APPENDIX 'A'

TABLE (5) (*Vide* Paragraph 26)

Number of Patents in force on the 1st January, 1958

Total number . . .	13,774
Owned by Indians . . .	1,157
Owned by Indians and Foreigners jointly . . .	21
Owned by Foreigners . .	12,596

APPENDIX 'A'

TABLE (6) (*Vide* Paragraph 26)

Number of Patents more than four year old and in force on the 1st January, 1958

Year	No. of Patents	Owned by		
		Indians	Indians and Foreigners jointly	Foreigners
1932 . . .	2	2	..	..
1933 . . .	..	..	..	..
1934 . . .	1	..	..	1
1935 . . .	2	..	..	2
1936 . . .	1	..	..	1
1937 . . .	64	14	..	50
1938 . . .	114	14	2	98
1939 . . .	127	30	..	97
1940 . . .	86	16	1	69
1941 . . .	90	11	1	78
1942 . . .	72	9	..	63
1943 . . .	136	4	..	132
1944 . . .	226	17	..	209
1945 . . .	363	27	..	336
1946 . . .	556	26	7	523
1947 . . .	600	14	..	586
1948 . . .	701	25	..	676
1949 . . .	641	44	..	597
1950 . . .	796	76	..	720
1951 . . .	1019	69	..	950
1952 . . .	1208	107	1	1100
1953 . . .	1366	102	1	1263
TOTAL .	8171	607	13	7551

APPENDIX 'A'

TABLE (7) (*Vide* Paragraph 136)

Applications for Patents made in the United Kingdom

1902—1913

Year	Applications
1902	28,972
1903	28,854
1904	29,702
1905	27,577
1906	30,030
1907	28,915
1908	28,598
1909	30,603
1910	30,388
1911	29,353
1912	30,089
1913	30,077

APPENDIX 'A'

TABLE (8) (*Vide* Paragraphs 137 and 140)

Table showing applications for compulsory licences under Section 22 of the Indian Patents and Designs Act, 1911 during 1950—57

Year and Number of Applns	Nationality of Patentee	Nationality of Applicant	Nature of inventions	Remarks
1950—4	Indian	Indian	Machines for removing husk from dhall, etc.	All the 4 under same patent —2 Allowed 2 Dismissed Appeals pending in Calcutta High Court against orders of Controller granting licence.
1951—5	4—U. K. 1—Ind.	Indian	4—Improvements in Textile machinery 1—Pharmaceuticals	Textile machinery applications abandoned in view of the settlement between parties, during pendency of proceedings. Appln. for pharmaceutical inventions withdrawn in view of a compromise under which licence was granted by voluntary arrangements.
1952—2	U. K.	Indian	Improvements in relation to train lighting and heating, etc.	Compulsory licence granted.
1953 1954	No applications.			
1955—1	U.S.A.	Indian	Capseals for container closures.	Pending.
1956—3	German	Indian	1—Wrist Watch bracelets. 1—Process for dyeing. 1—for dyeing.	All three pending.
1957—2	1—Brit. 1—Ger.	Ind.	1—Wrist watch bracelets. 1—Incandescent mantle fittings.	Both pending.

APPENDIX 'A'

TABLE (9) (*Vide* Paragraph 140)

Table showing applications for compulsory licences under Section 23-CC of the Indian Patents and Designs Act, 1911

Year	Number of applications	Nationality of patentee	Nationality of applicants	Nature of invention	Remarks
1952 to 1956—No applications.					
1957	1	British	Indian	Therapeutic preparation of iron.	Pending.

APPENDIX 'A'

TABLE (10) (*Vide* Paragraph 420)

Statement showing time taken from date of acceptance of an application to the printing of the specification etc.

Year	Maximum time that has been taken from the date of acceptance of an application for a patent upto the date when the specification is printed			Maximum time that has been taken from the date of acceptance of an application for a patent upto the date when the printed specification becomes available to the public			Approximate time that has been taken from the date of acceptance of an application for a patent upto the date when the specification was printed			Approximate time that has been taken from the date of acceptance of an application for a patent upto the date when the printed specification becomes available to public		
	Years	Months	Days	Years	Months	Days	Years	Months	Days	Years	Months	Days
1950	2	6	..	2	7	12	1	..	9	1	2	2
1951	1	9	..	1	11	10	1	1	4	1	2	24
1952	1	7	22	1	9	7	1	1	21	1	3	18
1953	1	3	28	1	4	17	1	..	..	1	1	..
1954	1	8	9	1	9	7	..	11	4	1	..	4
1955	1	7	28	1	8	1	..	11	6	1	1	21
1956	1	9	8	1	11	3	1	1	20	1	3	22
1957*	1	5	3	1	8	10	1	1	2	1	4	2

*Out of the 50 batches of specifications sent to Press for printing in 1957, only 15 batches have been received and made available to the public. The information furnished in respect of the year 1957 has been based on the said 15 batches only.

NOTE.—Patent specifications are accepted almost daily. The specifications accepted in a week are collected together and the MSS thereof are sent in one batch for printing. The above information is based on such batches.

APPENDIX 'B'

APPENDIX "B"—TABLE (1)

QUESTIONNAIRE

Re: Patents for inventions relating to chemical products etc.

