

COMM.91/2001

**PARLIAMENT OF INDIA
RAJYA SABHA**

THE PATENTS (SECOND AMENDMENT) BILL, 1999

REPORT OF THE JOINT COMMITTEE

**(PRESENTED TO THE RAJYA SABHA ON THE 19TH DECEMBER,
2001)**

**(LAID ON THE TABLE OF THE LOK SABHA ON THE 19TH
DECEMBER, 2001)**

**RAJYA SABHA SECRETARIAT
NEW DELHI**

DECEMBER, 2001/AGRAHAYANA, 1923 (SAKA)

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JOINT COMMITTEE ON PATENTS (SECOND AMENDMENT) BILL, 1999
(As constituted on the 22nd December, 1999)

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RAJYASABHA

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21. Shri Bolla Bulli Ramaiah
22. Shri Ram Sajivan
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30. Shri Murasoli Maran

SECRETARIAT

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Shri Surinder Kumar Watts, Deputy Secretary Shri M.K. Khan, Under Secretary
Shri D.K. Mishra, Committee Officer
Shri Virender Singh Griwan, Research Officer

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2. Shri A.E. Ahmed, Joint Secretary
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4. Shri Rajeev Ranjan, Director
5. Shri H.D. Thakur, Controller General, Patents Designs & Trade Marks

**MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
*(LEGISLATIVE DEPARTMENT)***

1. Shri N.L. Meena, Joint Secretary and Legislative Counsel
2. Dr. S.D. Singh, Deputy Legislative Counsel

REPORT

I, the Chairman of the Joint Committee on the Patents (Second Amendment) Bill, 1999, to which the 'Bill further to amend the Patents Act, 1970 was referred, having been authorised by the Joint Committee to submit the Report on its behalf, present this Report of the Committee with the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in the Rajya Sabha on the 20th December, 1999. The Motion for reference of the Bill to a Joint Committee of the Houses was moved in the Rajya Sabha by Dr. Raman, Minister of State in the Ministry of Commerce and Industry, on the 21st December, 1999 and was adopted by the House on the same day. (Appendix-I)

3. The Motion was transmitted to the Lok Sabha on the 22nd December, 1999- The Lok Sabha concurred with the Motion on the same day and the message from the Lok Sabha was reported to the Rajya Sabha on the 22nd December, 1999 (Appendix-II).

4. The Committee held 39 meetings, of these 33 were held at New Delhi and three each at Mumbai (on 22nd to 24th May, 2000) and at Calcutta (on 15th to 17th June, 2000), with the permission of the Chairman, Rajya Sabha. The Committee also held discussions with some experts in the field.

5. At its first meeting held on the 27th January, 2000, the Committee decided to issue a Press Communique inviting memoranda from various individuals, organisations and institutions interested in the subject matter of the Bill by the 15th February, 2000. A Press Communique was accordingly issued on the 28th January, 2000 (Appendix -III). Later the date was extended by the Committee upto the 29th February, 2000, through another Press Communique (Appendix -IV).

6. 42 memoranda containing views, comments and suggestions on the provisions and various aspects of the Bill were received by the Committee from various individuals, organisations and institutions. List of individuals / organizations is at (Appendix-V).

7. The Chairman requested Members of the Committee to suggest the names of individuals, organisations and institutions to be invited to give oral evidence before the Committee.

8. The Committee authorised the Chairman to decide, after going through the Memoranda to be received, about the individuals, organisations and institutions to be invited for tendering oral evidence before the Committee.

9. The Committee heard the oral evidence tendered by 51 witnesses (Appendix-VI). Besides, 19 individuals/organisations etc. also made submissions before the Committee.

10. The Committee also visited Patents Offices at Mumbai and Calcutta.

11. The Committee was to present its Report to the Houses by the 1st day of the last week of the Hundred and Eighty-Ninth Session of the Rajya Sabha. The Committee was, however, granted six extensions of time i.e., up to the last day of the Hundred Ninety-Fourth Session; up to the last day of the first week of the Hundred Ninetieth Session; upto the last day of the first week of Hundred and Ninety First Session; up to first day of the last week of the Second phase of the Budget Session, i.e., Hundred Ninety Second Session; up to the first day of the last week of the 193rd Session; up to the last day of the second week of the Hundred Ninety Fourth Session; and by the last day of the Hundred Ninety Fourth Session of Rajya Sabha.

¹ Published in Gazette of India, Extraordinary, Part II dated the 20th December, 1999.

12. The Committee undertook preliminary consideration of various clauses of the Bill. At its meeting held on September 26, 2001, the Committee decided to constitute a Group (Appendix-VII) to go into certain issues related to the Bill. The Group held eight meetings, wherein it held extensive deliberations and also heard crucial evidence on the subject. The suggestions made by the Group were considered by the Committee during formal clause-by-clause consideration of the Bill.

13. The Committee decided that a set each of the evidence recorded and the memoranda received from various individuals, organisations and institutions be placed in the Parliament Library, after the Report was presented to the House, for reference by Members of Parliament.

14. The Committee considered the draft Report at its meetings held on the 27th November and 14th December, 2001, and adopted the same at its meeting held on the 14th December, 2001, with some changes.

15. The changes suggested by the Committee in the Bill and the reasons therefor are set out in the succeeding paragraphs of this Report:-

Clause 3

This clause seeks to amend section 2 of the Patents Act, 1970 relating to definitions and interpretations. Clause 3(ac) seeks to add a new definition of "capable of industrial application". Members were of the view that the words "in any kind of industry" may be substituted by "in an industry", being more appropriate from the drafting point of view.

Clause (oa) has been made more specific by deletion of some words which had become superfluous.

Clause 4

This clause seeks to amend section 3 of the principal Act which relates to inventions not patentable. It proposes to modify some of the provisions in respect of non-patentable subject matter and to include some additional matters as non-patentable under the category of non-patentable subject matter.

In sub-clause 4(a), the word "law" has been substituted by the word "public order". This amendment has been proposed because certain commodities like cigarettes, etc. are sometimes prohibited for use and/ or sale, but in the manufacture is not stopped. To serve the purpose of their manufacture, future use, etc., subject to patent right, the grant of patent is necessary. Hence, the amendment.

In sub-clause (e), the word "other than micro organisms" have been proposed to be shifted to make the draft more clear and unequivocal.

In the new proposed clause (k) the words "*per se*" have been inserted. This change has been proposed because sometimes the computer programme may include certain other things, ancillary thereto or developed thereon. The intention here is not to reject them for grant of patent if they are inventions. However, the computer programmes as such are not intended to be granted patent. This amendment has been proposed to clarify the purpose.

A new clause (p) has been added to protect the country's traditional knowledge from being patented.

Clause 6

This clause seeks to insert a new provision in section 7 of the principal Act which relates to form of application. It proposes that an international application, when filed designating India, shall be treated as an application under the Act. The amendment in this clause has been made to provide for a procedural requirement so that the Controller in India may be aware of the contents of an application for patent, filed at international level, to facilitate further proceeding for processing of application for patent in India.

Clause 7

By sub-clause (b), sub-section (2) of section 8 is proposed to be substituted by a provision for receiving information relating to processing of corresponding application outside India from the applicant, within one month, under the direction of Controller or within such period as the Controller may permit. The amendment in this sub-clause has been made in view of the fact that details of applications sometimes vary from case to case. It may not be possible to comprehend all the details in the legislation. It is, therefore, intended to leave it on the executive to prescribe the details by framing rules.

Clause 8

By this clause some new provisions are proposed to be included under section 10, which relate to contents of application, to make furnishing of abstract of invention as mandatory for making deposit of biological material mentioned in the specifications, with the authorized depository institution, and for disclosing the source and geographical origin of the biological material used in the invention.

The amendment in sub-clause (a) has been made with a view to keep the national and foreign applicants for patent on equal footing. The other amendment is correction of a grammatical error.

The other amendment is correction of a grammatical error.

Clause 9

This clause seeks to include a system of publication of applications after 18 months of the priority date and a system of examination on request only. The amendment in this clause has been made to make the provision more comprehensive. Further, a new sub-section 2(b) of section 11(B) has been inserted in view of the mail box applications for patents, which cannot be taken up for examination under the existing provisions. It is, therefore, necessary to provide for a time limit, whenever they are taken up for examination. The other amendments are of drafting nature only.

Clause 10

This clause proposes to amend section 12 of the Act, relating to examination of an application, to the effect that the application is to be referred by the Controller to an examiner for examination only after a request for such examination is received. This clause has been amended by insertion of the word 'specification', since specification is an important document to be examined, for grant of patent.

Clause 13

This clause proposes to amend section 17 as consequential to introduction of the new provision of section 15 by clause 12. The amendment in this clause has been made to include the term "any other document", in sub-section (2) of section 17 of the principal Act, and the section has been re-worded. This change is consequential to amendment of clause 10.

Clause 14

This clause proposes to amend section 21 of the Act, relating to the time for putting application in order for acceptance. By this clause the time limit for putting up an application for patent in order for acceptance has been proposed to be reduced to twelve months (with no further extension).

The amendments in this clause are consequential to clause 10 and are of drafting nature, respectively.

Clause 17

This clause seeks to amend section 25 of the Act, to incorporate two additional grounds for opposition to grant of a patent. The amendments to this clause are drafting improvements.

New Clause 20

Members were of the view that the provisions contained in section 39 of the principal Act, which were deleted by the Patents (Amendment) Act, 1999, may be reintroduced, so as to prevent flow of sensitive information relating to country's security, outside India.

New Clause 21

This clause incorporates amendment to Section 40 of the principal Act. This change is consequential to insertion of a new clause 20.

Clause 22

(Re-numbered as Clause 24)

This clause seeks to substitute section 48 of the principal Act, making a provision to the effect that the right of a patentee on product patent is extended to prevent importation and in respect of process patent, the right is extended to sell and import the product directly obtained by the process, provided that the product itself is patentable.

The amendments to this clause have been made to provide protection to the existing patents and by inserting a more appropriate word.

Clause 24

(Re-numbered as Clause 26)

This clause seeks to amend section 53 of the principal Act, relating to the term of patent, laying down a uniform term of 20 years for every patent granted under the Act, from the date of filing of application for such patent.

The amendment to this clause has been made to provide the same protection to the patents, existing as on a particular date.

Clause 25

(Re-numbered as Clause 27)

This clause proposes amendment of section 57 of the Act, relating to amendment of application and specification, to incorporate provision for amendment of other documents related therewith. The amendment to this clause has been made to provide the requisite discretion to the Controller to advertise, in the Official Gazette, the amendment proposed and the nature of such amendment, after acceptance of the complete specification by him.

Clause 26

(Re-numbered as Clause 28)

This clause seeks to amend section 59 of the Act, which provides supplementary provisions for amendment of application and specification, so as to allow amendment for incorporation of actual facts also, to be included in the said supplementary provision. This amendment is consequential to amendment of clause 10.

Clause 27

(Re-numbered as Clause 29)

This clause proposes to amend section 60 of the principal Act, relating to restoration of lapsed patent. The amendment to this clause is correction of typographical error.

Clause 28

(Re-numbered as Clause 30)

This clause proposes to amend section 64 of the principal Act which relates to revocation of patents and proposes to incorporate two additional grounds for revocation of patents. The Amendment to this clause is consequential to insertion of a new clause 20. The other amendment is a drafting improvement.

Clause 30

(Re-numbered as Clause 32)

This clause seeks to amend section 68 of the principal Act, relating to registration of the documents like assignments, etc., to do away with the rigidity to make registration within a maximum period of one year from the date of execution of the documents. *Status quo ante* has been retained with the omission of the words which are not relevant.

Clause 31

(Re-numbered as Clause 33)

This clause proposes to amend section 72 of the principal Act, relating to register of patent to be open for public inspection. The amendment to this clause is correction of a typographical error.

New Clause 34

This new clause has been inserted in view of replacement of the Trade and Merchandise Marks Act, 1958 by the Trade Marks Act, 1999.

Clauses 35 to 46

These clauses have been omitted and a new clause 38, substituting the Chapter-XVI has been inserted. This amendment has been made to make provisions relating to working of patents, compulsory licences, etc., more conducive so as to take care of the country's public health requirements.

Clause 47

(Re-numbered as Clause 39)

This clause proposes to omit sub-section (2) of section 99 relating to the Patents granted under the Patents and Designs Act, 1911, which has become redundant. The Amendment to this clause is correction of a typographical error.

Clause 48

(Re-numbered as Clause 40)

This clause proposes amendment of section 100 of the Act, relating to power of Central Government to use invention for the purpose of Government. Sub-clause (a) has been amended so as to retain the proviso to sub-section (3) of section 100 of the principal Act, by rewording the same, so as to provide for greater flexibility in the payment of remuneration in cases of Government use of patented inventions.

Clause 50

(Re-numbered as Clause 42)

This clause seeks to insert a new section 104A in the Act, relating to burden of proof in cases of infringement suits, proposing that in the case of infringement of process patent, the burden of proof in proving that the patent is not infringed shall, in the specified circumstances, be on the alleged infringer. The clause has been amended, so as to provide that "in a given circumstance, the burden of proof shall be on the alleged infringer, when the courts so desire.

Clause 51

(Re-numbered as Clause 43)

This clause seeks to insert a new section 107-A in the 'principal Act, relating to certain acts which are not to be considered as infringement. This provision has been made to ensure prompt availability of products, particularly generic drugs, immediately after expiry of the term of the patent. The amendment in this clause has been made to make a provision in consonance with the Bolar provisions at the global level. The other amendment in this clause is correction of a typographical error.

Clause 52

(Re-numbered as Clause 44)

This clause proposes to amend section 108 of the principal Act, relating to reliefs in suits for infringement by giving powers to courts for destruction of infringing goods and implements used for 'production of the said goods. Members were of the view that it may not always be just and equitable to destroy the patented articles or the national assets to serve this purpose. Hence, this clause has been reworded.

Clause 54

(Re-numbered as Clause 46)

This clause seeks to substitute Chapter XIX of the Act with a new chapter with the heading "Appeals to the Appellate Board". Sub-section (2) of the new section 117 A of the principal Act has been amended, consequent upon insertion of new Chapter-XVI.

Sub-section (4) of the same section has been amended so as to make the decisions of the Central Government appealable.

The amendment in the new section 117C is correction of a typographical error. The Amendment in sub-section (2) of the new section 117E has been made to confer

upon the Controller the discretion when, instead of personal appearance before the Appellate Board, he chooses to submit a statement, to decide which particulars relating to the matter in issue would be necessary to be given in the statement.

New Clause 47

A provision has been made vide new section 117H, giving powers to the Appellate Board to make rules in respect of all proceedings before it. .

A provision has also been made vide new clause 47 incorporating amendment to Section 118 of the principal Act. This change is consequential to insertion of new clause 20.

Clause 59

(Re-numbered as Clause 52)

This clause proposes amendment of section 126 of the principal Act, relating to qualification for registration as a patent agent. The amendment to this clause is formal in nature, consequential to amendment of clause 1.

Clause 69

(Re-numbered as Clause 62)

This clause proposes amendment of section 157 A of the principal Act, relating to protection of the security of India, by proposing that the Central Government can take any action, including revocation of a patent in the interest of the security of India under clause (6) of this section, by issuing a notification in Official Gazette. This clause has been amended to widen the ambit of the security of India.

Clause 70

(Re-numbered as Clause 63)

This clause seeks to amend sub-section (2) of section 159 of the principal Act, relating to rule making powers of the Central Government, by enumerating some additional matters in respect of rule making powers, consequential to other amendments proposed in the Act. The amendment to this clause is consequential to amendment of section 8 of the principal Act by clause 7.

Enacting Formula and Clause 1

Amendments made in enacting Formula and Clause I are of formal nature necessitated due to passage of time.

16. All the other modifications not enumerated in the foregoing paragraphs are either of consequential or of drafting nature.

17. The Committee, at all stages of its consideration of the Bill, has been motivated by an abiding concern to balance and calibrate intellectual property protection with national and public interest requirements/concerns. Accordingly, the Committee has provided for effective flexibilities in the proposed legislation to enable an appropriate, timely and efficient response to national and public interest requirement/concerns, especially those relating to public health and nutrition. The Committee recommend that Government should accord similarly high priority to such concerns in all its IP related policies and strategies. The development of a fully modernized and efficient IP administration of international standards should also form a part of such initiatives.

18. The Committee recommend that the Bill, as amended, be passed.

NEW VELHI;
December 14.2001

T.N. Chaturvedi
Chairman,
Joint Committee on Patents (Second
Amendment) Bill. 1999

Bill No. XLIX of 1999

THE PATENTS (SECOND AMENDMENT) BILL, 1999
(As Reported by the Joint Committee)

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

A

BILL
Further to amend the Patents Act, 1970

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:-

1. (1) This Act may be called the Patents (Amendment) Act, 2001.

Short title and commencement

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and 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.

Substitution of certain words for the words "High Court" and "Court".

2. In the Patents Act, 1970 (hereinafter referred to as the principal Act), for the 39 of 1970. words "High Court" wherever they occur in sections 21, 43 and 71 and the word "Court" occurring in sections 21 and 71, the words "Appellate Board" and "Board" shall respectively be substituted.

39 of 1970

Amendment
of section 2

3. In Section 2 of the principal Act, in sub-section (I),-

(a) for clause (a), the following clauses shall be substituted, namely:

-(a) "Appellate Board" means the Appellate Board referred to in section 116;

(ab) "assignee" includes an assignee of the assignee and 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;

(ac) "capable of industrial application", in relation to an invention, means that the invention is capable of being made or used in an industry;';

(b) for clause (d), the following clause shall be substituted, namely:-

'(d) "convention country" means a country or a country which is member of a group of countries or a union of countries or an Inter-governmental organization notified as such under sub-section (f) of section 133;';

(c) for clause (g), the following clause shall be substituted, namely:-

'(g) "food" means any article of nourishment for human consumption and also includes any substance intended for the use of infants, invalids or convalescents as an article of food or drink;';

(d) in clause (i),-

(i) in sub-clause (i), for the words "Union territory of Delhi", the words "National Capital Territory of Delhi" shall be substituted;

(ii) for sub-clause (ii), the following sub-clause shall be substituted, namely:-

"(ii) in relation to the State of Arunachal Pradesh and the State of Mizoram, the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh);";

(iii) in sub-clause (v), for the words "Union territory of Goa, Daman and Diu", the words "State of Goa, the Union territory of Daman and Diu" shall be substituted;

(e) after clause (i), the following clause shall be inserted, namely:-

'(ia) "international application" means an application for patent made in accordance with the Patent Cooperation Treaty;';

(f) for clause (j), the following clauses shall be substituted, namely:-

'(j) "invention" means a new product or process involving an inventive step and capable of industrial application;

(ja) "inventive step" means a feature that makes the invention not obvious to a person skilled in the art;';

(g) for clause (m), the following clause shall be substituted, namely:-

‘(m) “patent” means a patent granted under this Act;’;

(h) after clause (o), the following clause shall be substituted, namely:-

‘(oa) “Patent Cooperation Treaty” means the Patent Cooperation Treaty done at Washington on the 19th day of June, 1970 as amended and modified from time to time***;’;

(i) for clause (u), the following clause shall be substituted, namely:-

‘(u) “prescribed” means,-

(A) in relation to proceedings. before a High Court, prescribed by rules made by the High Court;

(B) in relation to proceedings before the Appellate Board, prescribed by rules made by the Appellate Board; and

(C) in other cases, prescribed by rules made under this Act’.

4. In section 3 of the principal Act,-

Amendment of
section 3.

(a) for clause (b), the following clause shall be substituted, namely:-

“(b) an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;”;

(b) in clause (c), after the words "an abstract theory", the words "or discovery of any living thing or non-living substance occurring in nature" shall be inserted;

(c) clause (g) shall be omitted;

(d) in clause (i),-

(i) after the word “prophylactic”, the words “diagnostic, therapeutic” shall be inserted;

(ii) the words “or plants” shall be omitted;

(e) after clause (i), the following clauses shall be inserted, namely:-

“(j) plants and animals*** in whole or any part thereof other than microorganism but including seeds. Varieties and species and essentially biological processes for production or propagation of plants and animals:

(k) a mathematical or business method or a computer program per se or algorithms;

(l) a literary, dramatic, musical or artistic work or any other aesthetic

creation whatsoever including cinematographic works and television productions:

(m) a mere scheme or rule or method of performing mental act or method of playing game:

(n) a presentation of information:

(o) topography of integrated circuits:

(p) an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.”

Amendment of section 5. 5. In section 5 of the principal Act, after sub-section (2), the following Explanation shall be inserted, namely:-

‘Explanation-For the purposes of this section, “chemical process” includes biochemical, biotechnological process.’

Amendment of section 7. 6. In section 7 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:-

“(1A) Every international application under the Patent Cooperation Treaty for a patent, as may be filed designating India, shall be deemed to be an application under this Act, if a corresponding application has also been filed before the Controller in India.”

Amendment of section 8. 7. In section 8 of the principal Act:-

(a) in sub-section (1),-

(i) in the opening portion, after the words “he shall file along with his application”, the words “or subsequently within such period as the Controller may, for good and sufficient reasons allow” shall be inserted;

(ii) for clause (a), the following clause shall be substituted, namely:-

“(a) a statement setting out detailed particulars of such application; and”

(iii) in clause (b), for the words “details of the nature referred to in”, the words “detailed particulars as required under” shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:-

“(2) At any time after an application for patent is filed in India and till the grant of patent or refusal to grant of patent is made thereon, the Controller may also require the applicant to furnish details as may be prescribed, in that event the applicant shall furnish information available to him to the Controller within thirty days from the date of receipt of the communication requiring such furnishing of information or within such further period as the Controller may, for good and sufficient reasons, allow.”

8. In section 10 of the principal Act,-

Amendment of
section 10.

(a) in sub-section (4), after clause (c), the following clause shall be inserted, namely:-

“(d) be accompanied by an abstract to provide technical information on the invention:

Provided that-

(i) the Controller may amend the abstract for providing better information to third parties; and

(ii) if the applicant mentions a biological material in the specification which may not be described in such a way as to satisfy clauses (a) and (b), and if such material is not available to the public, the application shall be completed by depositing the material to an authorized depository institution as may be notified by the Central Government in the Official Gazette and by fulfilling the following conditions, namely:-

(A) the deposit of the material shall be made not later than the date of the patent application in India ***;

(B) all the available characteristics of the material required for it to be correctly identified or indicated are included in the specification including the name, address of the depository institution and the date and number of the deposit of the material at the institution.

(C) access to the material is available in the depository institution only after the date of the application for patent in India or if a priority is claimed after the date of the priority;

(D) disclose the source and geographical origin of the biological material in the specification, when used in an invention.”

(b) after sub-section (4), the following sub-section shall be inserted, namely:-

“(4A) in case of an international application designating India,-

(i) the title, description, drawings, abstracts and claims filed with the application shall be taken as the complete specification for the purposes of this Act; and

(ii) the filing date of the application and its complete specification, processed by the patent office as designated office or elected office, shall be the international filing date accorded under the Patent Cooperation Treaty.”

(c) for sub-section (5), the following sub-section shall be substituted, namely:-

“(5) The claim or claims of a complete specification shall relate

to a single invention, or to a group of inventions, linked so as to form a single inventive concept, shall be clear and succinct and shall be fairly based on the matter disclosed in the specification.”

Amendment
of Chapter
IV.

9. In Chapter IV of the principal Act,-

(a) for the Chapter heading “EXAMINATION OF APPLICATIONS”, the following Chapter heading shall be substituted, namely:-

“PUBLICATION AND EXAMINATION OF APPLICATIONS”

(b) before section 12, the following sections shall be inserted, namely:-

Publication of
applications

“11A (1) Applications for patents shall not be open to the public for a period of eighteen months*** from the date of filing or date of priority, whichever is earlier.

(2) Except when a secrecy direction is given under section 35, every application for a patent shall, on the expiry of the period as specified in sub-section (1), be published.

(3) The publication of every application for a patent shall be notified in the Official Gazette.

