection with the said use for the purposes of Government shall not be deemed to be an infringement of any copyright subsisting in the model or document.

(*2*) Where the patent, or the right to apply for or obtain the patent, has been assigned to the patentee in consideration of royalties or other benefits determined by reference to the use of the invention (including payments by way of minimum royalty), then, in relation to any use of the invention made for the purposes of Government by the patentee to the order of the Central Government, sub-section (*3*) of section 100 shall have effect as if that use were made by virtue of an authority given under that section; and any use of the invention for the purposes of Government by virtue of sub-section (*3*) of that section shall have effect as if the reference to the patentee included a reference to the assignor of the patent, and any sum payable by virtue of that sub-section shall be divided between the patentee and the assignor in such proportion as may be agreed upon between them or as may in default of agreement be determined by the High Court on a reference under section 103.

(*3*) Where by virtue of sub-section (*3*) of section 100, payments are required to be made by the Central Government or persons authorised under sub-section (*1*) of that section in respect of the use of an invention for the purposes of Government and where in

respect of such patent there is an exclusive licensee authorised under his licence to use the invention for the purposes of Government, such sum shall be shared by the patentee and such licensee in such proportions, if any, as may be agreed upon between them or as may in default of agreement be determined by the High Court on a reference under section 103 to be just, having regard to any expenditure incurred by the licensee—

(*a*) in developing the said invention; or

(*b*) in making payments to the patentees other than royalties or other benefits determined by reference to the use of the invention, including payments by way of minimum royalty in consideration of the licence.

Acquisition of inventions and patents by the Central Government.

102. (*1*) The Central Government may, if satisfied that it is necessary that an invention which is the subject of an application for a patent or a patent should be acquired from the applicant or the patentee for a public purpose, publish a notification to that effect in the Official Gazette, and thereupon the invention or patent and all rights in respect of the invention or patent shall, by force of this section, stand transferred to and be vested in the Central Government.

(*2*) Notice of the acquisition shall be given to the applicant, and, where a patent has been granted, to the patentee and other persons, if any, appearing in the register as having an interest in the patent.

(*3*) The Central Government shall pay to the applicant, or, as the case may be, the patentee and other persons appearing on the register as having an interest in the patent such compensation as may be agreed upon between the Central Government and the applicant, or the patentee and other persons; or, as may, in default of agreement, be determined by the High Court on a reference under section 103 to be just having regard to the expenditure incurred in connection with the invention and, in the case of a patent, the term thereof, the period during which and the manner in which it has already been worked (including the profits made during such period by the patentee or by his licensee whether exclusive or otherwise) and other relevant factors.

Reference to High Court of disputes as to use for purposes of Government.

103. (*1*) Any dispute as to the exercise by the Central Government or a person authorised by it of the powers conferred by section 100, or as to terms for the use of an invention for the purposes of Government thereunder or as to the right of any person to receive any part of a payment made in pursuance of sub-section (*3*) of that section or as to the amount of compensation payable for the acquisition of an invention or a patent under section 102, may be

referred to the High Court by either party to the dispute in such manner as may be prescribed by the rules of the High Court.

(2) In any proceedings under this section to which the Central Government is a party, the Central Government may,—

(a) if the patentee is a party to the proceedings, petition by way of counter-claim for revocation of the patent on any ground upon which a patent may be revoked under section 64; and

(b) whether a patentee is or is not a party to the proceedings, put in issue the validity of the patent without petitioning for its revocation.

(3) If in such proceedings as aforesaid any question arises whether an invention has been recorded, tested or tried as is mentioned in section 100, and the disclosure of any document regarding the invention, or of any evidence of the test or trial thereof, would, in the opinion of the Central Government, be prejudicial to the public interest, the disclosure may be made confidentially to the advocate of the other party or to an independent expert mutually agreed upon.

(4) In determining under this section any dispute between the Central Government and any person as to terms for the use of an invention for the purposes of Government, the High Court shall have regard to any benefit or compensation which that person or any person from whom he derives title, may have received, or may be entitled to receive, directly or indirectly in respect of the use of the invention in question for the purposes of Government.

(5) In any proceedings under this section, the High Court may at any time order the whole proceedings or any question or issue of fact arising therein to be referred to an official referee, commissioner or an arbitrator on such terms as the High Court may direct, and references to the High Court in the foregoing provisions of this section shall be construed accordingly.

(6) Where the invention claimed in a patent was made by a person who at the time it was made was in the service of the Central Government or of a State Government or was an employee of a Government undertaking and the subject-matter of the invention is certified by the relevant Government or the principal officer of the Government undertaking to be connected with the work done in the course of the normal duties of the Government servant or employee

of the Government undertaking, then, notwithstanding anything contained in this section, any dispute of the nature referred to in sub-section (*1*) relating to the invention shall be disposed of by the Central Government conformably to the provisions of this section so far as may be applicable, but before doing so the Central Government shall give an opportunity to the patentee and such other parties as it considers have an interest in the matter to be heard.

CHAPTER XVIII

SUITS CONCERNING INFRINGEMENT OF PATENTS

Jurisdiction.

104. No suit for a declaration under section 105 or for any relief under section 106 or for infringement of a patent shall be instituted in any court inferior to a district court having jurisdiction to try the suit:

Provided that where a counter-claim for revocation of the patent is made by the defendant, the suit, along with the counter-claim, shall be transferred to the High Court for decision.

Power of court to make declaration as to non-infringement.

105. (*1*) Notwithstanding anything contained in section 34 of the Specific Relief Act, 1963, any person may institute a suit for a declaration that the use by him of any process, or the making, use or sale of any article by him, does not, or would not, constitute an infringement of a claim of a patent against the patentee or the holder of an exclusive licence under the patent, notwithstanding that no assertion to the contrary has been made by the patentee or the licensee, if it is shown— 47 of 1963.

(*a*) that the plaintiff has applied in writing to the patentee or exclusive licensee for a written acknowledgment to the effect of the declaration claimed and has furnished him with full particulars in writing of the process or article in question; and

(*b*) that the patentee or licensee has refused or neglected to give such an acknowledgment.

(*2*) The costs of all parties in a suit for a declaration brought by virtue of this section shall, unless for special reasons the court thinks fit to order otherwise, be paid by the plaintiff.

(*3*) The validity of a claim of the specification of a patent shall not be called in question in a suit for a declaration brought by virtue of this section, and accordingly the making or refusal of such a declaration in the case of a patent shall not be deemed to imply that the patent is valid or invalid.

(*4*) A suit for a declaration may be brought by virtue of this section at any time after the date of advertisement of acceptance of the complete specification of a patent, and references in this section to the patentee shall be construed accordingly.

106. (*1*) Where any person (whether entitled to or interested in a patent or an application for a patent or not) threatens any other person by circulars or advertisements or by communications, oral or in writing, addressed to that or any other person, with proceedings for infringement of a patent, any person aggrieved thereby may bring a suit against him praying for the following reliefs, that is to say— Power of Court to grant relief in cases of groundless threats of infringement proceedings.

(*a*) a declaration to the effect that the threats are unjustifiable;

(*b*) an injunction against the continuance of the threats; and

(*c*) such damages, if any, as he has sustained thereby.

(*2*) Unless in such suit the defendant proves that the acts in respect of which the proceedings were threatened constitute or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid, the court may grant to the plaintiff all or any of the reliefs prayed for.

Explanation.—A mere notification of the existence of a patent does not constitute a threat of proceeding within the meaning of this section.

107. (*1*) In any suit for infringement of a patent, every ground on which it may be revoked under section 64 shall be available as a ground for defence. Defences, etc., in suits for infringement.

(*2*) In a suit for infringement of a patent granted in respect of a method or process of manufacture of a substance referred to in section 5, any substance of the same chemical composition or constitution as the first mentioned substance shall be presumed, unless the contrary is proved, to have been made by the aforesaid patented method or process.

108. The reliefs which a court may grant in any suit for infringement include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits. Reliefs in suits for infringement.

109. (*1*) The holder of an exclusive licence shall have the like right as the patentee to institute a suit in respect of any infringement of the patent committed after the date of the licence, and in awarding damages or an account of profits or granting any other relief in any such suit the court shall take into consideration any loss suffered or likely to be suffered by the exclusive licensee as such or, as the case may be, the profits earned by means of the infringement so far as it constitutes an infringement of the rights of the exclusive licensee as such. Right of exclusive licensee to take proceedings against infringement.

(2) In any suit for infringement of a patent by the holder of an exclusive licence under sub-section (1), the patentee shall, unless he has joined as a plaintiff in the suit, be added as a defendant, but a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

Right of licensee under section 84 to take proceedings against infringement.

110. Any person to whom a licence has been granted under section 84 shall be entitled to call upon the patentee to take proceedings to prevent any infringement of the patent, and, if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as though he were the patentee, making the patentee a defendant; but a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

Restriction on power of court to grant damages or account of profits for infringement.

111. (1) In a suit for infringement of a patent damages or an account of profits shall not be granted against the defendant who proves that at the date of the infringement he was not aware and had no reasonable grounds for believing that the patent existed.

Explanation.—A person shall not be deemed to have been aware or to have had reasonable grounds for believing that a patent exists by reason only of the application to an article of the word 'Patent', 'Patented' or any word or words expressing or implying that a patent has been obtained for the article, unless the number of the patent accompanies the word or words in question.

(2) In any suit for infringement of a patent the court may, if it thinks fit, refuse to grant any damages or an account of profits in respect of any infringement committed after a failure to pay any renewal fee within the prescribed period and before any extension of that period.

(3) Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act after the publication of the specification, no damages or account of profits shall be granted in any proceeding in respect of the use of the invention before the date of the decision allowing the amendment, unless the court is satisfied that the specification as originally published was framed in good faith and with reasonable skill and knowledge.

(4) Nothing in this section shall affect the power of the court to grant an injunction in any suit for infringement of a patent.

Restriction on power of court

112. If in proceedings for the infringement of a patent endorsed or deemed to be endorsed with the words "Licences of right" (otherwise than by the importation of the patented article from other countries) the infringing defendant is ready and willing to take a licence upon

terms to be settled by the Controller as provided in section 88, no injunction shall be granted against him, and the amount (if any) recoverable against him by way of damages shall not exceed double the amount which would have been recoverable against him as licensee if such a licence had been granted before the earliest infringement. to grant injunction in certain cases.

113. (1) If in any proceedings before a High Court for the revocation of a patent under section 64 the validity of any claim of a specification is contested and that claim is found by the court to be valid, the Court may certify that the validity of that claim was contested in those proceedings and was upheld. Certificate of validity of specification and costs of subsequent suits for infringement thereof.

(2) Where any such certificate has been granted, then, if in any subsequent suit before a court for infringement of that claim of the patent or in any subsequent proceeding for revocation of the patent in so far as it relates to that claim, the patentee or other person relying on the validity of the claim obtains a final order or judgment in his favour, he shall be entitled to an order for the payment of his full costs, charges and expenses of and incidental to any such suit or proceeding properly incurred so far as they concern the claim in respect of which the certificate was granted, unless the court trying the suit or proceeding otherwise directs:

Provided that the costs as specified in this sub-section shall not be ordered when the party disputing the validity of the claim satisfies the court that he was not aware of the grant of the certificate when he raised the dispute and withdrew forthwith such defence when he became aware of such a certificate.

(3) Nothing contained in this section shall be construed as authorising courts hearing appeals from decrees or orders in suits for infringement or petitions for revocation to pass orders for costs on the scale referred to therein.

114. (1) If in proceedings for infringement of a patent it is found that any claim of the specification, being a claim in respect of which infringement is alleged, is valid, but that any other claim is invalid, the court may grant relief in respect of any valid claim which is infringed: Relief for infringement of partially valid specification.

Provided that the court shall not grant relief except by way of injunction save in the circumstances mentioned in sub-section (3).

(2) Where the plaintiff proves that the invalid claim was framed in good faith and with reasonable skill and knowledge, the court shall grant relief in respect of any valid claim which is infringed subject to the discretion of the court as to costs and as to the date from which damages or an account of profits should be reckoned, and in exercising such discretion the court may take into consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there.

Scientific advisers.

115. (1) In any suit for infringement or in any proceeding before a court under this Act, the court may at any time, and whether or not an application has been made by any party for that purpose, appoint an independent scientific adviser to assist the court or to inquire and report upon any such question of fact or of opinion (not involving a question of interpretation of law) as it may formulate for the purpose.

(2) The remuneration of the scientific adviser shall be fixed by the court and shall include the costs of making a report and a proper daily fee for any day on which the scientific adviser may be required to attend before the court, and such remuneration shall be defrayed out of moneys provided by Parliament by law for the purpose.

CHAPTER XIX

APPEALS

Appeals.

116. (1) No appeal shall lie from any decision, order or direction made or issued under this Act by the Central Government, or from any act or order of the Controller for the purpose of giving effect to any such decision, order or direction.

(2) Save as otherwise expressly provided in sub-section (1), an appeal shall lie to a High Court from any decision, order or direction of the Controller under any of the following provisions, that is to say,

section 15, section 16, section 17, section 18, section 19, section 20, section 25, section 27, section 28, section 51, section 54, section 57, section 60, section 61, section 63, sub-section (3) of section 69, section 78, section 84, section 86, section 89, section 93, section 96 and section 97.

(3) Every appeal under this section shall be in writing and shall be made within three months from the date of the decision, order or direction, as the case may be, of the Controller, or within such further time as the High Court may in accordance with the rules made by it under section 158 allow.

117. (*1*) Every appeal before a High Court under section 116 shall be by petition and shall be in such form and shall contain such particulars as may be prescribed by rules made by the High Court under section 158. Procedure for hearing of appeals.

(*2*) Every such appeal shall be heard by a single Judge of the High Court:

Provided that any such Judge may, if he so thinks fit, refer the appeal at any stage of the proceeding to a Bench of the High Court.

(*3*) Every such appeal shall be heard as expeditiously as possible and endeavour shall be made to decide the appeal within a period of twelve months from the date on which it is filed.

CHAPTER XX

PENALTIES

118. If any person fails to comply with any direction given under section 35 or makes or causes to be made an application for the grant of a patent in contravention of section 39, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both. Contravention of secrecy provisions relating to certain inventions.

119. If any person makes, or causes to be made, a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in such a register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both. Falsification of entries in register, etc.

120. If any person falsely represents that any article sold by him is patented in India or is the subject of an application for a patent in India, he shall be punishable with fine which may extend to five hundred rupees. Unauthorised claim of patent rights.

Explanation 1.—For the purposes of this section, a person shall be deemed to represent—

(*a*) that an article is patented in India if there is stamped, engraved or impressed on, or otherwise applied to, the article the word "patent" or "patented" or some other word expressing or implying that a patent for the article has been obtained in India;

(*b*) that an article is the subject of an application for a patent in India, if there are stamped, engraved or impressed on, or otherwise applied to, the article the words "patent applied for", "patent pending", or some other words implying that an application for a patent for the article has been made in India.

Explanation 2.—The use of words "patent", "patented", "patent applied for", "patent pending" or other words expressing or implying that an article is patented or that a patent has been applied for shall be deemed to refer to a patent in force in India, or to a pending application for a patent in India, as the case may be, unless there is an accompanying indication that the patent has been obtained or applied for in any country outside India.

Wrongful use of words "patent office".

121. If any person uses on his place of business or any document issued by him or otherwise the words "patent office" or any other words which would reasonably lead to the belief that his place of business is, or is officially connected with, the patent office, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Refusal or failure to supply information

122. (*1*) If any person refuses or fails to furnish—

(*a*) to the Central Government any information which he is required to furnish under sub-section (5) of section 100,

(*b*) to the Controller any information or statement which he is required to furnish under section 146,

he shall be punishable with fine which may extend to one thousand rupees.

(*2*) If any person, being required to furnish any such information as is referred to in sub-section (*1*), furnishes information or statement which is false, and which he either knows or has reason to believe to be false or does not believe to be true, he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Practice by non-registered patent agents.

123. If any person contravenes the provisions of section 129, he shall be punishable with fine which may extend to five hundred rupees in the case of a first offence and two thousand rupees in the case of a second or subsequent offence.

Offences by companies.

124. (*1*) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

CHAPTER XXI

PATENT AGENTS

Register of patent agents.

125. The Controller shall maintain a register to be called the register of patent agents in which shall be entered the names and addresses of all persons qualified to have their names so entered under section 126.

Qualifications for registration as patent agents.

126. (1) A person shall be qualified to have his name entered in the register of patent agents if he fulfils the following conditions, namely,—

(a) he is a citizen of India; **

(b) he has completed the age of 21 years;

(c) he has obtained a degree ** from any University in the territory of India or possesses such other equivalent ** qualifications as the Central Government may specify in this behalf, and, in addition,—

(i) is an advocate within the meaning of the Advocates Act, 1961; or 25 of 1961.

(ii) has passed the qualifying examination prescribed for the purpose; **

(*d*) he has paid such fee as may be prescribed.

(*2*) Notwithstanding anything contained in sub-section (*1*), a person who has been practising as a patent agent before the 1st day of November, 1966 and has filed not less than five complete specifications before the said day, shall, on payment of prescribed fee, be qualified to have his name entered in the register of patent agents.

Rights of patent agents.

127. Subject to the provisions contained in this Act and in any rules made thereunder, every patent agent whose name is entered in the register shall be entitled—

(*a*) to practise before the Controller; and

(*b*) to prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller under this Act.

Subscription and verification of certain documents by patent agents.

128. (*1*) Subject to the provisions contained in sub-section (*2*) and to any rules made under this Act, all applications and communications to the Controller under this Act may be signed by a patent agent authorised in writing in this behalf by the person concerned.

(*2*) The following documents, namely,—

(*i*) applications for patents;

(*ii*) applications for the restoration of lapsed patents;

(*iii*) applications for the sealing of patents after the time allowed for that purpose by or under sub-section (*2*), or sub-section (*3*) of section 43 has expired;

(*iv*) applications for leave to amend;

(*v*) applications for compulsory licences or for revocation; and

(*vi*) notices of surrender of patents;

shall be signed and verified in the manner prescribed by the person making such applications or giving such notices:

Provided that if such person is absent from India, they may be signed and verified on his behalf by a patent agent authorised by him in writing in that behalf.

Restrictions on practice as patent agents.

129. (*1*) No person, either alone or in partnership with any other person, shall practise, describe or hold himself out as a patent agent, or permit himself to be so described or held out, unless he is registered as a patent agent or, as the case may be, unless he and all his partners are so registered.

(*2*) No company or other body corporate shall practise, describe itself or hold itself out as patent agents or permit itself to be so described or held out.

Explanation.—For the purposes of this section, practise as a patent agent includes any of the following acts, namely:—

(*a*) applying for or obtaining patents in India or elsewhere;

(*b*) preparing specifications or other documents for the purposes of this Act or of the patent law of any other country;

(*c*) giving advice other than of a scientific or technical nature as to the validity of patents or their infringement.

Removal from register of patent agents and restoration.

130. (*1*) The Central Government may remove the name of any person from the register when it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it thinks fit to make—

(*i*) that his name has been entered in the register by error or on account of misrepresentation or suppression of material fact;

(*ii*) that he has been convicted of any offence and sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity which in the opinion of the Central Government renders him unfit to be kept in the register.

(*2*) The Central Government may, on application and on sufficient cause being shown, restore to the register the name of any person removed therefrom.

Power of Controller to refuse to deal with certain agents.

131. (*1*) Subject to any rules made in this behalf, the Controller may refuse to recognise as agent in respect of any business under this Act—

(*a*) any individual whose name has been removed from, and not restored to, the register; ***

(b) any person who has been convicted of an offence under section 123;

(c) any person, not being registered as a patent agent, who in the opinion of the Controller is engaged wholly or mainly in acting as agent in applying for patents in India or elsewhere in the name or for the benefit of the person by whom he is employed;

(d) any company or firm, if any person whom the Controller could refuse to recognise as agent in respect of any business under this Act, is acting as a director or manager of the company or is a partner in the firm.

(2) The Controller shall refuse to recognise as agent in respect of any business under this Act any person who neither resides nor has a place of business in India.

Savings in respect of other persons authorised to act as agents.

132. Nothing in this Chapter shall be deemed to prohibit—

(a) the applicant for a patent or any person, not being a patent agent, who is duly authorised by the applicant from drafting any specification or appearing or acting before the Controller; or

(b) an advocate, not being a patent agent, from taking part in any proceedings under this Act otherwise than by way of drafting any specification.

CHAPTER XXII

INTERNATIONAL ARRANGEMENTS

Notification as to convention countries.

133. (1) With a view to the fulfilment of a treaty, convention or arrangement with any country outside India which affords to applicants for patents in India or to citizens of India similar privileges as are granted to its own citizens in respect of the grant of patents and the protection of patent rights, the Central Government may, by notification in the Official Gazette, declare such country to be a convention country for the purposes of this Act.

(2) A declaration under sub-section (1) may be made for the purposes either of all or of some only of the provisions of this Act, and a country in the case of which a declaration made for the purposes of some only of the provisions of this Act is in force shall be deemed to be a convention country for the purposes of those provisions only.

Notification as to countries not providing for reciprocity.

134. Where any country specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the grant of patents and the protection of patent rights as it accords to its own nationals, no

national of such country shall be entitled, either solely or jointly with any other person,—

(*a*) to apply for the grant of a patent or be registered as the proprietor of a patent;

(*b*) to be registered as the assignee of the proprietor of a patent; or

(*c*) to apply for a licence or hold any licence under a patent granted under this Act.

Convention applications.