Patents relating to (a) chemical products used in industry and medicine, (b) substances used or capable of being used for food or medicine, and (c) insecticides, fungicides and disinfectants etc. are of vital importance to our national economy and public health and it is common ground that our Patent Law should be such that it should encourage indigenous research and foster Indian industry and enable the public to obtain the patented products at reasonable prices. The problems relating to these patents may be considered under two heads:

(1) the desirability of imposing restrictions on the patentability of such inventions;

(2) the desirability of and the nature of the restrictions to be imposed on patentees after the patents are granted.

A. Patentability of inventions relating to chemical products etc.

The Indian Patents & Designs Act, 1911 contains no restrictions as regards the patentability of inventions relating to these substances. In several countries of the world, however, the law renders such inventions unpatentable or when this is permitted restricts patentability to the process by which the substance is obtained. In certain other countries where product claims for patent are allowed the claims are restricted to the product as produced by the process particularly specified.

In the United Kingdom whose laws have hitherto served as our model, there was no statutory restriction on the patentability of chemical products until 1919, when Section 38A was introduced into the Patents & Designs Act of 1907. During the late 19th and the early years of the present century, German scientists were foremost in the field of chemical research and as a result they applied for and obtained patents in England for several new chemical products. In a case decided under the earlier Acts it had been held that a patent for a new product (dye-stuff) covered that product when manufactured by any process whether the same was described by the patentee in his specification or not (*vide* Pearson, J. in *Badische Anilin Und Soda Fabrik v. Lennstein*—2 RPC 74) approved by the House of Lords (4 RPC 449). The result of this decision was that when once a patent had been obtained for a new product, research into alternative methods of obtaining the same product was practically prevented. These patents for inventions which originated in Germany, were numerous and tended to hinder, if not to stifle, chemical research and the establishment of chemical

industry in the United Kingdom. Some relief was no doubt afforded by the provision for compulsory licensing on proof of abuse of monopoly, which will be dealt with later, but owing to the narrowness of the language employed by the legislature and the strict conditions which had to be fulfilled before such licences could be obtained, as well as the heavy royalties which had to be paid, the intended object of this provision was not fulfilled. The next result of this was that at the commencement of the First World War in 1914, Germany had practically a monopoly in the chemical industry, particularly the dye-stuff industry of the United Kingdom.

In order to stimulate and encourage British research and invention in the chemical industry, the Patents & Designs Act, 1919 introduced a new provision [section 38(A)] into the principal Act of 1907. This section provided that in regard to patents for inventions relating to substances prepared or produced by chemical process or intended for food or medicine, there could be no claim of monopoly for the substance, *per se*, but only for the substance when prepared or produced by a process described or by its obvious chemical equivalents. Some criticism had been levelled against the terms of section 38(A) on the ground that it was capable of evasion or circumvention by patentees or applicants for patents describing or specifying all or several possible alternative processes for obtaining the product claimed, so that virtually the patent protected the substance however obtained. Nevertheless the history of English chemical industry from 1919 upto the end of the Second World War shows a steady and phenomenal progress in both dye-stuff and drug industries; so much so, that that country attained by 1945 a position of world leadership in these industries, with a large and expanding export market. In 1945 the Swan Committee[1] which considered the revision of the patent laws, recommended that the restrictions on the patentability of chemical substances contained in the said section 38(A)(1) of the U.K. Act might be deleted and this has been carried out in the present U.K. Patents Act, 1949.

Though the Indian Patents & Designs Act, 1911 was amended several times from 1930 to 1953, a provision as in section 38(A)(1) of the U.K. Act of 1907—1932 which was considered essential for the protection and encouragement of the British chemical and pharmaceutical industry against competition by foreign patentees has not been introduced into the Indian enactment, although the position in India as regards patents for chemicals and drugs would seem to be much worse than what obtained in the United Kingdom prior to the commencement of the First World War, in view of the very predominant and the virtually monopolistic position in these patents held by foreign patentees. To rectify the position two solutions appear to present themselves for consideration, namely,

(1) to deny patentability to inventions relating to chemical products and those capable of being used for food or medicine; or

(2) to incorporate in the Indian statute a provision on the lines of section 38A of the U.K. Acts of 1907 to 1932, now repealed.

1. A Committee appointed in April 1954 by the Board of Trade of the United Kingdom to consider and report on the changes desirable in the Patents & Designs Acts. The present U. K. Act of 1949 has been enacted in implementation of the recommendations of this Committee.

The first alternative has been adopted in some countries which are still industrially undeveloped and whose economy is predominantly agricultural, *e.g.* Argentina, Chile, Denmark and Rumania, while the second alternative, namely, restricting the claims to process and to products only when prepared by the described process, has been adopted by a very large number of other countries, *e.g.* France, German, Austria, Canada, Czechoslovakia, Switzerland, Portugal, Spain, Mexico, Holland, Norway, Sweden, Japan, Yugoslovia and U.S.S.R.

In the light of the above:

I. (a) Would you consider it desirable to amend the law so as to prohibit altogether the grant of patents for inventions relating to chemical products used in industry or are capable of being used as articles of food or drink or medicine?, or,

(b) Would you consider it desirable to restrict the claims for such patents only to the processes described and deny patent rights to the products even if made by such processes?, or,

(c) Would you consider it desirable to introduce a provision in the Indian Statute on the lines of Section 38A(1) of the U.K. Acts, 1907—1932 (now repealed), i.e. to substances when prepared or produced by the methods or processes or manufacture particularly described or by their obvious chemical equivalents?