(4) In case a secrecy direction has been given in respect of an application under section 35, then, it shall be published after the expiry of the period of eighteen months or when the secrecy direction has ceased to operate, whichever is later.

(5) The publication of every application under this section shall include the particulars of the date of application, number of application, name and address of the applicant identifying the application and an abstract.

(6) Upon publication of an application for a patent under this section-

(a) the depository institution shall make the biological material mentioned in the specification available to the public;

(b) the patent office may, on payment of such fee as may be prescribed, make the specification and drawing, if any, of such application available to the public.

Request for
examination.

11B. (1) No application for a patent shall be required to be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within forty-eight months from the date of filing of the application for patent.

(2) In case of an application filed before the commencement of the Patent (Amendment) Act 2001, a request in the prescribed manner for examination shall be made by the applicant or any other interested person within a period of twelve months from the date of such commencement or within forty-eight months from the date of the application, whichever is later

(3) In case of an application in respect of a claim for a patent covered under sub-section (2) of section 5, a request in the prescribed manner for examination shall be made by the applicant or any other interested person within a period of twelve months from 31st day of December, 2004 or within forty-eight months from the date of the application, whichever is later.

(4) In case the applicant or any other interested person does not make a request for examination of the application for a patent within the period as specified under sub-section (1) or sub-section (2) or sub-section (3), the application shall be treated as withdrawn by the applicant:

Provided that-

(i) the applicant may, at any time after the filing of the application but before the grant of the patent, withdraw the application made by him; and

(ii) in a case where a secrecy direction has been issued under section 35, the request for examination may be made within forty-eight months from the date of revocation of the secrecy direction."

10. In section 12 of the principal Act,-

Amendment of section 12.

(a) in sub-section (1),-

(i) for the words "When the complete specification has been filed in respect of an application for a patent, the application and specification relating thereto", the words "brackets, figures and letter "When a request for examination has been made in respect of an application for a patent in the prescribed manner under sub-section (1) or sub-section (2) or sub-section (3) of section II B, the application and specification and other documents related thereto" shall be substituted;

(ii) in clause (a), for the words "specification relating thereto", the words "specification and other documents related thereto" shall be substituted:

(b) in sub-section (2), for the words "specification relating thereto", the words "specification and other documents related thereto" shall be substituted.

11. In section 13 of the principal Act, in sub-section (2), the words "as the Controller may direct" shall be omitted.

Amendment of section 13.

12. For section 15 of the principal Act, the following section shall be substituted, namely:-

Substitution of new section for section 15.

"15. Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may require the application, specification or other document, as the case may be, to be amended to his satisfaction before he proceeds with the application or refuse the

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

application on failure to do so.”

Amendment of section 17. **13.** In section 17 of principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) Where an application or specification (including drawings) or any other document is required to be amended under section 15, the application or specification or other document 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 or other document is returned to the applicant, on the date on which it is refilled after compliance with the requirement.

Amendment of section 21. **14.** In section 21 of the principal Act,-

(a) in sub-section (1), for the portion beginning with the words "fifteen months" and ending with the words "of this section", the words "twelve months from the date on which the first statement of objections to the application or complete specification or other documents related thereto is forwarded to the applicant by the Controller." shall be substituted:

(b) sub-section (2) shall be omitted:

(c) in sub-section (3),-

(i) for the words, brackets and figure "fifteen months specified in sub-section (1) or the extended period **", the words "twelve months" shall be substituted:

(ii) for the words "fifteen months or the extended period, as the case may be", the words "twelve months" shall be substituted.

(d) in sub-section (1). for the words "fifteen months, or as the case may be, the extended period, until the expiration of", the words "twelve months to" shall be substituted,

Amendment of section 22. **15,** In section 22 of the principal Act. in the proviso. for the words "eighteen months", the words "twelve months" shall be substituted.

Amendment of section 23. **16,** In section 23 of the principal Act. for the words "filed in pursuance thereof", the words "as accepted by the Controller along with other documents filed by the applicant in pursuance thereof" shall be substituted.

Amendment of section 25. **17.** In section 25 of the principal Act,-

(a) in sub-section (1), after clause (i), the following clauses shall be inserted, namely:-

(j) that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention:

(k) that the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere:"

(b) in sub-section (2), for the words "shall give", the words "may, if so desired, give" shall be substituted;

(c) in sub-section (3). after the words "shall be taken of any", the words "personal document or secret trial or" shall be inserted.

18. In section 35 of the principal Act. in sub-section (I), the words "to any person or class of persons specified in the directions" shall be omitted, Amendment of section 35.

19. In section 36 of the principal Act, for sub-section (I), the following sub-section shall be substituted, namely:- Amendment of section 36.

"(I) 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 reconsidered by the Central Government at intervals of twelve months or on a request made by the applicant which is found to be reasonable by the Controller and if. on such reconsideration it appears to the Central Government that the publication of the invention would no longer be prejudicial to the defence of India or in case of an application filed by a foreign applicant it is found that the invention is published outside India it shall forthwith give notice to the Controller to revoke the direction and the Controller shall thereupon revoke the directions previously given by him."

20. After section 38 of the principal Act. the following section shall be inserted, namely:- Insertion of new section 39.

"39. (I) No person shall, except under the authority of a written permit granted by or on behalf the Controller. make or cause to be made any application outside India for the grant of a patent for an invention relevant for defence purposes or related to atomic energy unless- Prohibition to apply, under certain circumstances, for patents relevant for defence purposes, etc.

(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 direction has 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."

21. In section 40 of the principal Act, after the words and figures "under section 35", the words and figures "or makes or causes to be made an application for grant of a patent outside India in contravention of section 39" shall be inserted. Amendment of section 40

22. In section 43 of the principal Act, in sub-section (1),- Amendment of section 43.

(a) in clause (c), the word "or" shall be inserted at the end;

(b) after clause (c), the following clause shall be inserted, namely:-

“(d) the application has not been found to be in contravention of any of the provisions of this Act.”

Amendment of section 45

23. In section 45 of the principal Act, for sub-section (10), the following sub-section shall be substituted, namely:-

"(1) Subject to the other provisions contained in this Act, every patent shall be dated as of the date on which the application for patent was filed".

Substitution of new section for section 48.

24. For section 48 of the principal Act, the following section shall be substituted, namely:-

Rights of patentees.

"48. Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted *** under this Act shall confer upon the patentee-

(a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;

(b) where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India:

Provided that the product obtained is not a product in respect of which no patent shall be granted under this Act."

Amendment of section 50.

25. In section 50 of the principal Act, in sub-section (2), for the words "make, use, exercise and sell the patented invention", the words and figures "the rights conferred by section 48" shall be substituted.

Amendment of section 53.

26. In section 53 of the principal Act,-

(a) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) Subject to the provisions of this Act, the term of every patent granted, after the commencement of the Patents (Amendment) Act, 2001, and the term of every patent which has not expired and has not ceased to have effect, on the date of such commencement, under this Act, shall be twenty years from the date of filing of the application for the patent.";

(b) after sub-section (3), the following sub-section shall be inserted, namely:-

"(4) Notwithstanding anything contained in any other law for the time being in force, on cessation of the patent right due to non-payment of renewal fee or on expiry of the term of patent, the subject matter covered by the said patent shall not be entitled to any protection."

27. In section 57 of the principal Act,-

Amendment of
section 57.

(a) in sub-section (1), after the word "specification" occurring at both the places, the words "or any document related thereto" shall be inserted;

(b) in sub-section (2), for the words "or a specification", the words "or a complete specification or any document related thereto" shall be substituted;

(c) for sub-section (3), the following sub-section shall be substituted, namely:-

"(3) Any application for leave to amend an application for a patent or a complete specification or a document related thereto under this section made after the acceptance of the complete specification and the nature of the proposed amendment may be advertised in the Official Gazette if the amendment, in the opinion of the Controller, is substantive.";

(d) in sub-section (6),-

(i) after the words "amend his specification", the words "or any document related thereto" shall be inserted;

(ii) after the words "acceptance of the complete specification", the words "along with other documents filed by the applicant" shall be inserted.

28. In section 59 of the principal Act, ***-

Amendment of
section 59.

(i) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) No amendment of an application for a patent or a complete specification or any document related thereto shall be made except by way of disclaimer, correction or explanation, and no amendment thereof shall be allowed, except for the purpose of incorporation of actual fact, 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 or shown 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.";

(ii) in sub-section (2),-

(a) for the words "complete specification, any amendment of the specification" the words "complete specification alongwith other documents related thereto, any amendment of the specification or any other document related thereto" shall be substituted;

(b) in clause (a), for the word "specification", the words "specification along with other documents related thereto" shall be substituted;

(c) in clause (b), for the word "specification", the words

“specification or any other document related thereto” shall be substituted.

Amendment
of section 60.

29. In section 60 of the principal Act,-

(a) in sub-section (1), for the words “one year”, the words “eighteen months” shall be substituted:

(b) sub-section (2) shall be omitted.

Amendment
of section 64.

30. In section 64 of the principal Act,-

(a) in sub-section(1),-

(i) the proviso to clause (b) shall be omitted;

(ii) the proviso to clause (e) shall be omitted;

(iii) the proviso to clause (f) shall be omitted;

(iv) in clause (n), after the words and figures “under section 35”, the words and figures “or made or caused to be made an application for the grant of a patent outside India in contravention of section 39” shall be inserted;

(v) after clause (o), the following clauses shall be inserted, namely:-

“(p) that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;

(q) that the invention so far as claimed in any claimed in any claim of the complete specification was anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere.”;

in sub-section (2), in clause (a), for the worlds “secret usc”, the words "personal document or secret trial or secret use" shall be substituted .

Amendment
of section 67

31. In section 67 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely:-

"(4) Notwithstanding anything contained in sub-section (I), it shall be lawful for the Controller to keep the register of patents or any pm1 thereof in computer floppies, diskettes or any other electronic form subject to such safeguards as may be prescribed.

(5) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of, or extracts from, the register of patents, certified to be a true copy under the hand of the Controller or any officer duly authorized by the Controller in this behalf shall, in all legal proceedings, be admissible in evidence. 1 of 1872.

(6) In the event the register is kept wholly or partly in computer floppies, diskettes or any other electronic form;-

(a) reference in this Act to an entry in the register shall be deemed to include reference to a record to particulars kept in

computer floppies, diskettes or any other electronic form and comprising the register or part of the register;

(b) references in this Act to particulars being registered or entered in the register shall be deemed to include references to the keeping of record of those particulars comprising the register or part of the register in computer floppies, diskettes or any other electronic form; and

(c) references in this Act to the rectification of the register are to be read as including references to the rectification of the record of particulars kept in computer floppies, diskettes or any other electronic form and comprising the register or part of the register”.

32. In section 68 of the principal Act., for the words "the Controller within six months from the commencement of this Act or the execution of the document, whichever is later or within such further period***", the words "the Controller within six months from the execution of the document or within such further period" shall be substituted. Amendment of section 68.

33. In section 72 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:- Amendment of section 72.

“(3) If the record of particulars is kept in computer floppies or diskettes or in any other electronic form, sub-sections (1) and (2) shall be deemed to have been compiled with if the public is given access to such computer floppies, diskettes or any other electronic form or printouts of such record of particulars for inspection.”.

34. In section 73 of the principal Act, in sub-section (1), for the words and figures “section 4 of the Trade and Merchandise Marks Act, 1958”, the words and figures “section 3 of the Trade Marks Act, 1999” shall be substituted. Amendment of section 73.

35. In section 76 of the principal Act,- Amendment of section 76.

(a) for the words “Central Government”, the words “Central Government or Appellate Board” shall substituted;

(b) in clauses (a) and (b), the words and figures “or under the Indian Patens and Designs Act, 1911” shall respectively be omitted.

36. In section 78 of the principal Act, in sub-section (1), after the words “complete specifications”, the words “or other documents related thereto” shall be inserted. Amendment of section 78.

37. In section 80 of the principal Act, the following proviso shall be inserted at the end, namely:- Amendment of section 80.

“Provided that the party desiring a hearing makes the request for such hearing to the Controller at least ten days in advance of the expiry of the time-limit specified in respect of the proceeding.”

38. For Chapter XVI of the principal Act, the following Chapter shall be substituted, namely:- Substitution of new Chapter for Chapter XVI.

**CHAPTER XVI
WORKING OF PATENTS, COMPULSORY LICENCES AND
REVOCAATION**

Distribution of
“patented and
articles” and
“patentee”.

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

(a) “patented article” includes any article made by 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 consideration, 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 extents that is reasonably practicable without undue delay;

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

(c) that the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;

(d) that patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socio-economic and technological development of India;

(e) that patents granted do not in any way prohibit Central Government in taking measures to protect public health;

(f) that the patent right is not abused by the patentee or person deriving title or interest on patent from the patentee, and the patentee or a person deriving title or interest on patent from the patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology; and

(g) that patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.

Compulsory
licences.

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 for grant of compulsory licence of patent on any of the following grounds, namely :-

(a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or

(b) that the patented invention is not available to the public at a

reasonably affordable price, or

(c) that the patented invention is not worked in the territory of India.

(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 stopped 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 worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable 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) 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 worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may order the patentee to grant a licence upon such terms as he may deem fit.

Where the Controller directs the patentee to grant a licence he may as incidental thereto exercise the powers set out in section 88.

(6) In considering the application filed under this section, 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;

(iv) as to whether the applicant has made efforts to obtain a licence from the patentee on reasonable terms and conditions and such efforts have not been successful within a reasonable period as the Controller may deem fit:

Provided that this clause shall not be applicable in case of national emergency or other circumstances of extreme urgency or in case of public non-commercial use or on establishment of a ground of anti-competitive practices adopted by the patentee, but shall not be required to take into account matters subsequent to the making of the application.

(7) For the purposes of this Chapter, the reasonable requirements of the public shall be deemed not to have been satisfied -

(a) 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 in India or the trade or industry of any person or class of persons trading or manufacturing in India is prejudiced; or

(ii) the demand for the patented article has not been met to an adequate extent or on reasonable terms; or

(iii) a market for export of the patented article manufactured in India is not being supplied or developed; or

(iv) the establishment or development of commercial activities in India is prejudiced; or

(b) if, 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, 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 patentee imposes a condition upon the grant of licences under the patent to provide exclusive grant back, prevention to challenges to the validity of patent or coercive package licensing, or

(d) if the patented invention is not being worked in the territory of India on a commercial scale to an adequate extent or is not being so worked to the fullest extent that is reasonably practicable, or

(e) if the working of the patented invention in the territory of India on a commercial scale is being prevented or hindered by the importation from abroad of the patented article 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.

Revocation of patents by the Controller for non-working

85. (1) Where, in respect of a patent, a compulsory licence has been granted, 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, apply to the Controller for an order revoking the patent on the ground that the patented invention has not been worked in the territory of India or that reasonable requirements of the public with respect to the patented invention has not been satisfied or that the patented invention is not available to the public at a reasonably affordable price.

(2) Every application under sub-section (1) shall contain such particulars as may be prescribed, 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 patented invention has not been worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may make an order revoking the patent.

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

86. (I) Where an application under section 84 or section 85, as the case may be, is made on the grounds that the patented invention has not been worked in the territory of India or on the ground mentioned in clause (d) of sub-section (7) of section 84 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:

Power of Controller to adjourn applications for compulsory licences, etc., in certain cases.

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 the territory of 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 (I) 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 the territory of India on a commercial scale and to an adequate extent.

87. (I) Where the Controller is satisfied, upon consideration of an application under section 84, or section 85, 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.

Procedure for dealing with applications under sections 84 and 85.

(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.

88. (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.

Powers of Controller in granting compulsory licences.

(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 to be amended.

(3) 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 and if those patents involve important technical advancement of considerable economic significance in relation to the other patents, 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.

(4) Where the terms and conditions of a licence have been settled by the Controller, the licensee may, at any time after he has worked the invention on a commercial scale for a period of not less than twelve months, make an application to the Controller for the revision of the terms and conditions on the ground that the terms and conditions 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 second time.

General purposes for granting compulsory licences.

89. 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 the territory of 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 the territory of India under the protection of a patent are not unfairly prejudiced.

Terms and conditions of compulsory licences.

90. (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 reasonably affordable prices;

(iv) that the licence granted is a non-exclusive licence;

(v) that the right of the licenses is non-assignable;

(vi) that the licence is for the balance term of the patent unless a shorter term is consistent with public interest;

(vii) that the licence is granted with a predominant purpose of supplying in Indian market and in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use and in the case, the licence granted to remedy a practice determined after judicial or administrative process to be anti-competitive, licensee shall be permitted to export the patented product.

(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.

91. (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 otherwise, 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.

Licensing of related patents.

(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 the territory of 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:

Provided that the licence granted by the Controller shall be non-assignable except with the assignment of the respective patents.

(4) The provisions of sections 87, 88, 89 and 90 shall apply to licences granted under this section as they apply to licences granted

under section 84.

Special provision for compulsory licences on notifications by Central Government.

92. (1) If the Central Government is satisfied, in respect of any patent in force, in circumstances of national emergency or in circumstances of extreme urgency or in case of public non-commercial use, that it is necessary that compulsory licences should be granted at any time after the sealing thereof to work the invention, it may make a declaration to that effect, by notification 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 granted to the applicant a licence under the patent on such terms and conditions as he thinks fit:

(ii) in settling the terms and conditions 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 87, 88, 89 and 90 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.

Order for licence to operate as a deed between parties concerned.

93. 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.

94. (1) On an application made by the patentee or any other person deriving title or interest in the patent, a compulsory licence granted under section 84 may be terminated by the Controller, if and when the circumstances that gave rise to the grant thereof no longer exist and such circumstances are unlikely to recur:

Provided that the holder of the compulsory licence shall have the right to object to such termination.

(2) While considering an application under sub-section (1) the Controller shall take into account that the interest of the person who had previously been granted the licence is not unduly prejudiced."

* * * *

Amendment of section 99.

39. In section 99 of the principal Act sub-section (2) shall be omitted.

Amendment of section 100.

40. In section 100 of the principal Act,-

(a) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:-

"Provided that in case of any such use of any patent, the patentee shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the use of the patent.":

(b) in sub-section (5), for the words “unless it appears to the Government that it would be contrary to the public interest so to do”, the words “except in case of national emergency or other circumstances of extreme urgency or for non-commercial use” shall be substituted:

(c) in sub-section (6), for the words "right to sell the goods", the words "right to sell. on non-commercial basis, the goods" shall be substituted.

41. In section 101 of the principal Act,-

Amendment of section 101.

(a) in sub-section (1),-

(i) the words “whether before or after the commencement of this Act”, shall be omitted.

(ii) the brackets and words “(including payments by way of minimum royalty)” shall be omitted:

(b) in sub-section (2), the brackets and words “(including payments by way of minimum royalty)”, shall be omitted;

(c) in sub-section (3), in clause (b), the words “including payments by way of minimum royalty” shall be omitted.

42. After section 104 of the principal Act, the following section shall be inserted, namely:-

Insertion of new section 104A.

"104A. (1) In any suit for infringement of a patent, where the subject matter of patent is a process for obtaining a product, the court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process. is different from the patented process if-

(a) the subject matter of the patent is a process for obtaining a new product: or

(b) there is a substantial likelihood that the identical product is made by the process, and the patentee or a person deriving title or interest in the patent from him has been unable through reasonable efforts to determine the process actually used:

Provided that the patentee or a person deriving title or interest in the patent from him, first proves that the product is identical ~~III~~ the product directly obtained by the patented process.

(2) In considering whether a party has discharged the burden imposed upon him by sub-section (1), the court shall not require him to disclose any manufacturing or commercial secrets, if it appears to the court that it would be unreasonable to do so.”

43. After section 107 of the principal Act. the following section shall be inserted, namely:-

Insertion of new section 107A.

“107A. For the purposes of this Act,-

Certain acts not to be considered as infringement.

(a) any act of making, constructing, using or selling a patented

invention solely for uses reasonably related to the development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use or sale of any product;

(b) importation of patented products by any person from a person who is duly authorised by the patentee to sell or distribute the product, shall not be considered as an infringement of patent rights.”

Amendment of section 108.

44. Section 108 of the principal Act shall be renumbered as sub-section (I) thereof, and after sub-section (I), as so renumbered, the following sub-section shall be inserted, namely:-

"(2) The court may also order that the goods which are found to be infringing and materials and implement, the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case, without payment of any compensation."

Omission of section 112.

45. Section 112 of the principal Act shall be omitted.

Substitution of new Chapter for Chapter XIX.

46. For Chapter XIX of the principal Act, the following Chapter shall be substituted, namely:-

“CHAPTER XIX
APPEALS TO THE APPELLATE BOARD

Appellate Board.

116. (I) Subject to the provisions of this Act, the Appellate Board established under section 83 of the Trade Marks Act, 1999 shall be the Appellate Board for the purposes of this Act and the said Appellate Board shall exercise the jurisdiction, power and authority conferred on it by or under this Act: 47 of 1999.

Provided that the Technical Member of the Appellate Board for the purposes of this Act shall have the qualifications specified in sub-section (2).

(2) A person shall not be qualified for appointment as a Technical Member for the purposes of this Act unless he-

(a) has at least five years held the post of Controller under this Act or has exercised the functions of the Controller under this Act for at least five years; or

(b) has been for at least ten years functioned as a Registered Patent Agent and possesses a degree in engineering or technology or a masters degree in science from any University established under law for the time being in force or equivalent; or

(c) has, for at least ten years, been an advocate of a proven specialized experience in practicing law relating to patents and designs.

Staff of Appellate Board.

117. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Appellate Board in the discharge of its functions under this Act and provide the Appellate Board With such officers and other employees as it may think fit.

(2) The salaries and allowances and conditions of service of the officers and other employees of the Appellate Board shall be such as may be prescribed.

(3) The officers and other employees of the Appellate Board shall discharge their functions under the general superintendence of the Chairman of the Appellate Board in the manner as may be prescribed.

117 A. (1) Save as otherwise expressly provided in sub-section (2), 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.

Appeals to Appellate Board.

(2) An appeal shall lie to the Appellate Board from any decision, order or direction of the Controller or Central Government under 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 6 I, section 63, section 66, sub-section (3) of section 69, section 78, sub-sections (1) to (5) of section 84, section 85, section 88, section 91, section 92 and section 94.

(3) Every appeal under this section shall be in the prescribed form and shall be verified in such manner as may be prescribed and shall be accompanied by a copy of the decision, order or direction appealed against and by such fees as may be prescribed.

(4) Every appeal shall be made within three months from the date of the decision, order or direction, as the case may be, of the Controller or the Central Government, or within such further time as the Appellate Board may, in accordance with the rules made by it allow.

47 of 1999.

117B. The provisions of sub-sections (2) to (6) of section 84, section 87, section 92, section 95 and section 96 of the Trade Marks Act, 1999 shall apply to the Appellate Board in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Trade Marks Act, 1999.

Procedure and powers of Appellate Board.

117C. No court or other authority shall have or, be entitled to, exercise any Bar of jurisdiction, powers or authority in relation to the matters referred to in sub- jurisdiction of section (2) of section 117 A or section 117D.

Bar of jurisdiction of courts, etc.

117D. (1) An application for rectification of the register made to the Appellate Board under section 71 shall be in such form as may be prescribed.

Procedure for application for rectification, etc., before Appellate Board.

(2) A certified copy of every order or judgment of the Appellate Board relating to a patent under this Act shall be communicated to the Controller by the Board and the Controller shall give effect to the order of the Board and shall, when so directed, amend the entries in, or rectify, the register in accordance with such order.

117E. (1) The Controller shall have the right to appear and be heard:-

Appearance of Controller in legal proceedings.

(a) in any legal proceedings before the Appellate Board in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the patent office is raised;

(b) in any appeal to the Appellate Board from an order of the

Controller on an application for grant of a patent-

(i) which is not opposed, and the application is either refused by the Controller or is accepted by him subject to any amendments, modifications, conditions or limitations, or

(ii) which has been opposed and the Controller considers that his appearance is necessary in the public interest, and the Controller shall appear in any case if so directed by the Appellate Board.