135. (*1*) Without prejudice to the provisions contained in section 6, where a person has made an application for a patent in respect of an invention in a convention country (hereinafter referred to as the "basic application"), and that person or the legal representative or assignee of that person makes an application under this Act for a patent within twelve months after the date on which the basic application was made, the priority date of a claim of the complete specification, being a claim based on matter disclosed in the basic application, is the date of making of the basic application.

Explanation.—Where applications have been made for similar protection in respect of an invention in two or more convention countries, the period of twelve months referred to in this sub-section shall be reckoned from the date on which the earlier or earliest of the said applications was made.

(*2*) Where applications for protection have been made in one or more convention countries in respect of two or more inventions which are cognate or of which one is a modification of another, a single convention application may, subject to the provisions contained in section 10, be made in respect of those inventions at any time within twelve months from the date of the earliest of the said applications for protection:

Provided that the fee payable on the making of any such application shall be the same as if separate applications have been made in respect of each of the said inventions, and the requirements of clause (*b*) of sub-section (*1*) of section 136 shall, in the case of any such application, apply separately to the applications for protection in respect of each of the said inventions.

Special provisions relating to convention applications.

136. (*1*) Every convention application shall—

(*a*) be accompanied by a complete specification; and

(*b*) specify the date on which and the convention country in which the application for protection, or, as the case may be, the first of such applications was made; and

(*c*) state that no application for protection in respect of the invention had been made in a convention country before that

date by the applicant or by any person from whom he derives title.

(2) Subject to the provisions contained in section 10, a complete specification filed with a convention application may include claims in respect of developments of, or additions to, the invention in respect of which the application for protection was made in a convention country, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make a separate application for a patent.

(3) A convention application shall not be post-dated under sub-section (1) of section 17 to a date later than the date on which under the provisions of this Act the application could have been made.

Multiple priorities.

137. (1) Where two or more applications for patents in respect of inventions have been made in one or more convention countries and those inventions are so related as to constitute one invention, one application may be made by any or all of the persons referred to in sub-section (1) of section 135 within twelve months from the date on which the earlier or earliest of those applications was made, in respect of the inventions disclosed in the specifications which accompanied the basic applications.

(2) The priority date of a claim of the complete specification, being a claim based on matters disclosed in one or more of the basic applications, is the date on which that matter was first so disclosed.

(3) For the purposes of this Act, a matter shall be deemed to have been disclosed in a basic application for protection in a convention country if it was claimed or disclosed (otherwise than by way of disclaimer or acknowledgment of a prior act) in that application, or any documents submitted by the applicant for protection in support of and at the same time as that application, but no account shall be taken of any disclosure effected by any such document unless a copy of the document is filed at the patent office with the convention application or within such period as may be prescribed after the filing of that application.

Supplementary provisions as to convention applications.

138. (1) Where a convention application is made in accordance with the provisions of this Chapter, the applicant shall furnish, in addition to the complete specification, copies of the specifications or corresponding documents filed or deposited by the applicant in the patent office of the convention country in which the basic application was made, certified by the official chief or head of the patent office of the convention country, or otherwise verified to the satisfaction of the Controller, along with the application or within three months thereafter, or within such further period as the Controller may on good cause allow

(2) If any such specification or other document is in a foreign language, a translation into English of the specification or document, verified by affidavit or otherwise to the satisfaction of the Controller, shall be annexed to the specification or document.

(3) For the purposes of this Act, the date on which an application was made in a convention country is such date as the Controller is satisfied, by certificate of the official chief or head of the patent office of the convention country or otherwise, is the date on which the application was made in that convention country.

Other provisions of Act to apply to convention applications.

139. Save as otherwise provided in this Chapter, all the provisions of this Act shall apply in relation to a convention application and a patent granted in pursuance thereof as they apply in relation to an ordinary application and a patent granted in pursuance thereof.

CHAPTER XXIII

MISCELLANEOUS

Avoidance of certain restrictive conditions.

140. (1) It shall not be lawful to insert—

(i) in any contract for or in relation to the sale or lease of a patented article or an article made by a patented process; or

(ii) in a licence to manufacture or use a patented article; or

(iii) in a licence to work any process protected by a patent,

a condition the effect of which may be—

(a) to require the purchaser, lessee, or licensee to acquire from the vendor, lessor, or licensor, or his nominees, or to prohibit him from acquiring or to restrict in any manner or to any extent his right to acquire from any person or to prohibit him from acquiring except from the vendor, lessor, or licensor or his nominees, any article other than the patented article or an article other than that made by the patented process; or

(b) to prohibit the purchaser, lessee or licensee from using, or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee, to use an article other than the patented article or an article other than that made by the patented process, which is not supplied by the vendor, lessor or licensor or his nominee; or

(c) to prohibit the purchaser, lessee or licensee from using or to restrict in any manner or to any extent the right of the

purchaser, lessee or licensee to use any process other thah the patented process;

and any such condition shall be void.

(2) A condition of the nature referred to in clause (*a*) or clause (*b*) or clause (c) of sub-section (*1*) shall not cease to be a condition falling within that sub-section merely by reason of the fact that the agreement containing it has been entered into separately, whether before or after the contract relating to the sale, lease or licence of the patented article or process.

(3) In proceedings against any person for the infringement of a patent, it shall be a defence to prove that at the time of the infringement there was in force a contract relating to the patent and containing a condition declared unlawful by this section:

Provided that this sub-section shall not apply if the plaintiff is not a party to the contract and proves to the satisfaction of the court that the restrictive condition was inserted in the contract without his knowledge and consent, express or implied.

(4) Nothing in this section shall—

(*a*) affect a condition in a contract by which a person is prohibited from selling goods other than those of a particular person;

(*b*) validate a contract which, but for this section, would be invalid;

(c) affect a condition in a contract for the lease of, or licence to use, a patented article, by which the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the patented article as may be required or to put or keep it in repair.

(5) The provisions of this section shall also apply to contracts made before the commencement of this Act if, and in so far as, any restrictive conditions declared unlawful by this section continue in force after the expiration of one year from such commencement.

Determination of certain contracts.

141. (*1*) Any contract for the sale or lease of a patented article or for licence to manufacture, use or work a patented article or process, or relating to any such sale, lease or licence, whether made before or after the commencement of this Act, may at any time after the patent or all the patents by which the article or process was

protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything to the contrary in the contract or in any other contract, be determined by the purchaser, lessee, or licensee, as the case may be, of the patent on giving three months notice in writing to the other party.

(2) The provisions of this section shall be without prejudice to any right of determining a contract exercisable apart from this section.

Fees.

142. (*1*) There shall be paid in respect of the grant of patents and applications therefor, and in respect of other matters in relation to the grant of patents under this Act, such fees as may be prescribed by the Central Government.

(*2*) Where a fee is payable in respect of the doing of an act by the Controller, the Controller shall not do that act until the fee has been paid.

(*3*) Where a fee is payable in respect of the filing of a document at the patent office, the document shall be deemed not to have been filed at the office until the fee has been paid.

(*4*) Where a principal patent is granted later than two years from the date of the application for patent, the fees which have become due in the meantime may be paid within a term of three months from the date of the recordal of the patent in the register.

Restrictions upon publication of specifications.

143. Subject to the provisions of Chapter VII, an application for a patent, and any specification filed in pursuance thereof, shall not, except with the consent of the applicant, be published by the Controller or be open to public inspection at any time before the date of advertisement of acceptance of the application in pursuance of section 23.

Reports of examiners to be confidential.

144. The reports of examiners to the Controller under this Act shall not be open to public inspection or be published by the Controller; and such reports shall not be liable to production or inspection in any legal proceeding unless the court certifies that the production or inspection is desirable in the interests of justice, and ought to be allowed:

Provided that the Controller may, on application made in the prescribed manner, by any person, disclose the result of any search made under section 13 in respect of any application for a patent where the complete specification has been published.

Publication of patented inventions.

145. The Controller shall issue periodically a publication of patented inventions containing such information as the Central Government may direct.

Power of Controller to call for information from patentees.

146. The Controller may, at any time during the continuance of the patent, by notice in writing, require a patentee or a licensee, exclusive or otherwise, to furnish to him within two months from the date of such notice or within such further time as the Controller may allow, such information or such periodical statements as to the extent to which the patented invention has been commercially worked in India as may be specified in the notice.

Evidence of entries, documents, etc.

147. (*1*) A certificate purporting to be signed by the Controller as to any entry, matter or thing which he is authorised by this Act or any rules made thereunder to make or do, shall be *prima facie* evidence of the entry having been made and of the contents thereof and of the matter or thing having been done or omitted to be done.

(*2*) A copy of any entry in any register or of any document kept in the patent office or of any patent, or an extract from any such register or document, purporting to be certified by the Controller and sealed with the seal of the patent office shall be admitted in evidence in all courts, and in all proceedings. without further proof or production of the original.

(*3*) The Controller or any other officer of the patent office shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special causes.

Declaration by infant, lunatic, etc.

148. (*1*) If any person is, by reason of minority, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(*2*) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

Service of notices, etc., by post.

149. Any notice required or authorised to be given by or under this Act, and any application or other document so authorised or required to be made or filed, may be given, made or filed by post.

Security for costs.

150. If any party by whom notice of any opposition is given under this Act or by whom application is made to the Controller for the grant of a licence under a patent neither resides nor carries on business in India, the Controller may require him to give security for the costs of the proceedings, and in default of such security being given may treat the opposition or application as abandoned.

Transmission of orders of courts to Controller.

151. (*1*) Every order of the High Court on a petition for revocation, including orders granting certificates of validity of any claim, shall be transmitted by the High Court to the Controller who shall cause an entry thereof and reference thereto to be made in the register.

(*2*) Where in any suit for infringement of a patent or in any suit under section 106 the validity of any claim or a specification is contested and that claim is found by the court to be valid or not valid, as the case may be, the court shall transmit a copy of its judgment and decree to the Controller who shall on receipt thereof cause an entry in relation to such proceeding to be made in the prescribed manner in a supplemental record.

(*3*) The provisions of sub-sections (*1*) and (*2*) shall also apply to the court to which appeals are preferred against decisions of the courts referred to in those sub-sections.

Transmission of copies of specifications, etc., and inspection thereof.

152. Copies of all such specifications, drawings and amendments left at the patent office as become open to public inspection under the provisions of this Act, shall be transmitted, as soon as may be, after the printed copies thereof are available, to such authorities as the Central Government may appoint in this behalf, and shall be open to the inspection of any person at all reasonable times at places to be specified by those authorities and with the approval of the Central Government.

Information relating to patents.

153. A person making a request to the Controller in the prescribed manner for information relating to any such matters as may be prescribed as respects any patent specified in the request or as respects any application for a patent so specified shall be entitled, subject to the payment of the prescribed fee, to have information supplied to him accordingly.

Loss or destruction of patent.

154. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Controller, the Controller may at any time, on application made in the prescribed manner and on

payment of the prescribed fee, cause a duplicate thereof to be sealed and delivered to the applicant.

Reports of Controller to be placed before Parliament.

155. The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution of this Act by or under the Controller.

Patent to bind Government.

156. Subject to the other provisions contained in this Act, a patent shall have to all intents the like effect as against Government as it has against any person.

Right of Government to sell or use forfeited articles.

157. Nothing in this Act shall affect the power of the Government or of any person deriving title directly or indirectly from the Government to sell or use any articles forfeited under any law for the time being in force.

Power of High Courts to make rules.

158. The High Court may make rules consistent with this Act as to the conduct and procedure in respect of all proceedings before it under this Act.

Power of Central Government to make rules.

159. (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) Without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely:—

(*i*) the form and manner in which any application for a patent, any specifications or drawings and any other application or document may be filed in the patent office;

(*ii*) the time within which any act or thing may be done under this Act, including the manner in which and the time within which any matter may be advertised under this Act;

(*iii*) the fees which may be payable under this Act and the manner of payment of such fees;

(*iv*) the matters in respect of which the examiner may make a report to the Controller;

(*v*) the form of request for the sealing of a patent;

(*vi*) the form and manner in which and the time within which any notice may be given under this Act;

(*vii*) the provisions which may be inserted in an order for restoration of a patent for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had ceased;

(*viii*) the establishment of branch offices of the patent office and the regulation generally of the business of the patent office, including its branch offices;

(*ix*) the maintenance of the register of patents and the matters to be entered therein;

(*x*) the matters in respect of which the Controller shall have powers of a civil court;

(*xi*) the time when and the manner in which the register and any other document open to inspection may be inspected under this Act;

(*xii*) the qualifications of, and the preparation of a roll of, scientific advisers for the purpose of section 115;

* * * * * *

(*xiii*) the manner in which any compensation for acquisition by Government of an invention may be paid;

(*xiv*) the manner in which the register of patent agents may be maintained; the conduct of qualifying examinations for patent agents; and matters connected with their practice and conduct, including the taking of disciplinary proceedings against patent agents for misconduct;

(*xv*) the regulation of the making, printing, publishing and selling of indexes to, and abridgments of, specifications and other documents in the patent office; and the inspection of indexes and abridgments and other documents;

(*xvi*) any other matter which has to be or may be prescribed.

(3) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication.

Rules to be placed before Parliament.

160. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and, if before the expiry of the session in which it is so laid or in the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Special provisions with respect to certain applications deemed to have been refused under Act 2 of 1911.

161. (*1*) Where, as a result of action taken by the Controller under section 12 of the Atomic Energy Act, 1948, or under section 20 of the Atomic Energy Act, 1962, an application for a patent made before the commencement of this Act could not be accepted within the time specified for the purpose in the Indian Patents and Designs Act, 1911 (hereafter in this section referred to as the repealed Act), and, consequently, was deemed to have been refused by reason of sub-section (*4*) of section 5 of the repealed Act, the application may, if the applicant, or, if he is dead his legal representative, makes a request in that behalf to the Controller in the prescribed manner within three months from the commencement of this Act, be revived and shall be disposed of as if it were an application pending at the commencement of this Act to which the provisions of this Act apply by reason of sub-section (*3*) of section 162.

29 of 1948. 37 of 1962. 2 of 1911.

(2) The Controller may, before proceeding to act upon any such request as is referred to in sub-section (*1*), refer the matter to the Central Government for directions as to whether the invention is one relating to atomic energy and shall act in conformity with the directions issued by it.

(3) Where in pursuance of any such application as is referred to in sub-section (*1*) a patent is granted, the rights of the patentee shall be subject to such conditions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by contract or otherwise to avail themselves of, the patented invention before the date of advertisement of the acceptance of the complete specification.

(4) A patent granted in pursuance of any such application as is referred to in sub-section (1) shall be dated as of the date on which the request for reviving such application was made under sub-section (1).

Repeal of Act 2 of 1911 in so far as it relates to patents and savings.

162. (1) The Indian Patents and Designs Act, 1911, in so far as it relates to patents, is hereby repealed, that is to say, the said Act shall be amended in the manner specified in the Schedule.

(2) Notwithstanding the repeal of the Indian Patents and Designs Act, 1911, in so far as it relates to patents—

(a) the provisions of section 21A of that Act and of any rules made thereunder shall continue to apply in relation to any patent granted before the commencement of this Act in pursuance of that section, and

(b) the renewal fee in respect of a patent granted under that Act shall be as fixed thereunder.

(3) Save as otherwise provided in sub-section (2), the provisions of this Act shall apply to any application for a patent pending at the commencement of this Act and to any proceedings consequent thereon and to any patent granted in pursuance thereof.

10 of 1897.

(4) The mention of particular matters in this section shall not prejudice the general application of the General Clauses Act, 1897, with respect to repeals.

(5) Notwithstanding anything contained in this Act, any suit for infringement of a patent or any proceeding for revocation of a patent, pending in any court at the commencement of this Act, may be continued and disposed of, as if this Act had not been passed.

Amendment of Act 43 of 1958.

163. In sub-section (1) of section 4 of the Trade and Merchandise Marks Act, 1958, the words and figures "and the Controller of Patents and Designs for the purposes of the Indian Patents and Designs Act, 1911" shall be omitted.

2 of 1911.

THE SCHEDULE

[*See* section 162]

AMENDMENTS TO THE INDIAN PATENTS AND DESIGNS ACT, 1911

1. Long title—Omit "Inventions and".

2. Preamble—Omit "inventions and".

3. Section 1—In sub-section (*1*) omit "Indian Patents and".

4. Section 2—

(*a*) omit clause (*1*) ;

(*b*) in clause (*2*) omit "(as respects designs)";

(*c*) for clause (*3*), substitute—

'(*3*) "Controller" means the Controller General of Patents, Designs and Trade Marks appointed under sub-section (*1*) of section 4 of the Trade and Merchandise Marks Act, 1958;'; 43 of 1958.

(*d*) in clause (*5*) for "trade mark as defined in section 478", substitute "trade mark as defined in clause (*v*) of sub-section (*1*) of section 2 of the Trade and Merchandise Marks Act, 1958"; 43 of 1958.

(*e*) omit clause (*6*);

(*f*) in clause (*7*), after sub-clause (*e*) insert—

"(*f*) in relation to the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu, the High Court of Bombay;

(*g*) in relation to the Union territory of Pondicherry, the High Court of Madras;";

(*g*) omit clauses (*8*), (*10*) and (*11*);

(*h*) for clause (*12*), substitute—

'(*12*) "Patent Office" means the patent office referred to in section 74 of the Patents Act, 1966.'

5. Omit Part I.

6. For section 51B, substitute—

"51B. A registered design shall have to all intents the like effect as against Government as it has against any person and the provisions of Chapter XVII of the Patents Act, 1966, shall apply to registered designs as they apply to patents.". Designs to bind Government.

7. In section 54, for "The provisions of this Act", substitute "The provisions of the Patents Act, 1966".

8. Omit sections 55 and 56.

9. Section 57—For sub-section (*1*), substitute—

"(*1*) There shall be paid in respect of the registration of designs and applications therefor and in respect of other matters relating to designs under this Act such fees as may be prescribed by the Central Government.".

10. Omit section 59A.

11. Section 61—Omit sub-section (*1*).

12. For section 62, substitute—

"62. The Controller may, on request in writing accompanied by the prescribed fee, correct any clerical error in the representation of a design or in the name or address of the proprietor of any design or in any other matter which is entered upon the register of designs.". Power of Controller to correct clerical errors.

13. Section 63—

(*a*) in sub-section (*1*), omit "to a patent or" and "patent or";

(*b*) in sub-section (*2*), omit "patent or" and for "patents or designs, as the case may be,", substitute "designs,";

(*c*) in sub-section (*3*), omit "patent or" wherever that expression occurs;

(*d*) in sub-section (*4*), omit "to a patent or".

14. Section 64—

(*a*) in sub-section (*1*), omit "patents or" and omit "either" wherever that word occurs;

(*b*) in sub-section (*5*), omit clause (*a*).

15. Omit section 66.

16. Section 67—Omit "for a patent, or for amendment of an application or of a specification, or".

17. Section 69—In sub-section (*1*), omit "to grant a patent for an invention or".

18. Section 71A—Omit "or from patents, specifications and other.".

19. Omit section 72.

20. Omit sections 74A and 75.

21. Section 76—

(*a*) in sub-section (*1*), omit "other";

(*b*) in sub-section (*2*), in clause (*c*), omit "opponent".

22. Section 77—

(*a*) in sub-section (*1*)—

(*i*) in clauses (c) and (d), omit "specifications";

(*ii*) for clause (e), substitute—

"(*e*) providing for the inspection of documents in the patent office and for the manner in which they may be published;";

(*iii*) omit clause (*eee*);

(*b*) omit sub-section (*2A*).

23. Omit section 78.

24. For section 78A, substitute—

Reciprocal arrangement with United Kingdom and other Commonwealth countries.

"78A. (*1*) Any person who has applied for protection for any design in the United Kingdom or his legal representative or assignee shall, either alone or jointly with any other person, be entitled to claim that the registration of the said design under this Act shall be in priority to other applicants and shall have the same date as the date of the application in the United Kingdom:

Provided that—

(*a*) the application is made within six months from the application for protection in the United Kingdom; and

(b) nothing in this section shall entitle the proprietor of the design to recover damages for infringements happening prior to the actual date on which the design is registered in India.

(2) The registration of a design shall not be invalidated by reason only of the exhibition or use of, or the publication of a description or representation of, the design in India during the period specified in this section as that within which the application may be made.

(3) The application for the registration of a design under this section must be made in the same manner as an ordinary application under this Act.

(4) Where it is made to appear to the Central Government that the legislature of any such Commonwealth country as may be notified by the Central Government in this behalf has made satisfactory provision for the protection of designs registered in India, the Central Government may, by notification in the Official Gazette, direct that the provisions of this section, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of designs registered in that Commonwealth country.".

25. Omit the Schedule.

APPENDIX I

(*Vide* para 2 of the Report)

Motion in Lok Sabha for reference of the Bill to Joint Committee.

"That the Bill to amend and consolidate the law relating to patents, be referred to a Joint Committee of the Houses consisting of 48 members, 32 from this House, namely:—

(1) Shri S. V. Krishnamoorthy Rao
(2) Seth Achal Singh
(3) Shri Peter Alvares
(4) Shri Ramchandra Vithal Bade
(5) Shri Panna Lal Barupal
(6) Shri Dinen Bhattacharya
(7) Shri Bibhuti Mishra
(8) Shri P. C. Borooah
(9) Sardar Daljit Singh
(10) Shri Basanta Kumar Das
(11) Shri V. B. Gandhi
(12) Shri H. K. V. Gowdh
(13) Shri Kashi Ram Gupta
(14) Shri Prabhu Dayal Himatsingka
(15) Shri Madhavrao Laxmanrao Jadhav
(16) Shri Mathew Maniyangadan
(17) Shri M. R. Masani
(18) Shri Braj Behari Mehrotra
(19) Shri Bibudhendra Mishra
(20) Shrimati Sharda Mukerjee
(21) Shri P. S. Naskar
(22) Shri Chhotubhai M. Patel
(23) Shri Naval Prabhakar

(24) Shri R. Ramanathan Chettiar
(25) Shri Sham Lal Saraf
(26) Shri A. T. Sarma
(27) Dr. C. B. Singh
(28) Dr. L. M. Singhvi
(29) Shri P. Venkatasubbaiah
(30) Shri K. K. Warior.
(31) Shri Balkrishna Wasnik
(32) Shri Ram Sewak Yadav

and 16 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the second week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 16 members to be appointed by Rajya Sabha to the Joint Committee."