II. (a) Would you draw any distinction for the above purposes between different types of substances or articles, *e.g.*

(i) heavy chemicals and fine chemicals;

(ii) chemicals used or capable of being used in the pharmaceutical industry or as drugs;

(iii) articles of food or drink;

(iv) articles which could be used as insecticides, germicides, fungicides and disinfectants;

(v) inventions capable of being used as surgical and curative devices?

(b) If you are in favour of any special legislative provisions for patents relating to drugs and medicines, do you consider it desirable to make any further sub-division in this class of goods, *e.g.* into antibiotics, sulpha compounds, vitamin preparations, glandular and biological products, antimalarials or others as regards the particular provision to be enacted?

... provisions in relation to compulsory licensing of patents relating to chemical products.

The history of this provision in the U.K. statutes briefly as follows:—

> Prior to 1883 there was no statutory provision whereby a patentee could be forced to grant a licence even if he abused his monopoly rights by not working the invention in the United Kingdom or by blocking other inventions or by demanding or charging unreasonably high royalties for licences to work or charging exorbitant prices for the patented products imported by him. By section 22 of the British Patents & Designs Act, 1883 the Board of Trade was given the power to order the grant of compulsory licences "where the patent was not being worked in the U.K. or the reasonable requirements of the public in respect of the invention were not satisfied or any person was prevented from working or using the invention of which he was possessed". Since that date, the grounds upon which compulsory licences could be applied for have become progressively enlarged to the benefit of applicants for licences. Nevertheless, there have been only a few applications for compulsory licensing under the U.K. Acts, but this may be due to the patentees voluntarily granting licences on reasonable terms because of the possibility of applications for compulsory licences. The provisions in the United Kingdom legislation as regards compulsory licensing of patents are general and are not confined to any particular class of inventions. Though there was some opposition to the provisions as to compulsory licensing, the Swan Committee recommended (paragraphs 54 and 55 of the second Interim Report) not only the retention of these provisions but that the concept of abuse of monopoly should be expanded further by treating any restrictions on the export market as an abuse of patent right [*vide* section 37(2) (d) of the Patents Act, 1949].

Apart from and without prejudice to the above general provisions for compulsory licensing, the U.K. Act of 1919 introduced a special provision for the grant of licences "as of right" without requiring any proof of abuse of monopoly in the case of inventions relating to food or medicine [*vide* section 38(A) (3) of the U.K. Act]. This provision in the U.K. Act of 1919 was also recommended to be retained by the Swan Committee and now appears as section 41 of the U.K. Patents Act, 1949.

A provision on the lines of section 41 of the U.K. Patents Act of 1949 was introduced into the Indian Patents and Designs Act, 1911 by an amendment effected in 1952 which with slight changes in 1953 now forms section 23CC of the Act. It will be noticed that these licences as of right are confined to articles of food or medicine and to insecticides etc. and do not extend to other products or articles. Section 23CC, however, contains a sub-clause (4) under which the Central Government has power to direct the provisions of that section to apply to other commodities besides food, medicine, insecticide etc. but this power does not appear to have been invoked, or exercised.

The Patents Bill introduced in Parliament in 1953 proposes to re-enact the provisions of the present section 23CC, which has been in force since 1953.

(1) In your opinion has this provision had any effect in promoting or fostering indigenous research in food, medicine, insecticides and surgical instruments or other articles mentioned in that section?

(2) As a consequence of the compulsory licensing provisions under section 23CC have you noticed any tendency on the part of research workers or inventors to work inventions relating to foods and drugs in secret without obtaining patents therefor?

(3) Has any local food or pharmaceutical industry been to your knowledge started within the last four years to work any licence under section 23CC from patentees?

(4) Do you consider that it is advisable to expand the scope of the compulsory licensing provision now found in section 23CC to cover cases of all chemical substances used in Industry?

(5) Do you consider that the Indian chemical industry in general or any branch of the chemical industry in particular, has in recent years been suffering any handicap by reason of the existence of valid patents of foreign nationals?

(6) Do you consider that the prices charged for patented chemicals or drugs are unduly high taking into account the cost of production and reasonable profit on the outlay by reason of the inability of the Indian manufacturers to compete with the foreign patentees?

(7) Do you consider that the compulsory grant of licences on reasonable terms to any one who applies for them would promote (a) research by Indian scientists, (b) the starting or development of chemical or pharmaceutical industry in India?

(8) If patentees are directed to grant licences, which in your opinion would be better in the interests of Indian industry as a whole—

(a) exclusive licences; or

(b) non-exclusive licence to any one willing to abide by reasonable terms as to royalty etc.

(9) If licences are to be granted on reasonable terms, which would you consider best suited to Indian requirements—

(a) specifying in the Act or the rules the maximum and minimum royalty rates leaving it to the Controller (subject to appeal) to fix the figure which he considers reasonable in the circumstances of the case within the limits specified by law; or

(b) specifying in the Act or the rules the minimum royalty as well as the scale of royalties to be charged, the latter

to be based upon the total output or sales of the licensee, on a slab system with a decreasing percentage as the sales increase.

C. Revocation of Patents for abuse of monopoly

Neither the Indian Patents and Designs Act, 1911 as amended uptodate nor the Patents Bill, 1953 contains any provision for the revocation of a patent grounded on continued abuse of monopoly rights by the patentee. Such a provision is enacted in section 42 of the U.K. Act of 1949 and is to be found in certain other countries also.

Do you consider that such a provision would be suitable or useful in India?