(2) Unless the Appellate Board otherwise directs, the Controller may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him or of the practice of the patent office in like cases, or of other matters relevant to the issues and within his knowledge as the Controller may deem it necessary, and such statement shall be evidence in the proceeding.

Costs of Controller in proceedings before Appellate Board.

117F. In all proceedings under this Act before the Appellate Board, the costs of the Controller shall be in the discretion of the Board, but the Controller shall not be ordered to pay the costs of any of the parties.

Transfer of pending proceedings to Appellate Board.

117G. All cases of Appeals against any order or decision of the Controller and all cases pertaining to rectification of register, pending before any High Court, shall be transferred to Appellate Board from such date as may be notified by the Central Government in the Official Gazette and the Appellate Board may proceed with the matter either *de novo* or from the stage it was so transferred.

Power of Appellate of Board to make rules.

117H. The Appellate Board may make rules consistent with this Act as to the conduct and procedure in respect of all proceedings before it under this Act.”

Amendment of section 118.

47. In section 118 of the principal Act, after the words and figures “under section 35”, the words and figures “ or makes or causes to be made an application for the grant of a patent in contravention of section 39” shall be inserted.

Amendment of section 120.

48. In section 120 of the principal Act, for the words “five hundred rupees”, the words “ten thousand rupees” shall be substituted.

Amendment of section 122.

49. In section 122 of the principal Act, in sub-section (1), for the words “one thousand rupees”, the words “twenty thousand rupees” shall be substituted.

Amendment of section 123.

50. In section 123 of the principal Act,-
(a) for the words “five hundred rupees”, the words “ten thousand rupees” shall be substituted;

(b) for the words “two thousand rupees”, the words “forty thousand rupees” shall be substituted.

51. For section 125 of the principal Act, the following section shall be substituted namely:-

Substitution of new section for section 125.

“125. (1) The Controller shall maintain a register to be called the

register of patent agents in which shall be entered the names, addresses and other relevant particulars, as may be prescribed, of all persons qualified to have their names so entered under section 126.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Controller to keep the register of patent agents in computer floppies, diskettes or any other electronic form subject to such safeguards as may be prescribed."

52. In section 126 of the principal Act,-

Amendment of section 126.

(a) in sub-section (1),-

(i) in clause (c),-

(A) for the words "degree from any University", the words "degree in science, engineering or technology from any University established under law for the time being in force" shall be substituted;

(B) in sub-clause (ii), the word "or" shall be inserted at the end;

(ii) after sub-clause (ii), the following sub-clause shall be inserted, namely:-

"(iii) has, for a total period of not less than ten years, functioned either as an examiner or discharged the functions of the Controller under section 73 or both, but ceased to hold any such capacity at the time of making the application for registration;"

(b) for sub-section (2). the following sub-section shall be substituted, namely:-

"(2) Notwithstanding anything contained in sub-section (1), a person who has been registered as a patent agent before the commencement of the Patents (Amendment) Act, 2001 shall be entitled to continue to be, or when required to be re-registered, as a patent agent, on payment of the fee as may be prescribed,".

53. In section 128 of the principal Act,-

Amendment of section 128

(a) in sub-section (1), the words "Subject to the provisions contained in sub-section (2) and to any rules made under this Act" shall be omitted;

(b) sub-section (2) shall be omitted.

54. In section 130 of the principal Act,-

Amendment of section 130.

(a) for the words "Central Government" wherever they occur, the word "Controller" shall be substituted.

(b) in sub-section (1), for the word "it", the word "he" shall be substituted.

Amendment of section 132.

55. In section 132 of the principal Act,-

(a) in clause (a), the words "or any person, not being a patent agent, who is duly authorized by the applicant" shall be omitted:

(b) in clause (b), for the words "proceedings under this Act otherwise than by way of drafting any specification," the words

“hearing before the Controller on behalf of a party who is taking part in any proceeding under this Act” shall be substituted.

Amendment of section 133.

56. In section 133 of the principal Act, the following Explanation shall be inserted at the end, namely:-

‘Explanation-For the purposes of this Chapter “country” includes a group or union of countries or Inter-governmental organisation.’

Amendment of section 138.

57. In section 138 of the principal Act,-

(a) in sub-section (1), after the words “shall furnish”, the words “when required by the Controller,” shall be inserted;

(b) in sub-section (2), for the words “annexed to the specification or document”, the words “furnished when required by the Controller” shall be substituted;

(c) after sub-section (3), the following sub-sections shall be inserted, namely:-

“(4) An international application filed under the Patent Cooperation Treaty designating India shall have effect of filing an application for patent under section 7, section 54 and section 135, as the case may be, and the title, description, claim and abstract and drawings, if any, filed in the international application shall be taken as complete specification for the purposes of this Act.

(5) The filing date of an application for patent and its complete specification processed by the patent office as designated office shall be the international filing date accorded under the Patent Cooperation Treaty.

(6) Amendment, if any, proposed by the applicant for an international application designating India or designating and electing India before international searching authority or preliminary examination authority shall, if the applicant so desires, be taken as an amendment made before the patent office.”

Amendment of section 140.

58. In section 140 of the principal Act,-

(a) in sub-section (1), in clause (iii), after sub-clause (c), the following sub-clause shall be inserted, namely:-

"(d) to provide exclusive grant back. prevention to challenges to validity of patent and coercive package licensing.";

(b) sub-section (5) shall be omitted.

59. In section 141 of the principal Act. in sub-section (I), the words "whether made before or after the commencement of this Act." shall be omitted.

Amendment of section 141.

60. In section 142 of the principal Act,-

Amendment of section 142.

(a) for sub-section (3). the following sub-section shall be substituted, namely:-

"(3) Where a fee is payable in respect of the filing of a document at the patent office. the fee shall be paid along with the document or within the prescribed time and the document shall be deemed not to have been filed at the office if the fee has not been paid within such time.";

(b) in sub-section (4). the words "or within the extended period not later than nine months from the date of recording" shall be inserted at the end.

61. In section 143 of the principal Act, for the words "or be open to public inspection at any time before the date of advertisement of acceptance of the application", the words "before eighteen months from the date of application or the priority date of the application or before the same is opened to public inspection" shall be substituted.

Amendment of section 143.

62. For section 157A of the principal Act, the following section shall be substituted. namely:-

Substitution of new section for section 157A.

'157 A. Notwithstanding anything contained in this Act, the Central Government shall-

Protection of security of India.

(a) not disclose any information relating to any patentable invention or any application relating to the grant of patent under this Act, which it considers prejudicial to the interest of the security of India;

(b) take any action including the revocation of any patent which it considers necessary in the interest of the security of India by issue of a notification in the Official Gazette to that effect.

Explanation. - For the purposes of this section, the expression "security of India" includes any action necessary for the security of India which-

(i) relates to fissionable materials or the materials from which they are derived; or

(ii) relates to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(iii) is taken in time of war or other emergency in international relations."

Amendment of section 159.

63. In section 159 of the principal Act, in sub-section (2),-

(a) after clause (i), the following clauses shall be inserted. namely:-

"(ia) the details to be furnished by the applicant under subsection (2) of section 8;

(ib) the manner of making the request for examination of an application for patent under sub-section (I) of section 11B;"

(b) in clause (iii), after the word "manner", the words "and time" shall be inserted;

(c) in clause (ix), after the word "patents", the words "and the safeguards to be observed in the maintenance of such register in computer floppies, diskettes or any other electronic form" shall be inserted;

(d) after clause (xii), the following clauses shall be inserted, namely:-

"(xiia) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Board under sub-section (2) and the manner in which the officers and other employees of the Appellate Board shall discharge their functions under sub-section (3) of section 117;

(xiib) the form of making an appeal, the manner of verification and the fee payable under sub-section (3) of section 117A;

(xiic) the form in which, and the particulars to be included in, the application to the Appellate Board under sub-section (I) of section 117D;"

(e) in clause (xiv), after the word "maintained", the words, brackets and figures "under sub-section (I) of section 125 and the safeguards to be observed in the maintenance of such register of patent agents on computer floppies, diskettes or any other electronic form under subsection (2) of that section" shall be inserted.

Omission of section 161.

64. Section 161 of the principal Act shall be omitted.

Amendment of section 162.

65. In section 162 of the principal Act, sub-section (2) and (3) shall be omitted.

APPENDICES

(Vide para 2 of the Report)

MOTION IN THE RAJYA SABHA FOR REFERENCE OF THE BILL TO THE JOINT COMMITTEE.

Dr. Raman, Minister of State in the Ministry of Commerce and Industry moved the following Motion:-

“That the Bill further to amend the Patent Act, 1970 be referred to a Joint Committee of the Houses consisting of 30 Members. 10 Members from this House, namely:-

1. Shri T. N. Chaturvedi
2. Dr. L.M. Singhvi
3. Shri Suresh A. Keswani
4. Dr. M.N.Das
5. Dr. Biplab Dasgupta
6. Shri C. P. Thirunavukkarasu
7. Shri J. Chitharanjan
8. Shri K. Kalavenkata Rao
9. Shri Satishchandra Sitaram Pradhan
10. Shri Jayant Kumar Malhoutra

And 20 Members from the Lok 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 next Session of the Rajya Sabha.

That in order respects the Rules of Procedure of this House relating to Select Parliamentary Committees shall apply with such variations and modifications as the Chairman may make; and

That this House recommends to the Lok Sabha that Lok Sabha do join the said Committee and communicate to this House the names of Members to be appointed by Lok Sabha to the Joint Committee.”

The Motion was adopted.

(vide para 3 of the Report)

MOTION IN THE LOK SABHA

The motion for concurrence in the recommendation of Rajya Sabha for refernce of the Bill to a Join Committee of the Houses was moved by

Dr. Raman Singh.

The motion was adopted as follows:

“That this House do concur in the recommendation of Rajya Sabha that the House do join in the Joint Committee of the Houses on the Bill further to amend the Patents Act, 1970 made in the motion adopted by Rajya Sabha at its sitting held on the 21st December, 1999 and communicated to this House on the 21st December, 1999 and do resolve that the following 20 members of Lok Sabha be nominated to serve on the said Joint Committee, namely:-

1. Shri Mani Shankar Aiyar
2. Shrimati Krishna Bose
3. Shri Dhinakaran
4. Shrimati Sheela Gautam
5. Shri Trilochan Kanungo
6. Shri Brahmanand Mandal
7. Shri Subodh Mohite
8. Shri Rupchand Pal
9. Shri S. S. Palanimanickam
10. Shri Shrinivas Dadasaheb Patil
11. Shri Bolla Bulli Ramaiaha
12. Shri Ram Sajivan
13. Shri S. Jaipal Reddy
14. Shri Rajiv Pratap Rudy
15. Shri Shyama Charan Shukla
16. Shri Shivraj Singh
17. Shri Kirit Somaiya
18. Shri Kharabela Swain
19. Shri Ravi Prakash Verma
20. Shri Murasoli Maran”

(Vide para 5 of the Report)

PRESS COMMUNIQUE

The Patents (Second Amendment) Bill 1999, introduced in the Rajya Sabha on the 20th December, 1999 has been referred to a Joint Committee of the Houses of Parliament with Shri T.N. Chaturvedi, Member Rajya Sabha, as its Chairman. There are 30 members in the Committee. 10 from Rajya Sabha and 20 from Lok Sabha.

The Patents Act, 1970 was amended in March, 1999 to meet India's obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which forms part of the Agreement establishing the World Trade Organisation (WTO). Development of technological capability in India, coupled with the need for integrating the intellectual property system with international practices and intellectual property regimes, warrant modification of the Act into a modern, harmonised and user-friendly legislation, to adequately protect national and public interests, while simultaneously meeting India's international obligations under the TRIPS Agreement. The Bill inter alia, seeks to simplify the patent granting procedure and harmonise it with international norms and practices.

Some of the salient features of the Bill are as under:-

- (a) to define the term "invention" in consonance with international practices and consistent with TRIPS Agreement;
- (b) to modify section 3 of the present Act to include exclusions permitted by TRIPS Agreement and also subject matters like discovery of any living or non-living substances occurring in nature in the list of exclusions which in general do not constitute patentable invention;
- (c) to align rights of patentee as per Article 28 of the TRIPS Agreement;
- (d) to add provision for reversal of burden of proof in case of infringement suit on process patent in accordance with Article 34 of the TRIPS Agreement;
- (e) to provide a uniform term of patent protection of twenty years for all categories of invention as per Article 33 of the TRIPS Agreement;
- (f) to align the provisions relating to compulsory licensing and to omit provisions relating to licensing of rights;
- (g) to provide provisions relating to parallel import of patented products;
- (h) to make a provision for enabling persons other than patent holder to obtain marketing approval from the appropriate regulatory authorities within three years before the expiration of the term of the patent;
- (i) to incorporate measures for protection of biodiversity and traditional knowledge;
- (j) to provide an Appellate Board for speedy disposal of appeals and rectification of register of patent which at present lie before High Court;
- (k) to amend the provisions relating to national security;
- (l) to amend various provisions of the Act with a view to simplifying and rationalising the procedures aimed at benefiting users.

The Joint Committee, at its sitting held on the 27th January, 2000. Decided to invite memoranda on the provision of the Bill from organisations, institutions and individuals

interested in the subject-matter of the Bill by the 15th February, 2000 and to hear oral evidence on the Bill. The organisations, institutions and individuals interested in the subject-matter of the Bill may send copies of their memoranda, indicating whether they would also be interested in giving oral evidence before the Committee, to Shri Surinder Kumar Watts, Deputy Secretary, Rajya Sabha Secretariat, Room No. 007, Ground Floor, Parliament House Annexe, New Delhi. The Bill was published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 20th December, 1999. Its copies can also be had on a request made in writing to the above-mentioned officer.

NEW DELHI; *January 28, 2000.*

(Vide para 5 of the Report)

PRESS COMMUNIQUE

The Joint Committee of the Houses of Parliament on the Patents (Second Amendment) Bill, 1999 had invited memoranda containing views on the provisions of the Bill from institutions, organisations and individuals, interested in the subject matter of the Bill, upto 15th February, 2000. It has now been decided that the institutions, organisations and individuals, who have not been in a position to submit their views by the said date for Committee's consideration, may now submit the same by the 29th February, 2000. The views may be sent to Shri Suriender Kumar Watts, Deputy Secretary, Rajya Sabha Secretariat, Room No. 007, Parliament House Annexe, New Delhi. Copy of the Bill, if need be, can be obtained on request from the above officer.

New Delhi:
February 7, 2000

(vide para 6 of the Report)

LIST OF ORGANISATIONS/INDIVIDUALS FROM WHOM MEMORANDA WERE RECEIVED

1. Dr. Vandana Shiva, Director,
Research Foundation,
A-60, Hauz Khas,
New Delhi-110016
2. Dr. Suman Sahai,
President Gene Campaign,
J-235/A, Sainik Farm,
New Delhi-62
3. Shri B. K. Keayla, Managing Trustee,
Centre for Study of Global Trade System and Development,
A-388, Sarita Vihar,
New Delhi-110044.
4. Shri N. H. Israni, President,
Indian Drug Manufacturers' Association,
102-B, Poonam Chambers,
'A', Wing, Dr. A. B. Road, Worli,
Mumbai-400018
5. Shri N. B. Zaveri, Advocate,
Sunflower, 2nd RD Rajawadi, Ghatkopar (E),
Bombay-400077.
6. Swadeshi Jagaran Manch,
4 Vatrallyam G.V. Scheme Road 1,
Mulund (E), Mumbai-400081.
7. Shri Mahesh D. Bakhal,
F/14, Shri Kumar CHS Ltd., Opp. Post &
Telegraph Quarters, Nehru Road, Santacruz (E),
Mumbai-400055.
8. Shri Homi R. Khusro Khan, President,
Organisation of Pharmaceutical Producers,
Of India Cook's Building, 324 Dr. Dadabhy,
Naraji Road, for, Mumbai-400001.
9. Ms. Krishna Sarma. Partner.
Corporate law Group. C-462,

Defence Colony.
New Delhi-II 0024.

10. Shri Manoj Pillai. CIE'
110 A/3. Krishna Nagar.
Safdarjung Enclave,
New Delhi-29.
11. Shri Basudeo Prajapati.
12. Shri AX. Mukhopadhyaya, Chairman,
Indian Defence Foundation G-1307,
Chittaranjan Park,
New Delhi-I 10019
13. Dr. Narpat S. Shekhawat, Co-ordinator.
UGC-Special Assistance Programme (SAP),
Biotechnology Unit Department of Botany,
Jai Narain Vyas University,
Jodhpur-342001.
14. Shri Kirit Somaiya, M.P (lok Sabha)
32, South Avenue, New Delhi.
15. Shri Sandeep Kumar
Bus Station Road, Gouri Bazzar,
Devariya, Uttar Pradesh-274202.
16. Shri Sanjai Kumar Jaiswal,
S/o Shri Dharm Chand Gupta Moh. Shah,
Kuti (Hamuman Pur) P.O. Mughalsarai,
Distt. Chandauli, U.P.
17. Dr. N.S. Gopalakrishnan. Reader
School of legal Studies. Cochin
University of Science & Technology,
Cochin- 682022.
18. 169 H, Pocket IV, Phase-I, Mayur Vihar
Delhi.
19. Dr. S. Vedaraman
C/508, Manju Mahal, 35, Pali Hill (Smt.
Nargis Dutt Road) Bandra (West)
Mumbai - 400050.
20. Shri Arun Ghosh
78, Munirka Enclave,

New Delhi – 67.

21. Dr. Rajeev Dhavan,
Public Interest Legal Support and Research
Centre (PILSARC)
A-131, New Friends Colony,
New Delhi – 110065.
22. Shri Dilip A. Mehta, President,
All India Organisation of Chemists & Druggists
C/o. MSCDA
110/111, Dadar Manish Market, Ground
floor, Senapati Bapat Marg, Dadar (W.R.),
Mumbai-400 028.
23. Shri Bimal K. Raizada, Sr. Vice President, Ranbaxy Lab Ltd.
Sr. Vice President,
Ranbaxy Lab Ltd.
24. Dr. Mrs. Nilima M. Chandiramani
Department of Law, University of Bombay
B-IO MIRA, 21⁵¹ Chembur,
Bombay - 400071.
25. IMA Pvt. Ltd.
B 112, Sarvodaya Enclave,
New Delhi-I 10017.
26. Shri Surendra J. Patel
27. Shri Nitya Nand, Ex Director,
CDRI Lumbini
B-62, Nirala Nagar, Lucknow-266020.
28. Society for Environment and Development,
329, Jodhpur Park, Kolkata - 700068.
29. Drug Action Forum, West Bengal
10 A, Parsibagan Lane, Kolkata - 700009.
30. Ranbaxy
19, Nehru Place, New Delhi - 19.
31. Piramal Enterprises Ltd.
58, Ring Road, Lajpat Nagar-III,
New Delhi-24.
32. ASSOCHAM
II. Community Centre. Zamrudpur,
New Delhi-48.
33. Subramanian. Natraj and Associate, Delhi
E-556, G.K.-IL, New Delhi-48.

34. Kumaran and Sagar Associate, Delhi.
35. Dr. Amarjyoti Basu, Kolkata
I B. Old Post Office Street, G.F. R.No.6,
Calcutta - 700001.
36. Indian Chemical
Manufacturers Association, Eastern Region,
Calcutta.
37. Dr. A.D. Damodaran, Thiruvananthapuram
Sudharma, 91, Mangalan Lane
Sasthamangalan,
Thimvanathapuram - 695010.
38. Shri L.S. Davar and Co., Kolkata
17, Carmac Street, Calcutta-7000 17.
39. Ms. Prathiba M. Singh, Advocate,
F-12. Jangpura Extension, New Delhi.
40. Dr. Jayati Ghosh,
1314, Poorvanchal JNU,
New Delhi110067.
41. Institute of Intellectual Property
Development, New Delhi.
42. Department of Indian System of Medicine
and Homoeopathy, Ministry of Health and
Family Welfare.

(vide para 9 of the Report)

LIST OF INDIVIDUALS/ORGANISATIONS WHO TENDERED ORAL EVIDENCE/MADE SUBMISSIONS BEFORE THE JOINT COMMITTEE

Sr. No.	Name of Witnesses	Date of hearing
1.	Shri C. T. Benjamin, Secretary, Department of Industrial Development, Ministry of Commerce and Industry.	07.02.2000
2.	Shri P.P. Prabhu, Secretary, Department of Commerce, Ministry of Commerce and Industry.	07.02.2000
3.	Dr. Raghbir Singh, Secretary, Legislative Department Ministry of Law, Justice & Company Affairs.	22.02.2001
4.	Shri B.K. Keayla, Managing Trustee, Centre for Study of Global Trade System & Development	21.03.2000
5.	Shri B.K. Keayla, Managing Trustee, Centre for Study of Global Trade System & Development.	21.03.2000
6.	Shri Arun Ghosh, Former Member of Planning Commission	12.04.2000
7.	Centre for Law & Economics, New Delhi (i) Shri Manoj Pillai (ii) Ms. Manisha Singh	12.04.2000
8.	Corporate Law Group, New Delhi (i) Ms. Krishna Sarma (ii) Shri Atul Kumar	12.04.2000
9.	Ministry of Chemicals & Fertilizers (Department of Chemicals & Petrochemicals) Shri Arvind Verma, Secretary	12.04.2000
10.	Ministry of Science and Technology (Department of Scientific & Industrial Research) Dr. R. A. Mashelkar, Secretary and DG, CSIR	12.04.2000
11.	Ministry of Environment and Forests Shri V. Anand, Secretary	04.05.2000
12.	Dr. S. Vedardaman, Advocate, Former, Comptroller General of Patents, Design and Trade Mark.	