APPENDIX II

(*Vide* para 3 of the Report)

Motion in Rajya Sabha

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to amend and consolidate the law relating to patents, and resolves that the following members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

(1) Shri Arjun Arora
(2) Shri T. Chengalvaroyan
(3) Shri Babubhai M. Chinai
(4) Shri Vimalkumar M. Chordia
(5) Shri R. S. Doogar
(6) Shri D. P. Karmarkar
(7) Shri B. T. Kulkarni
(8) Shri P. K. Kumaran
(9) Shri Shyamnandan Mishra
(10) Shri Dahyabhai V. Patel
(11) Shri Mulka Govinda Reddy
(12) Shri M. R. Shervani
(13) Dr. M. M. S. Siddhu
(14) Shri Dalpat Singh
(15) Shri R. P. Sinha
(16) Shri T. N. Singh."

APPENDIX III

[*Vide* para 7 of the Report]

Statement Showing the names of Associations/ individuals etc. from whom Memoranda/ Representations were received by the Joint Committee

Sl. No.	From whom received	Action taken
1	2	3
1	L.S. Davar & Co., Patent & Trade Mark Attorneys, Clacutta.	Circulated to Members and evidence taken on 27th and 28th January, 1966.
2	Remfry & Son, Patent & Trade Mark Attorneys, Calcutta.	Circulated to Members and evidence taken on 28th and 29th January, 1966.
3	British Pharmaceutical Industry Association, England.	Circulated to Members and evidence taken on 31st January, 1966.
4	Zandu Pharmaceutical Works Limited, Bombay.	Do.
5	The Chemical Industrial and Pharmaceutical Laboratories Ltd., Bombay.	Circulated to Members and evidence taken on 1st Feb., 1966.
6	Dr. J. M. Hunck, Chief Editor, Handelsblatt, Duesseldorf, West Germany.	Circulated to Members and evidence taken on 2nd February, 1966.
7	Dr. E. Jucker, Incharge of Synthetic Research, Sandoz Ltd., Basle (Switzerland).	Circulated to Members and evidence taken on 3rd February, 1966.
8	Prof. G.H.C. Bodenhausen Director of United International Bureau for the Protection of Intellectual Property (BIRPI) Geneva.	Circulated to Members and evidence taken on 23rd April, 1966.
9	National Foreign Trade Council Inc. 10 Rockefeller, Plaza, New York.	Circulated to Members and Evidence taken on 1st July, 1966.
10	Chamber of Commerce of the United States of America, Washington.	Circulated to Members and evidence taken on 2nd July, 1966.
11	Association of Chemical Industry in West Germany.	Circulated to Members and evidence taken on 4th July, 1966.
12	Centre European Des Federations De L' Industrie Chimique Bureau, Zurich.	Circulated to Members and evidence taken on 4th July, 1966.
13	Prof. Gino Bergami, Director, Institute DI Fesiologia Umana Universita (Nepals) and	Circulated to Members and evidence taken on 5th July, 1966.

1	2	3
	Dr. Giorgio Delgiudice, Leodoga SPA Lepetit, Via Andhrea Vesalio 6, Rome (Assisted by Mr. Gabrial Brohamasha as Interpreter).	
14	Japan Pharmaceutical Manufacturers' Association, Japan Pharmaceutical, Medical and Dental Supply Exporters' Association and Federation of Economic Organizations, Tokyo.	Circulated to Members and evidence taken on 5th July, 1966.
15	The Indian Merchants Chamber, Bombay.	Circulated to Members and evidence taken on 6th July, 1966.
16	Trade Marks Owners Association of India, Bombay.	Do.
17	Indian Pharmaceutical Association, Bombay.	Circulated to Members and evidence taken on 7th July, 1966.
18	Bundesverband Der Pharmazeutischen & Industries E.V. Brankfurt Am Main, West Germany, Association of the German Pharmaceutical Industry, Frankfurt Am Main.	Do.
19	Neo-Pharma Industries, Bombay .	Circulated to Members and evidence taken on 8th July, 1966.
20	Haffkine Institute, Bombay . .	Do.
21	Mr. J.F. Monnet, Chambre Syndicate Nationale des Fabricants de Products Pharmaceutiques, 88 Rue de la Faisanderie, Paris—16.	Do.
22	Dr. T.R. Govindachari, Director, CIBA Research Centre, Goregaon, Bombay.	Circulated to Members and evidence taken on 11th July, 1966.
23	All India Drugs & Pharmaceuticals Manufacturers' Consultative Committee, Bombay.	Do.
24	All India Manufacturers' Organisation, Bombay.	Do.
25	Sarvashri G.M. Parikh, H.J. Vaidya and S.C. Nanabhai, Zandu Pharmaceutical Works Ltd., Bombay.	Circulated to Members and evidence taken on 11th July, 1966.
26	Indian Chamber of Commerce, Calcutta.	Circulated to Members and evidence taken on 12th July, 1966.
27	Associated Chambers of Commerce and Industry of India, Calcutta.	Do.
28	Bengal Chemists and Druggists Association, Calcutta.	Do.
29	Shri T. Durairajan, Dollar Company, Madras.	Circulated to Members and evidence taken on 13th July, 1966.
30	Pharmaceutical Manufacturers' Organisation Ahmedabad.	Do.
31	Gujarat Veapari Mahamandal, Ahmedabad .	Do.

1	2	3
32	Pharmacy Council of India, New Delhi	Circulated to Members and evidence taken on 14th July, 1966.
33	Federation of Indian Chambers of Commerce and Industry, New Delhi.	Do.
34	Dr. V.B. Chipalkatti, Director, Shri Ram Institute for Industrial Research, Delhi	Do.
35	Business Council for International Understanding, New York.	Do.
36	Organisation of Pharmaceutical Producers of India, Bombay.	Circulated to Members and evidence taken on 15th July, 1966.
37	Indian Chemical Manufacturers' Association, Bombay.	Do
38	Incorporated Law Society of Calcutta	Circulated to Members and evidence taken on 12th August, 1966.
39	Council of Scientific and Industrial Research, New Delhi.	Do.
40	Directorate General of Technical Development, Government of India, New Delhi.	Circulated to Members and evidence taken on the 26th August, 1966.
41	Shri S.K. Borkar, Drug Controller, Government of India, New Delhi.	Circulated to Members and evidence taken on 27th the August, 1966.
42	Dr. A. Joga Rao, Controller General of Patents and Designs, Government of India, Bombay.	Do.
43	Confederation of British Industry, London .	Circulated to Members.
44	Chemical Industries Association Limited, London.	Do.
45	Shri N. Adhikari, Bengal Chemical and Pharmaceutical Works Ltd., Calcutta.	Do.
46	National Association of Manufacturers, New York.	Do.
47	U.S. Council of the International Chamber of Commerce Inc., New York.	Do.
48	Manufacturing Chemists' Association, Inc., Washington.	Do.
49	Japan Patents Association, Tokyo.	Do.
50	Embassy of the United States of America, New Delhi.	Do.
51	Embassy of the Federal German Republic, New Delhi.	Do.
52	Swiss Association of Machinery Manufacturers and Swiss Patent Commission, Switzerland.	Do.

1	2	3
53	Shri B.K. Nyogi, Auckland Mansions, 617, Lower Circular Road, Calcutta.	Circulated to Members.
54	The Indo-German Chamber of Commerce, Bombay.	Do.
55	Srikar Pai & Co., Patent and Trade Mark Attorneys, Calcutta.	Do.
56	Depenning & Depenning Patent and Trade Mark Agents, Calcutta.	Do.
57	The All India Association of Industries, Bombay.	Do.
58	Association of Physicians of India, Bombay.	Do.
59	Federation of German Industry Cologn.	Do.
60	The Patent & Trade Mark Practitioners Association, Bombay.	Do.
61	Shri N. Bose, Cheif Chemist, Simplex Brothers, Research Chemists, Calcutta.	Do.
62	Major General Sir Sahib Singh Sokhey, Haffkine Institute, Bombay.	Do.
63	The Chartered Institute of Patent Agents, London.	Do.
64	The Southern Indian Chamber of Commerce Madras.	Kept in the Library.
65	The Bangalore Bar Association, Kempegowda Road, Bangalore.	Do.
66	Dr. (Mrs.) Asima Chatterjee, D. Sc. Khaira Professor of Chemistry, University College of Science and Technology, University of Calcutta.	Do.
67	Shri N.R. Amin, Director, Public Relations, Alembic Chemical Works Co. Ltd., Alembic Road, Baroda.	Do.
68	Bombay Incorporated Law Society, High Court New Building, Bombay.	Do.
69	V. Bolshakov, Head of the Department (Soviet Review)	Do.
70	Dr. M. D. 'Phalnikar, Gokhle Road, Bombay.	Do.

APPENDIX IV

(*Vide* para 9 of the Report)

Visited by Study Groups of the Joint Committee, on the Patents Bill, 1965. Pharmaceutical units, Research Institutes/Laboratories etc. for an on-the-spot-study of their working.

Composition of Study Groups	Units Visited with dates
Composition of Study Group—I (Bombay Region)	
1. Shri S. V. Krishnamoorthy Rao—*Chairman*	*Monday, the 6th June*, 1966
2. Shri Peter Alvares	1. Zandu Pharmaceutical Works Ltd., Bombay.
*3. Shri Ramachandra Vithal Bade	2. Chemical Industrial and Pharmaceutical Laboratories (Cipla), Bombay.
4. Sardar Daljit Singh	3. K. Mahadev and Company Private Ltd., Bombay.
5. Shri Basanta Kumar Das	*Tuesday, The 7th June*, 1966
**6. Shri V. B. Gandhi	4. Glaxo Fine Chemical Factory, Thana.
7. Shri Kashi Ram Gupta	5. Ciba Research Centre, Bombay.
†8. Shri M. R. Masani	6. Haffkine Institute, Bombay.
9. Shri Chhotubhai M. Patel	*Wednesday, The 8th June*, 1966
10. Shri R. Ramanathan Chettiar	7. Merck Sharp and Dohme of India, Private Ltd., Bombay.
11. Shri Sham Lal Saraf	8. Hoechst Pharmaceuticals, Bombay.
12. Shri A. T. Sarma	*Thursday, The 9th June*, 1966
@13. Shri Ram Sewak Yadav	9. Alembic Chemicals, Baroda.
14. Shri Arjun Arora	10. Sarabhai Chemicals, Baroda.
†15. Shri Babubhai M. Chinai	*Friday, The 10th June*, 1966
16. Shri P. K. Kumaran	11. Sandoz, Bombay.
17. Dr. M. M. S. Siddhu	12. Unichem Laboratories, Bombay.
$18. Shri R. P. Sinha	*Saturday, The 11th June*, 1966
	13. Hindustan Antibiotics Ltd., Pimpri (Poona).

*Arrived Bombay on the 6th June, 1966. Joined the Study Group w.e.f. 6th June, 1966 onwards.

**Did not visit Baroda.

†Joined the Study Group on the 7th June and did not visit Baroda and Poona.

@Left Bombay for Delhi on the 10th June, 1966 in the afternoon. Did not visit Poona.

$Arrived Bombay on the 9th June, 1966. Did not visit Baroda.

1	2

Composition of Study Group—II

1. Shri S. V. Krishnamoorthy Rao—*Chairman.*
2. Seth Achal Singh
3. Shri Panna Lal Barupal
*4. Shri Dinen Bhattacharya
5. Shri Bibhuti Mishra
6. Shri Prabhu Dayal Himatsingka
7. Shri Madhavrao Laxmanrao Jadhav
8. Shri Braj Behari Mehrotra
9. Shri Naval Prabhakar
**10. Dr. C. B. Singh
11. Shri K. K. Warior
†12. Shri Balkrishna Wasnik
13. Shri Vimalkumar M. Chordia
‡14. Shri D. P. Karmarkar
††15. Shri Shyamnandan Mishra
§16. Shri Dahyabhai V. Patel
17. Shri Dalpat Singh
18. Shri B. K. Das

Composition of Study Group—III.

1. Shri S. V. Krishnamoorthy Rao—*Chairman.*
2. Seth Achal Singh
3. Shri Panna Lal Barupal
4. Shri Dinen Bhattacharya
5. Shri Bibhuti Mishra
6. Shri Madhavrao Laxmanrao Jadhav
7. Shri Braj Behari Mehrotra
8. Shri Naval Prabhakar
9. Shri Balkrishna Wasnik
10. Shri Vimalkumar M. Chordia
11. Shri Dalpat Singh
12. Shri Mulka Govinda Reddy
13. Shri P. K. Kumaran
14. Shri Kashi Ram Gupta.

Monday, The 13th June, 1966

1. Bengal Chemical & Pharmaceutical Works Ltd., Calcutta.
2. The Bengal Immunity Co. Ltd., Calcutta

Tuesday, The 14th June, 1966

'3. Standard Pharmaceutical Limited., Calcutta.
4. M/s. Smith Stanistreet & Co. Ltd., Calcutta.

Wednesday, The 15th June, 1966

5. M's. Martin & Harris (Pvt.) Ltd., Calcutta.
6. Dey's Medical Stores (Mfg.) Pvt. Ltd., Calcutta.

Thursday, The 16th June, 1966

7. Kavirai N. N. Sen & Co. Private Ltd., Calcutta.
8. East India Pharmaceutical Works Ltd., Calcutta.
9. Dabur (Dr. S. K. Burman) Private Ltd., Calcutta.

Friday, The 17th June, 1966

10. Paul Lohmann (India) Ltd., Calcutta.
11. Tata Fison Industries Ltd., Calcutta.
12. Patent Office-Informal discussion with the Joint Controller of Patents and Designs, Calcutta.

Saturday, The 18th June, 1966

13. Calcutta Chemical Co. Ltd., Calcutta.
14. Albert David Ltd., Calcutta.

(Chandigarh)

Saturday, The 16th July, 1966

Pfizer's Basic Manufacturing Plant Chandigarh.

*Joined the Group from the 14th June, 1966 onwards.

**Left Calcutta on the 17th June, 1966 (A.N.)

†Left Calcutta on the 18th June, 1966 (F.N.)

‡Left Calcutta on the 16th June, 1966 (A.N.)

††Joined the Group from the 14th June, 1966 onwards.

§Joined the Group from the 15th June, 1966 onwards.

1	2
Composition of Study Group—IV.	(Lucknow)
1. Shri S. V. Krishnamoorthy Rao—*Chairman.*	*Saturday, The 6th August*, 1966
2. Shri P. C. Borooah	Central Drug Research Institute, Lucknow.
3. Shri Basanta Kumar Das	
4. Shri Kashi Ram Gupta	
5. Shri Vimalkumar M. Chordia.	
6. Shri P. K. Kumaran	
7. Shri R. P. Sinha	
8. Dr. C. B. Singh	
9. Shri M. R. Shervani	
10. Seth Achal Singh	
11. Shri Braj Behari Mehrotra.	
12. Dr. M. M. S. Siddhu.	
Composition of Study Group—V.	(Jammu)
1. Shri S. V. Krishnamoorthy Rao—*Chairman.*	*Saturday, The 20th August*, 1966
2. Shri Ramchandra Vithal Bade	Regional Research Laboratory, and Chakroha Farm, Jammu.
3. Shri Dinen Bhattacharya	
4. Shri Bibhuti Mishra	
5. Shri P. C. Borooah	
6. Sardar Daljit Singh	
7. Shri H. K. V. Gowdh	
8. Shri Madhavrao Laxmanrao Jadhav	
9 Shri Mathew Maniyangadan	
10. Shri Braj Behari Mahrotra	
11. Shri Naval Prabhakar	
12. Shri R. Ramanathan Chettiar	
13. Shri Sham Lal Saraf	
14. Shri A. T. Sarma	
15. Shri K. K. Warior	
16. Shri D. P. Karmarkar	
17. Dr. M. M. S. Siddhu	
18. Shri Dalpat Singh	

APPENDIX V

(*Vide* para 10 of the Report)

List of Associations/Individuals etc. who gave evidence before the Joint Committee

S. No.	Names of Parties/Individuals	Dates on which evidence was taken
1	L.s. Davar & Co., Patent & trade Mark Attorneys, Calcutta.	27-1-1966 & 28-1-66
2	Remfry & Son, Patent & Trade Mark Attorneys, Calcutta. .	28-1-1966 & 29-1-66
3	British Pharmaceutical Industry Association, England. .	31-1-1966
4	Zandu Pharmaceutical Works Limited, Bombay. .	31-1-1966
5	The Chemical, Industrial and Pharmaceutical Laboratories Ltd., Bombay	1-2-1966
6	Dr. J. M. Hunck, Chief Editor, Handelsblatt, Duesseldorf West Germany	2-2-1966
7	Dr. E. Jucker, Incharge of synthetic Research, Sandoz Ltd., Basle (Switzerland).	3-2-1966
8	Prof. G. H. C. Bodenhausen, Director of United International Bureau for the Protection of Intellectual Property (BIRPI), Geneva.	23-4-1966
9	National Foreign Trade Council Inc. 10, Rockefeller, Plaza, New York	1-7-1966
10	Chamber of Commerce of the United States of America, Washington	2-7-1966
11	Association of Chemical Industry in West Germany. .	4-7-1966
12	Centre Europeen Des Federations De L'—Industrie Chimique Bureau, Zurich.	4-7-1966
13	Prof. Gino Bergani, Director, Institute DI Fisiologia Umana Universita (Naples) and Dr. Giorgio Delgiudice, Leodoga SPA Lepetit, Via Andrea Vesalio 6, Rome, (Assisted by Mr. Gabriel Brohama sha as Interpreter). .	5-7-1966
14	Japan Pharmaceutical Manufacturers' Association, Japan Pharmaceutical, Medical and Dental Supply Exporters' Association and Federation of Economic Organizations, Tokyo.	5-7-1966
15	The Indian Merchants Chamber, Bombay. . . .	6-7-1966
16	Trade Marks Owners Association of India. . . .	6-7-1966
17	Indian Pharmaceutical Association, Bombay. . .	7-7-1966

1	2	3
18	Bundesverband Der Pharmazeutischen & Industries E. V. Frankfurt Am Main, West Germany, Association of the German Pharmaceutical Industry, Frankfurt Am Main..	7-7-1966
19	Neo-Pharma Industries, Bombay. . . .	8-7-1966
20	Haffkine Institute, Bombay.	8-7-1966
21.	Mr. J. F. Monnet, Chambre Syndicale Nationale des Fabricants de Products Pharmaceutiques, 88 Rue dela Faisanderie, Paris—16.	8-7-1966
22	Dr. T. R. Govindachari, Director, CIBA Research Centre, Goregaon, Bombay.	11-7-1966
23	All India Drugs & Pharmaceuticals Manufacturers' Consultative Committee, Bombay.	11-7-1966
24	All India Manufacturers' Organisation, Bombay. . .	11-7-1966
25	Sarvashri G. M. Parikh, H. J. Vaidya and S. C. Nanabhai., Zandu Pharmaceutical Works Ltd., Bombay. . .	11-7-1966
26	Indian Chamber of Commerce, Calcutta. . . .	12-7-1966
27	Associated Chambers of Commerce and Industry of India, Calcutta.	12-7-1966
28	Bengal Chemists and Druggists Association, Calcutta .	12-7-1966
29	Shri T. Durairajan, Dollar Company, Madras. . .	13-7-1966
30	Pharmaceutical Manufacturers' Organisation, Ahmedabad .	13-7-1966
31	Gujarat Vepari Mahamandal, Ahmedabad. . . .	13-7-1966
32	Pharmacy Council of India, New Delhi.	14-7-1966
33	Federation of Indian Chambers of Commerce & Industry, New Delhi.	14-7-1966
34	Dr. V. B. Chipalkatti, Director, Shri Ram Institute for Industrial Research,, Delhi.	14-7-1966
35	Business Council for International Understanding, New York	14-7-1966
36	Organisation of Pharmaceutical Producers of India, Bombay	15-7-1966
37	Indian Chemical Manufacturers' Association, Bombay. .	15-7-1966
38	Incorporated Law Society of Calcutta.	12-8-1966
39	Council of Scientific and Industrial Research New Delhi.	12-8-1966
40	Directorate General of Technical Development, Government of India, New Delhi	26-8-1966
41	Dr. M. L. Dhar, Director, Central Drug Research Institute, Lucknow.	26-8-1966

1	2	3
42	(i) Shri S. K. Borkar, Drug Controller, Government of India New Delhi	27-8-1966
	(ii) Shri P.S. Ramachandran, Deputy Drug Controller, Government of India, New Delhi	
43	(i) Dr. A. Joga Rao, Controller General of Patents and Designs, Government of India, Bombay.	27-8-1966
	(ii) Shri R. V. Pai, Joint Controller of Patents and Designs, Calcutta.	

APPENDIX VI

Minutes of the Sittings of the Joint Committee on the Patents Bill, 1965.