D. Other suggestions

Have you any further or other suggestions to make as regards the amendments to be effected to the law relating to patents which would render the enactment a potent instrument for fostering research and the establishment and development of the Indian chemical and pharmaceutical industries?

APPENDIX "B"—TABLE (2)

QUESTIONNAIRE

Re: Patents for inventions relating to chemical products used in industry or in medicine

Patents in relation to chemical products used in industry or in medicine are of vital importance to our national economy and the Patent law should be such that it should encourage indigenous research and foster Indian industry and enable the supply of patented products at reasonable prices. The problems relating to these patents may be considered under two heads:

(1) The desirability of imposing restrictions on the patentability of such inventions;

(2) The desirability of and the nature of the restrictions to be imposed on patentees after the patents are granted.

A. Patentability of inventions relating to chemical products etc.

The Indian Patents and Designs Act, 1911 contains no restrictions as regards the patentability of inventions relating to chemical products. In several countries of the world, however, the law renders such inventions unpatentable or when this is permitted restricts patentability to the process by which the substance is obtained. In certain other countries where product claims for patent are allowed the claims are restricted to the product as produced by the process particularly specified.

In the United Kingdom whose laws have hitherto served as our model there was no statutory restriction on the patentability of chemical products until 1919, when section 38(A) was introduced into the Patents & Designs Act of 1907. During the late 19th and the early years of the present century, German scientists were foremost in the field of chemical research and as a result they applied for and obtained patents in England for several new chemical products. In a case decided under the earlier Acts it had been held that a patent for a new product (in that case a dye-stuff) covered that product when manufactured by any process whether the same was described by the patentee in his specification or not (*vide* Pearson, J. in *Badische Anilin Und Fabrik v. Levinstein*—2 R.P.C. 74, approved by the House of Lords, 4 R.P.C. 449). The result of this decision was that when once a patent had been obtained for a new product, research into alternative methods of obtaining the same product was practically prevented. Such patents for chemical products for inventions originating in Germany, were numerous tended to hinder, if not to stifle, chemical research and the establishment of the chemical industry in the United Kingdom. Some relief was afforded by the provision for compulsory licences on proof of abuse of monopoly, but owing to the narrowness of the language employed by the legislature

and the strict conditions which had to be fulfilled before such licences could be obtained, as well as the heavy royalties which had to be paid, the intended object of the licensing provision was not fulfilled. The net result of this was that at the commencement of the First World War in 1914, Germany had practically a monopoly in the chemical industry, particularly the dye-stuff industry, of the United Kingdom.

In order to stimulate and encourage British research and invention in the chemical industry, the Patents & Designs Act, 1919 introduced a new provision [Section 38(a)] into the principal Act of 1907. This section provided that in regard to patents for inventions relating to substances prepared or produced by chemical processes there could be no claim of monopoly for the substance *per se* but only for the substance when prepared or produced by a process described or by its obvious chemical equivalents. Some criticism had been levelled against the terms of section 38(A) on the ground that it was capable of evasion or circumvention by patentees or applicants for patents describing or specifying all or several possible alternative processes for obtaining the product claimed, so that virtually the patent protected the substance however obtained. Nevertheless, the history of English chemical industry from 1919 upto the end of the Second World War shows a steady and phenomenal progress in chemical industry; so much so, that that country attained by 1945 a position of world leadership in this country. In 1945 the Swan Committee*, which considered the revision of the Patents laws, recommended that the restrictions on the patentabiliy of chemical substances contained in the section 38(A) (1) of the U.K. Patents Act might be deleted and this has been carried out in the present U.K. Patents Act, 1949.

Though the Indian Patents & Designs Act, 1911 was amended several times from 1930 to 1953, a provision as in section 38(A)(1) of the U.K. Act of 1907—1932 which was considered essential for the protection and encouragement of the British chemical and pharmaceutical industry against competition by foreign patentees, has not been introduced into the Indian enactment, although the position in India as regards patents for chemicals and drugs would seem to be much worse than what obtained in the United Kingdom prior to the commencement of the First World War, in view of the very predominant and the virtually monopolistic position in these patents held by foreign patentees. To rectify the position two solutions appear to present themselves for consideration, namely,

(1) to deny patentability to inventions relating to chemical products used in industry or in medicine; or

(2) to incorporate in the Indian statute a provision on the lines of section 38A of the U.K. Acts of 1907 to 1932, now repealed.

The first alternative has been adopted in some countries which are still industrially undeveloped and whose economy is predominantly agricultural, e.g. Argentina, Chile, Denmark and Rumania, while the second alternative, namely, restricting the claims to process and to products when prepared by the described process, has been adopted

*A committee appointed in April 1944 by the Board of Trade of the United Kingdom to consider and report on the changes desirable in the Patents & Designs Acts. The present U. K. Act of 1949 has been enacted in implementations of this Committee.

by a very large number of other countries, e.g. France, Germany Austria, Canada, Czechoslovakia, Switzerland, Portugal, Spain Mexico, Holland, Norway, Sweden, Japan, Yugoslovia and U.S.S.R.

In the light of the above:

I. (a) Would you consider it desirable to amend the law so as to prohibit altogether the grant of patents for inventions relating to chemical products used in industry or in medicine?, or

(b) Would you consider it desirable to restrict the claims for such patents only to the processes described, and deny patent rights to the products even if made by such processes?, or

(c) Would you consider it desirable to introduce a provision in the Indian Statute on the lines of section 38A(1) of the U.K. Acts, 1907-1932 (now repealed), i.e. to substances when prepared or produced by the methods or processes of manufacture particularly described or by their obvious chemical equivalents?