Sr. No.	Name of Witnesses	Date of hearing
13.	Ramu Vedaraman, Advocate Mrs. Anuradha Ramu, Advocate	
14.	Shri Narendra B. Zaveri, Advocate	23.05.2000
15.	Shri Mahesh D. Bakhai	
16.	Swadeshi Jagaran Manch (i) Shri Ramesh Sheth (ii) Shri B. B. Singh (iii) Shri Ravindra Mahajan Dr. (Mrs.) Neelima M. Chandiramani	
17.	Intellectual Property Law Practitioners' Association (i) Shri T. N. Daroowala, President (ii) Shri Vijay F. Shah, Hon. Secretary (iii) Shri Manoj Menda, Joint Secretary	24.05.2000
18.	Indian Drug Manufacturer's Association (i) Shri N. H. Israni, President (ii) Shri S. G. Kare, Vice President (iii) Shri Y. R. Majumdar, Vice President (iv) Shri D. S. Patel, Ex. President (v) Shri G. G. Nair, Ex. President (vi) Shri K. D. Vara, Ex. Official Member (vii) Shri I. A. Alva, Secretary	24.05.2000
19.	All India Organisation of Chemist & Druggists (i) Shri Dilip A. Mehta, President (ii) Shri Vishnu Kamat, Secretary (iii) Shri Kirti Anan, Committee Member	24.05.2000
20.	Organisation of Pharmaceutical Producers of India (i) Mr. Homi R. Khusrookhan (ii) Dr. Ajit V. Dangi (iii) Mr. D. Bhadury (iv) Dr. K. K. Maheshwari (v) Mr. Tapan Ray (vi) Mr. A. C. Rekhi (vii) Mr. B. K. Raizada (viii) Mr. S. Ramkrishna	24.05.2000 24.05.2000
21.	Ministry of Health & Family Welfare (Department of	02.06.2000

Health)

Shri J. A. Chowdhury, Secretary

Sr. No.	Name of Witnesses	Date of hearing
22.	Dr. Vandana Shiva, Director, Research Foundation	02.06.2000
23.	India Defence Foundation	02.06.2000
	(i) Air Marshal (Retd) A. K. Mukhopadhyaya, (ii) Group Captain (Retd) Vimal Kumar Jain	
24.	Confederatin of Indian Industry	
	(i) Shri Harinder Sikka, President, Nicholas Piramal India Ltd. (ii) Shri Mohit Malhotra, Senior Manager, Business Solutions, Ranbaxy, Ltd. (iii) Dr. H. Subramanian, Patent and Trademark Attorney (iv) Shri S. Sen, Deputy Director General, CII (v) Shri N. B. Mathur, Adviser, CII (vi) Ms. Rachna Singh, Deputy Director, CII	02.06.2000
25.	Shri M. K. Chakraborty, of L. S. Davar & Co., Patents and Trademark Attorneys, Calcutta	16.06.2000
26.	Shri S. Chakraborty, of D. P. Ahuja & Co., Patents and Trademark Attorneys, Calcutta	16.06.2000
27.	Shri A. K. Ghosh, of Centre for Environment & Development, Calcutta.	16.06.2000
28.	Shri M. C. Sarkar, Ex. Joint Controller of Patents & Designs	16.06.2000
29.	Dr. Amarjyoti Basu, Patents Agent and Trademark Attorney, Calcutta.	17.06.2000
30.	Shri S. Majumdar of S. Majumdar & Co., Patents and Trademark Attorney, Calcutta.	17.06.2000
31.	Dr. S. Mukharjee, Joint Secretary, Drug Action Forum, Calcutta	17.06.2000
32.	Indian Chemicals Manufacturers Association, Kolkata	
	i) Shri Prabir Roy ii) Shri D. Banerjee	17.06.2000
33.	Dr. G. Sreekandan Nair, Director, TBGRI, Thiruvananthapuram	20.06.2000

34.	Citizen's Commission for National Issues	
	i) Dr. Y. P. Anand, Joint Convenor	20.06.2000
	ii) Shri P. K. Sidharatha, Secretary	
Sr. No.	Name of Witnesses	Date of hearing
35.	International Market Assessment (I) Pvt. Ltd, New Delhi	
	i) Shri Pranav Kumar	20.06.2000
	ii) Shri Adit Jain	
	iii) Shri Vivek Dev Roy	
36.	Shri Pravin Anand, Patents and Trade Marks Attorney, New Delhi	20.06.2000
37.	Shri Dinesh Abrol, Scientist, New Delhi	20.06.2000
38.	Dr. Suman Sahai, Director, Gene Campaign, New Delhi	20.06.2000
39.	Ministry of Health and Family Welfare Department of Indian Systems of Medicine & Homoeopathy	
	(i) Mrs. Shailaja Chandra, Secretary	03.07.2000
	(ii) Shri L. Prasad, Joint Secretary	
	(iii) Dr. S. K. Sharma, Adviser (Ayurveda)	
40.	Dr. A. D. Damodaran, Former Director, CSIR	03.07.2000
41.	Dr. Nitya Nand, Former Director, CDRI	03.07.2000
42.	Shri D. C. Gabriel, Patents & Trade Mark Attorney	03.07.2000
43.	Dr. H. Subramaniam, Patents & Trade Mark Attorney	03.07.2000
44.	Mrs. Prathibha M. Singh, Advocate	03.07.2000
45.	Dr. Jayati Ghosh	04.09.2001
46.	Institute of Intellectual Property Development, New Delhi	
	i) Shri B. K. Raizada, Member, Governing Council	15.09.2000
	ii) Dr. Aditya Trivedi, Secretary	
	iii) Shri Vivek Pandi, Assistant Secretary	
	iv) Shri Ritish Threhan, Member	
47.	Public Interest, Legal Support and Research Centre, New Delhi	
	i) Dr. Rajeev Dhavan, Senior Advocate	15.09.2000
	ii) Shri Anil Srivastav, Advocate	
	iii) Shri Amit Gupta, Researcher	

- iv) Shri Gautam Narayan, Researcher
- v) Ms. Jyoti Dutt, Researcher
- vi) Ms. Saloni Gupta, Researcher

Sr. No.	Name of Witnesses	Date of hearing
48.	Shri Philip Cullet	05.09.2001
49.	Ministry of Health and Family Welfare (Department of Health) Shri J. V. R. Prasad Rao, Special Secretary	16.10.2001
50.	Ministry of Science and Technology (Department of Biotechnology) Dr. (Mrs.) Manju Sharma, Secretary Ministry of Commerce and Industry	16.10.2001
51.	Department of Industrial Policy and Promotion Shri V. Govindarajan, Secretary	16.10.2001

(vide para 12 of the Report)

LIST OF GROUP OF THE JOINT COMMITTEE ON PATENTS (SECOND AMENDMENT) BILL, 1999

1. Shri Kirit Somaiya – *Convenor*

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Dr. Biplab Dasgupta
5. Shri J. Chitharanjan
6. Shri Fali S. Nariman

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Shri Subodh Mohite
9. Shri Rupchand Pal
10. Shri S. Jaipal Reddy
11. Shri Shyama Charan Shukla
12. Shri Kharabela Swain
13. Shri Ravi Prakash Verma
14. Shri Trilochan Kanungo

MINUTES

I
MEETINGS OF THE JOINT COMMITTEE
I
FIRST MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 3.00 P.M. on Thursday, the 27th January, 2000 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. M. N. Das
3. Dr. Biplab Dasgupta
4. Shri C. P. Thirunavukkarasu
5. Shri J. Chitharanjan
6. Shri K. Kalavenkata Rao
7. Shri Satishchandra Sitaram Pradhan
8. Shri Jayant Kumar Malhoutra

LOK SABHA

9. Shri Manishankar Aiyar
10. Smt. Krishna Bose
11. Smt. Sheela Gautam
12. Shri Trilochan Kanungo
13. Shri Brahmanand Mandal
14. Shri Subodh Mohita
15. Shri Rupchand Pal
16. Shri S. S. Palanimanickam
17. Shri Shriniwas Dadasaheb Patil
18. Shri Bolla Bulli Ramaiah
19. Shri S. Jaipal Reddy
20. Shri Rajiv Pratap Rudi
21. Shri Shyama Charan Shukla
22. Shri Shivraj Singh Chauhan
23. Shri Kirit Somaiya
24. Shri Kharabela Swain
25. Shri Ravi Prakash Verma
26. Shri Murasoli Maran

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary

Shri M. K. Khan, Under Secretary
Smt. Janak Dawar, Committee Officer

2. The Chairman welcomed Members of the Joint Committee on Patents (Second Amendment) Bill, 1999 to first meeting of the Committee and apprised them of the task before the Committee. He sought cooperation of Members to accomplish the Committee's task.

3. The Committee then took up for discussion its future course of action for examination of the Bill. The Chairman informed Members that at his behest, the Secretariat had already requested some eminent persons to send their views on the Bill. He requested Members to suggest names of eminent persons/organizations, institutions etc. who could be requested to furnish their memoranda on the subject-matter and also be invited before the Committee to give their views. He also requested them to suggest the literature, if any, on the subject which they would like to be supplied to them by the Ministry. Members suggested some names and authorized the Chairman to decide the organizations, institutions and individuals for the above purpose.

4. The Committee decided to issue a Press Release inviting memoranda on the Bill from various organizations, institutions and individuals interested in the subject matter of the Bill, advising them to send the same to the Rajya Sabha Secretariat by the 15th February, 2000, also indicating whether they would be interested in giving oral evidence before the Committee.

5. Some Members pointed out that the time given to the Joint Committee for submission of its report was very short. It was, however, decided to discuss the matter in the next meeting of the Committee.

6. The Committee decided to hold its next meeting on the 7th February, 2000 to hear the views of the Secretaries, (I) Department of Industrial Development and (II) Department of Commerce, on the subject.

A summary of the proceedings of the meeting was kept.

7. The Committee adjourned at 4.05 P.M.

II

SECOND MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 A.M. on Monday, the 7th February, 2000 in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Dr. Biplab Dasgupta
4. Shri C. P. Thirunavukkarasu
5. Shri J. Chitharanjan
6. Shri Satishchandra Sitaram Pradhan
7. Shri Jayant Kumar Malhoutra

LOK SABHA

8. Shri Manishankar Aiyar
9. Smt. Krishna Bose
10. Shri Trilochan Kanungo
11. Shri Brahmanand Mandal
12. Shri Subodh Mohita
13. Shri Rupchand Pal
14. Shri Rajiv Pratap Rudi
15. Shri Shyama Charan Shukla
16. Shri Kirit Somaiya
17. Shri Ravi Prakash Verma

WITNESSES

- (I) Shri C. T. Benjamin, Secretary, Department of Industrial Development, Ministry of Commerce and Industry.
- (II) Shri P. P. Prabhu, Secretary, Department of Commerce, Ministry of Commerce and Industry.
- (III) Shri A. E. Ahmed, Joint Secretary, Department of Industrial Development, Ministry of Commerce and Industry.

Representatives of Ministry of Commerce and Industry

- i. **Department of Industrial Development**
Shri Sohan Lal, Director
Dr. S. K. Pal, Assistant Controller of Patents and Designs,
- ii. **Ministry of Law, Justice and Company Affairs, Legislative Department**

Shri N. K. Nampoothiry, Deputy Legislative Counsel

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Smt. Janak Dawar, Committee Officer

The Chairman informed Members that Secretaries, Departments of (i) Industrial Development, and (ii) Commerce have been invited to present their views on the Patents (Second Amendment) Bill, 1999.

2. The Committee heard the views of the above witnesses. Members raised some queries which were replied to by the witnesses.

3. The Chairman informed Members that the response to the Press Release issued by the Secretariat inviting views of organizations, institutions and individuals on the Bill have been insufficient due to its inadequate coverage through the media. The Committee decided to extend the date for receipt of memoranda on the Bill upto 29th February, 2000 and issue a fresh Press Release for the purpose.

4. The Chairman also informed the Members that requests from different sources for giving oral evidence on the Bill were being received in the Secretariat. The Committee decided that by the time the schedule for their hearing was finalized, they may be advised to send memoranda containing their views on the subject in the first instance.

5. The Committee, then, reviewed the position regarding the memoranda and the requests for oral evidence on the Bill received from various organizations, institutions and individuals. Members were of the view that many more memoranda and requests for oral evidence were expected during the course of the following few days. The Committee would, thereafter, undertake exhaustive examination of the Bill and hear oral evidence.

6. The time given to the Committee for submission of its report was very short. The Committee, therefore, decided to seek extension of time for submission of its report to the Rajya Sabha upto last day of first week of the Hundred Ninetieth Session of the Rajya Sabha. The Committee authorized the Chairman, and in his absence (two members) to move necessary motion in this regard in the House. Dr. L. M. S. Singhvi and Shri Jayant Kumar Malhoutra in its ensuing Session.

7. The Committee decided to hear the views of Secretary, Legislative Department, Ministry of Law, Justice and Company Affairs in its next meeting on 22nd February, 2000.

8. The Committee adjourned at 1.35 P.M.

III

THIRD MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 A.M. on Tuesday, the 22nd February, 2000 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh A. Keswani
3. Dr. M. N. Das
4. Dr. Biplab Dasgupta
5. Shri J. Chitharanjan
6. Shri Satishchandra Sitaram Pradhan

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Smt. Krishna Bose
9. Shri Brahmanand Mandal
10. Shri Subodh Mohita
11. Shri Rupchand Pal
12. Shri Shriniwas Patil
13. Shri Bolla Bulli Ramaiah
14. Shri Ram Sajivan
15. Shri S. Jaipal Reddy
16. Shri Rajiv Pratap Rudi
17. Shri Shyama Charan Shukla
18. Shri Kirit Somaiya
19. Shri Ravi Prakash Verma

WITNESSES

- I. (i) Dr. Raghbir Singh, Secretary, Legislative Department, Ministry of Law, Justice & Company Affairs
(ii) Shri N. K. Nampoothiry, Deputy Legislative Counsel, Ministry of Law, Justice and Company Affairs.
- II. Shri B. K. Keayla, Managing Trustee, Centre for Study of Global Trade System & Development.
- III. **Representatives of Ministry of Commerce and Industry, (Department of Industrial Development)**

Shri Sohan Lal, Director
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Smt. Gayatri Kanth, Committee Officer

The Chairman informed Members that he had received letter from some individuals/organizations, etc. containing their views on the Bill and directed that Secretariat may acknowledge the receipt of the memoranda so received.

2. The Committee, then, heard the views of the above-mentioned witnesses on the provision of the Bill. Members raised some queries which were replied to by the witnesses.

The hearing of Shri B. K. Keayla remained inconclusive. The Commtee, therefore, decided to hear his views again in its next meeting.

3. Since the Committee had already decided to seek extension of time for submission of its reports to the Rajya Sabha upto last day of first week of the Hundred Ninetieth Session of the Rajya Sabha, it authorized Dr. M. N. Das and Shri Satishchandra Sitaram Pradhan, besides the others Members already authorized, to move the necessary motion in the ensuing Session of the Rajya Sabha.

4. The Committee adjourned at 1.40 P.M.

IV

FOURTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 A.M. on Tuesday, the 21st March, 2000 in Committee Room '139', First Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh A. Keswani
3. Shri C. P. Thirunavukkarasu
4. Shri J. Chitharanjan

LOK SABHA

5. Shri Mani Shankar Aiyar
6. Smt. Krishna Bose
7. Shri T. T. V. Dhinakaran
8. Smt. Sheela Gautam
9. Shri Trilochan Kanungo
10. Shri Rupchand Pal
11. Shri Bolla Bulli Ramaiah
12. Shri Ram Sajivan
13. Shri S. Jaipal Reddy
14. Shri Rajiv Pratap Rudi
15. Shri Shivraj Singh Chauhan
16. Shri Kirit Somaiya
17. Shri Kharabela Swain
18. Shri Ravi Prakash Verma

WITNESSES

Shri B. K. Keayla, Managing Trustee, Centre for Study of Global Trade System & Development.

Representatives of Ministries

- I. **Ministry of Commerce and Industry, (Department of Industrial Development)**

Shri Sohan Lal, Director
Shri D. P. S. Parmar, Assistant Controller of Patents and Desgins

- II. **Ministry of Law, Justice and Company Affairs, (Legislative Department)**

Shri N. K. Nampoothiry

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Smt. Gayatri Kanth, Committee Officer

The Chairman informed Members that Centre for Study of Global Trade System & Development has been invited to conclude their presentation on the Patent (Second Amendment) Bill, 1999.

2. The Committee resumed hearing of the views of the above-mentioned witness on the provisions of the Bill. Members raised some queries which were replied to by the witness.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee decided to meet again on 12th April, 2000.

4. The Committee adjourned at 1.15 P.M.

V

FIFTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 A.M. to 1.30 P.M. and again from 2.35 P.M. on Wednesday, the 12th April, 2000 in Room No. '63', First Floor, Parliament House, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh A. Keswani
3. Dr. M. N. Das
4. Shri C. P. Thirunavukkarasu
5. Shri J. Chitharanjan
6. Shri K. Kalavenkata Rao
7. Shri Satishchandra Sitaram Pradhan

LOK SABHA

8. Shri Mani Shankar Aiyar
9. Smt. Krishna Bose
10. Smt. Sheela Gautam
11. Shri Brahmanand Mandal
12. Shri Subodh Mohite
13. Shri Rupchand Pal
14. Shri Shrinivas Patil
15. Shri Ram Sajivan
16. Shri Rajiv Pratap Rudi
17. Shri Shivraj Singh Chauhan
18. Shri Kirit Somaiya
19. Shri Kharabela Swain
20. Shri Ravi Prakash Verma

WITNESSES

- I. Shri Arun Ghosh, Former Member of Planning Commission

- II. **Centre for Law & Economics, New Delhi**

Shri Manoj Pillai
Ms. Manisha Singh

- III. **Corporate Law Group, New Delhi**

Ms. Krishna Sarma
Shri Atul Kumar

IV. Ministry of Chemicals & Fertilizers, (Department of Chemicals & Petrochemicals)

Shri Arvind Verma, Secretary

Shri Sharad Gupta, Joint Secretary

Ms. Ananya Ray, Director

V. Ministry of Science and Technology, (Department of Scientific & Industrial Research)

Dr. R. A. Mashelkar, Secretary and DG, CSIR

VI. Representatives of Ministries

i) Ministry of Commerce and Industry, (Department of Industrial Development)

Shri Sohan Lal, Director

Shri D. P. S. Parmar, Assistant Controller of Patents and Designs

Dr. S. K. Pal, Assistant Controller of Patents and Designs

ii) Ministry of Law, Justice and Company Affairs, (Legislative Department)

Shri N. K. Nampoothiry, Deputy Legislative Council.

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary

Shri M. K. Khan, Under Secretary

Smt. Gayatri Kanth, Committee Officer

The Chairman informed Members that Shri Arun Ghosh, former Ex-Member, Planning Commission, the Centre for Law & Economic, the Corporate Law Group, Secretaries Department of Chemical and Fertilizers and Department of Scientific and Industrial Research have been invited to appear before the Committee make presentation on the Patents (Second Amendment) Bill, 1999.

2. The Committee heard views of the above-mentioned witnesses on the provisions of the Bill, Members raised some queries which were replied to by the witnesses.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee adjourned at 5.00 P.M.

VI

SIXTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 9.30 A.M. on Thursday, 4th May, 2000 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. Biplab Dasgupta
3. Shri J. Chitharanjan
4. Shri Satishchandra Sitaram Pradhan
5. Shri Fali S. Nariman

LOK SABHA

6. Smt. Sheela Gautam
7. Shri Trilkochan Kanungo
8. Shri Subodh Mohite
9. Shri Rupchand Pal
10. Shri Bolla Bulli Ramaiah
11. Shri Ram Sajivan
12. Shri Shyama Charan Shukla
13. Shri Kirit Somaiya
14. Shri Kharabela Swain
15. Shri Ravi Prakash Verma

WITNESSES

I. Ministry of Environment and Forest

Shri V. Anand, Secretary
Shri R. H. Khwaja, Joint Secretary
Shri G. V. Sarat Babu, Joint Director

II. Representatives of Ministries

i) Ministry of Commerce and Industry, (Department of Industrial Policy and Promotion

Shri Sohan Lal, Director
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Dr. S. K. Pal, Assistant Controller of Patents and Designs

ii) Ministry of Law, Justice and Company Affairs, (Legislative Department)

Shri N. K. Nampoothiry, Additional Legislative Counsel

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Smt. Gayatri Kanth, Committee Officer

The Chairman welcomed two newly appointed Members namely Dr. Bilplab Dasgupta and Shri Fali S. Nariman.

2. The Committee then, heard the views of the above-mentioned witness on various provisions of the Bill. Members raised some queries, which were replied to by the witness. The evidence remained inconclusive.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee then considered its future programme regarding examination of the Patents (Second Amendment) Bill, 1999. Members were unanimous in their view that looking at the importance of the subject-matter of the Bill, and for a proper understanding of the issues required to be taken care of through the proposed enactment, it would be necessary to hear oral evidence from different parts of the country and also to visit some organizations, if necessary, doing work in the field of Patents. The Committee, therefore, decided, to visit Mumbai from 22nd to 24th May, 2000 and authorized the Chairman to approach Hon'ble Chairman, Rajya Sabha, to seek his permission for the Committee's visit. [It also authorized him to work out detailed programme for the visit.

4. The Committee also decided to meet in Delhi on Friday, the 2nd June, 2000, to further consider the Bill.

5. The Committee adjourned at 10.5 A.M.

VII

SEVENTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 10.00 A.M. to 1.00 P.M. and again from 2.30 P.M. to 5.00 P.M. on Tuesday, the 23rd May, 2000 in Cristal Room North, Conference Room, Hotel Taj Mahal, Mumbai.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh A. Keswani
3. Dr. Biplab Dasgupta
4. Shri C. P. Thirunavukkarasu
5. Shri K. Kalavenkata Rao
6. Shri Satishchandra Sitaram Pradhan

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Smt. Sheela Gautam
9. Shri Bolla Bulli Ramaiah
10. Shri Ram Sajivan
11. Shri S. Jaipal Reddy
12. Shri Shyama Charan Shukla
13. Shri Kirit Somaiya
14. Shri Kharabela Swain
15. Shri Ravi Prakash Verma

WITNESSES

- I. Dr. S. Vedardaman, Advocate, Former, Comptroller General of Patents, Designs and Trade Mark.
- II. Ramu Vedaraman, Advocate
- III. Mrs. Anuradha Ramu, Advocate
- IV. Shri Narendra B. Zaveri, Advocate
- V. Shri Mahesh D. Bakhai
- VI. Swadeshi Jagaran Manch
 - i) Shri Ramesh Sheth
 - ii) Shri B. B. Singh
 - iii) Shri Ravindra Mahajan
- VII. Drs. (Mrs.) Neelima M. Chandiramani

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Shri M. R. Verma, Executive Officer

2. The Committee heard the views of the above-mentioned witnesses on various provisions of the Bill. Members raised some queries, which were replied to by the witness. The Joint Committee also decided to visit Calcutta from 15th to 17th June and Chennai from 10th to 12th July, 2000 to hold discussions with various organizations and eminent personalities on various provisions of the Bill and to visit the Patents Registry Offices there. The Committee also decided to hear the views of the Director, tropical Botanical Garden and Research Institute, Thiruvananthapuram, Department of Science, Technology and Environment Government of Kerala, on the Bill, during its visit to Chennai.

A summary of the discussions was kept.

3. The Committee then visited Patents Registry Office at Mumbai and heard the views of staff there.

4. The Committee adjourned at 5.00 P.M.

VIII

EIGHTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met from 9.30 A.M. to 1.15 P.M. and again from 2.30 P.M. to 4.00 P.M. on Wednesday, the 24th May, 2000 in Cristal Room North, Conference Room, Hotel Taj Mahal, Mumbai.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh A. Keswani
3. Dr. Biplab Dasgupta
4. Shri K. Kalavenkata Rao
5. Shri Satish Pradhan

LOK SABHA

6. Shri Mani Shankar Aiyar
7. Smt. Sheela Gautam
8. Shri Subodh Mohite
9. Shri Rupchand Pal
10. Shri Bolla Bulli Ramaiah
11. Shri Ram Sajivan
12. Shri S. Jaipal Reddy
13. Shri Kirit Somaiya
14. Shri Kharabela Swain
15. Shri Ravi Prakash Verma

WITNESSES

I. Intellectual Property Law Practitioners' Association

- i) Shri T. N. Daroowala, President
- ii) Shri Vijay F. Shah, Hon'ble Secretary
- iii) Shri Manoj Menda, Joint Secretary

II. Indian drug Manufacturer's Association

- i) Shri N. H. Israni, President
- ii) Shri S. G. Kare, Vice President
- iii) Shri Y. R. Majumdar, Vice President
- iv) Dr. D. S. Patel, Ex. President
- v) Dr. G. G. Nair, Ex. President
- vi) Shri K. D. Vara, Ex. Official Member
- vii) Shri I. A. Alva, Secretary

III. All India Organisation of Chemist & Druggists

- i) Shri Dilip A. Mehta, President

- ii) Shri Vishnu Kamat, Secretary
- iii) Shri Kirit Anan, Committee Member

IV. Organisation of Pharmaceutical Producers of India

- i) Mr. Homi R. Khusrokhani
- ii) Dr. Ajit V. Dangi
- iii) Mr. D. Bhadury
- iv) Dr. K. K. Maheshwari
- v) Mr. Tapan Ray
- vi) Mr. A. C. Rekhi
- vii) Mr. B. K. Raizada
- viii) Mr. S. Ramkrishna

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Shri M. R. Verma, Executive Officer

2. The Committee then heard the views of the above-mentioned witness on various provisions of the Bill. Members raised some queries, which were replied to by the witness.

A summary of the discussions was kept.