I

First Sitting

The Committee met on Saturday, the 11th December, 1965 from 14.30 to 15.05 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

1. Seth Achal Singh.
2. Shri Peter Alvares.
3. Shri Ramchandra Vithal Bade.
4. Shri Pana Lal Barupal.
5. Shri Dinen Bhattacharya.
6. Shri Bibhuti Mishra.
7. Shri P. C. Borooah.
8. Sadar Daljit Singh.
9. Shri V. B. Gandhi.
10. Shri Kashi Ram Gupta.
11. Shri Madhavrao Laxmanrao Jadhav.
12. Shri Mathew Maniyangadan.
13. Shri M. R. Masani.
14. Shri Braj Behari Mehrotra.
15. Shrimati Sharda Mukerjee.
16. Shri P. S. Naskar.
17. Shri Naval Prabhakar.
18. Dr. L. M. Singhvi.
19. Shri Ram Sewak Yadav.

Rajya Sabha

20. Shri Arjun Arora.
21. Shri Vimalkumar M. Chordia.
22. Shri B. T. Kulkarni.
23. Shri P. K. Kumaran.
24. Shri Shyamnandan Mishra.
25. Shri Dahyabhai V. Patel.
26. Shri Mulka Govinda Reddy.
27. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY

1. Shri K. V. Venkatachalam, *Joint Sceretary, Department of Industry, Ministry of Industry & Supply.*
2. Shri B. N. Atrishi, *O.S.D., Department of Industry, Ministry of Industry & Supply.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

At the outset, the Chairman mentioned to the Committee about a letter received from one Mr. Leonard J. Robbins of M/s. Langner, Parry, Card & Langner, New York, a U.S. Patent lawyer and a Member of the New York Bar, who had expressed a desire to appear before the Committee as an individual patent attorney having an expert knowledge of international patent problems, and also on behalf of American clients, particularly those in the pharmaceutical field.

2. After some discussion, the Committee decided that a Press Communique be issued advising associations, public bodies and individuals who were desirous of presenting their suggestions or views or of giving evidence before the Committee in respect of the Bill, to send written memoranda thereon to the Lok Sabha Secretariat by the 12th January, 1966, at the latest.

3. The Committee authorised the Chairman to select the parties, after receipt of written memoranda, to be asked to send their representatives to give oral evidence.

4. The Committee desired the Ministry of Industry & Supply to furnish the following material to them as early as possible:—

(i) A note stating the various aspects of the working of the various Patent Offices in India under the Ministry of Industry;

(ii) A note stating the working of the existing Patent Law in India *vis-a-vis* that obtaining in U.S.A., U.K., U.S.S.R., and other European countries;

(iii) Report of Shri N. Rajagopala Ayyangar on the Law of Patents in India;

(iv) A note stating the salient features of the Caufever Committee Report of the U.S.A., Senate along with a copy of the Report;

(v) A note setting forth the salient features of the working of the International Patents Pool.

5. The Committee decided to sit from the 27th January, 1966, onwards for hearing oral evidence, if any, and for clause by clause consideration of the Bill.

6. The Committee then adjourned to meet again on Thursday, the 27th January, 1966 at 11-00 hours.

II

Second Sitting

The Committee met on Thursday, the 27th January, 1966 from 14-00 to 17-00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares
4. Shri Ramchandra Vithal Bade
5. Shri Panna Lal Barupal
6. Shri Dinen Bhattacharya

7. Shri Bibhuti Mishra
8. Shri P. C. Borooah
9. Sardar Daljit Singh
10. Shri Basanta Kumar Das
11. Shri V. B. Gandhi
12. Shri H. K. V. Gowdh
13. Shri Kashi Ram Gupta
14. Shri Prabhu Dayal Himatsingka
15. Shri Madhavrao Laxmanrao Jadhav
16. Shri Mathew Maniyangadan
17. Shri M. R. Masani
18. Shri Braj Behari Mehrotra
19. Shri Bibudhendra Mishra
20. Shrimati Sharda Mukherjee
21. Shri Chhotubhai M. Patel
22. Shri Naval Prabhakar
23. Shri R. Ramanathan Chettiar
24. Shri Sham Lal Saraf
25. Shri A. T. Sarma
26. Dr. C. B. Singh
27. Dr. L. M. Singhvi
28. Shri P. Venkatasubbaiah
29. Shri K. K. Warior
30. Shri Balkrishna Wasnik
31. Shri Ram Sewak Yadav.

Rajya Sabha

32. Shri Arjun Arora
33. Shri Vimalkumar M. Chordia
34. Shri R. S. Doogar
35. Shri D. P. Karmarkar
36. Shri B. T. Kulkarni
37. Shri P. K. Kumaran
38. Shri Dahyabhai V. Patel
39. Shri Mulka Govinda Reddy

40. Shri M. R. Shervani
41. Dr. M. M. S. Siddhu
42. Shri Dalpat Singh
43. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *Joint Secretary, Department of Industry, Ministry of Industry & Supply.*
2. Dr. A. Joga Rao, *Controller General of Patents, Designs and Trade Marks, Trade Marks Registry, Bombay.*
3. Shri B. N. Atrishi, *O.S.D., Department of Industry, Ministry of Industry & Supply.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India, Ministry of Health.*

DRAFTSMEN

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Department, Ministry of Law.*
2. Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

L. S. Davar & Co., Patent & Trade Mark Attorneys, Calcutta.

Shri L. S. Davar.

2. The Committee decided to continue their current series of sittings upto the 3rd February, 1966 and then to sit on the 15th Februrary, 1966 for hearing oral evidence of Prof. Bodenhausen, Director, United International Bureau for the Protection of Intellectual Property (BIRPI), Geneva. The Committee decided to cancel the sittings fixed for the 4th, 5th and 12th February, 1966.

3. Before the witness was called in, it was pointed out that there were certain clauses in the Bill which sought to curtail the privileges, particularly relating to drugs and medicines, already granted

to the patentees in the public interest under the existing Law. The point as to whether such a curtailment offended against the provisions of the Constitution inasmuch as compensation was not provided for in the Bill should be examined.

4. The Committee heard Shri L. S. Davar of M/s. L. S. Davar & Co., Patent & Trade Mark Attorneys, Calcutta. His evidence was not concluded.

5. The Committee desired that the Ministry of Industry and Supply be asked to furnish copies of the following publications for use of the Members as early as possible:—

(1) The Role of Patents in the Transfer of Technology to Developing Countries (Published by the United Nations);

(2) Model Law for Developing Countries on Inventions (B. I. R. P. I.) Geneva, 1965.

6. A verbatim record of the evidence given was taken.

7. The Committee then adjourned to meet again on Friday, the 28th January, 1966 at 14-00 hours for hearing further oral evidence on the Bill.

III

Third Sitting

The Committee met on Friday, the 28th January, 1966 from 14-00 to 17-15 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares
4. Shri Ramchandra Vithal Bade
5. Shri Panna Lal Barupal
6. Shri Dinen Bhattacharya

7. Shri Bibhuti Mishra
8. Shri P. C. Borooah
9. Sardar Daljit Singh
10. Shri Basanta Kumar Das
11. Shri V. B. Gandhi
12. Shri H. K. V. Gowdh
13. Shri Kashi Ram Gupta
14. Shri Prabhu Dayal Himatsingka
15. Shri Madhavrao Laxmanrao Jadhav
16. Shri Mathew Maniyangadan
17. Shri M. R. Masani
18. Shri Braj Behari Mehrotra
19. Shri Bibudhendra Mishra
20. Shrimati Sharda Mukerjee
21. Shri P. S. Naskar
22. Shri Chhotubhai M. Patel
23. Shri Naval Prabhakar
24. Shri R. Ramanathan Chettiar
25. Shri Sham Lal Saraf
26. Shri A. T. Sarma
27. Dr. C. B. Singh
28. Dr. L. M. Singhvi
29. Shri P. Venkatasubbaiah
30. Shri K. K. Warior
31. Shri Balkrishna Wasnik
32. Shri Ram Sewak Yadav.

Rajya Sabha

33. Shri Arjun Arora
34. Shri Babubhai M. Chinai
35. Shri Vimalkumar M. Chordia
36. Shri D. P. Karmarkar
37. Shri B. T. Kulkarni
38. Shri P. K. Kumaran
39. Shri Shyamnandan Mishra

40. Shri Dahyabhai V. Patel
41. Shri Mulka Govinda Reddy
42. Shri M. R. Shervani
43. Dr. M. M. S. Siddhu
44. Shri Dalpat Singh
45. Shri R. P. Sinha
46. Shri T. N. Singh.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *Joint Secretary, Department of Industry, Ministry of Industry & Supply.*
2. Dr. A. Joga Rao, *Controller General of Patents, Designs and Trade Marks, Trade Marks Registry, Bombay.*
3. Shri B. N. Atrishi, *O.S.D., Department of Industry, Ministry of Industry & Supply.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India, Ministry of Health.*

DRAFTSMEN

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Department, Ministry of Law.*
2. Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. *L. S. Davar & Co., Patent & Trade Mark Attorneys, Calcutta.*
Shri L. S. Davar

II. *Remfry & Son, Patent & Trade Mark Attorneys, Calcutta.*

1. Mr. Harold Holloway
2. Mr. Desh Pal Ahuja
3. Mr. Baldev Chaturbhuj Ojha.

DRAFTSMEN

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Department, Ministry of Law.*
2. Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

Remfry & Son, Patent and Trade Mark Attorneys, Calcutta.

1. Mr. Harold Holloway
2. Mr. Desh Pal Ahuja
3. Mr. Baldev Chaturbhuj Ojha.

2. The Committee concluded further hearing of the evidence of the representatives of M/s. Remfry & Son, Patent & Trade Mark Attorneys, Calcutta.

3. A verbatim record of the evidence given was taken.

4. The Committee then adjourned to meet again on Monday, the 31st January, 1966 at 10.00 hours for hearing further oral evidence on the Bill.

V

Fifth Sitting

The Committee met on Monday, the 31st January, 1966 from 10.00 to 13.00 hours and again from 14.30 to 17.05 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Pater Alvares
3. Shri Ramchandra Vithal Bade
4. Shri Panna Lal Barupal

5. Shri Bibhuti Mishra
6. Shri P. C. Borooah
7. Sardar Daljit Singh
8. Shri Basanta Kumar Das
9. Shri V. B. Gandhi
10. Shri H. K. V. Gowdh
11. Shri Kashi Ram Gupta
12. Shri Madhavrao Laxmanrao Jadhav
13. Shri Mathew Maniyangadan
14. Shri Braj Behari Mehrotra
15. Shri Bibudhendra Mishra
16. Shrimati Sharda Mukerjee
17. Shri Chhotubhai M. Patel
18. Shri Naval Prabhakar
19. Shri R. Ramanathan Chettiar
20. Shri Sham Lal Saraf
21. Shri A. T. Sarma
22. Dr. L. M. Singhvi
23. Shri K. K. Warior
24. Shri Ram Sewak Yadav.

Rajya Sabha

25. Shri Vimalkumar M. Chordia
26. Shri D. P. Karmarkar
27. Shri B. T. Kulkarni
28. Shri P. K. Kumaran
29. Shri Shyamnandan Mishra
30. Shri Dahyabhai V. Patel
31. Shri Mulka Govinda Reddy
32. Dr. M. M. S. Siddhu
33. Shri Dalpat Singh
34. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *Joint Secretary, Ministry of Industry.*
2. Shri B. N. Atrishi, *O.S.D., Ministry of Industry.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India, Ministry of Health.*

DRAFTSMEN

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Department, Ministry of Law.*
2. Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. *British Pharmaceutical Industry Association, England*

Mr. A. G. Shaw

II. *Zandu Pharmaceutical Works Limited, Bombay*

Dr. K. M. Parikh

2. The Committee heard the evidence given by the witnesses mentioned above.

3. A verbatim record of the evidence given was taken.

4. The Committee then adjourned to meet again on Tuesday, the 1st February, 1966 at 14·00 hours for hearing further oral evidence on the Bill.

VI

Sixth Sitting

The Committee met on Tuesday, the 1st February, 1966 from 14.00 to 17.10 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares

4. Shri Ramchandra Vithal Bade
5. Shri Panna Lal Barupal
6. Shri P. C. Borooah
7. Sardar Daljit Singh
8. Shri Basanta Kumar Das
9. Shri V. B. Gandhi
10. Shri H. K. V. Gowdh
11. Shri Kashi Ram Gupta
12. Shri Madhavrao Laxmanrao Jadhav
13. Shri Mathew Maniyangadan
14. Shri Braj Behari Mehrotra

14A. Shri Bibudhendra Mishra

15. Shrimati Sharda Mukerjee
16. Shri Chhotubhai M. Patel
17. Shri Naval Prabhakar
18. Shri R. Ramanathan Chettiar
19. Shri Sham Lal Saraf
20. Shri A. T. Sarma
21. Dr. L. M. Singhvi
22. Shri K. K. Warior
23. Shri Balkrishna Wasnik
24. Shri Ram Sewak Yadav

Rajya Sabha

25. Shri Arjun Arora
26. Shri Vimalkumar M. Chordia
27. Shri D. P. Karmarkar
28. Shri B. T. Kulkarni
29. Shri P. K. Kumaran
30. Shri Shyamnandan Mishra
31. Shri Dahyabhai V. Patel
32. Shri Mulka Govinda Reddy
33. Shri M. R. Shervani
34. Dr. M. M. S. Siddhu
35. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *Joint Secretary, Ministry of Industry.*

2. Shri B. N. Atrishi, *O.S.D., Ministry of Industry.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India, Ministry of Health.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

The Chemical, Industrial and Pharmaceutical Laboratories Ltd., Bombay

Dr. K. A. Hamied

2. At the outset, some members drew attention to a Press report appearing in some of the local Delhi newspapers according to which Dr. Jucker of Sandoz, Basle, Switzerland, who was to appear before the Committee on the 3rd February, 1966 for giving oral evidence, had told Reporters about his opinion on the question of Patents *vis-a-vis* drug research. It was felt that this foreign witness should not have rushed to the Press when he was to appear before the Joint Committee. After some discussion, it was decided that the Chairman might bring to the notice of the witness the impropriety of his action, when he appeared before the Committee.

3. The Chairman then mentioned to the Committee the contents of a cable dated the 31st January, 1966, received from Dr. Bodenhausen, Director BIRPI, Geneva, wherein he had requested the Committee to hear him on the 13th February, 1966, when he expected to be in Delhi on his way back from Colombo. While the Committee expressed their regret on their inability to accede to Dr. Bodenhausen's request, they decided that a cable should be sent to him asking him to intimate any Saturday during February or March, 1966, which would suit him. On hearing from him, a sitting of Joint Committee could be called.

4. The Committee then heard the evidence given by Dr. K. A. Hamied, Chairman of the Chemical, Industrial and Pharmaceutical Laboratories Limited, Bombay.

5. A verbatim record of the evidence given was taken.

6. Another witness, Dr. Abraham Patani, a representative of the Indian Drug Manufacturers Association, Bombay, was called in. Due to lack of time, the Committee informed him that some other day would be fixed for his oral evidence and he would be informed of it in due course.

7. The Committee then adjourned to meet again on Wednesday, the 2nd February, 1966 at 14.00 hours for hearing further oral evidence on the Bill.

VII

Seventh Sitting

The Committee met on Wednesday, the 2nd February, 1966 from 14.00 to 17.10 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares
4. Shri Ramchandra Vithal Bade
5. Shri Panna Lal Barupal
6. Shri P. C. Borooah
7. Sardar Daljit Singh
8. Shri Basanta Kumar Das
9. Shri V. B. Gandhi
10. Shri H. K. V. Gowdh
11. Shri Kashi Ram Gupta
12. Shri Madhavrao Laxmanrao Jadhav
13. Shri Mathew Maniyangadan

14. Shri Braj Behari Mehrotra
15. Shri Bibudhendra Mishra
16. Shrimati Sharda Mukerjee
17. Shri P. S. Naskar
18. Shri Chhotubhai M. Patel
19. Shri Naval Prabhakar
20. Shri R. Ramanathan Chettiar
21. Shri Sham Lal Saraf
22. Dr. C. B. Singh
23. Shri K. K. Warior
24. Shri Balkrishna Wasnik
25. Shri Ram Sewak Yadav

Rajya Sabha

26. Shri Arjun Arora
27. Shri Vimalkumar M. Chordia
28. Shri R. S. Doogar
29. Shri D. P. Karmarkar
30. Shri P. K. Kumaran
31. Shri Shyamnandan Mishra
32. Shri Dahyabhai V. Patel
33. Shri Mulka Govinda Reddy
34. Dr. M. M. S. Siddhu
35. Shri Dalpat Singh
36. Shri R. P. Sinha

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *Joint Secretary, Ministry of Industry.*
2. Shri B. N. Atrishi, *O.S.D., Ministry of Industry.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, Drug Controller of India, *Ministry of Health.*

DRAFTSMEN

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Department, Ministry of Law.*
2. Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS

Dr. J. M. Hunck, *Chief Editor, Handelsblatt, Duesseldorf, West Germany.*

2. The Committee heard the evidence given by the witness named above.

3. A verbatim record of the evidence given was taken.

4. The Chairman informed the Committee that the Speaker had been pleased to permit them to visit some of the modern pharmaceutical units in the different regions of the country in groups; as desired by them. The Chairman announced that the Committee might divide themselves into three groups to visit the units at the following places during the next inter-session period:

(i) Calcutta;

(ii) Hyderabad, Madras and Bangalore; and

(iii) Bombay, Baroda and Indore.

The Committee authorised the Chairman to put fifteen members in each of the three groups in case the number of members in any group exceeded that limit.

5. The Committee then adjourned to meet again on Thursday, the 3rd February, 1966 at 14.00 hours for hearing further oral evidence on the Bill.

VIII

Eighth Sitting

The Committee met on Thursday, the 3rd February, 1966 from 14.00 to 17.05 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh

3. Shri Peter Alvares

4. Shri Ramchandra Vithal Bade
5. Shri Panna Lal Barupal
6. Shri Dinen Bhattacharya
7. Sardar Daljit Singh
8. Shri Basanta Kumar Das
9. Shri V. B. Gandhi
10. Shri H. K. V. Gowdh
11. Shri Kashi Ram Gupta
12. Shri Madhavrao Laxmanrao Jadhav
13. Shri Braj Behari Mehrotra
14. Shrimati Sharda Mukerjee
15. Shri P. S. Naskar
16. Shri Chhotubhai M. Patel
17. Shri Naval Prabhakar
18. Shri R. Ramanathan Chettiar
19. Shri Sham Lal Saraf
20. Dr. C. B. Singh
21. Dr. L. M. Singhvi
22. Shri K. K. Warior
23. Shri Ram Sewak Yadav

Rajya Sabha

24. Shri Arjun Arora
25. Shri Vimalkumar M. Chordia
26. Shri D. P. Karmarkar
27. Shri P. K. Kumaran
28. Shri Shyamnandan Mishra
29. Shri Mulka Govinda Reddy
30. Dr. M. M. S. Siddhu
31. Shri Dalpat Singh
32. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *Joint Secretary, Ministry of Industry.*
2. Shri B. N. Atrishi, O.S.D., *Ministry of Industry.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India, Ministry of Health.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS

Dr. E. Jucker, *Incharge of Synthetic Research, Sandoz Ltd., Basle (Switzerland).*

2. Before the commencement of the proceedings, the Chairman drew the attention of the witness, Dr. E. Jucker, Incharge of Synthetic Research, Sandoz Ltd., Basle (Switzerland) to the reported Press Conference held by him on the 31st January, 1966 expressing his views on the merits of the Bill. While explaining the circumstances under which he met the Press, Dr. Jucker tendered a sincere apology for what had been attributed to him by the Press, whom he had met in connection with his proposed lecture before the Science Society of Delhi University.

3. The Committee then heard the evidence given by Dr. Jucker.

4. A verbatim record of the evidence given was taken.

5. The Chairman informed the Committee that the visits to the various pharmaceutical units in the country would be arranged sometime in the middle of May, 1966, and the detailed programme, when chalked out, would be circulated to the Members in due course.

6. The Committee decided to ask for an extension of time for the presentation of their Report upto the first day of the second week of the August-September, 1966 session of Lok Sabha. The Committee authorised the Chairman and, in his absence, Dr. C. B. Singh, to move the necessary motion in the House on Wednesday, the 16th February, 1966.

7. The Committee also decided to sit from the second Monday of June 1966 onwards for hearing further oral evidence on the Bill and from about the middle of July, 1966 onwards for taking up clause-by-clause consideration of the Bill.

8. The Committee then adjourned.

IX

Ninth Sitting

The Committee met on Thursday, the 17th February, 1966 from 16.30 to 17.00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri P. C. Borooah
4. Sardar Daljit Singh
5. Shri Kashi Ram Gupta
6. Shri Madhavrao Laxmanrao Yadhav
7. Shri M. R. Masani
8. Shri Braj Behari Mehrotra
9. Shri P. S. Naskar
10. Shri Chhotubhai M. Patel
11. Shri R. Ramanathan Chettiar
12. Shri A. T. Sarma
13. Dr. C. B. Singh

Rajya Sabha

14. Shri Arjun Arora
15. Shri Shyamnandan Mishra
16. Dr. M. M. S. Siddhu.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *Joint Secretary, Ministry of Industry.*
2. Shri B. N. Atrishi, O.S.D., *Ministry of Industry.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Chairman mentioned to the Committee about the letter dated the 12th February, 1966, addressed to him by the Japanese Ambassador in India wherein it had been stated that the Government of Japan had decided to send two experts *viz.* Mr. M. Inoue, ex-Chairman of the Patent Agency, Government of Japan and Mr. Matsui of the Federation of Economic Organisation, who would represent Japan and explain its position before the Joint Committee and that they should be given an earliest possible opportunity to place their views before the Joint Committee. The Committee decided that they might be called to give evidence at 14.30 hours on Friday, the 18th March, 1966 and in the meantime, the Embassy might be asked by the Chairman to tell their home Government to forward the usual number of copies of the memorandum stating the views of these two experts for the information of the Committee.