(d) Would you differentiate for the above purposes between heavy and fine chemicals and drugs?

B. Restrictions on patentees—Compulsory licences etc.

1. The history of the provisions relating to compulsory licensing of patents in the U.K. statutes is briefly as follows:—

Prior to 1883 there was no statutory provision whereby a patentee could be forced to grant a licence even if he abused his monopoly rights by not working the invention in the United Kingdom or by blocking other inventions or by demanding or charging unreasonably high royalties for licences to work or charging exorbitant prices for the patented products imported by him. By section 22 of the British Patents & Designs Act, 1883 the Board of Trade was given the power to order the grant of compulsory licence "where the patent was not being worked in the U.K. or the reasonable requirements of the public in respect of the invention were not satisfied or any person was prevented from working or using the invention of which he was possessed". Since that date, the grounds upon which compulsory licence could be applied for have become progressively enlarged to the benefit of the applicants for licences. Nevertheless, there have been few applications for compulsory licensing under the U.K. Acts but this may be due to the patentees voluntarily granting licences on reasonable terms because of the possibility of applications for compulsory licences. The provisions in the United Kingdom legislation as regards compulsory licensing of patents are general and are not confined to any particular class of inventions. Though there was some opposition to the provisions as to compulsory licensing, the Swan Committee recommended (paragraphs 54 and 55 of the Second Interim Report) not only the retention of these provisions but that the concept of the abuse of monopoly should be expanded further by treating an adverse effect on the creation or expansion of an export market as an abuse of patent right [*vide* sections 37(2)(d) of the U.K. Patents Act, 1949].

... without prejudice to the above general provisions for compulsory licensing, the U.K. Act of 1919 introduced a special provision for the grant of licences as of right without requiring any proof of abuse of monopoly in the case of inventions relating to food or medicine [*vide* section 38(A) (3) of the U.K. Act]. This provision in the U.K. Act of 1919 was also recommended to be retained by the Swan Committee and now appears as section 41 of the U.K. Patents Act, 1949.

By amendments effected to the Indian Patents & Designs Act, 1911 by Act 32 of 1950 the grounds on which compulsory licences could be applied for were almost brought into line with the corresponding position in the United Kingdom. In addition, a special provision for foods and drugs on the lines of section 41 of the U.K. Act of 1949 was introduced into the Indian Patents and Designs Act, 1911 by an amendment effected in 1952 which with slight changes in 1953 now forms section 23(CC) of the Act. It will be noticed that the licences as of right under this section are confined to articles of food or medicine and to insecticides etc. and do not extend to chemical products used in other than pharmaceutical industries. Section 23CC, however, contains a sub-clause (4) under which the Central Government has power to direct the provisions of that section to apply to other commodities besides food, medicine and insecticide etc. but this power does not appear to have been invoked or exercised.

The argument urged against provisions for compulsory licensing is that by diminishing the income derived by patentees from the exploitation of patents, they have a tendency to act as a disincentive to patenting among research workers, leading inventors to prefer working their inventions in secret rather than obtain patents for them, since by patenting they would expose themselves to applications for compulsory licences.

Bearing in mind these considerations—

(1) Have you noticed any tendency on the part of the research workers or inventors to work inventions in secret without obtaining patents therefor as a consequence of the compulsory licensing provisions in the Indian Patents & Designs Act, 1911?

(2) Have these provisions in your opinion had or would have any effect in promoting or fostering indigenous research?

(3) Do you consider that Indian industry in general or any branch thereof in particular has in recent years been suffering from any handicap by reason of the large majority of the patents registered in India being owned by foreign nationals?

(4) Do you consider that the prices charged for patented products in India are unduly high taking into account the cost of production and reasonable profit on the outlay, by reason of the inability of Indian manufacturers to enter into competition with foreign patentees?

(5) Do you consider the grounds which are specified in section 22 as constituting abuse of monopoly, sufficient or if they have to be enlarged, what are the suggestions you would offer?

(6) Would you consider that failure on the part of a patentee to supply adequate quantities of the patented products at reasonable prices might be specifically enumerated as an abuse of monopoly?

(7) Do you consider that the grant of licences on reasonable terms to any one who applies for it would promote (a) research by Indian scientists, (b) the starting and development of Indian industry?

(8) If the patentees are directed to grant licences, which would in your opinion be better in the interests of Indian industry as a whole,

(a) exclusive licences on agreed terms, and in default of agreement, on terms fixed by the Controller;

(b) non-exclusive licence to any one willing to abide by reasonable terms as to royalty etc.

(9) If licences are to be granted on reasonable terms, which would you consider best suited to Indian requirements—

(a) specifying in the Act or the Rules the maximum and minimum royalties leaving it to the Controller to fix the figure which he considers reasonable in the circumstances of the case within the limits specified by law; or

(b) specifying in the Act or the Rules the minimum royalty as well as the scale of royalties to be charged, the latter to be based upon the total output or sales of the licensee, on a slab system with a decreasing percentage as the sales increase.

In connection with the above, what would you consider reasonable terms and scale of royalty.

2. It is stated that any statutory provisions for the compulsory grant of licence do not fulfil their purpose because many inventions cannot be worked properly or successfully merely on the basis of the complete specification but that considerable further information touching the operation of the processes of manufacture usually termed "know-how" is necessary for the purpose. It is further stated that the patentees do not impart to the licensees forced upon them by the Controller the "know-how" for putting the invention into effective and profitable use and that in the absence of the importing of such knowledge the licensees find themselves unable to utilise the invention except after further prolonged and expensive research which most find themselves not in a position to undertake.