3. The Committee adjourned at 4.00 P.M.

IX

NINTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met from 10.30 A.M. to 1.10 P.M. and again from 2.45 P.M. on Friday, the 2nd June, 2000 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh A. Keswani
3. Dr. Biplab Dasgupta
4. Shri C. P. Thirunavukkarasu
5. Shri J. Chitharanjan
6. Shri Satish Pradhan

LOK SABHA

7. Smt Krishna Bose
8. Smt. Sheela Gautam
9. Shri Brahmanand Mandal
10. Shri Subodh Mohite
11. Shri Rupchand Pal
12. Shri Shriniwas Patil
13. Shri Ram Sajivan
14. Shri S. Jaipal Reddy
15. Shri Kirit Somaiya
16. Shri Kharabela Swain

WITNESSES

I. Ministry of Health & Family Welfare (Department of Health)

Shri J. A. Chowdhury, Secretary
Shri Ashwini Kumar, Drugs Controller General of India
Shri S. Tata, Deputy Secretary
Shri K. S. Nagi, Deputy Director

II. Dr. Vandana Shiva, Director, Research Foundation

III. India Defence Foundation

Air Marshal (Retd.) A. K. Mukhopadhyaya,
Group Captain (Retd.) Vimal Kimar Jain

IV. Confederation of Indian Industry

Shri Harinder Sikka, President, Nicholas Piramal India Ltd.
Shri Mohit Malhotra, Senior Manager, Business Solutions, Ranbaxy, Ltd.

Dr. H. Subramanian, Patent and Trademark Attorney
Shri S. Sen. Deputy Director General, CII
Shri N. B. Mathur, Adviser, CII
Ms. Rachna Singh, Deputy Director, CII

V. Representatives of Ministries

i) Ministry of Commerce and Industry, (Department of Industrial Policy and Promotion)

Shri Sohan Lal, Director
Shri Rajeev Ranjan, Director
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs

ii) Ministry of Law, Justice and Company Affairs, (Legislative Department)

Shri S. D. Singh, Deputy Legislative Counsel.

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary

2. The Committee heard the views of the above-mentioned witnesses on various provisions of the Patents (Second Amendment) Bill, 1999. Members raised some queries, which were replied to by the witnesses.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee then considered its future programme regarding examination of the Patents (Second Amendment) Bill, 1999 and decided to meet again in New Delhi on 20th June, 2000 to hear further oral evidence on the Bill. The Committee also decided to cancel its proposed visit to Chennai from 10th to 12th July, 2000.

4. The Committee adjourned at 5.00 P.M.

X

TENTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met from 10.00 A.M. to 1.30 P.M. and again from 2.30 P.M. to 5.00 P.M. on Friday, the 16th June, 2000 in Mandalin Conference Room, Hotel Taj Bengal, Calcutta.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh A. Keswani
3. Dr. Biplab Dasgupta
4. Shri Satish Pradhan

LOK SABHA

5. Shri Rupchand Pal
6. Shri Shriniwas Patil
7. Shri Bolla Bulli Ramaiah
8. Shri Ram Sajivan
9. Shri Shyama Charan Shukla
10. Shri Kirit Somaiya
11. Shri Kharabela Swain
12. Shri Ravi Prakash Verma

WITNESSES

- I. Shri M. K. Chakraborty, of L. S. Davar & Co., Patent and Trademark Attorneys, Calcutta.
- II. Shri S. Chakraborty, of D. P. Ahuja & Co., Patents and Trademark Attorneys, Calcutta.
- III. Shri A. K. Ghosh, of Centre for Environment & Development, Calcutta.
- IV. Shri M. C. Sarkar, Ex. Joint Controller of Patents & Designs.

V. Representatives of Ministries:

(I) Ministry of Commerce & Industry (Department of Industrial Policy and Promotion)

Shri S. K. Lohani, Deputy Secretary

(II) Ministry of Law, Justice and Company Affairs (Legislative Department)

Dr. S. D. Singh, Deputy Legislative Counsel.

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary

2. The Committee heard the views of the above-mentioned witnesses on various provisions of the Bill. Members raised some queries, which were replied to by the witnesses.

A summary of the discussions was kept.

3. The Committee then visited Patents Registry Office at Calcutta and had an interaction with the officers and staff there.

4. The Committee adjourned at 5.00 P.M.

XI

ELEVENTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met from 10.00 A.M. on Saturday, the 17th June, 2000 in Mandalin Conference Room, Hotel Taj Bengal, Calcutta.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh A. Keswani
3. Dr. Biplab Dasgupta

LOK SABHA

4. Shri Rupchand Pal
5. Shri Shriniwas Patil
6. Shri Bolla Bulli Ramaiah
7. Shri Ram Sajivan
8. Shri Shyama Charan Shukla
9. Shri Kharabela Swain
10. Shri Ravi Prakash Verma

WITNESSES

- I. Dr. Amarjyoti Basu, Patents Agent and Trademark Attorney, Calcutta
- II. Shri S. Majumdar of S. Majumdar & Co., Patents and Trademark Attorney, Calcutta
- III. Dr. S. Mukharjee, Joint Secretary, Drug Action Forum, Calcutta
- IV. Indian Chemicals Manufacturers Associations, Calcutta:
 - i) Shri Prabir Roy
 - ii) Shri D. Banerjee

V. Representatives of Ministries:

(i) Ministry of Commerce and Industry (Department of Industrial Policy and Promotion)

Shri S. K. Lohani, Deputy Secretary

(ii) Ministry of Law, Justice and Company Affairs (Legislative Department)

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary

2. The Committee heard the views of the above-mentioned witnesses on various provisions of the Bill. Members raised some queries which were replied to by the witnesses.

A summary of the discussions was kept.

3. The Committee adjourned at 1.15 P. M.

XII

TWELFTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met from 11.00 A.M. to 1.45 P.M. and again from 2.45 P.M. onward on Tuesday, the 20th June, 2000 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Dr. Biplab Dasgupta
5. Shri C. P. Thirunavukkarasu
6. Shri J. Chitharanjan
7. Shri Satish Pradhan
8. Shri Fali S. Nariman

LOK SABHA

9. Shri Subodh Mohite
10. Shri Rupchand Pal
11. Shri Shriniwas Patil
12. Shri Kirit Somaiya
13. Shri Kharabela Swain
14. Shri Ravi Prakash Verma

WITNESSES

- I. Dr. G. Sreekandan Nair, Director, TBGRI, Thiruvananthapuram

II. Citizen's Commission for National Issues

Dr. Y. P. Anand, Joint Convenor
Shri P. K. Sidharatha, Secretary

III. International Market Assessment (I) Pvt. Ltd, New Delhi

Shri Pranav Kumar
Shri Adit Jain
Shri Vivek Dev Roy

- IV. Shri Pravin Anand, Patents and Trade Marks Attorney, New Delhi

- V. Shri Dinesh Abrol, Scientist, New Delhi

- VI. Dr. Suman Sahai, Director, Gene Campaign, New Delhi

- VII. Representatives of Ministries

i) **Ministry of Commerce and Industry (Department of Industrial Policy and Promotion)**

Shri Sohan Lal, Director

Shri B. P. Misra, Joint Controller of Patents and Designs

Shri H. C. Bakshi, Deputy Controller of Patents and Designs

ii) **Ministry of Law, Justice and Company Affairs (Legislative Department)**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary

Shri M. K. Khan, Under Secretary

Shri D. K. Mishra, Committee Officer

2. The Committee heard the views of the above-mentioned witnesses on various provisions of the Bill. Members raised some queries, which were replied to by the witnesses.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee adjourned at 5.40 P.M.

XIII

THIRTEENTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met from 10.30 A.M. to 1.45 P.M. and again from 2.30 P.M. onward on Monday, the 3rd July, 2000 in Committee Room 'E' Basement, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Dr. M.N. Das
5. Dr. Biplab Dasgupta
6. Shri Satish Pradhan

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Shri Rupchand Pal
9. Shri Ram Sajivan
10. Shri Kirit Somaiya
11. Shri Kharabela Swain

WITNESSES

I. Ministry of Health and Family Welfare Department of Indian Systems of

Medicine & Homoeopathy

Mrs. Shailaja Chandra, Secretary
Shri L. Prasad, Joint Secretary
Dr. S. K. Sharma, Adviser (Ayurveda)

- II. Dr. A. D. Damodaran, former director, CSIR
- III. Dr. Nitya Nand, Former Director, CDRI
- IV. Shri D. C. Gabriel, Patents & Trade Mark Attorney
- V. Mrs. Prathibha M. Singh, Advocate

VI. Representatives of Ministries

i) Ministry of Commerce and Industry (Department of Industrial Policy and Promotion)

Shri Sohan Lal, Director

Shri Rajeev Ranjan, Director
Shri D. P. S. Parmar, Assistant
Shri S. K. Pal, Assistant Controller of Patents and Designs

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer

2. The Committee heard the views of the above-mentioned witnesses on various provisions of the Bill. Members raised some queries, which were replied to by the witnesses.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee adjourned at 5.00 P.M.

XIV

FOURTEENTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met from 11.00 A.M. to 12.20 P.M. on Monday, the 17th July, 2000 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L.M. Singhvi
3. Shri Suresh A. Keswani
4. Dr. Biplab Dasgupta
5. Shri C. P. Thirunavukkarasu
6. Shri J. Chitharanjan
7. Shri K. Kalavenkata Rao
8. Shri Satish Pradhan

LOK SABHA

9. Smt. Krishna Bose
10. Smt Sheela Gautam
11. Shri Trilochan Kanungo
12. Shri Brahmanand Mandai
13. Shri S.S. Palanimanickam
14. Shri Shrinivas Patil
15. Shri Ram Sajivan
16. Shri Rajiv Pratap Rudi
17. Shri Kirit Somaiya

I. REPRESENTATIVES OF MINISTRIES

i) **Ministry of Commerce and Industry (Department of Industrial Policy and Promotion)**

Shri Rajeev Ranjan, Director
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs

ii) **Ministry of Law, Justice and Company Affairs (Legislative Department)**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer

2. The Chairman made a reference to the tragic air crash involving the Alliance Air aircraft early this morning at Patna. The Members expressed shock and sorrow at the loss of human lives in the crash and observed two minutes silence in the memory of the departed souls.

3. The Committee reviewed at length the progress made so far on the Bill and considered the course of action it may adopt for further examination of the Bill and expedite its work. After taking stock of the pending work, it decided to seek further extension of time for presentation of its report upto the last day of the first week of Hundred and Ninety First Session of the Rajya Sabha. The Committee authorized the Chairman or in his absence Shri Suresh A. Keswani and Shri Satish Pradhan to move the motion in the House in this regard.

4. The Committee adjourned at 12.20 P.M.

XV

FIFTEENTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 2.30 P.M. on Thursday, the 24th August, 2000 in Room No. '67' First Floor, Parliament House, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri C. P. Thirunavukkarasu
3. Shri K. Kalavenkata Rao

LOK SABHA

4. Shri Mani Shankar Aiyar
5. Shri Rupchand Pal
6. Shri Shriniwas Patil
7. Shri Bolla Bulli Ramaiah
8. Shri Ram Sajivan
9. Shri Kirit Somaiya
10. Shri Kharabela Swain

REPRESENTATIVES OF MINISTRIES

i) Ministry of Commerce and Industry (Department of Industrial Policy and Promotion)

Shri Rajeev Ranjan, Director
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs

ii) Legislative Department, Ministry of Law, Justice and Company Affairs

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer

2. The Committee condoled the death of Shri R. Kumaramangalam, Union Minister of Power on 22nd August, 2000 and observed two minutes' silence in the memory of the departed soul.

3. The Committee took up for consideration its future programme regarding examination of the Patents (Second- Amendment) Bill, 1999 and decided to hold its next series of meetings on 4th, 15th, 25th and 26th September and 10th, 11th and 12th October, 2000.

4. The Committee adjourned at 4.00 P.M.

XVI

SIXTEENTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 10.30 A.M. on Monday, the 4th September, 2000 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh Keswani
4. Dr. Biplab Dasgupta
5. Shri J. Chitharanjan

LOK SABHA

6. Shri Mani Shankar Aiyar
7. Shri Trilochan Kanungo
8. Shri Brahmanand Mandal
9. Shri Shriniwas Patil
10. Shri Bolla Bulli Ramaiah
11. Shri Ram Sajivan
12. Shri Rajiv Pratap Rudi
13. Shri Shyama Charan Shukla
14. Shri Shivraj Singh Chauhan
15. Shri Kirit Somaiya
16. Shri Kharabela Swain
17. Shri Ravi Prakash Verma

WITNESS

Dr. Jayati Ghosh, J. N. U, Delhi

Representatives of Ministries

i) Department of Industrial Policy and Promotion, Ministry of Commerce and Industry

Shri Rajeev Ranjan, Director

Shri D. P. S. Parmar, Assistant Controller of Patents and Designs

ii) Legislative Department, Ministry of Law, Justice and Company Affairs

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer

2. The Committee heard the views of the above mention witness on various provisions of the Bill. Members raised some queries, which were replied to by the witness.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee adjourned at 12.35 P.M.

XVII

SEVENTEENTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met from 12.00 Noon to 2.00 P.M. and again from 4.00 P.M. on Friday, the 15th September, 2000 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh Keswani
4. Dr. Biplab Dasgupta
5. Shri J. Chitharanjan
6. Shri K. Kalavenkata Rao

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Shri Brahmanand Mandal
9. Shri Rupchand Pal
10. Shri S. Jaipal Reddy
11. Shri Shyama Charan Shukla
12. Shri Shivraj Singh Chauhan
13. Shri Kirit Somaiya
14. Shri Kharabela Swain
15. Shri Ravi Prakash Verma

WITNESSES

I. Institute of Intellectual Property Development, New Delhi

- (i) Shri B. K. Raizada, Member, Governing Council
- (ii) Dr. Aditya Trivedi, Secretary
- (iii) Shri Vivek Pandit, Assistant Secretary
- (iv) Shri Ritish Threhan, Member

II. Public Interest, Legal Support and Research Centre, New Delhi

- (i) Dr. Rajeev Dhavan, Senior Advocate
- (ii) Shri Anil Srivastav, Advocate
- (iii) Shri Amit Gupta, Researcher
- (iv) Shri Gautam Narayan, Researcher
- (v) Ms. Jyoti Dutt, Researcher
- (vi) Ms. Saloni Gupta, Researcher

III. Representatives of Ministries

(i) Department of Industrial Policy and Promotion, Ministry of Commerce and Industry

Shri Rajeev Ranjan, Director
Shri Vinod Kumar, Under Secretary
Shri K. S. Kardam, Examiner of Patents and Designs

(ii) Legislative Department, Ministry of Law, Justice and Company Affairs

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer

2. The Committee heard the views of the above mention witness on various provisions of the Bill. Members raised some queries, which were replied to by the witness.

A verbatim record of the proceedings of the meeting was kept.

3. The Chairman informed Members that Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, would be in a position to furnish clause-by-clause summary of the memoranda received and evidence recorded on various provisions of the Bill, along with views of Government thereon, by 25th September, 2000, for circulation to Members of the Committee. The Chairman requested members to send their notices of amendment to the Bill, if any, by that date.

4. The Committee then took stock of the work accomplished by it so far regarding examination of the Bill. Members were unanimous in their view that the Committee should visit some of the developed and as well as developing Countries, known to have set up adequate infrastructure in their countries, to cope up with the emerging economic scenario under the WTO regime. For this purpose, the Joint Committee decided, subject to Hon'ble Chairman's approval, to visit (i) Argentina, Brazil, Canada and (ii) South Korea, China, Japan. to study the functioning of Patents Offices and to hold discussions with the

concerned officials there. The Committee authorised the Chairman to constitute two groups to undertake the above visits, to finalise the details of the visits and to approach Hon'ble Chairman for his permission for Committee's visits.

5. The Committee, thereafter, decided to cancel its meeting scheduled to be held on 25th September, 2000 and to meet instead on 26th and 27th September, 2000, to further consider the Bill.

6. The Committee adjourned at 5.30 P.M.

XVIII

EIGHTEENTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 3.00 P.M. on Tuesday, the 26th September, 2000 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh Keswani
3. Dr. M. N. Das
4. Dr. Biplab Dasgupta
5. Shri C. P. Thirunavukkarasu
6. Shri J. Chitharanjan
7. Shri Satish Pradhan

LOK SABHA

8. Shri Mani Shankar Aiyar
9. Smt Krishna Bose
10. Smt Sheela Gautam
11. Shri Trilochan Kanungo
12. Shri Subodh Mohite
13. Shri Shyama Charan Shukla
14. Shri Kirit Somaiya
15. Shri Kharabela Swain

WITNESSES

Representatives of Ministires

- i) **Department of Industrial Policy and Promotion, Ministry of Commerce and**

Industry

Shri Rajeev Ranjan, Director
Shri H. D. Thakur, Controller General Patent Designs & Trade Mark
Dr. S. K. Pal, Assistant Controller Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs

- ii) **Legislative Department, Ministry of Law, Justice and Company Affairs**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri D. K. Mishra, Committee Officer

2. The Chairman informed Members that Hon'ble Chairman, Rajya Sabha had granted permission for study visits of the Joint Committee to (i) Argentina, Brazil, Canada; and (ii) South Korea, China and Japan in two groups.
3. The Chairman requested members to give their option as to which group they would like to accompany, so as to enable him to constitute the two study groups and finalise other details of the visits.
4. Some Members expressed the view that besides the countries proposed to be visited by the Joint Committee visit now, it should study the patents system of some more countries also, like Germany. South Africa, Israel, European Union, etc. For this, the feasibility of the Joint Committee stopping over at Brussels, during its impending visit may be explored. After some discussion, it was decided that it will not be appropriate to add any new country.
5. The Members, then, held preliminary discussions to work out modalities for further examination of the Bill. Some Members suggested that the Joint Committee may hear the views of some more eminent personalities on the subject, before taking up clause-by-clause consideration of the Bill. The discussions remained inconclusive.
6. The Committee adjourned at 5.00 P.M.

XIV

NINETEENTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 a.M. on Wednesday, the 27th September, 2000 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh Keswani
3. Dr. M. N. Das
4. Dr. Biplab Dasgupta
5. Shri C. P. Thirunavukkarasu
6. Shri Satish Pradhan

LOK SABHA

7. Shri Trilochan Kanungo
8. Shri Subodh Mohite
9. Shri Ram Sajivan
10. Shri S. Jaipal Reddy
11. Shri Rajiv Pratap Rudi
12. Shri Shyama Charan Shukla
13. Shri Kharabela Swain

WITNESSES

Representatives of Ministries

- i) **Department of Industrial Policy and Promotion, Ministry of Commerce and Industry**

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri H. D. Thakur, Controller General, Patent Designs & Trade Mark
Dr. S. K. Pal, Assistant Controller Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs

- ii) **Legislative Department, Ministry of Law, Justice and Company Affairs**

Shri N. L. Meena, Joint Secretary and Legislative Counsel
Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri D. K. Mishra, Committee Officer

2. The Joint Committee resumed preliminary discussion on various provisions of the Patents (Second Amendment) Bill, 1999. Initially clause 2 and 3 were discussed, the major stress being on Clause 3. The discussion remained inconclusive.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee adjourned at 1.45 P.M.

XX

TWENTIETH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 A.M. on Tuesday, the 10th October, 2000 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri L. M. Singhvi
3. Shri Suresh Keswani
4. Dr. Biplab Dasgupta
5. Shri J. Chitharanjan
6. Shri Fali S. Nariman

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Shri Trilochan Kanungo
9. Shri Rupchand Pal
10. Shri S. S. Palanimanickam
11. Shri S. Jaipal Reddy
12. Shri Shyama Charan Shukla

WITNESSES

REPRESENTATIVES OF MINISTRIES

- i) **Department of Industrial Policy and Promotion, Ministry of Commerce and Industry**

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri H. D. Thakur, Controller General, Patent Designs & Trade Mark
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs

- ii) **Legislative Department, Ministry of Law, Justice and Company Affairs**

Shri N. L. Meena, Joint Secretary and Legislative Counsel
Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer

2. The Joint Committee resumed preliminary discussions on various provisions of the Patents (Second Amendment) Bill, 1999. Discussion on clause 3 was concluded. The discussion remained inconclusive on other clauses.

A verbatim record of the proceedings of the meeting was kept.

3. The Chairman of the Committee informed Members that he was in receipt of two letters from Shri Kirit Somaiya, M.P., and a member of the Joint Select Committee, opposing the proposed study visits of the Committee abroad. He further informed Members that some news-items had also appeared in some dailies, which carry some incorrect facts. The members felt that the episode was not in good taste. The Chairman clarified that the Committee initially had no proposal for a study visit to any foreign country. However, it was only when some witnesses informed the Committee of various positions obtaining in different countries vis-a-vis Patent legislations, their applications, working of patent offices and the methodology adopted by them to safeguard their national interests, that the Committee decided to visit abroad. The Chairman further informed that Hon'ble Chairman, Rajya Sabha had given his unconditional approval to the proposal after considering the merit therein. The Committee reconsidered the whole matter and adhered to its proposal of visiting the six countries, viz, Argentina, Brazil and Canada, and Japan, South Korea and China in two groups.

4. The Committee adjourned at 1.35 P.M.

XXI

TWENTY FIRST MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 A.M. on Wednesday, the 11th October, 2000 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh Keswani
4. Dr. M. N. Das
5. Dr. Biplab Dasgupta
6. Shri J. Chitharanjan
7. Shri Satish Pradhan
8. Shri Fali S. Nariman

LOK SABHA

9. Shri Mani Shankar Aiyar
10. Smt. Sheela Gautam
11. Shri Trilochan Kanungo
12. Shri Subodh Mohite
13. Shri Rupchand Pal
14. Shri Bolla Bulli Ramaiah
15. Shri Ram Sajivan
16. Shri S. Jaipal Reddy
17. Shri Shyama Charan Shukla
18. Shri Kirit Somaiya

WITNESSES

REPRESENTATIVES OF MINISTRIES

- i) **Department of Industrial Policy and Promotion, Ministry of Commerce and Industry**

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri H. D. Thakur, Controller General, Patent Designs & Trade Mark
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs

- ii) **Department of Commerce, Ministry of Commerce and Industry**

Shri Atul Kaushik, Deputy Secretary

iii) Legislative Department, Ministry of Law, Justice and Company Affairs

Shri N. L. Meena, Joint Secretary and Legislative Counsel
Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer

2. The Joint Committee resumed preliminary discussions on various provisions of the Patents (Second Amendment) Bill, 1999. The Committee, in this connection, heard the views of the representatives of Department of Commerce on the latest developments in the field of WTO/TRIPS. Members sought certain clarifications which were replied to by the representatives of Departments of Industrial Policy and Promotion and Commerce. The discussion remained inconclusive.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee decided to seek extension of time for presenting its Report to the two Houses of Parliament upto first day of the last week of the Second Phase of the Budget Session. The Committee authorised the Chairman to nominate two Members of Rajya Sabha to move the Motion for the purpose.

4. The Committee adjourned at 1.40 P.M.

XXII

TWENTY SECOND MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 A.M. on Thursday, the 12th October, 2000 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh Keswani
4. Dr. M. N. Das
5. Dr. Biplab Dasgupta
6. Shri J. Chitharanjan
7. Shri K. Kalavenkata Rao
8. Shri Satish Pradhan
9. Shri Fali S. Nariman

LOK SABHA

10. Shri Mani Shankar Aiyar
11. Smt. Sheela Gautam
12. Shri Trilochan Kanungo
13. Shri Brahmanand Mandal
14. Shri Subodh Mohite
15. Shri Rupchand Pal
16. Shri Bolla Bulli Ramaiah
17. Shri Rajiv Pratap Rudi
18. Shri Kirit Somaiya

WITNESSES

REPRESENTATIVES OF MINISTRIES

- i) **Department of Industrial Policy and Promotion, Ministry of Commerce and Industry**

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri H. D. Thakur, Controller General, Patent Designs & Trade Mark
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs

- ii) **Legislative Department, Ministry of Law, Justice and Company Affairs**

Shri N. L. Meena, Joint Secretary and Legislative Counsel
Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer

2. The Joint Committee resumed preliminary discussions on clause 4 of the Patents (Second Amendment) Bill, 1999. The discussion remained inconclusive.

A verbatim record of the proceedings of the meeting was kept.