3. The Chairman also apprised the Committee about the communication dated the 11th February, 1966 addressed to him by Prof. G. H. C. Bodenhausen, Director of the U.I.B.I.P., Geneva that he would be ready to meet the Committee on the 23rd April, 1966. The Committee decided to sit at 09.30 hours on that day to hear this witness.

The Committee then adjourned.

X

Tenth Sitting

The Committee met on Saturday, the 23rd April, 1966 from 09.30 to 12.15 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Shri Panna Lal Barupal
3. Shri Dinen Bhattacharya
4. Sardar Daljit Singh

5. Shri Basanta Kumar Das
6. Shri V. B. Gandhi
7. Shri Kashi Ram Gupta
8. Shri Prabhu Dayal Himatsingka
9. Shri Braj Behari Mehrotra
10. Shri Bibudhendra Mishra
11. Shri P. S. Naskar
12. Shri R. Ramanathan Chettiar
13. Shri Sham Lal Saraf
14. Dr. C. B. Singh
15. Shri Balkrishna Wasnik

Rajya Sabha

16. Shri Arjun Arora
17. Shri Vimalkumar M. Chordia
18. Shri R. S. Doogar
19. Shri D. P. Karmarkar
20. Shri B. T. Kulkarni
21. Shri Dahyabhai V. Patel
22. Shri Mulka Govinda Reddy
23. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *Joint Secretary, Ministry of Industry.*
2. Dr. A. Joga Rao, *Controller General of Patents, Designs and Trade Marks, Bombay.*
3. Shri B. N. Atrishi, *O.S.D., Ministry of Industry.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India, Ministry of Health.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS

Prof. G. H. C. Bodenhausen, Director of United International Bureaux for the Protection of Intellectual Property (BIRPI), Geneva.

2. The Committee heard the evidence given by Prof. G. H. C. Bodenhausen, Director of United International Bureaux for the Protection of Intellectual Property (BIRPI), Geneva.

3. A verbatim record of the evidence given was taken.

4. The Committee agreed to the requests made by the following parties to give oral evidence before them:—

(i) Major General S. S. Sokhey; and

(ii) Sarvashri G. M. Parikh and M. A. Pattani of Zandu Pharmaceutical Works Ltd., Bombay.

5. The Committee then considered their tour programme. The Chairman informed the Committee that since there were not many units in the South for one Group of the Committee to visit, the Committee might be divided into two Groups only *viz.* (i) visiting the units in the Bombay region (Bombay, Baroda and Poona) and the other at Calcutta and the Pfizer's Plant at Chandigarh (this was to be arranged on a convenient day when the Committee next hold their sittings). The programme as approved is set forth at annexures I & II.

The Committee also decided at the instance of the Drug Controller (Shri S. K. Borkar) to include two or three small scale pharmaceutical units in Bombay in their itinerary. He undertook to intimate their particulars.

6. Referring to the earlier decision to restrict the number of members joining each Group to 15, the Chairman announced that now that only two Groups were being constituted, this number might be restricted to 22. The Chairman was authorised to exercise his discretion to regulate this number.

7. The Committe also authorised the Chairman to visit the TATA Chemical Works at Mithapore (Gujarat) to study the application of the process patents envisaged in the Bill instead of products patents in respect of B.H.C. etc. manufactured by this Unit. The Chairman was to nominate 2 or 3 members to accompany him during this visit. It was also decided that an officer of the Secretariat should accompany this group. The date for the visit was to be determined by the Chairman.

8. The Committee then considered their future programme of work.

It was decided to sit daily from 09.30 to 13.00 hours and again from 15.00 to 17.00 hours from the 1st July, 1966 onwards (for a fortnight or less, if possible) to hear oral evidence of the witnesses—both foreign and Indian. It was decided that foreign witnesses should be given about two hours each and the Indian witnesses about one and a half hours each for giving evidence. The Chairman appealed to the members to be brief in their examination and thus help in completing the recording of evidence within this period. The Committee authorised the Chairman to draw up the programme of the sittings and have it circulated to them.

9. The Committee also tentatively agreed to sit from the 25th July, 1966 onwards to take up clause-by-clause consideration of the Bill.

10. The Committee then adjourned.

ANNEXURE I

(*See* Para 5 of the Minutes dt. 23-4-1966)

GROUP I

TOUR PROGRAMME OF VISITS TO PHARMACEUTICAL FACTORIES IN BOMBAY REGION

Sunday, the 5th June, 1966

Members to assemble at Bombay (exact place to be notified later).

Monday, the 6th June, 1966

F.N.—Zandu Pharmaceutical Works Ltd., Bombay.

A.N.—CIPLA, Bombay.

Tuesday, the 7th June, 1966.

F.N. Glaxo Laboratories, Bombay.

A.N. (i) CIBA RESEARCH CENTRE, Bombay.

(ii) Haffkine Institute, Bombay.

Wednesday, the 8th June, 1966.

F.N. Merck Sharp and Dohme, Bombay.

A.N. HOECHEST Pharmaceuticals, Bombay.

Dep: for Baroda by the Gujrat Mail at 21.40 hrs.

Thursday, the 9th June, 1966.

Arr: Baroda at 4.22 hrs.

F.N. Alembic Chemicals, Baroda.

A.N. Sarabhai. Chemicals, Baroda.

Friday, the 10th June, 1966.

Dep: for Bombay Central By Gujrat Mail at 0.6 hrs.

Arr: Bombay Central at 5.55 hrs.

F.N. Sandoz, Bombay.

A.N. Unichem Laboratories, Bombay.

4 *P.M.* Discussion with the Controller General of Patents and Designs and Trade Marks, Bombay.

Saturday, the 11th June, 1966.

Dep: Bombay V.T. for Pimpri (Poona) by 305 Dn. Deccan Express at 7.10 hrs.

Arr: Poona 11.5 hrs.

Visit to the Hindustan Antibiotics Ltd., Pimpri (Poona).

DISPERSAL AT POONA

Note: This Group will also visit 2-3 small scale pharmaceutical units in Bombay. Their particulars will be intimated separately.

ANNEXURE II

(*See* Para 5 of the Minutes dt. 23-4-1966)

GROUP II

Tour Programme of visits to Pharmaceutical Factories/Works in Calcutta and Chandigarh**

Sunday, the 12th June, 1966.

Members to assemble at Calcutta.

(Exact place to be notified later) may be Central Government Guest House, Nizam's Palace.

Monday, the 13th June, 1966.

F.N. Bengal Chemicals, Calcutta.

A.N. Bengal Immunity, Calcutta.

**Visit to the Pfizer's basic manufacturing factory at Chandigarh will be arranged after the Joint Committee conclude their first round of sittings to be held in July, 1966.

Tuesday, the 14th June, 1966.

F.N. Standard Pharmaceuticals, Calcutta.

A.N. Smith Stanistreet, Calcutta.

Wednesday, the 15th June, 1966.

F.N. Martin & Harris, Calcutta.

A.N. Dey's Medical Stores, Calcutta.

Thursday, the 16th June, 1966.

F.N. East India Pharmaceutical Works, Calcutta.

A.N. Ayurvedic Units—(i) DABAR (ii) Kavi Raj N. N. Sen.

Friday, the 17th June, 1966.

Discussion with Joint Controller of Patents and Designs and the President, Technical Society of Patents.

Saturday, the 18th June, 1966.

Dispersal at Calcutta.

**Visit to the Pfizer's Basic manufacturing factory at Chandigarh will be arranged after the Joint Committee conclude their first round of sittings to be held in July, 1966.

XI

Eleventh Sitting

The Committee met on Friday, the 1st July, 1966 from 09.30 to 13.15 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares
4. Shri Ramchandra Vithal Bade
5. Shri Panna Lal Barupal
6. Shri Bibhuti Mishra
7. Sardar Daljit Singh
8. Shri Basanta Kumar Das
9. Shri V. B. Gandhi
10. Shri H. K. V. Gowdh

11. Shri Kashi Ram Gupta
12. Shri Madhavrao Laxmanrao Jadhav
13. Shri Braj Behari Mehrotra
14. Shri Bibudhendra Mishra
15. Shrimati Sharda Mukerjee
16. Shri Naval Prabhakar
17. Shri Sham Lal Saraf
18. Shri A. T. Sarma
19. Dr. C. B. Singh
20. Shri P. Venkatasubbaiah
21. Shri K. K. Warior
22. Shri Balkrishna Wasnik
23. Shri Ram Sewak Yadav

Rajya Sabha

24. Shri P. K. Kumaran
25. Shri Shyamnandan Mishra
26. Shri Mulka Govinda Reddy
27. Shri Dahyabhai V. Patel
28. Dr. M. M. S. Siddhu
29. Shri Dalpat Singh
30. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D., Ministry of Industry.*
2. Shri B. N. Atrishi, *O.S.D., Ministry of Industry.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India, Ministry of Health.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS

National Foreign Trade Council Inc. 10, Rockefeller, Plaza, NEW YORK.

Mr. Leonard J. Robbins.

2. The Committee heard the evidence given by the witness mentioned above.

3. A verbatim record of the evidence given was taken.

4. The Chairman then informed the Joint Committee that the Business Council for International Understanding, New York, having intimated that they would not be able to come on the 2nd July, 1966 to give evidence before the Joint Committee, as there was very little time for them to undertake the journey, he had agreed to their representative being heard by the Committee on the 14th July, 1966. As a result of this, there would now be left only one party which would be coming up before the Committee on the 2nd July, 1966, *viz.* The Chamber of Commerce of the United States of America, Washington. This party, the Chairman added, had been asked to come at 10.00 hours on the 2nd July, 1966 instead of at 11.30 hours, as originally scheduled.

5. The Chairman also informed the Joint Committee that Dr. Guido Zerilli-Marimo who was to come with Prof. Gino Bergami from Italy on the 5th July, 1966 had intimated that he had met with an accident and that he would not be able to undertake the journey. In his place, Dr. Giorgio Delgiudice would be coming.

6. The Committee were apprised of the proposed visit by the Study Group II to the Pfizer's Basic Manufacturing Plant at Chandigarh (as earlier decided) on the 16th July, 1966.

7. The Chairman also informed the Joint Committee that on a suggestion being made by some members, a visit to the Hamdard Dawakhana Drug Manufacturing and Research Unit in Delhi was being arranged at 16.00 hours on Monday, the 4th July, 1966.

8. The Committee then ajourned till 10.00 hrs., the 2nd July, 1966.

XII

Twelfth Sitting

The Committee met on Saturday, the 2nd July, 1966 from 10.00 to 12.45 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares

4. Shri Ramchandra Vithal Bade
5. Shri Panna Lal Barupal
6. Shri Bibhuti Mishra
7. Sardar Daljit Singh
8. Shri Basanta Kumar Das
9. Shri V. B. Gandhi
10. Shri H. K. V. Gowdh
11. Shri Kashi Ram Gupta
12. Shri Madhavrao Laxmanrao Jadhav
13. Shri Braj Behari Mehrotra
14. Shri Bibudhendra Mishra
15. Shrimati Sharda Mukerjee
16. Shri Naval Prabhakar
17. Shri Sham Lal Saraf
18. Shri A. T. Sarma
19. Dr. C. B. Singh
20. Dr. L. M. Singhvi
21. Shri P. Venkatasubbaiah
22. Shri K. K. Warior
23. Shri Balkrishna Wasnik
24. Shri Ram Sewak Yadav

Rajya Sabha

25. Shri B. T. Kulkarni
26. Shri P. K. Kumaran
27. Shri Shyamnandan Mishra
28. Shri Dahyabhai V. Patel
29. Shri Mulka Govinda Reddy
30. Shri M. R. Shervani
31. Shri Dalpat Singh
32. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Shri B. N. Atrishi, *O.S.D.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

Chamber of Commerce of the United States of America, Washington.

Prof. Maurice D. Kilbridge

2. The Committee heard the evidence given by the witness mentioned above.

3. A verbatim record of the evidence given was taken.

4. The Chairman informed the Committee about the communication received from the Directorate of Research Coordination and Industrial Liaison, C.S.I.R., New Delhi, wherein they had stated that Dr. S. H. Zaheer, D.G., C.S.I.R., and Shri Baldev Singh, who were to appear before the Committee on the 8th July, 1966, would be both out of station on that day, the Committee might agree to permit Dr. K. Ganapathi, Director, Regional Research Laboratory, Jammu, alongwith Shri R. B. Pai on behalf of the C.S.I.R. to appear before them instead. The Committee did not agree to the request and decided that they should be asked to intimate the next date which would be convenient to them.

5. The Committee then adjourned till 09.30 hours on Monday, the 4th July, 1966.

XIII

Thirteenth Sitting

The Committee met on Monday, the 4th July, 1966 from 09.55 to 13.30 and again from 14.30 to 16.50 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh

3. Shri Peter Alvares

4. Shri Ramchandra Vithal Bade
5. Shri Panna Lal Barupal
6. Shri Dinen Bhattacharya
7. Sardar Daljit Singh
8. Shri Basanta Kumar Das
9. Shri V. B. Gandhi
10. Shri R. K. V. Gowdh
11. Shri Kashi Ram Gupta
12. Shri Madhavrao Laxmanrao Jadhav
13. Shri Braj Behari Mehrotra
14. Shri Bibudhendra Mishra
15. Shrimati Sharda Mukerjee
16. Shri Naval Prabakar
17. Shri A. T. Sarma
18. Dr. C. B. Singh
19. Shri P. Venkatasubbaiah
20. Shri Balkrishna Wasnik

Rajya Sabha

21. Shri Arjun Arora
22. Shri P. K. Kumaran
23. Shri Shyamnandan Mishra
24. Shri Dalpat Singh
25. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Shri B. N. Atrishi, *O.S.D.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. Association of Chemical Industry in West Germany.

1. George Albrechtskirchinger.

2. Dr. Ulrich Heubaum.

II. Centre European Des Federations De L'—Industrie Chimique Bureau, ZURICH.

1. Mr. R. A. Willens, Head of the Patent Department of Shell Chemicals, London.

2. Mr. J. Egli, Director of the Swiss Society of Chemical Industries.

3. Mr. Haslam, Head of the Patent Department Wellcome Foundation Ltd., London.

4. Mr. D. H. Nowotny, Delegate of Swiss Society of Chemical Industries, Zurich.

2. The Committee heard the evidence given by the witnesses mentioned above.

3. A verbatim record of the evidence given was taken.

4. Before proceeding to give evidence, Mr. J. Egli, leader of the representatives of the Swiss Society of Chemical Industries (Centre European Des Federations De L' Industrie Chimique Bureau, ZURICH expressed his sincere thanks to the Joint Committee of Parliament of India for giving him this opportunity of participating at their hearings. He added that he was extremely impressed by the manner in which the Chairman of the Committee had organised these hearings. It was very rare in the world that a Parliamentary Committee was receiving foreigners to testify before them. For this very great generosity of the Committee, he expressed his admiration and his sincere thanks. He further added that he very much appreciated this gesture of a great Democratic Country like India to have given him an opportunity to give evidence before the Committee.

The Committee then adjourned till 9.30 hours on Tuesday, the 5th July, 1966.

XIV

Fourteenth Sitting

The Committte met on Tuesday, the 5th July, 1966 from 09.30 to 13.00 and again from 15.00 to 17.15 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares
4. Shri Ramchandra Vithal Bade
5. Shri Panna Lal Barupal
6. Shri Dinen Bhattacharya
7. Sardar Daljit Singh
8. Shri Basanta Kumar Das
9. Shri V. B. Gandhi
10. Shri H. K. V. Gowdh
11. Shri Kashi Ram Gupta
12. Shri Madhavrao Laxmanrao Jadhav
13. Shri M. R. Masani
14. Shri Braj Behari Mehrotra
15. Shri Bibudhendra Mishra
16. Shri Naval Prabhakar
17. Shri R. Ramanathan Chettiar
18. Shri A. T. Sarma
19. Dr. C. B. Singh
20. Dr. L. M. Singhvi
21. Shri P. Venkatasubbaiah
22. Shri Balkrishna Wasnik
23. Shri Ram Sewak Yadav

Rajya Sabha

24. Shri Arjun Arora
25. Shri Vimalkumar M. Chordia
26. Shri P. K. Kumaran
27. Shri Shyamnandan Mishra
28. Shri Dalpat Singh

29. Shri R. P. Sinha

30. Shri B. T. Kulkarni

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*

2. Shri B. N. Atrishi, *O.S.D.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chagla—*Deputy Secretary.*

WITNESSES

I. 1. Prof. Gino Bergami, Director, Institute DI FISIOLOGIA UMANA UNIVERSITA (NAPALES).

2. Dr. Giorgio Delgiudice, Leodoga SPA Lepetit, *Via* ANDREA VESALIO 6, ROME. (Assistant by Mr. Gabriel Brohamasha as Interpreter).

II. Japan Pharmaceutical Manufacturers, Association, Japan Pharmaceutical, Medical and Dental Supply Exporters' Association and Federation of Economic Organizations, Tokyo.

1. Mr. Shoji Matsui, *Patent Attorney.*

2. Mr. Shoichi Inoue, *Senior Managing Director, (Assistant by Sardar Hem Singh, as Interpreter).*

2. The Committee heard the evidence given by the witnesses mentioned above.

3. A verbatim record of the evidence given was taken.

4. At the outset, Prof. Bergami stattd that he would wish to pay his most hearty compliment to the Chairman and the Members of the Joint Committee for their readiness to hear the views of experts from other countries. This was a unique and excellent approach by the Parliament of India knowing as he did the Parliaments of many other countries.

This showed in a very impressive manner, how liberal democratic and progressive the Parliamentary institution in India was. He added that he and his colleague had nothing but admiration for the manner in which Government and people of India had recently faced the stupendous problem that was before the country. He further added that he did not represent any special interest nor any industrial tnterprise and his only interest was the welfare of the people of India.

5. Messrs. Shoji Matsui and Shoichi Inoue of Japan also expressed their appreciation of the manner in which they had been treated by the Committee.

6. The Committee then adjourned till 09.30 hours on Wednesday, the 6th July, 1966.

XV
Fifteenth Sitting

The Committee met on Wednesday, the 6th July, 1966 from 09.30 to 13.00 and again from 15.00 to 15.30 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares
4. Shri Panna Lal Barupal
5. Shri Dinen Bhattacharya
6. Shri Bibhuti Mishra
7. Sardar Daljit Singh
8. Shri Basanta Kumar Das
9. Shri V. B. Gandhi
10. Shri H. K. V. Gowdh
11. Shri Kashi Ram Gupta
12. Shri Madhavrao Laxmanrao Jadhav
13. Shri M. R. Masani
14. Shri Braj Behari Mehrotra
15. Shri Bibhudhendra Mishra
16. Shri Naval Prabhakar

17. Shri R. Ramanathan Chettiar
18. Shri A. T. Sarma
19. Dr. C. B. Singh
20. Dr. L. M. Singhvi
21. Shri P. Venkatasubbaiah
22. Shri Balkrishna Wasnik
23. Shri Ram Sewak Yadav

Rajya Sabha

24. Shri Babubhai M. Chinai
25. Shri Vimalkumar M. Chordia
26. Shri P. K. Kumaran
27. Shri Shyamnandan Mishra
28. Shri Dalpat Singh
29. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

Shri K. V. Venkatachalam, *O.S.D.*

2. Shri B. N. Atrishi, *O.S.D.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. The Indian Merchants Chamber, Bombay.

1. Dr. R. C. Cooper—*Vice-President.*
2. Shri P. A. Narielwala, *Member.*
3. Shri C. L. Gheevala, *Secretary.*

II. Trade Marks Owners Association of India.

1. Shri S. H. Gursahani, *Chairman.*
2. Shri R. A. Shah, *Solicitor.*
3. Shri C. K. R. Rao, *Secretary.*

2. The Committee heard the evidence given by the witnesses mentioned above.

3. A verbatim record of the evidence given was taken.

4. The Committee then discussed their future programme re: clause-by-clause consideration of the Bill. One view was that the Bill as reported by the committee should be passed by the House during the next session, as the winter session of Parliament would not only be over crowded but also of a short duration, and it might not be possible to get through this Bill, which might ultimately lead to the lapse of the Bill—the term of the current Lok Sabha would be over shortly after the winter session. Another view was that members should be given adequate time to digest the evidence in view of the intricacies and complexities of this Bill. They were all set against the Bill being rushed through. It was suggested that the Committee should sit for a week or ten days in early October to take up clause-by-clause consideration of the Bill. After some discussion, it was decided that the Chairman might discuss the matter with the Minister of Parliamentary Affairs and ascertain from him whether Government hoped to ensure passage of this Bill during the next Session or in case it could not be brought up in that Session, it could be passed for certain during the Winter Session so that all the labours of the Committee did not become infructuous.

Further consideration of this issue was, therefore, deferred.

5. The Committee noted that the three Witnesses representing the Indian Drugs Manufacturers Association, Bombay, who were to appear before the Committee, had not turned up.

The Committee then adjourned till 9.30 hours on Thursday, the 7th July, 1966.