Do you consider that this handicap of the licensees could be obviated by the imposition of a statutory condition in every compulsory licence that on demand by the licensee, the patentee shall impart the "know-how" to enable the licensee to obtain the product? Do you consider that such statutory condition could be effectively enforced by suitable provisions in licences, such as,

(a) that the royalty fixed shall not be payable unless the 'know-how' was imparted; and

(b) that on failure of the patentee to comply with the licence condition as regards imparting of the 'know-how', so as to enable the licensee to work the invention within a reasonable interval after the grant of the licence, the patent may be revoked on application to the Controller by the licensee (subject to an appeal).

3. Notwithstanding the general similarity, the Indian Patents & Designs Act, 1911 as now amended differs somewhat from the corresponding provisions of the U.K. Act of 1949 as to compulsory licence

and these points of difference are maintained in the Patents Bill, 1953. They are—

(1) The U.K. Act permits patentees voluntarily to have their patents endorsed "licences of right", on doing which the renewal fees payable are halved.

(2) On proof of abuse of monopoly under the U.K. Patents Act, 1949 any person interested as also the Central Government, may apply for an endorsement of the patent with the words "licences of right" whereas under the Indian Act, an application for such relief can be preferred only by the Central Government.

(3) The statutory law of the United Kingdom includes the Monopolies and Restrictive Practices (Enquiry and Control Act), 1948, a piece of legislation on the lines of the Anti-Trust Statutes of the United States. When the Monopolies Commission appointed under the above U.K. Act reports that a condition of monopoly prevails in regard to the supply of any particular patented articles or to a patented process and a resolution is passed by the House of Commons declaring that the conditions operate against the public interest, Government may apply to the Controller and the Controller may pass appropriate orders directing the patentee to grant licences or abrogating the offending provisions of the licences already granted [*vide* sections 40(3) and 43(6) of the U.K. Patents Act, 1949].

Do you consider that provisions on the lines of U.K. Act set out above or in any modified form will prove useful in India?

4. In addition to the provisions for compulsory licensing, the Patents Bill, 1953 in clause 99, in line with Section 57 of the U.K. Patents Act, 1949 enacts prohibitions against patentees imposing unreasonable conditions on those who deal with them either as buyers or hirers or licensees of their products in the course of trade.

Do you consider that provisions of clause 99 sufficient to cover all types of prevalent restrictive trade practices or would you suggest any enlargement and if so on what lines?

5. **Revocation of patent for abuse of monopoly.**—Neither the Indian Patents Act, 1911 as amended uptodate nor the Patents Bill, 1953 contains any provision for the revocation of a patent grounded on continued abuse of monopoly rights by the patentee even after the grant of compulsory licences. Such a provision is enacted in Section 42 of the U.K. Act of 1949 and is to be found in certain other countries also.

Do you consider that such a provision would be suitable or useful in India?

6. **Other suggestions.**—Have you any further or other suggestions to make as regards the amendments to be effected to the law relating to patents in India which would render the enactment, a potent instrument for fostering research and the establishment and development of the Indian industry?

APPENDIX "B"—Table (3)

SECRET PATENTS

Patents relevant for the purpose of Defence

The present law on the subject is contained in section 21A of the Indian Patents and Designs Act, 1911. The section which is identical in terms with section 30 of the U.K. Patents and Designs Act, 1907–1932 was introduced in the Indian Patents and Designs Act, 1911 by an amendment effected by Act VII of 1930. This section is confined to inventions for instruments or munitions of war assigned to Government by inventors for or without valuable consideration either before or after the patents therefor are granted. When an assignment has been so made the Central Government may at any time before the publication of the specification certify to the Controller in the interests of public service that the particulars of the invention and the manner in which it is to be performed should be kept secret. If such certificate issues, the specifications and drawings are to be kept in a packet sealed by Government (sub-section 4). Sub-section 10 enacts:

> (10) No copy of any specification or other document or drawing by this section required to be placed in a sealed packet shall in any manner whatever be published or open to the inspection of the public, but, save as otherwise provided in this section, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

This is given effect to by the Secret Patent Rules, 1933 which provide that the application would be subjected to the usual examination but that the acceptance would not be advertised. The specification is not to be published and no opposition will lie against such application. On acceptance of the application a patent will be sealed by the Controller but the patent will be entered in a separate Secret Register. The packet containing the specification and drawings is not to be opened except on the orders of Government during the term of the patent (sub-section 5) and on the expiration of the term, the packet is to be delivered to Government (sub-section 7). Patents covered by the secrecy directions are not subject to revocation (sub-section 9). Government may at any time revoke the secrecy directions, in which event the patents will be covered by the rules applicable to other patents.

Although obviousy the secrecy directions would not be effective unless they provided against disclousure, not only by the Patent Office but also by the inventor, the section is defective in so far as it does not expressly prohibit the inventor from communicating the invention to others. This defect was rectified during the war both in the United Kingdom and in India by rule 3 of the Defence (Patents and Trade Marks Act) Regulation, 1939–41 framed under the Defence of the Realm Act, 1939 and by rule 42 of the Defence of India Rules, 1939 respectively. Rule 42 of the Defence of India Rules ran:

[illegible] purpose of this rule, the expression 'Controller' means the Controller of Patents and Designs appointed under the Indian Patents and Designs Act, 1911.