3. The Chairman, informed the Committee that Political Clearance for visit of the group visiting Japan, South Korea and China had been received from the Ministry of External Affairs. In respect of the group visiting Argentina, Brazil and Canada, the same was, however, awaited. After some discussion, the Committee decided to postpone its visit abroad to the month of January, 2001.

4. The Committee decided to meet on 7th and 8th November, 2000, to resume clause by clause consideration of the Bill.

5. The Committee adjourned at 1.15 P.M.

XXIII

TWENTY THIRD MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met from 11.00 A.M. to 1.30 P.M. and again met at 2.30 P.M. on Wednesday, the 17th January, 2001 in Room No. '63' First Floor, Parliament House, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh Keswani
3. Dr. Biplab Dasgupta
4. Shri C. P. Thirunavukkarasu
5. Shri K. Kalavenkata Rao

LOK SABHA

6. Shri Mani Shankar Aiyar
7. Shri Trilochan Kanungo
8. Shri Brahmanand Mandal
9. Shri Rupchand Pal
10. Shri Ram Sajivan
11. Shri S. Jaipal Reddy
12. Shri Shyama Charan Shukla
13. Shri Kharabela Swain
14. Shri Ravi Prakash Verma

WITNESSES

REPRESENTATIVES OF MINISTRIES

- i) **Department of Industrial Policy and Promotion, Ministry of Commerce and Industry**

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri H. D. Thakur, Controller General, Patent Designs & Trade Mark
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

- ii) **Legislative Department, Ministry of Law, Justice and Company Affairs**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer
Shri Shashi Bhushan, Executive Officer

2. Chairman informed Members that Hon'ble Chairman had reviewed his decision regarding permission for Joint Committee's proposed visits abroad. The Committee decided to cancel those visits.

3. The Joint Committee resumed preliminary discussions on various provisions of the Patents (Second Amendment) Bill, 1999. The Committee started discussions from clause 4 and concluded discussion upto clause 8 of the Bill. Discussion on clause 9 of the Bill remained inconclusive.

A verbatim record of the proceedings of the meeting was kept.

4. The Committee adjourned at 3.45 P.M.

XXIV

TWENTY FOURTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 A.M. on Thursday, the 18th January, 2001 in Room No. '63' First Floor, Parliament House, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh Keswani
3. Dr. Biplab Dasgupta
4. Shri C. P. Thirunavukkarasu

LOK SABHA

5. Shri Mani Shankar Aiyar
6. Shri Brahmanand Mandal
7. Shri Ram Sajivan
8. Shri S. Jaipal Reddy
9. Shri Shyama Charan Shukla
10. Shri Kharabela Swain
11. Shri Ravi Prakash Verma

WITNESSES

REPRESENTATIVES OF MINISTRIES

- i) **Department of Industrial Policy and Promotion, Ministry of Commerce and Industry**

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri H. D. Thakur, Controller General, Patent Designs & Trade Mark
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

- ii) **Legislative Department, Ministry of Law, Justice and Company Affairs**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer
Shri Shashi Bhushan, Executive Officer

2. The Joint Committee resumed preliminary discussion on various provisions of the Patents (Second Amendment) Bill, 1999. The Committee started discussions from clause 9 and completed upto clause 18 of the Bill, except clause 13 and 14 which the Committee decided to take up later on.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee decided to meet again on 12th and 13th February, 2001 to further consider the Bill.

4. The Committee adjourned at 2.15 P.M.

XXV

TWENTY FIFTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met from 11.00 A.M. to 2.00 P.M. and again from 3.30 P.M. to 5.50 P.M. on Monday, the 12th February, 2001 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh Keswani
3. Dr. M. N. Das
4. Dr. Biplab Dasgupta
5. Shri J. Chitharanjan
6. Shri Satish Pradhan

LOK SABHA

7. Smt. Sheela Gautam
8. Shri Trilochan Kanungo
9. Shri Rupchand Pal
10. Shri Bolla Bulli Ramaiah
11. Shri Ram Sajivan
12. Shri S. Jaipal Reddy
13. Shri Shyama Charan Shukla
14. Shri Kharabela Swain

WITNESSES

REPRESENTATIVES OF MINISTRY OF COMMERCE AND INDUSTRY

(Department of Industrial Policy and Promotion)

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri H. D. Thakur, Controller General, Patent Designs & Trade Mark
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri D. K. Mishra, Committee Officer
Shri Virender Singh Griwan, Research Officer

2. The Joint Committee resumed preliminary discussion on various provisions of the Patents (Second Amendment) Bill, 1999 from clause 19 and completed discussions upto clause 34. However, discussions on the issue of product patent and process patent in clause 22 remained inconclusive.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee decided to cancel its meeting scheduled to be held on Tuesday, 13th February, 2001.

4. The Committee adjourned at 5.50 P.M.

XXVI

TWENTY SIXTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 3.00 P.M. on Wednesday, the 7th March, 2001 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Dr. Biplab Dasgupta
4. Shri C. P. Thirunavukkarasu
5. Shri J. Chitharanjan
6. Shri Fali S. Nariman

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Shri Rupchand Pal
9. Shri Shrinivas Patil
10. Shri Bollar Bulli Ramaiah
11. Shri Kirit Somaiya
12. Shri Kharabela Swain

WITNESSES

REPRESENTATIVES OF MINISTRIES

Ministry of Commerce and Industry

i) Department of Industrial Policy and Promotion

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri H. D. Thakur, Controller General, Patent Designs & Trade Mark
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

ii) Legislative Department, Ministry of Law, Justice and Company Affairs

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary

Shri D. K. Mishra, Committee Officer

2 The Joint Committee resumed preliminary discussion on the provisions of the Patents (Second Amendment) Bill, 1999 and concluded its discussions on clause 35.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee decided to meet on Friday, 16th March, 2001.

4. The Committee adjourned at 5.15 P.M.

XXVII

TWENTY SEVENTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 3.00 P.M. on Tuesday, the 24th April, 2001 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh Keswani
4. Dr. M. N. Das
5. Dr. Biplab Dasgupta
6. Shri J. Chitharanjan

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Smt. Sheela Gautam
9. Shri Brahmanand Mandal
10. Shri Subodh Mohite
11. Shri Rupchand Pal
12. Shri S. S. Palanimanickam
13. Shri Bollar Bulli Ramaiah
14. Shri Ravi Prakash Verma

WITNESSES

REPRESENTATIVES OF MINISTRIES

Ministry of Commerce and Industry

i) Department of Industrial Policy and Promotion

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri H. D. Thakur, Controller General, Patent Designs & Trade Mark
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

ii) Legislative Department, Ministry of Law, Justice and Company Affairs

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer
Shri Virender Singh Griwan, Research Officer

2. The Committee took up for consideration the work accomplished so far by it in examination of the Patents (Second Amendment) Bill, 1999. The Chairman informed Members that the circumstances were such that the Committee would not be able to complete consideration of the Bill and submit its Report to Parliament before the end of the current Session, in view of likelihood of curtailment of current Session. The Committee, therefore, decided to seek extension of time for submission of the Report to Parliament till the first day of the last week of the 193rd Session of the Rajya Sabha, i.e. Monsoon Session. The Committee authorised the Chairman or in his absence, Shri Suresh A. Keswani, Dr. M.N. Das and Shri J. Chitharanjan to move the necessary Motion in the House in this regard.

3. Shri Suresh A. Keswani put forward a proposal suggesting that a Sub-Committee of the Joint Committee should visit some countries in order to ascertain their views on the issues of Patents and interact with them. Since Hon'ble Chairman had withdrawn the permission granted earlier, for visit of the Joint Committee to a few countries, the Chairman of the Joint Committee expressed inability in approaching him again for seeking permission for visiting the countries. Shri Keswani also informed the Committee that various representatives from countries like Chile, Paraguay, Peru, Argentina, Canada, etc, had visited India to participate in the World Bank Network in International Development and had opined that there was a need to sit together and interact on all issues pertaining to Patent Laws. Some of them were willing to participate in such discussion, if invited. Shri Keswani was of the view that it would not be possible to exchange views on the Internet, or in writing or by fax because there were so many issues on which views had to be exchanged. He suggested that the Committee should request Hon 'ble Chairman to re-consider his decision regarding visit of the Committee to

other countries. He even expressed his readiness to take up the issue with Hon,ble Chairman. The proposal, after some discussion, for foreign visit was dropped.

4. Dr. L.M. Singhvi suggested that a common strategy needs to be evolved by the concerned countries, particularly that more powerful within the less powerful group of nations. They need to act together and formulate their stand. The Committee should make an intensive study of the latest developments in at least five or six chosen countries, viz., Brazil, Argentina, Japan, South Korea, Canada and China in areas of common and mutual interest and organise two or three meaningful sessions of interaction, by inviting the representatives of those countries. He further suggested that the Committee, on its own, should request certain societies of those countries for supplying the latest material and get it translated. Shri Keswani added that immediately after the Bush administration took over in USA, they signed NAFTA A, that is going to reverse the whole process of FDI from the developing world to the developed world and the Committee should examine all those aspects. The Chairman was also of the view that the Committee would have to gather a lot of material. For this, the Committee could address the Embassies/High Commissions directly or approach MEA to do the needful. However, the Committee decided to complete consideration of the Bill expeditiously

5. The Chairman brought to the notice of Members a letter received from Shri Sahib Singh Verma, alongwith a complaint made by a person from Jaipur. The complainant wanted to give evidence before the Committee. But since the Committee had already completed the evidence part and by then the complainant had not brought any matter to the notice of the Committee, it was now not possible to entertain his request. Instead, the complaint could be brought to the notice of the concerned authorities.

A summary record of the proceedings of the meeting was kept.

6. The Committee decided to meet on 15th, 16th and 17th May, 2001.

7. The Committee adjourned at 4.30 P.M.

XXVIII

TWENTY EIGHTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met from 11.00 A.M. to 2.00 P.M. and again met at 3.00 P.M. on Tuesday, the 15th May, 2001 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Dr. M. N. Das
4. Shri J. Chitharanjan
5. Shri K. Kalavenkata Rao

LOK SABHA

6. Shri Mani Shankar Aiyar
7. Smt. Sheela Gautam
8. Shri Trilochan Kanungo
9. Shri Subodh Mohite
10. Shri Ram Sajivan
11. Shri Shyama Charan Shukla
12. Shri Kirit Somaiya
13. Shri Kharabela Swain

WITNESSES

REPRESENTATIVES OF MINISTRIES

Ministry of Commerce and Industry

i) Department of Industrial Policy and Promotion

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri Vinod Kumar, Under Secretary
Shri H. D. Thakur, Controller General, Patent Designs & Trade Mark
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

ii) Legislative Department, Ministry of Law, Justice and Company Affairs

Shri K. Biswal, Asstt. Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri Virender Singh Griwan, Research Officer

2. The Joint Committee resumed preliminary discussion on various provisions of the Patents (Second Amendment) Bill, 1999. The discussions started from clause 36 of the Bill and concluded up to clause 47.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee adjourned at 5.50 P.M.

XXIX

TWENTY NINTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met from 11.00 A.M. to 1.30 P.M. and again met at 2.30 P.M. on Wednesday, the 16th May, 2001 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh Keswani
3. Dr. M. N. Das
4. Shri J. Chitharanjan
5. Shri K. Kalavenkata Rao
6. Shri Satish Pradhan

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Shri Trilochan Kanungo
9. Shri Subodh Mohite
10. Shri Ram Sajivan
11. Shri Rajiv Pratap Rudi
12. Shri Shyama Charan Shukla
13. Shri Kharabela Swain

WITNESSES

REPRESENTATIVES OF MINISTRIES

Ministry of Commerce and Industry

i) Department of Industrial Policy and Promotion

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri Vinod Kumar, Under Secretary
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

ii) Legislative Department, Ministry of Law, Justice and Company Affairs

Shri K. Biswal, Asstt. Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri Virender Singh Griwan, Research Officer

2. The Joint Committee resumed preliminary discussion on the provisions of the Patents (Second Amendment) Bill, 1999. The discussions starting from clause 48 of the Bill were concluded.

A verbatim record of the proceedings of the meeting was kept.

3. The Committee adjourned at 4.00 P.M.

XXX

THIRTIETH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 on Thursday, the 17th May, 2001 in Committee Room 'A' Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh Keswani
4. Dr. M. N. Das
5. Shri Satish Pradhan

LOK SABHA

6. Smt. Sheela Gautam
7. Shri Trilochan Kanungo
8. Shri Brahmanand Mandal
9. Shri Rupchand Pal
10. Shri Ram Sajivan
11. Shri Ravi Prakash Verma

WITNESSES

REPRESENTATIVES OF MINISTRIES

Ministry of Commerce and Industry

i) Department of Industrial Policy and Promotion

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

ii) Legislative Department, Ministry of Law, Justice and Company Affairs

Shri K. Biswal, Asstt. Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri Virender Singh Griwan, Research Officer

2. The Joint Committee held general discussion on the Patents (Second Amendment) Bill, 1999 and some related issues, including a paper received from Shri B.K. Keayla of the Centre for Study of Global System and Development, titled "Issues for Patents (Second Amendment) Bill, 1999".

A summary of the proceedings of the meeting was kept.

3. The Joint Committee was informed by the representatives of the Department of Industrial Policy and Promotion that the renovation/upgradation of infrastructure in the Patents Office at Chennai was about to be completed within the next few days. After some discussions, the Committee decided to hold its next series of meetings at Chennai, Ooty and Pondicherry from 26th to 30th June, 2001 and make an on-the-spot assessment of infrastructural innovations made in the Chennai Patents Office. The Joint Committee authorised the Chairman to finalise details of the visit and approach Hon'ble Chairman, Rajya Sabha, to obtain permission for meetings of the Joint Committee at Chennai, Ooty and Pondicherry.

4. The Committee adjourned at 12.30 P.M., to meet at New Delhi on Monday, June 25, 2001.

XXXI

THIRTY FIRST MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 3.30 on Monday, the 30th July, 2001 in Committee Room 'E' Basement, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Dr. M. N. Das
5. Shri C. P. Thirunavukkarasu
6. Shri J. Chitharanjan
7. Shri Satish Pradhan

LOK SABHA

8. Shri Bolla Bulli Ramaiah
9. Shri Rajiv Pratap Rudi
10. Shri Shyama Charan Shukla
11. Shri Kharabela Swain

WITNESSES

REPRESENTATIVES OF MINISTRIES

Ministry of Commerce and Industry

i) Department of Industrial Policy and Promotion

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

ii) Legislative Department, Ministry of Law, Justice and Company Affairs

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer
Shri Virender Singh Griwan, Research Officer

2. The Joint Committee held discussions on the modalities regarding completion of its work. Members were generally of the view that some more time was needed so that fullest justice could be done towards its task, in view of the important developments taking place in the international scenario. The Committee, therefore, decided to seek extension of time for presentation of its Report upto the last day of the second week of the Hundred Ninety Fourth Session of the Rajya Sabha. The Committee authorised the Chairman or in his absence S/Shri J. Chitharanjan and Suresh A. Keswani to move the Motion for the purpose in Rajya Sabha.
3. The Committee, then, took up for consideration its programme for visit to Chennai, Ooty and Pondicherry, originally scheduled from 26th to 29th June, 2001, for which Hon'ble Chairman had accorded permission, but was postponed. It decided to undertake that visit now from 23rd to 26th September, 2001.
4. The Committee decided to cancel its meetings scheduled to be held on 31st July and 2nd and 3rd August, 2001, and to meet again from 3rd to 5th September, 2001.
5. The Committee adjourned at 4.35 P.M.

THIRTY SECOND MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 on Tuesday, the 4th September, 2001 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Dr. Bilpab Dasgupta
5. Shri J. Chitharanjan

LOK SABHA

6. Shri Mani Shankar Aiyar
7. Shri Brahmanand Mandal
8. Shri Rupchand Pal
9. Shri Shyama Charan Shukla
10. Shri Shivraj Singh Chauhan
11. Shri Kharabela Swain
12. Shri Ravi Prakash Verma

WITNESSES

REPRESENTATIVES OF MINISTRIES

- i) **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

- ii) **Legislative Department, Ministry of Law, Justice and Company Affairs**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri D. K. Mishra, Committee Officer
Shri Virender Singh Griwan, Research Officer

2. The Joint Committee held general discussions on the Bill and the modalities regarding completion of examination of the Bill.
3. The Committee, then, took up for consideration its programme for visit to Chennai, Ooty and Pondicherry. After some discussion, the Committee authorised the Chairman to decide the dates and finalise the details of the visit.
4. The Committee adjourned at 1.00 P.M.

XXXIII

THIRTY THIRD MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 3.00 P.M. on Wednesday, the 5th September, 2001 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh A. Keswani
3. Dr. Bilpab Dasgupta
4. Shri J. Chitharanjan
5. Shri K. Kalavenkata Rao

LOK SABHA

6. Shri Mani Shankar Aiyar
7. Smt. Sheela Gautam
8. Shri Trilochan Kanungo
9. Shri Brahmanand Mandal
10. Shri Rupchand Pal
11. Shri Ram Sajivan
12. Shri Shyama Charan Shukla
13. Shri Kirit Somaiya
14. Shri Kharabela Swain

WITNESSES

REPRESENTATIVES OF MINISTRIES

- i) **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

- ii) **Legislative Department, Ministry of Law, Justice and Company Affairs**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri D. K. Mishra, Committee Officer
Shri Virender Singh Griwan, Research Officer

2. The Committee heard the views of Dr. Philip Cullet, environmental lawyer based in Geneva, who presented an analysis of the Patents Bill vis-a-vis the position in other countries, in the context of the TRIPS and other international agreements. Members raised some queries, which were replied to by the witness.

A verbatim record of the proceedings of the meeting was kept.

3. The Chairman directed the Secretariat to circulate a working document on the trend of discussions on the Bill, to facilitate Members to formulate their views on the Bill, for preparation of the Report.

4. The Chairman requested Members to send their suggestion, if any, on various provisions of the Bill by Friday, the 28th September, 2001.

5. The Committee adjourned at 4.40 P.M.

XXXIV

THIRTY FOURTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 12.00 Noon on Thursday, the 6th September, 2001 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri L. M. Singhvi
3. Shri Suresh A. Keswani

LOK SABHA

4. Smt. Sheela Gautam
5. Shri Brahmanand Mandal
6. Shri Subodh Mohite
7. Shri Rupchand Pal
8. Shri Ram Sajivan
9. Shri Shyama Charan Shukla
10. Shri Kharabela Swain
11. Shri Ravi Prakash Verma

WITNESSES

REPRESENTATIVES OF MINISTRIES

- i) **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

- ii) **Legislative Department, Ministry of Law, Justice and Company Affairs**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri D. K. Mishra, Committee Officer
Shri Virender Singh Griwan, Research Officer

2. The Committee held discussions on the Bill, in the context of the impact of the emerging scenario vis-a-vis the pricing in the area of drugs, when the product patent regime comes into force in 2005. The Committee decided to take special care about the protection of the public interest vis-a-vis the interest of the Drug Companies.
3. The Committee decided to meet again on 26th, 27th and 28th September, 2001.
4. The Committee adjourned at 1.30 P.M.

THIRTY FIFTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 A.M. on Wednesday, the 26th September, 2001 in Room No. '63', First Floor, Parliament House, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Shri Suresh A. Keswani
3. Dr. Biplab Dasgupta
4. Shri J. Chitharanjan
5. Shri K. Kalavenkata Rao

LOK SABHA

6. Shri Mani Shankar Aiyar
7. Smt. Sheela Gautam
8. Shri Rupchand Pal
9. Shri Shrinivas Patil
10. Shri S. Jaipal Reddy
11. Shri Shyama Charan Shukla
12. Shri Kirit Somaiya
13. Shri Kharabela Swain

WITNESSES

REPRESENTATIVES OF MINISTRIES

- i) **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**

Shri Rajeev Ranjan, Director
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

- ii) **Legislative Department, Ministry of Law, Justice and Company Affairs**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Virender Singh Griwan, Research Officer

2. The Chairman informed Members that he had received a letter from Shri Mani Shankar Aiyar, co-signed by other Members of the Committee namely S/Shri Suresh A. Keswani, Fali S. Nariman, S. Jaipal Reddy and Shyama Charan Shukla, drawing his attention towards certain issues which, according to them, needed to be gone into before the Committee takes up formal clause-by-clause consideration of the Bill.

3. The Committee, then, held discussion on the modalities for clause-by-clause consideration of the Bill, in the context of issues raised in the said letter. After some discussion, the Committee decided to constitute a group to go into those issues, with the following composition:-

1. Shri Kirit Somaiya - Convenor

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Dr. Biplab Dasgupta
5. Shri J. Chitharanjan
6. Shri Fali S. Nariman

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Shri Subodh Mohite
9. Shri Rupchand Pal
10. Shri S. Jaipal Reddy
11. Shri Shyama Charan Shukla
12. Shri Kharabela Swain
13. Shri Ravi Prakash Verma

4. The Group will submit its findings/recommendations to the Chairman. The Group will meet 27th September, 2001, to decide its programme.

4.1. The Committee, therefore, decided that its meetings scheduled for September 27 and 28, 2001, may be cancelled.

5. The Committee adjourned at 12.20 P.M.

XXXVI

THIRTY SIXTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 4.00 P.M. on Wednesday, the 21st November, 2001 in Room No. '63', First Floor, Parliament House, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

Dr. L. M. Singhvi
Dr. M. N. Das
Shri J. Chitharanjan
Shri Fali S. Niriman

LOK SABHA

Smt. Krishna Bose
Smt. Sheela Gautam
Shri Shrinivas Patil
Shri Bolla Bulli Ramaiah
Shri Ram Sajivan
Shri Shyama Charan Shukla

WITNESSES

REPRESENTATIVES OF MINISTRIES

- i) **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

- ii) **Legislative Department, Ministry of Law, Justice and Company Affairs**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri Virender Singh Griwan, Research Officer

2. The Committee took up for consideration the Background Note prepared by the Secretariat on the clause Nos. 3 (ac), 3(f), 5, 21, 24, 48 (b) and 53 which were left by the Group to be considered by the Committee. Members were generally in agreement over the proposals contained in those clauses. However, the Committee decided to take up formal clause-by-clause consideration of the Bill during its next series of meetings.

3. The Committee decided to seek further extension of time for presentation of its report by the end of the current session. The Committee authorized the Chairman and in his absence Dr. L. M. Singhvi and Dr. M. N. Das to move the necessary motion in the House in this regard.

4. The Committee decided to meet on 27th November and 3rd & 4th December, 2001.

5. The meeting adjourned at 5.10 P.M.

XXXVII

THIRTY SEVENTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 3.00 P.M. on Tuesday, the 27th November, 2001 in Room No. '67', First Floor, Parliament House, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Dr. M. N. Das
4. Shri J. Chitharanjan
5. Shri Fali S. Niriman

LOK SABHA

7. Smt. Krishna Bose
8. Shri Rupchand Pal
9. Shri Shrinivas Patil
10. Shri Bolla Bulli Ramaiah
11. Shri Ram Sajivan
12. Shri Shyama Charan Shukla
13. Shri Kharabela Swain
14. Shri Kirit Somaiya

WITNESSES

REPRESENTATIVES OF MINISTRIES

- i) **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri H. D. Thankur, Controller General, Patents Designs & Trade Marks
Dr. S. K. Pal, Assistant Controller, Patent Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

- ii) **Legislative Department, Ministry of Law, Justice and Company Affairs**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri Virender Singh Griwan, Research Officer

2. The Committee took up formal Clause-by-Clause consideration of the Bill.

Clause 2

The clause was adopted without any change.

Clause 3

- (I) Sub-Clause (ac)
Page 2: line 10, the words “any kind of” were substituted by the word “an industry”.
- (II) Sub-Clause (oa)
Page 2: line 43, the words “in terms of articles 47 and 69 of that Treaty” were omitted.

The clause, as amended, was adopted.