XVI

Sixteenth Sitting

The Committee met on Thursday, the 7th July, 1966 from 09.50 to 13.40 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares

4. Shri Panna Lal Barupal
5. Sardar Daljit Singh
6. Shri Basanta Kumar Das
7. Shri V. B. Gandhi
8. Shri H. K. V. Gowdh
9. Shri Kashi Ram Gupta
10. Shri Madhavrao Laxmanrao Jadhav
11. Shri Braj Behari Mehrotra
12. Shri Naval Prabhakar
13. Shri A. T. Sarma
14. Dr. C. B. Singh
15. Dr. L. M. Singhvi
16. Shri Ram Sewak Yadav.

Rajya Sabha

17. Shri Babubhai M. Chinai
18. Shri Vimalkumar M. Chordia
19. Shri P. K. Kumaran
20. Shri Shyamnandan Mishra
21. Shri Dalpat Singh
22. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Shri B. N. Atrishi, *O.S.D.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

1. Shri S. K. Borkar, *Drug Controller of India.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. Indian Pharmaceutical Association, Bombay.

1. Mr. K. C. Chatterjee, *Vice-President.*
2. Dr. J. N. Banerjee, *General Secretary.*

II. *Bundesverband Der Pharmazeutischen & Industries, E.V., Frankfurt Am Main, West Germany.

1. Mr. Curt Engelhorn, *President.*
2. Dr. Scholl, *Adviser.*

2. The Committee heard the evidence given by the witnesses mentioned above.

3. A verbatim record of the evidence given was taken.

4. The Committee then adjourned till 09.30 hours on Friday, the 8th July, 1966.

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*Association of the German Pharmaceutical Industry, Frankfurt AM MAIN.

XVII

Seventeenth Sitting

The Committee met on Friday, the 8th July, 1966 from 09.40 to 13.05 and again from 15.30 to 17.30 hours.

PRESENT

Shri S. V. Krishnamoothy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares
4. Shri Panna Lal Barupal
5. Sardar Daljit Singh
6. Shri Basanta Kumar Das
7. Shri V. B. Gandhi
8. Shri H. K. V. Gowdh
9. Shri Kashi Ram Gupta
10. Shri Madhavrao Laxmanrao Jadhav
11. Shri Braj Behari Mehrotra
12. Shri Naval Prabhakar
13. Shri A. T. Sarma
14. Dr. C. B. Singh
15. Shri Ram Sewak Yadav.

16. Shri Arjun Arora
17. Shri Babubhai M. Chinai
18. Shri Vimalkumar M. Chordia
19. Shri D. P. Karmarkar
20. Shri P. K. Kumaran
21. Shri Shyamnandan Mishra
22. Shri Dahyabhai V. Patel
23. Shri Mulka Govinda Reddy
24. Shri Dalpat Singh
25. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Shri B. N. Atrishi, *O.S.D.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. Neo-Pharma Industries, Bombay.

1. Shri N. L. I. Mathias, *Director.*
2. Shri A. C. Mitra.

II Haffkine Institute, Bombay.

1. Dr. H. I. Jhala, *Asstt. Director.*
2. Dr. C. V. Deliwala, *Asstt. Director.*

III. Mr. J. F. Monnet, Chambre Sandicale Nationale des Fabricants de Products, Pharmaceutiques; 88. Rue de la Faisanderie, Paris—16.

2. The Committee heard the evidence given by the witnesses mentioned above.

3. A verbatim record of the evidence given was taken.

4. The discussion with the representatives of M|s. Neo Pharma Industries, Bombay, was to a large extent centered on the research aspect to ensure that the consumer was benefited by the incentives to industrialisation by the privileges and rights granted to an inventor under the Patents Law. The evidence showed an appalling lack of incentives on the part of the Indian Pharma manufacturers to invest some of their surpluses in research both in the matter of development of old drugs and discovery of new drugs for the benefit of the community. This aspect was brought to fore on the previous day also when the representatives of the Indian Pharma Association appeared before the Committee. The Committee, therefore, decided to visit the following Drug Research Institutes on the dates noted against each so as to acquaint themselves as to how things were going on in these Institutes which were run and managed by the Council of Scientific and Industrial Research:—

(i) Central Drug Research Institute, Lucknow, (Saturday, the 6th August, 1966).

(ii) Drug Research Institute, Jammu (recently taken over by CSIR).—Saturday, the 20th August, 1966.

The Committee decided to divide themselves into two Groups for visiting the two above mentioned Institutes. The Committee authorised the Chairman to regulate the number of members in each group which was not to exceed 22.

5. The Committee then decided to sit on Friday, the 12th August, 1966 from 14.00 hours onwards to hear the evidence of the following parties, which could not be taken up during their current session, and thus conclude their evidence taking part of the business:—

(i) 14.00 hrs. to 15.30 hrs.—Incorporated Law Society of Calcutta.

(ii) 15.30 hrs. onwards—Director General, Council of Scientific and Industrial Research.

Mr. J. F. Monnet thanked the Chairman and members of the Committee for having given him an opportunity to appear before them. This, he said, was not only a great honour to his own person

but he considered it a homage to his country which has had good and friendly relations with India in the past and which would certainly be reinforced in the future. He added that he had been particularly sensible to the fact that the Committee had taken a decision to give a hearing to the foreign witnesses on a matter of national importance on which others should not have any say. This, he said, was the privilege of great nations and the privilege of great democracies to be able to take such decisions. Continuing he said that he had not seen any similar decisions being taken in the world except in the U.S.A. as far back as in 1945, when he had an opportunity to be called there at a hearing on a Bill for extension of priority rights for patents that had been lapsing during the last war. The decision of the Committee to send for foreign witnesses, according to him, was the first of its kind and for that he paid his respects to the Committee and to the Indian Parliament.

The Committee then adjourned till 9.00 hours on Monday, the 11th July, 1966.

XVIII

Eighteenth Sitting

The Committee met on Monday, the 11th July, 1966 from 09.40 to 13.20 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Seth Aachal Singh
3. Sardar Daljit Singh
4. Shri Basanta Kumar Das
5. Shri V. B. Gandhi
6. Shri H. K. V. Gowdh
7. Shri Kashi Ram Gupta
8. Shri Prabhu Dayal Himatsingka
9. Shri Madhavrao Laxmanrao Jadhav
10. Shri Braj Behari Mehrotra
11. Shri Chhotubhai M. Patel

12. Shri Naval Prabhakar
13. Shri R. Ramanathan Chettiar
14. Shri A. T. Sarma
15. Dr. C. B. Singh
16. Dr. L. M. Singhvi
17. Shri K. K. Warior
18. Shri Balkrishna Wasnik
19. Shri Ram Sewak Yadav.

Rajya Sabha

20. Shri Vimalkumar M. Chordia
21. Shri Shyamnandan Mishra
22. Shri Dahyabhai V. Patel
23. Shri Mulka Govinda Reddy
24. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Shri B. N. Atrishi, *O.S.D.*
3. Dr. A. Joga Rao, *Controller General of Patents, Designs and Trade Marks.*

DRAFTSMAN

Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. Dr. T. R. Govindachari, *Director.*

CIBA Research Centre, Goregaon, Bombay.

II. All India Drugs & Pharmaceuticals Manufacturers' Consultative Committee, Bombay.

1. Dr. Gurbax Singh, *Leader.*
2. Shri G. M. Parikh
3. Shri R. Ganesan
4. Shri B. S. Giri.

III. All India Manufacturers' Organisation, Bombay.

1. Shri Hansraj Gupta, *Leader*
2. Shri G. M. Parikh
3. Shri B. S. Giri
4. Shri R. Ganesan
5. Dr. Gurbax Singh

} Members of the Central Committee.

IV. Sarvashri G. M. Parikh,

H. J. Vaidya and S. C. Nanabhai,

Zandu Pharmaceutical Works Ltd.,

Bombay.

2. The Committee heard the evidence given by the witnesses mentioned above. The evidence of the parties at S. Nos. II to IV was heard together at their request.

3. A verbatim record of the evidence given was taken.

4. At the outset, Shri R. P. Sinha, a member of the Committee, pointed out that the Minister-in-charge of the Bill, Shri D. Sanjivayya did not so far attend any sitting of the Committee. The other Minister, Shri Bibudhendra Mishra, too was not present. Shri P. S. Naskar also did not attend any of the sittings during the current session of the Committee. It was also pointed out that Shri Naskar being now the Deputy Home Minister was not concerned with the subject matter of the Bill any longer. The Chairman mentioned that he had already written a D. O. letter to the Minister-in-charge requesting him to make it convenient to attend the sittings of the Joint Committee. Shri Bibudhendra Mishra, who had gone to Bangalore to attend the Small Scale Industries Board meeting had taken his prior permission to be absent from the sittings of the Committee last week.

XIX

Nineteenth Sitting

The Committee met on Tuesday, the 12th July, 1966 from 09.30 to 13.10 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri P. C. Borooah
4. Sardar Daljit Singh
5. Shri Basanta Kumar Das
6. Shri V. B. Gandhi
7. Shri Kashi Ram Gupta
8. Shri Madhavrao Laxmanrao Jadhav
9. Shri Braj Behari Mehrotra
10. Shri Bibudhendra Mishra
11. Shri Chhotubhai M. Patel
12. Shri Naval Prabhakar
13. Shri R. Ramanathan Chettiar
14. Shri A. T. Sarma
15. Dr. C. B. Singh
16. Shri K. K. Warior
17. Shri Balkrishna Wasnik
18. Shri Mathew Maniyangadan

Rajya Sabha

19. Shri Arjun Arora
20. Shri Vimalkumar M. Chordia
21. Shri Shyamnandan Mishra
22. Shri Dahyabhai V. Patel
23. Shri Mulka Govinda Reddy
24. Shri M. R. Shervani
25. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Shri B. N. Atrishi, *O.S.D.*
3. Dr. A. Joga Rao, *Controller General of Patents, Designs and Trade Marks.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

DRAFTSMAN

Shri R. V. S. Perisastri, Deputy Draftsman, Legislative Department, Ministry of Law.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. Indian Chamber of Commerce, Calcutta.

1. Shri B. P. Khaitan
2. Shri B. Kalyanasundaram.

II. Associated Chambers of Commerce and Industry of India, Calcutta.

1. Mr. C. A. Pitts
2. Mr. A. B. Parakh
3. Mr. I. Mackinnon

III. Bengal Chemists and Druggists Association, Calcutta.

1. Shri P. K. Guha
2. Shri T. K. Ghosh.

2. The Committee heard the evidence given by the witnesses mentioned above.

3. A verbatim record of the evidence given was taken.

4. On a question being raised whether it would be possible for Government to allocate time during the next session to have the Bill as reported by the Joint Committee pushed through both Houses of Parliament, Chairman asked the Minister of State in the Ministry of Industry, Shri Bibudhendra Mishra, to ascertain the present position from the Minister of Parliamentary Affairs and to apprise the Committee of the same so that the latter could adjust their programme accordingly. The Chairman, however, pointed out that as earlier decided they had to sit on the 12th August, 1966 to examine two residuary witnesses *viz.* (i) Incorporated Law Society of Calcutta and (ii) Director General, Council of Scientific & Industrial Research

and thereafter, as suggested by the members today, the following further witnesses had to be examined:—

(i) Dr. B. Shah, Industrial Advisor, Director General of Technical Development, Government of India, New Delhi;

(ii) Director, Central Drug Research Institute, Lucknow;

(iii) Drug Controller, Government of India, New Delhi;

(iv) Controller General of Patents and Designs, Government of India, Bombay; and

(v) Joint Controller of Patents and Designs Office, Calcutta.

Further discussion on this issue was deferred till the Committee were informed of the outcome of the discussion which the Minister of State in the Ministry of Industry was asked to have with the Minister of Parliamentary Affairs.

The Committee then adjourned till 09.30 hours on Wednesday, the 13th July, 1966.

XX

Twentieth Sitting

The Committee met on Wednesday, the 13th July, 1966 from 09.30 to 13.05 hours and again from 17.10 to 18.20 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares
4. Shri Ramchandra Vithal Bade
5. Shri Panna Lal Barupal
6. Shri Bibhuti Mishra
7. Shri P. C. Borooah
8. Sardar Daljit Singh
9. Shri Basanta Kumar Das
10. Shri V. B. Gandhi
11. Shri Kashi Ram Gupta
12. Shri Madhavrao Laxmanrao Jadhav
13. Shri Mathew Maniyangadan
14. Shri Braj Behari Mehrotra

15. Shri Bibudhendra Mishra
16. Shrimati Sharda Mukerjee
17. Shri Chhotubhai M. Patel
18. Shri Naval Prabhakar
19. Shri R. Ramanathan Chettiar
20. Shri A. T. Sarma
21. Dr. C. B. Singh
22. Shri K. K. Warior
23. Shri Balkrishna Wasnik

Rajya Sabha

24. Shri Arjun Arora
25. Shri Vimalkumar M. Chordia
26. Shri P. K. Kumaran
27. Shri Shyamnandan Mishra
28. Shri Mulka Govinda Reddy
29. Shri M. R. Shervani
30. Shri R. P. Sinha

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Shri B. N. Atrishi, *O.S.D.*
3. Dr. A. Joga Rao, *Controller General of Patents, Designs and Trade Marks.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

DRAFTSMEN

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Department, Ministry of Law.*
2. Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

1. Shri T. Durairajan, Dollar Company, Madras.

II. Pharmaceutical Manufacturers' Organisation, Ahmedabad.

1. Shri Hasmukhlal C. Shah
2. Shri I. A. Modi.

III. Gujarat Vepari Mahamandal, Ahmedabad.

1. Shri Charandas Haridass, Vice-President.
2. Shri Chandulal Premchand, Ex-President.
3. Shri J. T. Trivedi.

2. The Committee heard the evidence given by the witnesses mentioned above.

3. A verbatim record of the evidence given was taken.

4. Before the representatives of the Gujarat Vepari Mahamandal, Ahmedabad, proceeded to give their evidence, they expressed their regret for their late arrival which they explained was due to the unusual late running of the train.

The Committee then adjourned till 09.30 hours on Thursday, the 14th July, 1966.

XXI

Twenty-first Sitting

The Committee met on Thursday, the 14th July, 1966 from 09.30 to 13.20 hours and again from 15.00 to 17.10 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Peter Alvares
3. Shri Ramchandra Vithal Bade
4. Shri Panna Lal Barupal
5. Shri Bibhuti Mishra
6. Sardar Daljit Singh
7. Shri Basanta Kumar Das

8. Shri V. B. Gandhi
9. Shri Kashi Ram Gupta
10. Shri Madhavrao Laxmanrao Jadhav
11. Shri Mathew Maniyangadan
12. Shri Bibudhendra Mishra
13. Shrimati Sharda Mukerjee
14. Shri Chhotubhai M. Patel
15. Shri Naval Prabhakar
16. Shri R. Ramanathan Chettiar
17. Shri Sham Lal Saraf
18. Shri A. T. Sarma
19. Dr. C. B. Singh
20. Shri K. K. Warior
21. Shri Balkrishna Wasnik

Rajya Sabha

22. Shri Arjun Arora
23. Shri Vimalkumar M. Chordia
24. Shri D. P. Karmarkar
25. Shri P. K. Kumaran
26. Shri Shyamnandan Mishra
27. Shri Mulka Govinda Reddy
28. Shri R. P. Sinha

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Shri B. N. Atrishi, *O.S.D.*
3. Dr. A. Joga Rao, *Controller General of Patents, Designs and Trade Marks.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

DRAFTSMEN

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Department, Ministry of Law.*
2. Shri R. V. S. Periastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. Pharmacy Council of India, New Delhi.

1. Dr. S. Rohatgi
2. Dr. P. K. Sanyal
3. Dr. S. B. Rao
4. Shri Devinder K. Jain.

II. Federation of Indian Chambers of Commerce and Industry, New Delhi.

1. Shri Ramanbhai B. Amin—President.
2. Shri L. S. Davar
3. Shri C. H. Desai
4. Shri N. Krishnamurthi

III. Dr. V. B. Chipalkatti, Director, Shri Ram Institute for Industrial Research, Delhi.

I. Business Council for International Understanding, New York.

Mr. Robert Meagher

2. The Committee heard the evidence given by the witnesses mentioned above.

3. A verbatim record of the evidence given was taken.

4. At the outset Shri R. P. Sinha raised the following issues:—

(i) the Committee had so far concentrated their deliberations on the effects of the Bill on the Drug and Pharmaceutical Industry and they had not examined any witness from other fields of industry where Patents other than those for Drugs and Pharmaceuticals were either being used or exploited;

(ii) chemical testing of a drug or medicine developed in India was a very complicated process and it took a very long time; and

(iii) the targets laid down in the Third and Fourth Five Year Plans and their achievements, so far as the Third Five Year Plan was concerned, for the manufacture of intermediates used in the preparation or manufacture of any of the medicines or drugs.

The Chairman, however, ruled that due publicity about the submission of the Memoranda and the giving of oral evidence had been given. But as it was, no other industry came forward to present their views or express their difficulties. As the Drug Industry was primarily affected by the proposed provisions of the Bill inasmuch as it sought to reduce the term of the Patent from 16 to 10 years, it was that Industry from whom a majority of the Memoranda|Representations had been received. For the same reason, much of the evidence also came from that Industry. The Chairman made it clear that the Committee were solely concerned with the consideration of the Bill within the framework of the principles underlying it, which had been accepted by the House while referring the Bill to the Joint Committee, and not with the development of any Industry. This, he observed, was beyond the scope of the Bill.

5. Before Mr. Meagher proceeded to give his evidence, he thanked the Chairman and Members of the Committee for giving him an opportunity to appear before them. This he considered to be very extra-ordinary for a Committee of Parliament to permit foreigners like himself to come forth to place his views before them.

Before withdrawing on the conclusion of his evidence, Mr. Meagher once again thanked the Committee for the honour done to him in giving him an opportunity to place his views before them.

The Committee then adjourned till 09.30 hours on Friday, the 15th July, 1966.

XXII

Twenty-second Sitting

The Committee met on Friday, the 15th July, 1966 from 09.30 to 13.25 hours and again from 15.00 to 18.55 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*.

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares

4. Shri Ramachandra Bade
5. Shri Panna Lal Barupal
6. Shri Dinen Bhattacharya
7. Shri Bibhuti Mishra
8. Shri P. C. Borooah
9. Sardar Daljit Singh
10. Shri Basanta Kumar Das
11. Shri V. B. Gandhi
12. Shri Kashi Ram Gupta
13. Shri Madhavrao Laxmanrao Jadhav
14. Shri Mathew Maniyangadan
15. Shri Braj Behari Mehrotra
16 Shri Bibudhendra Mishra
17. Shrimati Sharda Mukerjee
18. Shri Chhotubhai M. Patel
19. Shri Naval Prabhakar
20. Shri R. Ramananthan Chettiar
21. Shri Sham Lal Saraf
22. Shri A. T. Sarma
23. Dr. C. B. Singh
24. Dr. L. M. Singhvi
25. Shri P. Venkatasubbaiah
26. Shri Balkrishna Wasnik

Rajya Sabha

27. Shri Arjun Arora
28. Shri Vimalkumar M. Chordia
29. Shri D. P. Karmarkar
30. Shri P. K. Kumaran
31. Shri Shyamnandan Mishra
32. Shri Dahyabhai V. Patel
33. Shri Mulka Govinda Reddy
34. Shri M. R. Shervani
35. Dr. M. M. S. Siddhu
36. Shri Dalpat Singh
37. Shri R. P. Sinha

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Shri B. N. Atrishi, *O.S.D.*
3. Dr. A. Joga Rao, *Controller General of Potents, Designs and Trade Marks.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

DRAFTSMEN

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Department, Ministry of Law.*
2. Shri R. V. S. Perisastri, *Deputy Draftsman, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. Organisation of Pharmaceutical Producers of India, Bombay.

1. Dr. H. R. Nanji—President.
2. Mr. Keith C. Roy—Vice-President
3. Shri A. V. Mody
4. Mr. J. Reece
5. Dr. S. L. Mukherjee
6. Shri S. V. Divecha
7. Shri J. N. Chaudhry

II. Indian Chemical Manufacturers' Association, *Bombay.*

1. Shri J. H. Doshi, Member, Executive Committee.
2. Shri P. D. Nargolwala
3. Dr. K. Subramanyam, Secretary.

2. Before the witnesses were called in, the Committee decided, in addition to the sitting already fixed for Friday, the 12th August, 1966, to sit on the following days to conclude the hearing of evidence portion at least during the next Session:—

I. *Friday, the 26th August,* 1966:—

(i) Dr. B. Shah, Industrial Adviser, Director General of Technical Development, Government of India, New Delhi. 14.30 hrs.

(ii) Director, Central Drug Research Institute, Lucknow.

II. *Saturday, the 27th August, 1966:—*

(i) Drug Controller, Government of India, New Delhi. 09.30 hrs.

(ii) Controller General of Patents and Designs, Government of India

and

Joint Controller, Patents and Designs, Calcutta.

3. The Chairman then informed the Committee that according to the present schedule, the Committee were required to report to the House by the first day of the 2nd week of the next Session of Lok Sabha. As it was not possible to do so—some more witnesses being still left to be examined before clause-by-clause consideration of the Bill could be taken up—the Committee would have to ask for an extension of time upto the first day of the November-December 1966 Session. The Committee approved this suggestion and authorized the Chairman and, in his absence, Dr. C. B. Singh to move the necessary motion in the House on Thursday, the 28th July, 1966.

4. The Committee also decided that the evidence given before them might be printed and laid on the Tables of both the Houses and copies of the Memoranda received from the various parties who gave evidence before the Committee be placed in Parliament Library for reference by Members, after the report of the Committee had been presented to the House.