(2) Where, either before or after the coming into force of the Ordinance, an application has been made to the Controller for the grant of a patent or the registration of a design, the Controller, if he is satisfied that it is expedient for the defence of British India or the efficient prosecution of the war so to do, may notwithstanding anything contained in the Indian Patents and Designs Act, 1911, omit to do or delay the doing of anything which he would otherwise be required to do in relation to the application, and by order, prohibit or restrict the publication of information with respect to the subject matter of the application, or the communication of such information to particular persons or classes of persons.

(3) No person shall except under the authority of a written permit granted by the Controller make an application for the grant of a patent, or the registration of a design in any country or place not included in His Majesty's Dominions and not being an Indian State.

(4) If, in the opinion of the Central Government, it is necessary or expedient for the defence of British India of the efficient prosecution of the war so to do, the Central Government may by order require any person to furnish to such authority or person as may be specified in the order, any such information in his possession relating to any invention, design or process as may be specified in the order or demanded of him by the said authority or person.

(5) The right of a person to apply for, or to obtain, a patent in respect of an invention or registration in respect of a design, shall not be prejudiced by reason only of the fact that the invention or design has previously been communicated to an authority or person in compliance with any order given under sub-rule (4), or used by an authority or person in consequence of such communication, and a patent in respect of an invention, or the registration of a design, shall not be held to be invalid by reason only of the fact that the invention or design has been communicated or used as aforesaid.

(6) In connection with the making, use or exercise of any invention or design on behalf of, or for the services of the Crown (whether by virtue of the Indian Patents and Designs Act, 1911, or otherwise), the Central Government may by order authorise the use of any drawing model, plan, specification, or other document or information in such manner as appears to the Central Government to be expedient for the defence of British India or the efficient prosecution of the war, notwithstanding anything to the contrary contained in any licence or agreement; and any licence or agreement, if and in so far as it confers on any person, otherwise than for the benefit of the Crown, the right to receive any payment in respect of the use of any document or information in pursuance of such an authorisation, shall be inoperative"

In the United Kingdom the provisions of the war-time Regulation were subsequently enacted as Section 18 of the Patents Act, 1949 but no such step was taken in India when the Defence of India Rules lapsed. The law in India was, however, sought to be brought into line with that of Section 18 of the U.K. Act of 1949 by clause 23 of the Patents Bill, 1953.

The second matter which requires to be noticed is as regards the provisions enabling Government to utilise inventions which are relevant for the purpose of the security of the country. Section 21(2) of the Indian Patents and Designs Act, 1911 empowers the Central Government or their authorised agents or contractors to make, use or exercise an invention in respect of which an application for a patent had been made whether before or after the grant of the patent. The terms for such use of the invention are to be fixed either by negotiation with the applicant or patentee, or failing agreement by an independent arbitrator [Section 21(2) to (4)]. This provision being very general in its terms applied equally to inventions in regard to which applications for patents were subjected to secrecy directions under rule 42 of the Defence of India Rules. But since rule 42 has now lapsed, there is no provision for a secrecy direction in regard to inventions which have not been acquired by Government—a state of affairs which also was sought to be remedied by clause 23 of the Patents Bill, 1953.

It might be mentioned that though the Swan Committee of the United Kingdom contemplated the retention of Section 30 of the U.K. Act of 1907 (corresponding to section 21A of the Indian Patents and Designs Act, 1911) with slight verbal amendments, the provision was dropped when the Patents Bill was drafted on the ground that it was not of much use and was cumbersome. In its place was substituted Section 18 which was a reproduction of the war time provision vesting in the Controller power to direct an applicant for a patent relating to inventions falling within a class notified to him by a competent authority as relevant for the defence, to keep the invention secret and not to publish or communicate information relating to it. No patent was to be granted in pursuance of such application so long as the secrecy orders continued. As stated earlier, clause 23 of the Patents Bill, 1953 sought to effect this change in India. Some points have been raised regarding the adequacy of the provision and also regarding the amendment of the clause with a view to making the provision more useful and less cumbersome. The suggestions made have mainly been in respect of two matters.

(1) The extent of scrutiny that should take place in the office of the Controller before an application was referred to the Defence Department for a more exhaustive examination and final orders.

(2) The authority that should issue the secrecy direction, whether it should be the Controller of his own motion or whether the Controller should be directed to act only on the initiative of the Defence Department.

In regard to the first point, there might be an apprehension that on the terms of the provision as it stood in the Bill of 1953, the Controller might send up to the Department for examination either too few or too many applications. The suggestion is that the sending up of too many applications, which are not of any real significance for defence, might be avoided if the Controller be required to examine each application with a view to satisfy himself that the invention disclosed therein is *prima facie* relevant for defence, instead of his merely looking to the title of the invention and deciding

mechanically whether it fell within any notified class. For this purpose it has been suggested that the procedure of having "notified classes" might be omitted and the matter be left to the unfettered discretion of the Controller to examine each application and make up his mind whether *prima facie* the invention was of relevance for defence or not. If the system of having notified classes be retained, it is suggested that it should be made clear that the Controller is not bound to refer each and every application for an invention falling within the notified classes, but that, even in regard to inventions within the notified classes, he should be directed to choose and send up only those applications which appear to him *prima facie* relevant for the purpose of defence. Along with this a suggestion has been made that in addition to sending up applications which fell within the notified classes, the Controller be vested with the discretion to send such other applications as he considered *prima facie* would be relevant for defence, even though they might not fall within the notified classes so as to avoid the possibility of any really valuable inventions escaping the secrecy ban. It has also been suggested that provision might also be made for the title of the inventions being periodically forwarded by the Controller to the Defence Department so that the latter might check up the inventions regarding which secrecy directions have been granted by the Controller and if it is thought that any invention might be of importance and required to be classed as secret, further directions might be called for and the Controller directed to impose secrecy directions on the applicant.....