Clause 4

- (I) Sub-clause (a)
Page 3: line 7, the word “law” was substituted by the words “public order”.
- (II) Sub-clause (e)
 - (i) Page 3: line 17, the words “other than micro-organisms” were omitted.
 - (ii) Page 3: line 18, the words “other than micro-organisms but” were inserted after the word “thereof”.
 - (iii) Page 3: line 20, the words “per se” were inserted after the word “program”.
 - (iv) Page 3: after line 28, the following clause was inserted:-
“(p) an invention which, in effect, is traditional knowledge or is an aggregation or duplication of known properties of traditionally known component or components.”

The clause, as amended, was adopted.

Clause 5

The clause was adopted without any change.

Clause 6

- (i) Page 3: lines 35 and 36 were substituted by the following:
“(1A) Every international application under the Patent Co-operation Treaty for a patent, as may be filed designating India, shall be deemed to be an

application under this Act, if a corresponding application has also been filed before the Controller in India.”

The clause, as amended, was adopted.

Clause 7

- (i) Page 3: line 40, the word “or” was inserted before the word “subsequently”.
- (ii) Page 4: line 1, insert the word “for” after the bracket and letter “(b),”
- (iii) Page 4: line 6, the words “as may be prescribed” were inserted after the word “details”.

The clause, as amended, was adopted.

Clause 8

- (i) Page 4: lines 27 and 28 the words “or if a priority is claimed not later than the date of such priority” were omitted.
- (ii) Page 5: line 4, the words “group of invention” was substituted by the words “group of inventions”.

The clause, as amended, was adopted.

Clause 9

sub-clause (b):

- (i) Page 5: line 12, the words “be kept secret” were substituted by the words “not be open to public”.
- (ii) Page 5: line 13, the word “as” was omitted.
- (iii) Page 5: line 37, “sub-section (2)” of Section 11-B of the principal Act, was renumbered as “sub-section (2) (a).”
- (iv) Page 5: line 38, the word “Second” in the bracket was omitted and the figure “1999” was substituted by the figure, “2001”.
- (v) Page 5: after line 41, the following sub-section (2) (b) was added:

“In case of an application filed under sub-section (2) of Section 5, a request for examination shall be made by the applicant or any other interested person within a period of twelve months from 31st day of December, 2004 or within forty eight months from the date of the application, whichever is later.”

- (vi) Page 5: line 44, the words, bracket and figure “or sub-section (2)” were inserted after the words, bracket and figure “sub-section (1)”.

The clause, as amended, was adopted.

Clause 10

- (I) Page 6: line 9, the words, bracket and figure “or sub-section (2)” were inserted after the words, bracket and figure “sub-section (1)”.
- (II) Page 6: line 10, the word, “specification” was inserted after the word “application”.

- (III) Page 6: line 12, the words, “specification and” were inserted before the words “other documents”.
- (IV) Page 6: line 14, the words “specification and” were inserted before the words “other documents”.

The clause, as amended, was adopted.

Clause 11 and 12

The clauses were adopted without any change.

Clause 13

Page 6: For lines 25-26, the following were substituted:

“13. In Section 17 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

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

The clause, as amended, was adopted.

Clause 14

- (I) Page 6: line 31, the words “or other documents related thereto” were inserted after the word “specification”.
- (II) Page 6: line 35, the words, “as the case may be”, were omitted.

The clause, as amended, was adopted.

Clauses 15 and 16

The clauses, were adopted, without any change.

Clause 17

- (I) Page 7: line 1, the word “mention” was substituted by the word “mentions”.
- (II) Page 7: line 5, the words “in any country” were substituted by the words “in India or elsewhere”.

The clause, as amended, was adopted.

Clauses 18 and 19

The clauses were adopted without any change.

New Clause 20

After line 22, the following new clause 20 was inserted:

20. After section 38 of the principal Act, the following section 39 shall be inserted; namely:-

“Prohibition to apply, under certain circumstances, for patents relevant for defence purposes, etc.

39(1). No person shall, except under the authority of a written permission 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 relevant for defence purposes or related to atomic energy 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 direction has 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.”

Consequential changes in Sections 40, 64 and 118 of the principal Act, shall also be made.

New Clause 21

Page 7: after the new clause 20 the following new clause 21 was inserted:

“21. In section 40 of the principal Act, after the words and figures “under section 35”, the words and figures.” Or makes or causes to be made an application for grant of a patent outside India in contravention of section 39 “shall be inserted.”

Clauses 20 and 21

These clauses were re-numbered as clauses 22 and 23, respectively.

The clauses, as re-numbered, were adopted without any change.

Clause 22

The clause was re-numbered as clause 24.

(I) Page 7: lines 35 and 36, the words “after the commencement of the Patents (Second Amendment) Act, 1999” were deleted.

(II) Page 7: line 38, for the word “prohibit” the word “prevent” was substituted.

(III) Page 7: line 39, was inserted after the word “making”.

The clause, as amended, was adopted.

Clause 23

The clause was re-numbered as clause 25.

The clause, as re-numbered, was adopted without any change.

Clause 24

The clause was re-numbered as clause 26.

Page 8: lines 7 to 9 were substituted by the following:

“(1) Subject to the provisions of this Act, the term of every patent granted, after the commencement of the Patents (Amendment) Act, 2001, and the term of every patent which has not expired and has not ceased to have effect, on the date of such commencement, under this Act, shall be twenty years from the date of filing of the application for the patent.”

The clause, as amended, was adopted.

Clause 25

Sub-clause (c)

- (I) Page 8: lines 24-25, the words, “Controller deems it fit to do so” were substituted by the words, “amendment, in the opinion of the Controller, is substantive.”
- (II) Page 8: after line 25, the following sub-clause (d) was inserted:

“(d) in sub-section (6),-

- (i) after the words “amend his specification”, the words “or any document” related thereto” shall be inserted;
- (ii) after the words “acceptance of the complete specification”, the words “alongwith other documents filed by the applicant” shall be inserted.

The clause, as amended, was adopted.

Clause 26

The clause was re-numbered as clause 28.

Page 8: line 26 and 27, were substituted by the following:-

“26. In section 59 of the principal Act,-

- (i) for sub-section (1), the following sub-section shall be substituted,

namely:-

After line 35, the following lines shall be inserted:

'(ii) in sub-section (2),-

- (a) for the words "complete specification, any amendment of the specification", the words "complete specification, alongwith other documents related thereto, any amendment of the specification or any other document related thereto" shall be substituted;
- (b) in clause (a), for the word "specification", the words "specification alongwith other documents related thereto" shall be substituted;
- (c) in clause (b), for the word "specification", the words "specification or any other document related thereto" shall be substituted.

The clause, as amended, was adopted.

Clause 27

The clause was re-numbered as clause 29.

Sub-clause (b)

Page 8: line 39, the words bracket and figure "sub-section (3)" were substituted by the words, bracket and figure "sub-section (2)."

The clause, as amended, was adopted.

Clause 28

The clause was re-numbered as clause 30.

Sub-clause (a)

- (I) Page 9: line 2, the word "mention" was substituted by the word "mentions".
- (II) Page 9: lines 6 and 7, the words "in any country" were substituted by the words "in India or elsewhere".

The clause, as amended, was adopted.

Clause 29

The clause was re-numbered as clause 31.

The clause, as re-numbered, was adopted without any change.

Clause 30

The clause was re-numbered as clause 32.

Page 9: clause 30 was substituted by the following:

'30. In section 68 of the principal Act, for the words "the Controller within six months from the commencement of this Act, or the execution of the document, whichever is later or within such further period", the words "the Controller within six months from the execution of the document or within such further period" shall be substituted.'

The clause, as amended, was adopted.

Clause 31

The clause was re-numbered as clause 33.

Page 9: line 42, the words, brackets and figures "sub-section (1) and (3)" were substituted by the words, brackets and figures "sub-section (1) and (2)".

The clause, as amended, was adopted.

New Clause 34

Page 9: after line 44, the following new clause was inserted:

'34: In section 73 of the principal Act, in sub-section (1), for the the words and figures "section 4 of the Trade and Merchandise Marks Act, 1958", the words and figures "section 3 of the Trade Marks Act, 1999" shall be substituted.'

Clauses 32 to 34

These clauses were re-numbered as clauses 35 to 37, respectively.

The clauses, as re-numbered, were adopted without any change.

Clause 35 to 46

These clauses were omitted.

New Clause 38

Page 10: after line 9, the following new clause 38 was inserted:

"38. For Chapter XVI of the Principal Act, the following Chapter shall be substituted, namely:-

CHAPTER XVI

WORKING OF PATENTS, COMPULSORY LICENCES AND REVOCATION

Definition 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 consideration, 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;
- (b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;
- (c) that the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;
- (d) that patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interests specially in sectors of vital importance for socio-economic and technological development of India;
- (e) that patents granted do not in any way prohibit Central Government in taking measures to protect public health;
- (f) that the patent right is not abused by the patentee or person deriving title or interest on patent from the patentee and the patentee or a person deriving title or interest on patent from the patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology; and
- (g) that patents are granted to make the benefits of the patented invention available at reasonably affordable prices to the public.

Compulsory licences

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 for grant of compulsory license on patent on any of the following grounds, namely:-

- (a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or
- (b) that the patented invention is not available to the public at a reasonably affordable price, or
- (c) that the patented invention is not worked in the territory of India.

(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 worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable 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) 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 worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may order the patentee to grant a licence upon such terms as he may deem fit.

(5) Where the Controller directs the patentee to grant a licence he may as incidental thereto exercise the powers set out in section 88.

(6) In considering the application filed under this section, 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 was granted;

(iv) as to whether the applicant has made efforts to obtain a license from the patentee on reasonable terms and conditions and such efforts have not been successful within a reasonable period as the Controller may deem fit;

Provided that this clause shall not be applicable in case of national emergency or other circumstances of extreme urgency or in case of public non-commercial use or on establishment of a ground of anti-competitive practices adopted by the patentee.

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

(7) for the purposes of this Chapter, the reasonable requirements of the public shall be deemed not to have been satisfied,-

(a) if, by reason of the refusal of the patentee to grant a license or licenses 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 in India or the trade or industry of any person or class of persons trading or manufacturing in India is prejudiced; or

(ii) the demand for the patented article has not been met to an adequate extent or on reasonable terms; or

(iii) a market for export of the patented article manufactured in India is not being supplied or developed; or

(iv) the establishment or development of commercial activities in India is prejudiced; or

(b) if, by reason of conditions imposed by the patentee upon the grant of licenses under the patent or upon the purchase, hire or use of the patented articles 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 patentee imposes a condition upon the grant of licenses under the patent to provide exclusive grant back, prevention to challenges to the validity of patent or coercive package licensing, or

(d) if the patented invention is not being worked in the territory of India on a commercial scale to an adequate extent or is not being so worked to the fullest extent that is reasonably practicable, or

(e) if the working of the patented invention in the territory of India on a commercial scale is being prevented or hindered by the importation from abroad of the patented article 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.

Revocation of patents by the Controller for non-working

85. (1) Where, in respect of a patent, a compulsory license has been granted, the Central Government or any person interested may, after the expiration of two years from the date of the order granting the first compulsory license, apply to the Controller for an order revoking the patent on the ground that the patented invention has not been worked in the territory of India or that 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 reasonably affordable price.

(2) Every application under sub-section (1) shall contain such particulars as may be prescribed, 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 patented invention has not been worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable 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.

Power of Controller to adjourn applications for compulsory licenses, etc., in certain cases

86. (1) Where an application under section 84 or section 85 as the case may be, is made on the grounds that the patented invention has not been worked in the territory of India or on the ground mentioned in clause (d) of sub-section 7 of section 84 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 the territory of 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 the territory of India on a commercial scale and to an adequate extent.

Procedure for dealing with applications under sections 84 and 85

87. (1) Where the Controller is satisfied, upon consideration of an application under section 84, or section 85, 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

88. (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 licence to the applicant, order the existing licence to be amended.

(3) Where two or more patents are held by the same patentee and an applicant for a compulsory license 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 can not efficiently or satisfactorily work the license granted to him under those patents without infringing the other patents held by the patentee and if those patents involve important technical advancement of considerable economic significance in relation to the other patents, 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.

(4) Where the terms and conditions of a licence have been settled by the Controller, the licensee may, at any time after he has worked the invention on a commercial scale for a period of not less than twelve months, make an application to the Controller for the revision of the terms and conditions on the ground that the terms and conditions 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 second time.

General purposes for granting compulsory licences

89. 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 the territory of 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 the territory of India under the protection of a patent are not unfairly prejudiced.

Terms and conditions of compulsory licences

90. (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;

(iv) that the licence granted is a non-exclusive licence;

(v) that the right of the licensee is non-assignable;

(vi) that the licence is for the balance term of the patent unless a shorter term is consistent with public interest;

(vii) that the licence is granted with a predominant purpose of supplying in the Indian market and in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use and in the case, the licence granted to remedy a practice determined after judicial or administrative process to be anti-competitive, licensee shall be permitted to export the patented product".

(2) No licence granted by the Controller shall authorize 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 authorization, 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 authorize 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

91. (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 a licensee thereof, exclusive or otherwise, 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 the territory of 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;

Provided that the licence granted by the Controller shall be non-assignable except with the assignment of the respective patents.

(4) The provisions of sections 87, 88, 89 and 90 shall apply to licences granted under this section as they apply to licences granted under section 84.

Special provisions for compulsory licenses on notifications by Central Government

92. (1) If the Central Government is satisfied in respect of any patent in force in circumstances of national emergency or circumstances of extreme urgency or in case of public non-commercial use, that it is necessary that compulsory licenses should be granted at any time after the sealing thereof to work the invention, 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 license under the patent on such terms and conditions as he thinks fit;

(ii) in settling the terms and conditions of a license granted under this section, the Controller shall endeavor 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 87, 88, 89 and 90 shall apply in relation to the grant of licenses under this section as they apply in relation to the grant of licenses under section 84.

Order for license to operate as a deed between parties concerned

93. Any order for the grant of a license under this Chapter shall operate as if it were a deed granting a license executed by the patentee and all other necessary parties embodying the terms and conditions, if any, settled by the Controller."

Termination of Compulsory License

94. (1) On an application made by the patentee or any other person deriving title or interest in the patent, a compulsory license granted under section 84 may be terminated by the Controller, if and when the circumstances that gave rise to the grant thereof no longer exist and such circumstances are unlikely to recur:

Provided that the holder of the compulsory license shall have the right to object to such termination.

(2) While considering an application under sub-section (1), the Controller shall take into account that the interest of the person who had previously been granted the license is not unduly prejudiced.”

Clause 47

The clause was re-numbered as clause 39.

Page 12: line 12, the words, bracket and figure “sub-section (3),” were substituted by the words, bracket and figure “sub-section (2)”.

The clause, as amended, was adopted.

Clause 48

The clause was re-numbered as clause 40.

(I) Page 12: line 14, sub-clause (a) was substituted by the following:-

(a) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:-

“Provided that in the case of any such use of any patent, the patentee shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the use of the patent”.

(II) Page 12: line17, the words “circumstances of extreme urgency or of national emergency” were substituted by the words “case of national emergency or other circumstances of extreme urgency”.

The clause, as amended, was adopted.

Clause 49

The clause was renumbered as clause 41.

The clause, as re-numbered, was adopted.

Clause 50

Clause 50 was re-numbered as clause 42.

Page 12: lines 33 to 46 were substituted by the following:

“104-A (1) In any suit for infringement of a patent, where the subject matter of a patent is a process for obtaining a product, the court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process if,-

(a) the subject matter of the patent is a process for obtaining a new product; or

(b) there is a substantial likelihood that the identical product is made by the process and the patentee or a person deriving title or interest in the patent from him has been unable through reasonable efforts to determine the process actually used:

Provided that the patentee or a person deriving title or interest in the patent from him, first proves that the product is identical to the product directly obtained by the patented process.

(2) In considering whether a party has discharged the burden imposed upon him by sub-section (1), the court shall not require him to disclose any manufacturing or commercial secrets, if it appears to the court that it would be unreasonable to do so”.

The clause, as amended, was adopted

Clause 51

The clause was re-numbered as clause 43.

(I) Page 13: lines 4 to 7, were substituted by the following:

(a) any act of making, constructig, using or selling a patented invention solely for uses reasonably related to the development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use or sale of any product;

(II) Page 13: line 10, the word 'be' was inserted after the word "not".

The clause, as amended, was adopted.

Clause 52

The clause was re-numbered as clause 44.

Page 13: lines 14 to 16 were substituted by the following:

"(2) The court may also order that the goods which are found to be infringing and materials and implements, the predominant use of which is in the creation of infringing goods, shall be seized, forfeited or destroyed as the court deems fit under the circumstances of the case, without payment of any compensation".

The clause, as amended, was adopted.

Clauses 53

The clause was re-numbered as clause 45.

The clause, as re-numbered, was adopted without any change.

Clause 54

The clause was renumbered as clause 46.

(i) Page 14: lines 5 to 10 were substituted by the following:

"(2) An appeal shall lie to the Appellate Board from any decision, order or direction of the Controller or Central Government under 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, section 66, sub-section (3) of section 69, section 78, sub-section (1) to (5) of section 84, section 85, section 88, section 91, section 92 and section 94."

(ii) Page 14: line 15, after the word "Controller", the words "or the Central Government" were inserted.

(iii) Page 14: line 24, for the figure "116", the figures and letter "117A" were substituted.

(iv) Page 14: line 48, after the word "Controller" the words "may deem it necessary" were inserted.

(v) Page 15: after line 8, the following were inserted:

"117H. (1) The Appellate Board may, of its own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which the Controller or the Central Government has passed any decision, order or direction for the purpose of satisfying itself as to the correctness, legality or propriety of such decision, order or direction and may pass such order thereon as it thinks fit.

(2) No order under this section by the Appellate Board shall be made so as to prejudicially affect any person unless such person is given a reasonable opportunity of making representation if, he so desires, of being heard in his defence".

New Clause 47

Page 15: after line 10, the following new clause 47 was inserted:

“47. In section 118 of the principal Act, after the words and figures “under section 35”, the words and figures “or makes or causes to be made an application for the grant of a patent in contravention of section 39” shall be inserted.”

Clauses 55 to 58

The clauses were re-numbered as clauses 48 to 51, respectively.

The Clauses, as renumbered, were adopted without any change.

Clause 59

The clause was renumbered as clause 52.

(i) Page 15: line 43, the word “Second” in the bracket was omitted.

(ii) Page 15: line 43, the figure “1999” was substituted by the figure “2001”.

The clause, as amended, was adopted.

Clauses 60 to 68

The clauses were renumbered as clauses 53 to 61, respectively.

The clauses, as renumbered, were adopted, without any change.

Clause 69

The clause was renumbered as clause 62.

Page 17: line 23, the word “means” was substituted by the word “includes”.

The clause, as amended, was adopted.

Clause 70

The clause was re-numbered as clause 63.

(i) Page 17: after line 31, the following sub-clause (a) (ia) was inserted.

(ia) the details to be furnished by the applicant under sub-section (2) of section 8:

(ii) The existing sub-clause (a) (ia) was re-numbered as sub-clause (a) (ib).

(iii) Page 17: line 50, after the word “section”, the words “shall be inserted” were added.

The clause, as amended, was adopted.

Clauses 71 and 72

The clauses were re-numbered as clauses 64 and 65, respectively.

The clauses, as re-numbered, were adopted without any change.

Clause 1

Page 1: line 2, the figure “1999”, was substituted by the figure “2001”.

Page 1: line 2, the word “Second” in the bracket was omitted.

The clause, as amended, was adopted.

Enacting Formula

Page 1: line 1, the word “Fiftieth” was substituted by the word “Fifty-second”.

The Enacting Formula, as amended, was adopted.

The Title was adopted without any change.

3. The Committee authorised the Deputy Legislative Counsel, Ministry of Law, Justice and Company Affairs (Legislative Department), present in the meeting, to correct patent errors, if any, and to carry out changes of minor and consequential nature in Bill, including renumbering of the clauses, and directed him to prepare a manuscript copy of the Bill, as amended by the Committee, for consideration by the Chairman.
4. The Committee decided to consider the draft report on the Bill in its meeting to be held on the 3rd December, 2001,
5. The meeting adjourned at 5.10 P.M.

XXXVIII

THIRTY EIGHTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 3.00 P.M. on Monday, the 3rd December, 2001 in Room No. '63', First Floor, Parliament House, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Shri J. Chitharanjan
5. Shri Satish Pradhan
6. Shri Fali S. Niriman

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Shri Rupchand Pal
9. Shri Bolla Bulli Ramaiah
10. Shri Shyama Charan Shukla
11. Shri Kirit Somaiya

REPRESENTATIVES OF MINISTRIES

- i) **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri H. D. Thankur, Controller General, Patents Designs & Trade Marks
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

- ii) **Ministry of Law, Justice and Company Affairs, Legislative Department**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri Virender Singh Griwan, Research Officer

2. The Committee took up for consideration the draft report. Members were of the view that the Declaration of 4th Ministerial Conference of WTO held at Doha, has acceded the Right of the Member Countries to take measures to protect Public Health in their respective Countries. Thus, suggestions for amendments to the Patents (Second Amendment) Bill, 1999 would to be in conformity with the TRIPS agreement. Members discussed the issue of National Emergency in the context of Public Health and sought clarifications on Chapter XVI i.e. "Working of Patents", from the representatives of the Department of Industrial Policy and Promotion, which were replied to by the latter.
3. The Committee decided to further consider the Report at its next meeting to be held on 14th December, 2001.
4. The meeting adjourned at 4.25 P.M.

XXXIX

THIRTY NINTH MEETING

The Joint Committee on Patents (Second Amendment) Bill, 1999 met at 3.00 P.M. on Friday, the 14th December, 2001 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman

RAJYA SABHA

3. Dr. L. M. Singhvi
4. Dr. M. N. Das
5. Dr. Biplab Dasgupta
6. Shri J. Chitharanjan
7. Shri C. P. Thirunavakkarasu
8. Shri Fali S. Niriman

LOK SABHA

9. Smt. Sheela Gautam
10. Shri Trilochan Kanungo
11. Shri Subodh Mohite
12. Shri Rupchand Pal
13. Shri Shyama Charan Shukla
14. Shri Ravi Prakash Verma

REPRESENTATIVES OF MINISTRIES

i) Ministry of Commerce and Industry, Department of Industrial Policy and Promotion

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

ii) Ministry of Law, Justice and Company Affairs, Legislative Department

Shri N. L. Meena, Joint Secretary and Legislative Counsel
Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri M. K. Khan, Under Secretary
Shri D. K. Mishra, Committee Officer
Shri Virender Singh Griwan, Research Officer

2. The Committee re-opened consideration of clauses 28 and 54.

Clause 28

(Re-numbered as clause 30)
(vide Minutes dated 27th November, 2001)

Page 8: after line 44, the following clause (iv) was inserted:

"(iv) in clause (n), after the words and figures "under section 35". the words and figures "or made or caused to be made an application for the grant of a patent outside India in contravention of section 39" shall be inserted"

Page 8: line 45, the existing clause (iv) was renumbered as clause (v).

The clause, as further amended, was adopted.

Clause 54

(Re-numbered as clause 46)
(vide Minutes dated 27th November, 2001)

Page 15: after line 8, the new proposed section 117 H was substituted by the following:

"117H. The Appellate Board may make rules consistent with this Act as to the conduct and procedure in respect of all proceedings before it under this Act."

The clause, as further amended, was adopted.

3. The Committee then resumed consideration of the draft of report, alongwith the redraft of the amended clauses of the Bill.
4. The Committee authorised the Legislative Counsel, present in the meeting to carry out the amendments in the Bill to give effect to the decision of the Committee taken in the meeting, for consideration of the Chairman.
5. The Chairman informed Members that necessary consequential changes would be incorporated in the final copy of the report, before presentation to the House.
6. The Committee authorised the Chairman and, in his absence, Dr. M.N. Das, to present the report on their behalf to the Rajya Sabha.
7. The Committee also authorised the Chairman to nominate two Members from among Members of the Lok Sabha, to lay a copy of the report on the Table of the Lok Sabha.
8. The Committee decided that a set each of the evidence recorded and the memoranda received from various individuals, organisations and institutions be placed in

the Parliament Library, after the report was presented to the House, for reference by Members of Parliament.