5. The Committee then heard the evidence given by the witnesses mentioned above.

6. A verbatim record of the evidence given was taken.

The Committee then adjourned till 14.00 hours on Friday, the 12th August, 1966.

XXIII

Twenty-Third Sitting

The Committee met on Friday, the 12th August, 1966 from 14.00 to 16.30 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Bibhuti Mishra
4. Shri P. C. Borooah
5. Sardar Daljit Singh
6. Shri Basanta Kumar Das
7. Shri H. K. V. Gowdh
8. Shri Mathew Maniyangadan
9. Shri Braj Behari Mehrotra
10. Shri Bibudhendra Mishra
11. Shrimati Sharda Mukerjee
12. Shri P. S. Naskar
13. Shri Chhotubhai M. Patel
14. Shri R. Ramanathan Chettiar
15. Shri Sham Lal Saraf
16. Shri A. T. Sarma
17. Dr. C. B. Singh
18. Shri K. K. Warior

Rajya Sabha

19. Shri T. Chengalvaroyan
20. Shri P. K. Kumaran
21. Shri Shyamnandan Mishra
22. Shri M. R. Shervani
23. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Shri B. N. Atrishi, *O.S.D.*

3. Dr. A. Joga Rao, *Controller General of Patents, Designs and Trade Marks.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

REPRESENTATIVE OF MINISTRY OF LAW

Shri R. V. S. Periastri, *Deputy Legislative Council, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

1. Incorporated Law Society of Calcutta.

Shri B. P. Ray.

2. Council of Scientific and Industrial Research, New Delhi.

1. Dr. S. H. Zaheer, Director General, C.S.I.R. and Ex-officio Secretary to the Government of India, Ministry of Education.
2. Shri Baldev Singh, Industrial Liaison and Extension Officer, Directorate of Research Co-ordination & Industrial Liaison, C.S.I.R.
3. Shri R. B. Pai, Patents Officer, C.S.I.R.

2. The Committee heard the evidence given by the witnesses mentioned above.

3. A verbatim record of the evidence given was taken.

4. The Committee then adjourned till 14.30 hours on Friday, the 26th August, 1966.

XXIV

Twenty-Fourth Sitting

The Committee met on Friday, the 26th August, 1966 from 14.40 to 17.05 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Dinen Bhattacharya
3. Shri Bibhuti Mishra

4. Shri P. C. Borooah
5. Sardar Daljit Singh
6. Shri Basanta Kumar Das
7. Shri V. B. Gandhi
8. Shri Kashi Ram Gupta
9. Shri Prabhu Dayal Himatsingka
10. Shri Mathew Maniyangadan
11. Shri Bibudhendra Mishra
12. Shri Chhotubhai M. Patel
13. Shri Naval Prabhakar
14. Shri Sham Lal Saraf
15. Dr. C. B. Singh
16. Shri K. K. Warior
17. Shri Balkrishna Wasnik.

Rajya Sabha

18. Shri Babubhai M. Chinai
19. Shri D. P. Karmarkar
20. Shri Shyamnandan Mishra
21. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Shri B. N. Atrishi, *O.S.D.*
3. Dr. A. Joga Rao, *Controller General of Potents, Designs and Trade Marks.*

REPRESENTATIVE OF MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

REPRESENTATIVE OF MINISTRY OF LAW

Shri R. V. S. Perisastri, *Deputy Legislative Counsel, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. Directorate General of Technical Development, Government of India, New Delhi.

1. Dr. B. Shah, Industrial Adviser.
2. Dr. P. R. Gupta, Development Officer.
3. Dr. S. S. Gothoskar, Development Officer.

II. Dr. M. L. Dhar, Director, Central Drug Research Institute, *Lucknow*.

2. The Committee decided to sit from the 5th October, 1966 onwards to take up clause-by-clause consideration of the Bill and to sit for a week or ten days till the consideration of the Bill was completed whichever was earlier.

3. It was decided that notices of amendments to the Bill might be forwarded to the Lok Sabha Secretariat by the 1st October, 1966. The Committee desired that Government amendments should be accompanied with explanatory notes thereon.

4. The Committee then heard the evidence given by the witnesses mentioned above.

5. A verbatim record of the evidence given was taken.

6. The Committee then adjourned till 09.30 hours on Saturday, the 27th August, 1966.

XXV

Twenty-Fifth Sitting

The Committee met on Saturday, the 27th August, 1966 from 10.05 to 13.30 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*.

MEMBERS

Lok Sabha

2. Shri Bibhuti Mishra
3. Shri P. C. Borooah
4. Sardar Daljit Singh
5. Shri Basanta Kumar Das
6. Shri V. B. Gandhi
7. Shri Kashi Ram Gupta
8. Shri Prabhu Dayal Himatsingka
9. Shri Madhavrao Laxmanrao Jadhav
10. Shri Mathew Maniyangadan
11. Shri Bibudhendra Mishra
12. Shri P. S. Naskar
13. Shri Chhotubhai M. Patel
14. Shri Sham Lal Saraf

15. Dr. C. B. Singh
16. Shri Balkrishna Wasnik.

Rajya Sabha

17. Shri Shyamnandan Mishra
18. Shri M. R. Shervani
19. Shri R. P. Sinha.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
3. Shri B. N. Atrishi, *O.S.D.*

REPRESENTATIVE OF MINISTRY OF LAW

. Shri R. V. S. Peri Sastri, *Deputy Legislative Counsel, Legislative Department, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES

I. (1) Shri S. K. Borkar, Drug Controller, Government of India, New Delhi.

(2) Shri P. S. Ramachandran, Deputy Drug Controller, Government of India, New Delhi.

II. (1) Dr. A. Joga Rao, Controller General of Patents and Designs, Government of India, Bombay.

(2) Shri R. V. Pai, Joint Controller of Patents and Designs. Calcutta.

2. The Committee heard the evidence given by the witnesses mentioned above.

3. A verbatim record of the evidence given was taken.

4. The Committee then adjourned till 14.30 hours on Wednesday, the 5th October, 1966.

XXVI

Twenty-Sixth Sitting

The Committee met on Wednesday, the 5th October, 1966 from 14.30 to 15.45 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Ramchandra Vithal Bade
3. Shri Panna Lal Barupal
4. Shri Bibhuti Mishra
5. Shri P. C. Borooah
6. Sardar Daljit Singh
7. Shri Basanta Kumar Das
8. Shri V. B. Gandhi
9. Shri H. K. V. Gowdh
10. Shri Kashi Ram Gupta
11. Shri Prabhu Dayal Himatsingka
12. Shri Madhavrao Laxmanrao Jadhav
13. Shri Mathew Maniyangadan
14. Shri M. R. Masani
15. Shri Braj Behari Mehrotra
16. Shri Bibudhendra Mishra
17. Shri P. S. Naskar
18. Shri Naval Prabhakar
19. Shri R. Ramanathan Chettiar
20. Shri A. T. Sarma
21. Dr. C. B. Singh
22. Shri K. K. Warior
23. Shri Ram Sewak Yadav.

Rajya Sabha

24. Shri Vimalkumar M. Chordia
25. Shri R. S. Doogar
26. Shri B. T. Kulkarni
27. Shri P. K. Kumaran
28. Shri Shyamnandan Mishra
29. Shri Dahyabhai V. Patel
30. Shri Mulka Govinda Reddy
31. Shri M. R. Shervani
32. Dr. M. M. S. Siddhu
33. Shri Dalpat Singh.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*

2. Dr. A. Joga Rao, *Controller General of Patents, Designs, and Trade Marks.*

2. Shri B. N. Atrishi, *O.S.D.*

REPRESENTATIVES OF MINISTRY OF LAW

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Department.*

2. Shri R. V. S. Peri Sastri, *Deputy Legislative Counsel, Legislative Department.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. At the outset, the Committee decided to sit daily from 10.00 to 13.00 hours and again from 15.00 to 17.00 hours till the clause-by-clause consideration of the Bill was concluded.

3. The Committee then took up clause-by-clause consideration of the Bill.

4. *Clause* 2:

The following amendments were accepted—

(1) Page 2, *for* lines 19 to 22,

substitute '(g) "food" means any substance intended for the use of babies, invalids or convalascents as an article of food or drink;'

(2) Page 3, lines 31 and 32,

for "to the extent to which they are used" *substitute* "which are ordinarily used".

(3) Page 4, *for* line 1, *substitute*:

'(m) "patent" means a patent granted under this Act and includes for the purposes of sections 44, 49, 50, 51, 52, 54, 55, 56, 57, 58, 63, 65, 66, 68, 69, 70, 78, 134, 140, 153, 154 and 156 and Chapters XVI, XVII and XVIII, a patent granted under the Indian Patents and Designs, Act, 1911;'

(4) Page 4, lines 11 and 12,

for "established under"

substitute "referred to in"

Further consideration of the clause was held over.

5. The Committee then adjourned to meet again on Thursday, the 6th October, 1966 at 10.00 hours.

XXVII

Twenty-Seventh Sitting

The Committee met on Thursday, the 6th October, 1966 from 10.00 to 12.50 and again from 15.00 to 17.00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares
4. Shri Ramachandra Vithal Bade
5. Shri Panna Lal Barupal
6. Shri Dinen Bhattacharya
7. Shri Bibhuti Mishra
8. Shri P. C. Borooah
9. Sardar Daljit Singh
10. Shri Basanta Kumar Das
11. Shri V. B. Gandhi
12. Shri H. K. V. Gowdh
13. Shri Kashi Ram Gupta
14. Shri Prabhu Dayal Himatsingka
15. Shri Madhavrao Laxmanrao Jadhav
16. Shri Mathew Maniyangadan
17. Shri M. R. Masani
18. Shri Braj Behari Mehrotra
19. Shri Bibudhendra Mishra
20. Shri P. S. Naskar
21. Shri Naval Prabhakar
22. Shri R. Ramanathan Chettiar
23. Shri A. T. Sarma
24. Dr. C. B. Singh
25. Shri K. K. Warior
26 Shri Balkrishna Wasnik.

27. Shri Arjun Arora
28. Shri Vimalkumar M. Chordia
29. Shri R. S. Doogar
30. Shri P. K. Kumaran
31. Shri Shyamnandan Mishra
32. Shri Dahyabhai V. Patel
33. Shri M. R. Shervani
34. Dr. M. M. S. Siddhu
35. Shri Dalpat Singh.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Dr. A. Joga Rao, *Controller General of Patents, Designs and Trade Marks.*
3. Shri B. N. Atrishi, *O.S.D.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

REPRESENTATIVES OF MINISTRY OF LAW

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Department.*
2. Shri R. V. S. Perisastri, *Deputy Legislative Counsel, Legislative Department.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee resumed clause-by-clause consideration of the Bill.

3. *Clause* 3: The following amendment was accepted:—

Page 5, line 15, *omit* "a claim to"

The clause, as amended, was adopted.

4. *Clause* 4: The clause was adopted without amendment.

5. *Clause* 5: The following amendment was accepted:—

Page 6, *for* lines 7 to 9, *substitute*—

"the patent shall be granted only in respect of claims for the method or process of manufacture and in respect of claims for the substances when produced by such methods or processes".

The clause as amended, was adopted.

6. *Clause* 6: The clause was adopted without amendment.

7. *Clause* 7: The following amendments were accepted:

(1) Page 6, *for* lines 32 to 37, *substitute*—

"prescribed after the filing of the application, proof of the right to make the application".

(2) Page 7, line 5, *after* "such application," *insert* "(not being a convention application)".

The clause as amended, was adopted.

8. *Clauses* 8 *to* 10. The clauses were adopted without amendment.

9. *Clause* 11: The following amendment was accepted:—

Page 10, *for* lines 16 and 17, *substitute*—

"there has been a post-dating under section 9 or section 17 or, as the case may be, an ante-dating under section 16, be a reference to the date as so post-dated or ante-dated."

The clause, as amended, was adopted.

10. *Clause* 12: The clause was adopted without amendment.

11. *Clause* 13:—The Committee decided to amend the clause in order to provide that the examiner shall complete his investigation of the application referred to him under section 12 ordinarily within a period of eighteen months.

The Legislative Counsel was asked to redraft the clause accordingly.

Subject to this, the clause was adopted.

12. *Clause* 14: The clause was adopted without amendment.

13. *Clause* 15: The following amendment was accepted:—

Page 12, *for* lines 13 to 20, *substitute*—

"(2) If it appears to the Controller that the invention claimed in the specification is not an invention within the meaning of, or is not patentable under, this Act, he shall refuse the application".

The clause, was amended, was adopted.

14. *Clause* 16: The clause was adopted without amendment.

15. *Clause* 17: The following amendment was accepted:—

Page 13, *for* line 24, *substitute*—

"required to be amended under clause (b) of sub-"

The clause, was amended, was adopted.

16. *Clauses* 18 to 20: The clauses were adopted without amendments.

17. *Clause* 21: The following amendment was accepted:—

Page 17, *for* lines 1 to 31, *substitute*—

"(2) The period of fifteen months specified in sub-section (1) shall on request made by the applicant in the prescribed manner and before the expiration of the period so specified be extended for a further period so requested (hereafter in this section referred to as the extended period), so, however, that the total period for complying with the requirements, of the Controller does not exceed eighteen months from the date on which the objections referred to in sub-section (1) are forwarded to the applicant.

(3) If at the expiration of the period of fifteen months specified in sub-section (1) or the extended period—

(a) an appeal to the High Court is pending in respect of the application for the patent for the main invention, or

(b) in the case of an application for a patent of addition, an appeal to the High Court is pending in respect of either that application or the application for the main invention,

the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the said period of fifteen months or the extended period, as the case may be, be extended until such date as the High Court may determine.

(4) If the time within which the appeal mentioned in sub-section (3) may be instituted has not expired, the Controller may extend the period of fifteen months, or as the case may be, the extended period, until the expiration of such further period as he may determine:

Provided that if an appeal has been filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then, the requirements may be complied with within the time granted by the Court."

The clause, was amended, was adopted.

18. *Clause* 22: The following amendment was accepted:—

Page 13, line 1, *for* "sub-section (2)" *substitute* "sub-section (1)".

The clause, was amended, was adopted.

19. *Clauses* 23 *and* 24: The clauses were adopted without amendment.

20. *Clause* 25:—The following amendments were accepted:—

(1) Page 18,

(a) lines 30 and 31, *for* "of whom he is the legal representative", *substitute* "under or through whom he claims".

(b) line 34 *for* "claimed", *substitute* "of the claim".

(c) *for* lines 38, 39 and 40, *substitute*—

"(ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute anticipation by virtue of sub-section (2) or sub-section (3) of section 29".

(2) Page 19.—

(a) line 6, *for* "was used", *substitute* "was known or used".

(b) line 10, *for* "used", *substitute* "known or used".

(c) line 12, *after* "date", *insert* "except where such importation has been for the purpose of reasonable trial or experiment only".

The cluase, as amended, was adopted.

21. *Clause* 26.—The clause was adopted without amendment.

22. *Clause* 27.—The following amendments were accepted:—

Page 21,—

(i) lines 2 and 3, *omit* "in India or any other country".

(ii) *for* lines 7, 8 and 9, *substitute*—

"(b) in any other document in India or elsewhere".

(iii) for line 12, *substitute*—"his satisfaction:

Provided that the Controller shall not refuse to grant the patent on the ground specified in clause (b) if such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29".

The clause, as amended, was adopted.

23. *Clauses* 28 to 30.—The clauses were adopted without amendment.

24. *Clause* 31.—The following amendments were accepted:—

(1) Page 23, line 42, *after* "inventor", *insert* "of a person deriving title from him".

(2) Page 24, line 11, *after* "inventor", *insert* "or a person deriving title from him".

The clause, as amended, was adopted.

25. *Clauses* 32 *to* 35.—The clauses were adopted without amendment.

26. *Clause* 36.—The following amendments were accepted:—

Page 26,—

(i) line 10, *after* "36", *insert* "(1)".

(ii) *for* lines 13 and 14, *substitute*—

"within nine months from the date of issue of such directions and thereafter at intervals not exceeding twelve months, and if, on".

(iii) *after* line 19, *insert*—

"(2) The result of every consideration under sub-section (1) shall be communicated to the applicant within such time and in such manner as may be prescribed".

The clause, as amended, was adopted.

27. *Clause* 37.—The following amendment was accepted:—

Page 26, *for* lines 36 and 37 *substitute*—

"(a) if, during the continuance in force of the directions, any use of the invention is made by or on behalf of, or to the order".

The clause, as amended, was adopted.

28. *Clause* 38.—The clause was adopted without amendment.

29. *Clause* 39.—The following amendment was accepted:—

Page 27, line 28, *for* "eight weeks" *substitute* "six weeks".

The clause, as amended, was adopted.

30. *Clauses* 40 *and* 41.—The clauses were adopted without amendments.

31. *Clause* 42.—The following amendments were accepted:—

Page 28,

(i) line 15, *omit* "or any department thereof".

(ii) *for* line 17, *substitute*—

"under this Chapter should be made or whether an order so made should be revoked".

The clause, as amended, was adopted.

32. *Clause* 43.—The following amendment was accepted:

Page 29, lines 19 and 20,

for "or such shorter period as may be prescribed", *substitute*, "*in the aggregate*".

The clause, as amended, was adopted.

33. *Clause* 44.—The clause was adopted without amendment.

34. *Clause* 45.—The following amendment was accepted:—

Page 30, *for* lines 1 to 4, *substitute*,—

"(3) Notwithstanding anything contained in this section, no suit or other proceedings shall be commenced or prosecuted in respect of an infringement committed before the date of advertisement of the acceptance of the complete specification".

The clause, as amended, was adopted.

35. *Clauses* 46 *and* 47.—The clauses were adopted without amendment.

35A. *New Clause* 47A.—Discussion on the proposed new clause 47A was held over.

36. *Clause* 48.—The following amendments were accepted:—

(i) Page 30, lines 34 and 35, *for* "which may be specified by the Central Government in this behalf by notification in the Official Gazette", *substitute* "which, the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette".

(ii) Page 31, lines 6 and 7, *for* "conferred on the patentee by this Act", *substitute* "conferred on the patentee by this Act in respect of a patent granted, whether before or after the commencement of this Act."

The clause, as amended, was adopted.

37. *Clause* 49.—The clause was adopted without amendment

38. *Clause* 50.—The following amendment was accepted:—

Page 31, *for* lines 36 to 41, *substitute*—

"(3) Subject to the provisions contained in this section and in section 51 and to any agreement for the time being in force, where two or more persons are registered as

grantee or proprietor of a patent then, a licence under the patent shall not be granted and a share in the patent shall not be assigned by one of such persons except with the consent of the other person or persons".

The clause, as amended, was adopted.

39. *Clause* 51.—The following amendment was accepted:—

Page 32, line 42, *for* "co-proprietors", *substitute* "persons registered as grantee or proprietor".

The clause, as amended, was adopted.

40. *Clause* 52.—The clause was adopted without amendment.

41. *Clause* 53.—The following amendments were accepted:—

Page 34,

(i) *for* lines 1 and 2, *substitute*—

"is capable of being used as food or as medicine or drug shall be—

(a) ten years from the commencement of this Act, or

(b) sixteen years from the date as of which the patent was sealed under the Indian Patents and Designs Act, 1911, whichever is less".

(ii) line 12 *for* "three months", *substitute* "six months".

The clause as amended, was adopted.

42. The Committee then adjourned to meet again on Friday, the 7th October, 1966, at 10.00 hours.

XXVIII

Twenty-Eighth Sitting

The Committee met on Friday, the 7th October, 1966 from 10.00 to 13·00 and again from 15·00 to 17·00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Ramchandra Vithal Bade

4. Shri Pannalal Barupal
5. Shri Bibhuti Mishra
6. Sardar Daljit Singh
7. Shri Basanta Kumar Das
8. Shri V. B. Gandhi
9. Shri H. K. V. Gowdh
10. Shri Kashi Ram Gupta
11. Shri Prabhu Dayal Himatsingka
12. Shri Madhavrao Laxmanrao Jadhav
13. Shri M. R. Masani
14. Shri Braj Behari Mehrotra
15. Shri Bibudhendra Mishra
16. Shri P. S. Naskar
17. Shri Naval Prabhakar
18. Shri R. Ramanathan Chettiar
19. Shri A. T. Sarma
20. Dr. C. B. Singh
21. Shri K. K. Warior
22. Shri Balkrishna Wasnik

Rajya Sabha

23. Shri Arjun Arora
24. Shri Vimalkumar M. Chordia
25. Shri R. S. Doogar
26. Shri P. K. Kumaran
27. Shri Shyamnandan Mishra
28. Shri Dahyabhai V. Patel
29. Shri M. R. Shervani
30. Dr. M. M. S. Siddhu
31. Shri Dalpat Singh

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Dr. A. Joga Rao, *Controller General of Patents, Designs and Trade Marks.*
3. Shri B. N. Atrishi, *O.S.D.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Deptt.*
2. Shri R. V. S. Peri Sastri, *Deputy Legislative Counsel, Legislative Department.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee resumed clause-by-clause consideration of the Bill.

3. *Clause* 13:

As decided by the Committee at their sitting held on the 6th October, 1966, a draft amendment to provide for completion of investigation by the examiner of an application for a patent referred to him under section 12 ordinarily within a period of eighteen months, was considered by the Committee. The Committee decided that the following amendment should be incorporated in Clause 12 *instead* of Clause 13:—

Page 11, *after* line 5, *insert*

"(2) The examiner to whom the application and the specification relating thereto are referred under sub-section (1) shall ordinarily make the report to the Controller within a period of eighteen months from the date of such reference".

Clause 12 as amended was adopted accordingly.