9. The Committee decided that the Notes of Dissent, if any, may be sent so as to reach the Rajya Sabha Secretariat by 6.00 P.M. on Tuesday, the 18th December, 2001.

10. The Chairman thanked Members of the Committee for the keen interest taken by them in the working of the Committee and the co-operation extended to him, by them. Members also expressed their deep sense of appreciation for the able guidance given by the Chairman in the conduct of business of the Committee.

11. The Committee placed on record their appreciation for the officers of the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion and Ministry of Law, Justice and Company Affairs, Legislative Department and the officers and staff of the Rajya Sabha Secretariat, for the co-operation and assistance rendered by them in the smooth working of the Committee.

II

MEETINGS OF THE GROUP OF THE JOINT COMMITTEE

I

FIRST MEETING

The Group of Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 A.M. on Thursday, the 27th September, 2001 in Room No. '63', First Floor, Parliament House, New Delhi.

PRESENT

1. Shri T. N. Chaturvedi - Chairman
2. Shri Kirit Somaiya – Convenor

RAJYA SABHA

3. Dr. L. M. Singhvi
4. Shri Suresh A. Keswani
5. Dr. Biplab Dasgupta
6. Shri J. Chitharanjan

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Shri Rupchand Pal
9. Shri S. Jaipal Reddy
10. Shri Shyama Charan Shukla
11. Shri Kharabela Swain

REPRESENTATIVES OF MINISTRIES

i) Ministry of Commerce and Industry, Department of Industrial Policy and Promotion

Shri Rajeev Ranjan, Director
Dr. S. K.Pal, Assistant Controller, Patents and Designs
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs

ii) Ministry of Law, Justice and Company Affairs, Legislative Department

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri Virender Singh Griwan, Research Officer

2. The Group held general discussion on the Bill, with a view to go into certain issues related to the Bill.
3. Members referred to the concern of some developing countries on the implication of a TRIPS compliant patents legislation on the domestic industry, health policy vis-a-vis pricing in the area of drugs, protection of traditional knowledge, etc. The Group decided that information on certain points may be called from the Departments of Commerce and Health.
4. The Group decided to hold its next series of meetings on 10th, 11th, 15th, 16th, 17th, 31st October, and 1st November, 2001.
5. The Group adjourned at 12.40 P.M.

II

SECOND MEETING

The Group of Joint Committee on Patents (Second Amendment) Bill, 1999 met at 10.30 A.M. on Wednesday, the 10th October, 2001 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Kirit Somaiya – Convenor

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Shri J. Chitharanjan

LOK SABHA

5. Shri Mani Shankar Aiyar
6. Shri Rupchand Pal
7. Shri S. Jaipal Reddy
8. Shri Shyama Charan Shukla
9. Shri Kharabela Swain

REPRESENTATIVES OF MINISTRIES

- i) **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**

Shri A. E. Ahmad, Joint Secretary
Shri Rajeev Ranjan, Director
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs
Shri S. K. Mitra, Assistant Controller of Patents and Designs

- ii) **Ministry of Law, Justice and Company Affairs, Legislative Department**

Dr. S. D. Singh, Deputy Legislative Counsel

Ministry of Commerce and Industry, Department of Commerce

Shri R. P. Aggarwal, Joint Secretary
Shri Manoj Joshi, Deputy Secretary

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri D. K. Mishra, Committee Officer

2. The Group held general discussions on the Bill, with a view to go into certain issues related to the Bill. It was decided to consider the proposed Preamble in the next meeting. The Group also desired to get some further clarifications from the Department of Health in the context of the questionnaire sent by the Secretariat. Some Members expressed concern regarding implications on the indigenous manufacture of medicines by domestic companies, especially the medicines for HIV / AIDS, etc., after introduction of the Patents regime. The representatives of the Department of Industrial Policy and Promotion clarified that Government had the power to bring in the necessary legislation, in ease the conditions, after introduction of product patents regime, so warranted. The Group decided to resume discussions in its next meeting.

A summary of the proceedings of the meeting was kept.

3. The Group adjourned at 12.40 P.M.

III

THIRD MEETING

The Group of Joint Committee on Patents (Second Amendment) Bill, 1999 met at 10.30 A.M. on Thursday, the 11th October, 2001 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Kirit Somaiya – Convenor

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Shri J. Chitharanjan

LOK SABHA

5. Shri Mani Shankar Aiyar
6. Shri Rupchand Pal
7. Shri Kharabela Swain
8. Shri Trilochan Kanungo

REPRESENTATIVES OF MINISTRIES

- i) **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**

Shri Rajeev Ranjan, Director
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs
Shri S. K. Mitra, Assistant Controller of Patents and Designs

- ii) **Ministry of Law, Justice and Company Affairs, Legislative Department**

Dr. S. D. Singh, Deputy Legislative Counsel

Ministry of Commerce and Industry, Department of Commerce

Shri Manoj Joshi, Deputy Secretary

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri D. K. Mishra, Committee Officer

2. The Group held further discussions on the Bill, with a view to go into certain issues related to the Bill.

3. The Group decided to hear the views of the representatives of the Department of Health, Ministry of Health and Family Welfare, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry and Department of Biotechnology on 16th October, 2001, in connection some provisions of the Bill.

A summary of the proceedings of the meeting was kept.

4. The Group adjourned at 12.40 P.M.

IV

FOURTH MEETING

The Group of Joint Committee on Patents (Second Amendment) Bill, 1999 met at 10.30 A.M. on Tuesday, the 16th October, 2001 in Committee Room '67', First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Kirit Somaiya – Convenor

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Shri J. Chitharanjan

LOK SABHA

5. Shri Mani Shankar Aiyar
6. Shri Rupchand Pal
7. Shri Kharabela Swain

WITNESSES

REPRESENTATIVES OF MINISTRIES

- i) **Ministry of Health and Family Welfare, (Department of Health)**

Shri J. V. R. Prasad Rao, Special Secretary

- ii) **Ministry of Science and Technology, (Department of Biotechnology)**

Dr. (Mrs.) Manju Sharma, Secretary

- iii) **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**

Shri V. Govindarajan, Secretary

REPRESENTATIVES OF MINISTRIES

- i) **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**

Shri Rajeev Ranjan, Director

Shri D. P. S. Parmar, Assistant Controller of Patents and Designs

Shri K. S. Kardam, Assistant Controller of Patents and Designs

Shri S. K. Mitra, Assistant Controller of Patents and Designs

- ii) **Ministry of Law, Justice and Company Affairs, Legislative Department**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri Virender Sinigh Griwan, Research Officer
Shri D. K. Mishra, Committee Officer

2. The Group heard the views of the above-mentioned representatives on various provisions of the Bill especially in the context of concerns being expressed with regard to Public Health, compulsory licensing, availability of drugs at affordable prices etc., after coming into effect of the provisions of the Bill especially the clauses 4 (e), 5, 24 (a), 35, 36, 37, 39, 43, 44, 45, 46, 48, 50 and 51. Members sought certain clarifications, which were replied thereto by the witnesses.

A verbatim record of the proceedings of the meeting 'vas kept.

3. The Group adjourned at 1.00 P.M.

V

FIFTH MEETING

The Group of Joint Committee on Patents (Second Amendment) Bill, 1999 met at 10.30 A.M. on Tuesday, the 17th October, 2001 in Room No. '53', First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Kirit Somaiya – Convenor

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Shri J. Chitharanjan

LOK SABHA

5. Shri Mani Shankar Aiyar
6. Shri Kharabela Swain

REPRESENTATIVES OF MINISTRIES

- i) **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion**

Shri Rajeev Ranjan, Director
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs
Shri S. K. Mitra, Assistant Controller of Patents and Designs

- ii) **Ministry of Law, Justice and Company Affairs, Legislative Department**

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri D. K. Mishra, Committee Officer

2. The Group resumed discussions on the Bill, with a view to go into certain issues related to the Bill. Members were of the view that the country's traditional knowledge and the inventions based there on should not be patented. Also, whatever entered the public domain, should not be patented. Members were generally in agreement in respect of provisions contained in Clauses 3 (g), 3 (h), 3 (i), 5, 12, 14, 15, 16, 22 and 23, 26 to 34 and to the

insertion of the word 'substantive' in clause 25. Discussion on the provisions contained in clauses 2 to 34 was completed leaving out clauses 3(ac), 3(f), 5, 2 and 24 to be considered by the main Committee.

A summary of the proceedings of the meeting was kept.

3. The Group adjourned at 1.00 P.M.

VI

SIXTH MEETING

The Group of Joint Committee on Patents (Second Amendment) Bill, 1999 met at 11.00 A.M. on Wednesday, the 31st October, 2001 in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Kirit Somaiya – Convenor

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Dr. Biplab Dasgupta
5. Shri J. Chitharanjan

LOK SABHA

6. Shri Mani Shankar Aiyar
7. Shri Subodh Mohite
8. Shri Rupchand Pal
9. Shri Kharabela Swain
10. Shri Ravi Prakash Verma
11. Shri Trilochan Kanungo

REPRESENTATIVES OF MINISTRIES

i) Ministry of Commerce and Industry, Department of Industrial Policy and Promotion

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs
Shri S. K. Mitra, Assistant Controller of Patents and Designs

ii) Ministry of Law, Justice and Company Affairs, Legislative Department

Dr. S. D. Singh, Deputy Legislative Counsel

iii) Ministry of Health and Family Welfare, (Department of Health)

Shri Srinivas Tata, Deputy Secretary

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri Virender Singh Griwan, Research Officer
Shri D. K. Mishra, Committee Officer

2 The Group resumed discussions, with a view to go into certain issues related to the Bill. Discussion on clauses 35 to 46 was deferred to 1st November, 2001 by the Group, to study Chapter XVI, i.e., 'Working of Patents, Compulsory Licenses and Revocation'-a draft paper prepared by the Ministry of Health and Family Welfare, Department of Health, after extensive consultations with the Department of Industrial Policy and Promotion. Discussion on provisions contained in clauses 47 to 72 was completed leaving out clause 53, to be considered by the main Committee.

A summary of the proceedings of the meeting was kept.

3. The Group adjourned at 1.10 P.M.

VII

SEVENTH MEETING

The Group of Joint Committee on Patents (Second Amendment) Bill, 1999 met at 10.30 A.M. on Thursday, the 1st November, 2001 in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Kirit Somaiya – Convenor

RAJYA SABHA

2. Dr. L. M. Singhvi
3. Shri Suresh A. Keswani
4. Shri J. Chitharanjan

LOK SABHA

5. Shri Mani Shankar Aiyar
6. Shri Kharabela Swain
8. Shri Ravi Prakash Verma

REPRESENTATIVES OF MINISTRIES

i) Ministry of Commerce and Industry, Department of Industrial Policy and Promotion

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Shri K. S. Kardam, Assistant Controller of Patents and Designs
Dr. S. K. Pal, Assistant Controller, Patents and Designs

ii) Ministry of Law, Justice and Company Affairs, Legislative Department

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Surinder Kumar Watts, Deputy Secretary
Shr M. K. Khan, Under Secretary
Shri Virender Singh Griwan, Research Officer
Shri D. K. Mishra, Committee Officer

2 The Group took up for discussion the paper received from the Ministry of Health and Family Welfare, Department of Health. Certain clarifications were sought by Members, especially on the new proposed Section 83 (g), Section 84(1), (b) and (c). Members also held discussions on the Preamble, suggested to be added to the Bill.

A summary of the proceedings of the meeting was kept.

3. The Group adjourned at 1.10 P.M.

VIII

EIGHTH MEETING

The Group of Joint Committee on Patents (Second Amendment) Bill, 1999 met at 10.30 A.M. on Monday, the 12th November, 2001 in Room No. '67', First Floor, Parliament House, New Delhi.

PRESENT

Shri T. N. Chaturvedi – Chairman
Shri Kirit Somaiya – Convenor

RAJYA SABHA

3. Dr. L. M. Singhvi
4. Dr. Biplab Dasgupta
5. Shri J. Chitharanjan
6. Shri Fali S. Nariman

LOK SABHA

7. Shri Mani Shankar Aiyar
8. Shri Rupchand Pal
9. Shri Shyama Charan Shukla
10. Shri Kharabela Swain
11. Shri Ravi Prakash Verma
12. Shri Trilochan Kanungo

REPRESENTATIVES OF MINISTRIES

i) Ministry of Commerce and Industry, Department of Industrial Policy and Promotion

Shri A. E. Ahmed, Joint Secretary
Shri Rajeev Ranjan, Director
Shri H. D. Thakur, Controller General of Patnets, Designs and Trademarks
Shri D. P. S. Parmar, Assistant Controller of Patents and Designs
Dr. S. K. Pal, Assistant Controller, Patents and Designs

ii) Ministry of Law, Justice and Company Affairs, Legislative Department

Dr. S. D. Singh, Deputy Legislative Counsel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Surinder Kumar Watts, Deputy Secretary
Shri Virender Singh Griwan, Research Officer
Shri D. K. Mishra, Committee Officer

2. The Group held discussions on the draft Note prepared by the Secretariat, in consultation with Department of Industrial Policy and Promotion and Ministry of Law, Justice and Company Affairs, Legislative Department. The Members were in agreement to drop the idea of insertion of a Preamble to the Patents Act, 1970, to omit clauses 35 to 46 of the Bill and to insertion of a new Chapter XVI, regarding Working of Patents, Compulsory Licences and Revocation. Members also suggested certain amendments/corrections in the Note. The Group adopted the note and decided that the Convenor may submit the same to Chairman of the Joint Committee.

A summary of the proceedings of the meeting was kept.

3. The Group adjourned at 1.05 P.M.

NOTES OF DISSENT

NOTES OF DISSENT

I

BY SHRI RUPCHAND PAL

The TRIPS Agreement, in its Article 33, provides for term of protection for Patents (both for products and processes) for a period of 20 years, counted from the date of filing the patent application.

Under the TRIPS Agreement the term of 20 years would be uniformly applicable in all countries to all products and process. The apparent argument used for a longer patent term was due to delays in granting a patent, which was generally 6 to 8 years. The patent term of twenty years appears to be long. The term would be applicable for twenty years for process patent regime, particularly in the chemical field, including drugs and pharmaceuticals. The process patent regime could be extended to over new processes, which might satisfy the criteria of patentability. There is considerable progress in the application of biotechnology route to produce off product patent through that route. Similarly, process patents can also be granted to technical invention for new drug form (instead of 3 dosage a day the new technology provide for only 1 does which is absorbed in the system other a longer period). In view of this scenario, patent protection in some form or the other can get extended for much longer period, perpetuating limited monopoly. Analysis of life cycle of product shows whose that new potential substitutes become available for the same therapeutic use in a short span of 5-7 years of introduction of new drug. As the patent protection under TRIPS has to be provided for twenty years, the role of generic industry becomes infructuous at the end of this period. For the patent holders also the market potentiality of his product considerably dwindles after a period of marketing for about 10 years because of the competition from the new generations of similar products.

The 20 years patent term will provide for market distortations. In order to ensure some sort of role for the generic/domestic industry, at least after a period of 8/10 years from the date of grant of the patent, it might be desirable to provide for some freedom for

exploitation of patented products or processes. This kind of provision in the patent law of a large country like India, which has thousands of large, medium and small units, opportunity in the pharmaceutical fields seems extremely desirable.

There is yet another argument that the period taken for grant of patent has sharply come down from 8 years to only 1 to 5 years. Thus, the monopoly period over the patented product has increased considerably. Keeping the above fact in view, a need to review 20 years patent term. This period is certainly too long a period to provide exclusivity. The grant of compulsory licences may satisfy a small number of large companies but thousands of other companies would be deprived of their role. One way could be to formulate the provision on term of patent as follows:

"The term of patent protection available shall be 20 years from the date of filing the patent application or 8/10 years from the date of sealing the patent, which ever is shorter."

Important issues relating to Patents (Second Amendment) Bill, 1999

Clause 4

1. Section 3: Invention not patentable: Changes in dosage form, off patent combinations/formulations needs to be provided in sub section (d), clarifying that these are also not inventions.

Clause 4 (page 4)

2. Section 3 (j): Since Article 27.3 (b) is still under review by WTG. It would be desirable to wait for the final outcome of the review and till then "other than micro-organism" should not be incorporated in any form.

3. Section 5 (2): Patents in the pharmaceutical field should be restricted to new chemical entity/medicinal drugs and not formulations. This section and also definition in Section 2 (l) should be amended, specifically providing for this. Pharmaceutical has been stipulated in Article 70.8 of TRIPS. The dictionary meaning of this is medicinal drugs and not formulation (This will help in saving the pahrma industry i.e. SSI and Medium scale sectors. They will be able to do the formulations).

4. Restoration of Article 39: The opening sentence provides for only in regard to patents relevant for defence purposes and related to Atomic energy. It would be desirable to incorporate "or any other sector that may be notified by Government".

5. Clause 35 - Chapter XVI Section 84 (4): provides "The Controller....., may order the patentee to grant a licence upon such terms as he may deem fit". The Controller if he is satisfied should grant the licence himself and should not leave final action for the patentee. The matter will never be resolved. This has weakened the whole thrust of this Section. The words "may order the patentee" should be deleted. Sub section 84 (5) & 84 (7) also be amended accordingly.

6. New Section 84 (6) (iv): Article 31 (b) of TRIPS, in the opening sentence, provides for an important possibility of obtaining compulsory licence for commercial purposes as it provides that 'reasonable commercial terms and condition have to be offered'. This provision in Article 31 should be provided in an independent section and not incorporated in section 84. Section 84 provides for three contingencies viz. reasonable requirement of the public; reasonable affordable price and invention being not worked in India. These are reasons which have to be justified for the situations prevailing in the country. But according to Article 31 (b) (first sentence), one has not to justify any of the situation prevailing in the country. Only two conditions viz. 'offer of reasonable commercial terms and conditions' and 'waiting for a reasonable period of time' have to be fulfilled. If these two conditions are satisfied by the applicant, the Controller has to grant the compulsory licence. This is a major provision which ought to be provided independently. Further, the provision 6 (iv) complicates the matter. It dilutes the right of the Controller as the patentee can say that he has not been approached and as such compulsory licence should not be granted.

7. Section 94: The reference to Section 84 in second line should be reference to Section 92. The licences granted under 84 would be for full term - co-terminus with the term of patentee. Licences under 92 could be for short duration.

8. Section 100: It is important that parameters of royalty are indicated in some form or the other in this section, otherwise there would be disputes on royalty issue.

RUPCHAND PAL

II

BY SHRI SHYAMA CHARAN SHUKLA

In the draft report of the Joint Committee on Patents (Second Amendment) Bill, 1999

- I. In my opinion following further amendments are necessary in wider interest of the Nation and I hope the chairman and the committee will agree with my views. In Clause IV, Sub Clause (p), after the word in effect is, and before the word traditional knowledge, the words "Based on" should be inserted, so that after this insertion the clause will read as follows-

"(p) an invention which, in effect, is based on traditional knowledge or is an aggregation or duplication of known properties of traditionally known component or components."

The additions of these words "Based on" will prevent more effectively any attempt for taking advantage of traditional knowledge in the Ayurvedic system by simple separation of colloides in a medicinal herb or plant and claiming it an inventive step, suitable for patenting. This amendment will not be in conflict with the TRIPS agreement, as it also provides for non-patent of claimed invention based on public knowledge and. Ayurvedic herbs and plants having medicinal properties being in the domain of public knowledge for thousands of years. To leave scope or loophole for greedy profiteers will be a blunder on our part. Therefore, I hope the committee will agree with my view, otherwise this may be taken as my dissenting note.

- II. In Clause 24, it is proposed to amend section 53 of the principal act to bring it in conformity with the Trips agreement by making the term of every patent twenty years, but it is necessary that we add a proviso that patents for medicines or health care will have a term of seven years from the date of sealing of the patent. This will be entirely in the spirit of the declaration of India and Allied countries at the Ministerial Conference of World Trade Organization at Doha recently.

Clause 4 of the declaration states "While reiterating our commitment to the TRIPS Agreement, we affirm that the agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health."

To make an exception in case of medicines regarding term of patent which otherwise may be twenty years as per the TRIPS Agreements, would be wholly in conformity with the above clause which invokes the right of Members to protect public health. Reduction of the term of patents in case of medicines is absolutely necessary to protect public health as otherwise when the patentee has already not only recovered his investment on research but also has made considerable profit, he will continue to prevent wider and cheaper availability of medicines necessary to protect public health. This exploitative situation should not be allowed to extend beyond a reasonable period which ought to be about seven years. Department of Health, of Govt. of India has also made the same recommendation to our committee.

Therefore, I propose the following amendment:

In clause 24 after the words "Subject to the provisions of this act, the term of every patent granted under this act shall be twenty years from the date of filing of the application of the patent.", the following words be added "but in case of medicines the term of the patent will be seven years from the date of sealing of the patent.", the amended proposed sub-section in clause 24 should be as follows.

(a) for sub section (I), the following sub-section shall be substituted, namely-

'(I) Subject to the provisions of this Act, the term of every patent granted under this Act shall be twenty years from the date of filing of the application for patent, but in case of medicines the term of the patent will be seven years from the date of sealing of the patent.'

It may be mentioned that the TRIPS agreements provided for twenty years from the date of application as usually the period between filing the patent and sealing of the patent took a long time, therefore, in case of medicines seven years from the date of sealing of the patent will not be in conflict with the basic approach of the TRIPS and will also take care of our concern for public health. Therefore, I would strongly commend to the Chairman and the Committee the adoption of the above amendment but if they do not agree this may be taken as my note of dissent.

- III. In view of the worldwide scare of deadly communicable diseases like Aids and exorbitant pricing of life saving drugs the Ministerial Conference of the World Trade Organization, in its declaration, has invoked the right of Member countries to interpret and implement the Trips agreement in a manner which will take care of their concern for public health.

Therefore, provisions regarding licence of right, as provided in the UK patent law, should be incorporated in our Act.

The proposed clauses in this Bill regarding compulsory licence should be so worded as to avoid delays and long legal proceedings in the event of outbreak of deadly epidemics amounting to a National Emergency.

In clause 84, the provision for expiration of three years from the date of the sealing of the patent should be deleted, otherwise, in an emergency, the public will have to wait for three years for availability of a drug or availability at a reasonable price. Therefore, I propose the following amendment.

In clause 84, sub-clause (I) after the words at anytime after, the words "the expiration of three years from", should be delete.

The amended sub-clause (I) of clause 84 will read as follows-

(I) At any time after the date of the sealing of a patent, any person interested may make an application to the Controller for grant of compulsory license on patent on any of the following grounds, namely:-

The text as proposed.

I hope the Chairman and the Committee will agree with my above proposal otherwise it may be taken as my note of dissent.

SHYAMA CHARAN SHUKLA

III

BY DR. BIPLAB DASGUPTA

I am writing a small note of dissent on big issue, Patents, that we discussed over a fairly long period. I see no reason to extend the period of patent, which is a time-bound monopoly, to 20 years. At this age, when the technology is changing fast, any revision of the time period should have been Downwards, bringing the time period should have been downwards, bringing the time period down to ten years. A 20 year period would, in effect, mean that by the time the patent period expires, the product in question would become so much out of date that non-patent holders would be the least interested in its production. The original patent holder might, in the nlean time, develop new products that would take away demand from this.

When the Committee met experts, there was a divergence of response on this issue, and if I am right, the majority were opposed to the extension of the time period. Some have suggested that it takes about five years for complying with various formalities. [1' that is so, we can count the period from the date of approval. My fear is that the objective behind this extension proposed by the MNCs and implemented by WTO is, to perpetuate the monopoly hold of the original patent holders, and not to allow competition to grow against it in the market.

DR. BIPLAB DASGUPTA