4. *Clauses* 54 *to* 56: The clauses were adopted without amendment.

5. *Clause* 57: The following amendments were accepted:—

Page 36,

(i) lines 5 and 6, *for* "the complete specification," *substitute* "the application for the patent or the complete specification".

(ii) line 9, *for* "a specification", *substitute* "an application for a patent or a specification".

(iii) line 14, *for* "a specification", *substitute* "an application for a patent or a specification".

(iv) line 17, *for* "a specification", *substitute* "an application for a patent or a specification".

(v) line 32, *for* "passed", *substitute* "issued".

(vi) line 33, *for* "and", *substitute* "or".

The clause, as amended, was adopted.

6. *Clause* 58: The clause was adopted without amendment.

7. *Clause* 59: The following amendments were accepted:—

Page 37,

(i) line 9, *for* "a complete specification", *substitute* "an application for a patent or a complete specification".

(ii) line 12, *after* "obivious mistake", *insert* "and no amendment of a complete specification shall be allowed".

The clause, as amended, was adopted.

8. *Clause* 60: The following amendments were accepted:—

(1) Page 37, *for* lines 32 to 40, *substitute*.

"60. (1) Where a patent has ceased to have effect reason of failure to pay any renewal fee within the prescribed period or within that period as extended under sub-section (4) of section 53, the patentee or his legal representative, and where the patent was held by two or more persons jointly, then, with the leave of the Controller, one or more of them without joining the others, may, within one year from the date on which the patent ceased to have effect, make an application for the restoration of the patent".

(2) Page 38, *for* lines 1 to 5, *substitute*.

"(2) The provisions of sub-section (1) shall also apply to patents granted before the commencement of this Act, subject to the modification that for the reference to the period prescribed or to sub-section (4) of section 53, there shall be substituted a reference to the period prescribed therefor under the Indian Patents and Designs Act, 1911 or to subsection (2) of section 14 of that Act".

The clause, as amended, was adopted.

9. *Clause* 61: The following amendments were accepted:—

Page 38, *for* lines 11 to 14, *substitute*.

"61. (i) If, after hearing the applicant in cases where the applicant so desires or the Controller thinks fit, the Controller is *prima facie* satisfied that the failure to pay the

renewal fee was unintentional and that there has been no undue delay in the making of the application, he shall advertise the application in the".

(ii) *for* line 29, *substitute*

"restore the patent and any patent of addition specified in the application which has ceased to have effect on the cesser of that patent".

The clause, as amended, was adopted.

10. *Clause* 62: The following amendments were accepted:—

(1) Page 38, line 40, *for* "order restoring the", *substitute* "advertisement of the application for restoration of the".

(2) Page 39, lines 3 and 4, *for* "order restoring the", *substitute* "advertisement of the application for restoration of the".

The clause, as amended, was adopted.

11. *Clause* 63: The clause was adopted without amendment.

12. *Clause* 64: The following amendments were accepted:—

(1) Page 39, line 24, *after* "Government", *insert*

"or on a counter-claim in a suit for infringement of the patent"

(2) Page 40, (i) *after* line 7, *insert*—

"Provided that in relation to patents granted before the commencement of this Act, this clause shall have effect as if the words 'or elsewhere' had been omitted,".

(ii) *after* line 12, *insert*

"Provided that in relation to patents granted before the commencement of this Act, this clause shall have effect as if the words 'or elsewhere' had been omitted,".

(iii) line 39, *for* "material particulars", *substitute* "any material particular".

(3) Page 41, (i) line 2, *after* "made", *insert* "or caused to be made".

(ii) line 12, *after* "importation", *insert*

"except where such importation has been for the purpose of reasonable trial or experiment only".

The Clause, as amended, was adopted.

13. *Clauses* 65 *to* 67: The clauses were adopted without amendment.

14. *Clause* 68: The following amendments were accepted:—

Page 43,

(i) lines 7 and 8, *for* "three months, or within such further period not exceeding three months", *substitute* "six months from the execution thereof or within such further period not exceeding six months".

(ii) line 10, *omit* "from the execution thereof".

The clause, as amended, was adopted.

15. *Clause* 69: The following amendment was accepted:—

Page 43, *for* lines 36-41, *substitute*

"Provided that if there is any dispute between the parties whether the assignment, mortgage, licence, transmission, operation of law or any other such transaction has validly vested in such person a title to the patent or any share or interest therein, the Controller may refuse to take any action under clause (a) or, as the case may be, under clause (b), until the rights of the parties have been determined by a competent court.

The clause, as amended, was adopted.

16. *Clauses* 70 *to* 73: The clauses were adopted without amendment.

17. *Clause* 74: The following amendment was accepted:—

Page 45, *for* lines 25 and 26, *substitute*

"74(I) For the purposes of this Act, there shall be an office which shall be known as the patent office.

(IA) The patent office provided by the Central Government under the Indian Patents and Designs Act, 1911, shall be the patent office under this Act".

The clause, as amended, was adopted.

18. *Clauses* 75 *and* 76: The clauses were adopted without amendment.

19. *Clause* 77: The following amendments were accepted: —

Page 46, (i) line 27, *after* "application, made" *insert* "within the prescribed time and".

(ii) line 29, *after* "ex-parte", *insert* "on application made within the prescribed time and in the prescribed manner".

The clause, as amended, was adopted.

20. *Clauses* 78 *to* 81: The clauses were adopted without amendment.

21. *Clause* 82: The following amendment was accepted:—

Page 48, line 9, *for* "In this Chapter", *substitute* "In this Chapter, unless the context otherwise requires".

The clause, as amended, was adopted.

22. *Clause* 83: The clause was adopted without amendment.

23. *Clause* 84: The following amendments were accepted:—

(1) Page 48, (i) line 26, *after* "satisfied", *insert* "or that the patented invention is not available to the public at a reasonable price".

(ii) line 32, *after* "satisfied" *insert* "or that the patented invention is not available to the public at a reasonable price".

(2) Page 49, (i) line 5, *after* "satisfied", *insert* "or that the patented invention is not available to the public at a reasonable price".

(ii) *omit* lines 9 and 10.

The clause, as amended, was adopted.

24. *Clause* 85: The following amendments were accepted:—

Page 49, (i) *omit* lines 19 to 22.

(ii) line 23, *for* "(iv)", *substitute* "(iii)"

The clause, as amended, was adopted.

25. *Clause* 86: The following amendments were accepted:—

Page 49, (i) line 34, *after* "satisfied", *insert*

"or that the patented invention is not available to the public at a reasonable price".

(ii) lines 36-37, *after* "satisfied", *insert*

"or that the patented invention is not available to the public at a reasonable price".

The clause, as amended, was adopted.

26. *Clause* 87: The clause was adopted without amendment.

27. *Clause* 88: The following amendment was accepted:—

Page 50, line 33, *after* "upon", *insert*

"notwithstanding that he is already the holder of a licence under the patent".

The clause, as amended, was adopted.

28. *Clause* 89: The following amendments were accepted:—

Page 51,

(i) line 28, *for* "the date of the endorsement", *substitute* "the date of the order granting the first licence under Section 88".

(ii) line 31, *after* "satisfied", *insert* "or that the patented invention is not available to the public at a reasonable price".

(iii) line 39, *after* "satisfied", *insert* "or that the patented invention is not available to the public at a reasonable price".

(iv) *after* line 39, *add*—

"(4) Every application under sub-section (I) shall ordinarily be decided within one year of its being presented to the Controller".

The clause, as amended, was adopted.

29. *Clause* 90: The clause was adopted without amendment.

30. *Clause* 91: The following amendments were accepted:—

Page 53, (i) *after* line 3, *insert*

"Provided that in any case where the patentee establishes that the reason why a patented invention could not be worked as aforesaid before the date of the application was due to any State or Central Act or any rule or regulation made thereunder or any order of the Government imposed otherwise than by way of a condition for the working of the invention in India or for the disposal of the patented articles or of the articles made by the process or by the use of the patented plant, machinery, or apparatus, then the period of adjournment ordered under this sub-section shall be reckoned from the date on which the period during which the working of the invention was prevented by such Act, rule or regulation or order of Government as computed from the date of the application, expires".

(ii) *omit* lines 8 to 20.

The clause, as amended, was adopted.

31. *Clause* 92: The clause was adopted without amendment.

32. *Clause* 93: The following amendment was accepted:—

Page 54, line 40, *for* "Central Government" *substitute* "High Court".

The clause, as amended, was adopted.

33. *Clause* 94: The clause was adopted without amendment.

34. *Clause* 95: The following amendment was accepted:—

Page 55, line 34, *after* "other matters to", *insert,*

"the royalty and other remuneration, if any, payable to the patentee,".

The clause, as amended, was adopted.

35. *Clause* 96: The following amendments were accepted:—

Page 56, (1) *for* lines 5 to 8, *substitute*—

"(2) No order under sub-section (1) shall be made unless the Controller is satisfied—

(i) that the applicant is able and willing to grant, or procure the grant to the patentee and his licencees if they so desire, of a licence in respect of the other invention on reasonable terms; and

(ii) that the other invention has made a substantial contribution to the establishment or development of commercial or industrial activities in India.".

(2) *omit* lines 18 and 19

The clause, as amended, was adopted.

36. *Clause* 97: The following amendment was accepted:—

Page 56, *omit* lines 38 and 39.

The clause, as amended, was adopted.

37. *Clause* 98: The clause was adopted without amendment.

38. *Clause* 99: The following amendment was accepted:—

Page 57, lines 17 and 18, *omit*

"and under which no royalty or other remuneration is payable to the patentee".

The clause, as amended, was adopted.

39. *Clause* 100: The following amendments were accepted:—

(1) Page 57, line 30, *after* "use of the invention", *insert*—

"by the Central Government or any person authorised in writing by it".

(2) Page 58, (i) lines 16 and 17,

for "after the use has begun" *substitute* "of the fact".

(ii) lines 19 and 20,

for "the use of the invention has been" *substitute* "the invention has been made, used, exercised or vended.".

The clause, as amended, was adopted.

40. *Clauses* 101 *to* 103: The clauses were adopted without amendment.

41. *Clause* 104: The following amendment was accepted:—

"Page 62, *after* line 13, *insert*—

"Provided that where a counter claim for revocation of the patent is made by the defendant, the suit, along with the counter claim shall be transferred to the High Court for decision.".

The clause, as amended, was adopted.

42. *Clauses* 105 *and* 106: The clauses were adopted without amendment.

43. *Clause* 107: The following amendments were accepted:—

Page 63,

(i) line 20, *after* "107", *insert* "(1)"

(ii) *after* line 22, *insert*—

"(2) In a suit for infringement of a patent granted in respect of a method or process of manufacture of a substance referred to in section 5, any substance of the

same chemical composition or constitution as the first mentioned substance shall be presumed, unless the contrary is proved, to have been made by the aforesaid patented method or process."

The clause, as amended, was adopted.

44. *Clauses* 108 *to* 115: The clauses were adopted without amendment.

45. *Clause* 116: Consideration of the clause was not concluded.

46. Consideration of the proposed new clause 47A which was held over at their sitting held on the 6th October, 1966, was not pressed by the members in view of adoption of Government amendment to clause 107.

The Committee then adjourned to meet again on Saturday, the 8th October, 1966 at 10.00 hours.

XXIX

Twenty-Ninth Sitting

The Committee met on Saturday, the 8th October, 1966 from 10.00 to 11.30 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Panna Lal Barupal
4. Shri Bibhuti Mishra
5. Shri Basanta Kumar Das
6. Shri V. B. Gandhi
7. Shri H. K. V. Gowdh
8. Shri Prabhu Dayal Himatsingka
9. Shri Madhavrao Laxmanrao Jadhav
10. Shri Braj Behari Mehrotra
11. Shri Bibudhendra Mishra

12. Shri P. S. Naskar
13. Shri Chhotubhai M. Patel
14. Shri Naval Prabhakar
15. Shri R. Ramanthan Chettiar
16. Shri A. T. Sarma
17. Dr. C. B. Singh
18. Dr. L. M. Singhvi
19. Shri K. K. Warior
20. Shri Balkrishna Wasnik

Rajya Sabha

21. Shri Arjun Arora
22. Shri Vimalkumar M. Chordia
23. Shri R. S. Doogar
24. Shri P. K. Kumaran
25. Shri Shyamnandan Mishra
26. Shri Dahyabhai V. Patel
27. Dr. M. M. S. Siddhu.

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Dr. A. Joga Rao, *Controller General of Patents, Designs and Trade Marks.*
3. Shri B. N. Atrishi, *O.S.D.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

REPRESENTATIVES OF THE MINISTRY OF LAW

1. Shri V. N. Bhatia, *Joint Secretary, Legislative Department.*
2. Shri R. V. S. Peri Sastri, *Deputy Legislative Counsel, Legislative Department.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee resumed clause-by-clause consideration of the Bill.

3. *Clause* 116: The following amendment was accepted:—

Page 66, line 34, *for* "section 86 and section 89" *substitute* "section 84, section 86, section 89, section 93, section 96 and section 97".

The clause, as amended, was adopted.

4. *Clause* 117: The following amendment was accepted:—

Page 67, *for* lines 9 and 10, *substitute*—

"(3) Every such appeal shall be heard as expeditiously as possible and endeavour shall be made to decide the appeal within a period of twelve months from the date on which it is filed".

The clause, as amended, was adopted.

5. *Clauses* 118 to 125: The clauses were adopted without amendment.

6. *Clause* 126: The following amendments were accepted:—

Page 69, (i) line 21, *after* "126" *insert* "(i)".

(ii) *for* lines 24 to 26, *substitute*—

"(a) he is a citizen of India;".

(iii) lines 28 and 29, *omit* "in physical science or engineering".

(iv) line 30, *omit* "scientific or technical".

(v) *omit* lines 37 to 40.

Page 70,

(2) (i) *omit* lines 1 to 6

(ii) *after* line 7, *insert*—

"(2) Notwithstanding anything contained in sub-section (1), a person who has been practising as a patent agent before the 1st day of November, 1966 and has filed not less than five complete specifications before the said day, shall, on payment of prescribed fee, be qualified to have his name entered in the register of patent agents".

The clause, as amended, was adopted.

7. *Clauses* 127 to 130: The clauses were adopted without amendment.

8. *Clause* 131: The following amendment was accepted:—

Page 71, lines 33 and 34,

omit ", or who is for the time being suspended from acting as a patent agent".

The clause, as amended, was adopted.

9. *Clauses* 132 *to* 139: The clauses were adopted without amendment.

10. *Clause* 140: The following amendment was accepted:—

Page 76, line 32, *for* "three months", *substitute* "one year".

The clause, as amended, was adopted.

11. *Clauses* 141 *to* 160: The clauses were adopted without amendment.

12. *Clause* 161: The following amendment was accepted:—

Page 83, *for lines* 1 *to* 3, *substitute*—

"(4) A patent granted in pursuance of any such application as is referred to in sub-section (1) shall be dated as of the date on which the request for reviving such application was made under sub-section (1)".

The clause, as amended, was adopted.

13. *Clause* 162: The following amendments were accepted:—

Page 83, (i) *for* lines 7 to 11, *substitute*—

"(2) Notwithstanding the repeal of the Indian Patents and Designs Act, 1911, in so far as it relates to patents—

(a) the provisions of section 21A of that Act and of any rules made thereunder shall continue to apply in relation to any patent granted before the commencement of this Act in pursuance of that section, and

(b) the renewal fee in respect of a patent granted under that Act shall be as fixed thereunder".

(ii) *after* line 18, *insert*—

"(5) Notwithstanding anything contained in this Act, any suit for infringement of a patent or any proceeding for

revocation of a patent, pending in any court at the commencement of this Act, may be continued and disposed of, as if this Act had not been passed.".

The clause, as amended, was adopted.

14. *First Schedule.*—The schedule was adopted without amendment subject, however, to consequential changes, if any, to be made by the Legislative Counsel.

15. *Clause* 1: The following amendments were accepted:—

Page 1, (i) line 5, *for* "1965", *substitute* "1966".

(ii) line 8, *for* "appoint", *substitute* "appoint and different dates may be appointed for different provisions of this Act".

The clause, as amended, was adopted.

16. *Enacting Formula.*—The following amendment was accepted:—

Page 1, line 1, *for* "Sixteenth", *substitute* "Seventeenth".

The enacting formula, as amended, was adopted.

17. *Title.*—The title was adopted without amendment.

18. *Clause* 2: The clause as amended on the 5th October, 1966 was adopted subject to consequential changes, if any, to be made by the Legislative Counsel.

19. The Chairman then drew the attention of the Committee to the provisions of Direction 87 of the Directions by the Speaker under the Rules of Procedure regarding minutes of dissent.

20. The Committee directed the Legislative Counsel (Draftsman) to correct the patent errors and to carry out amendments of consequential nature in the Bill and submit an attested copy thereof, as amended and adopted, by Saturday, the 15th October, 1966, at the latest.

21. The Committee also decided that since the evidence given before them was voluminous and ran into about a thousand pages, it should be printed in two volumes instead of one, so that it might be more easy to handle. (The Committee at their earlier sitting held on the 15th July, 1966 had decided to print and lay the evidence on the Tables of both the Houses.)

22. The Committee also decided, on a suggestion being made, that before the Evidence Volumes were finally printed, Members should be given an opportunity to peruse their respective portions in the pro-

ceedings so that they could carry out any verbal changes therein, if necessary, as it was likely that some of them had not done so before when the verbatim record was sent to them. It was agreed that two copies of the proof should be made available to the Members for perusal by the Secretary of the Committee in his room for a period of one week.

23. The Committee also reaffirmed their earlier decision that copies of the memoranda|representations etc. received by the Committee from the various parties|organisations|institutions|experts—both foreign and Indian—should be placed in the Parliament Library for reference.

24. The Committee also decided that the Study Notes on the visits undertaken by their Study Groups to the various pharmaceutical Units, Research Institutes etc. for an on-the-spot study of their working etc. should not be printed, but only laid on the Tables of both the Houses. An adequate number of copies should, however, be kept in the Parliament Library for reference.

25. The Chairman also informed the members that since the Report of the Committee was to be presented to the House on the first day of the next session, *viz.*, the 1st November, 1966, members who were desirous of giving their Minutes of Dissent should do so by 10 A.M. on the 1st November, 1966. Further they should send 4 copies of their Minutes of Dissent so that these could be readily tacked to the authenticated copies of the Report to be presented to Lok Sabha and placed in the Parliament Library.

26. The Committee then adjourned to meet again on Monday, the 31st October, 1966, at 10.00 hours to consider their draft report.

XXX

THIRTIETH SITTING

The Committee met on Monday, the 31st October, 1966 from 15.00 to 16.05 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri Peter Alvares
4. Shri Ramchandra Vithal Bade
5. Shri Dinen Bhattacharya
6. Shri Bibhuti Mishra
7. Shri P. C. Borooah
8. Sardar Daljit Singh
9. Shri Basanta Kumar Das
10. Shri V. B. Gandhi
11. Shri H. K. V. Gowdh
12. Shri Kashi Ram Gupta
13. Shri Prabhu Dayal Himatsingka
14. Shri Madhavrao Laxmanrao Jadhav
15. Shri Mathew Maniyangadan
16. Shri Braj Behari Mehrotra
17. Shrimati Sharda Mukerjee
18. Shri Chhotubhai M. Patel
19. Shri Naval Prabhakar
20. Shri Sham Lal Saraf
21. Shri A. T. Sarma
22. Dr. C. B. Singh
23. Shri K. K. Warior
24. Shri Balkrishna Wasnik

Rajya Sabha

25. Shri Babubhai M. Chinai
26. Shri Vimalkumar M. Chordia
27. Shri R. S. Doogar
28. Shri B. T. Kulkarni
29. Shri P. K. Kumaran
30. Shri Shyamnandan Mishra
31. Shri Dahyabhai V. Patel
32. Shri Mulka Govinda Reddy
33. Dr. M. M. S. Siddhu
34. Shri Dalpat Singh

REPRESENTATIVES OF THE MINISTRY OF INDUSTRY

1. Shri K. V. Venkatachalam, *O.S.D.*
2. Shri B. N. Atrishi, *O.S.D.*
3. Shri R. V. Pai, *Joint Controller of Patents, Designs and Trade Marks.*

REPRESENTATIVE OF THE MINISTRY OF HEALTH

Shri S. K. Borkar, *Drug Controller of India.*

REPRESENTATIVE OF THE MINISTRY OF LAW

Shri V. N. Bhatia, *Joint Secretary, Legislative Department.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

2. The Committee adopted the Bill as amended.

3. The Committee adopted the Draft Report.

4. The member were asked to give their minute of dissent, if any, by 10.00 hours on Tuesday, the 1st November, 1966. Four copies of the minutes were to be sent.

5. The Committee authorised the Chairman and, in his absence, Dr. C. B. Singh to present the Report and to lay the Evidence, and Study Notes on the Table of the Lok Sabha on the 1st November, 1966.

6. The Committee also authorised Shri R. S. Doogar and in his absence, Shri Dahyabhai V. Patel to lay the Report, Evidence and Study Notes on the Table of Rajya Sabha at its first sitting.

7. The Committee placed on record their appreciation of the assistance rendered to them in their task by the Secretariat.

8. The Chairman apprized the Committee of the contents of the letter he had received from Dr. J. R. Guha, General Manager, Martin and Haris (Pvt.), Ltd., Calcutta wherein he had sought his permission to publish the comments recorded by him in their Visitor's Book when they visited their Factory on the 15th June, 1966. The Committee decided that it should not be published and the firm should be informed accordingly.

9. The Committee then adjourned.