It would be useful to refer to analogous provisions in the laws of other countries. The Australian Patents Act, 1952—56 departs from the English precedent and vests the discretion to choose applications for the imposition of the secrecy direction in the first instance in the Controller without any reference to notified classes. The relevant section 131(1) of the Australian Act, enacts:

> "The Commissioner may, if it appears to him to be necessary or expedient so to do in the interests of the defence of the Commonwealth.."

The position with regard to secrecy provision in the Patent law of the United States is as follows:—

Where the invention is of such a kind that the disclosure or publication thereof is, in the opinion of the Commissioner of Patents detrimental to national security, he makes the application available for inspection to the Atomic Energy Commission or the Defence Department. If these authorities agree with the opinion of the Commissioner, the latter is notified and he is directed to order the invention to be kept secret and to withhold the grant of the patent for such period as national interest requires and notify the applicant thereof. The application and other connected documents are thereupon kept in a sealed condition. The order for secrecy is to be reviewed every year, each order not being in force for more than one year (Section 181). There are also other provisions applicable in the event of national emergencies such as war etc., but these may be left out of account for the present. If the applicant violated the secrecy conditions or made an application for a patent abroad without the permission of the Commissioner, the application for the patent before the Commissioner is

deemed to be abandoned and the applicant also loses all rights to compensation against the United States based upon such invention (Section 182). Section 188 enables the Atomic Energy Commission and the Defence Department to issue rules and regulations to enable them to carry out the provisions to keep the inventions secret.

In Canada the law on the subject is contained in Section 20(15) and (16) of Patents Act. They run:—

> *20(15)*: "The Governor in Council, if satisfied that an invention relating to any instrument or munition of war, described in any specified application for patent not assigned to the Minister of National Defence, is vital to the defence of Canada and that the publication of a patent therefor should be prevented in order to preserve the safety of the State, may order that such invention and application and all the documents relating thereto shall be treated for all purposes of this section as if the invention had been assigned or agreed to be assigned to the Minister of National Defence."
>
> *20(16)*: "The Governor in Council may make rules under this section for the purpose of ensuring secrecy with respect to applications and patents to which this section applies and generally to give effect to the purpose and intent thereof. 1947, c. 23, s. 4".

The rules made under this provision are Rules 92 and 93.

> *Rule* 92: "Where the Governor in Council makes an order under sub-section (15) or (20) of the Act that an application shall be treated for the purpose of that section as if it had been assigned to the Minister, the Commissioner shall, as soon as he is informed of such order notify the applicant thereof by registered mail".
>
> *Rule* 93: "The Commissioner shall permit any public servant authorised in writing by the Minister of National Defence ..to inspect any pending application that in the opinion of the Commissioner relates to any instrument or munition of war and to obtain a copy of any such application."

It will be seen that the United Kingdom is the only country where the statute specifically refers to "notified classes" as relevant for defence purposes in respect of inventions for which secrecy orders are to be imposed. In other countries the matter is left to the discretion either of the Commissioner of Patents or of the concerned Governmental authority, without any designated or "notified classes" of inventions. Even so it is understood that in several of these countries, e.g. Australia, the defence department issues instructions as to classes of inventions which are relevant for the defence for the guidance of the Controller.

The above summary would also show that directions as to secrecy are imposed in the first instance by the Controller of Patents in the United Kingdom and Australia, while both in the United States as well as in Canada there is an examination by the defence authority on whose directions the Commissioner imposes the secrecy restrictions. It is, however, to be borne in mind that unless the examination by the defence authority for satisfying itself that the invention

is of importance for defence is concluded within a short time, it would always be advantageous to Government to have a secrecy direction imposed by the Controller immediately after a preliminary examination of the application, this being subject to revocation or continuance at the instance of the Defence authorities. It would be realised that the technical assistance that a Controller gets from his examiners may not be sufficient for a proper assessment of the invention as being relevant for the defence as his staff could not be expected to be experts posted with the information as to the latest developments in the field of munitions of war and military weapons. At best the Controller can only from a very rough idea of the importance or significance of an invention. Possibly this sort of difficulty is not experienced in other countries by reason of the Patent Office as well as the seat of the Government being located in the same place enabling the Controller to seek the aid of defence experts wherever he is in doubt. In India, however, while the Patent Office is in Calcutta, the Defence Science Organisation is in Delhi and so the Controller cannot immediately obtain the assistance of the Defence personnel for investigating the character of the invention.

In the light of the above considerations and having regard to the special needs of the defence,

1. In regard to the selection of applications for patents which are relevant for defence and as regards the secrecy directions to be imposed—

(a) would you consider it advisable to adopt the form of section 131 of the Australian enactment, viz., omitting all references to notified classes of inventions, leaving the matter entirely to the discretion of the Controller?

(b) if, however, you desire to retain the system of "notified classes", would you empower the Controller to issue secrecy directions in the first instance and refer to the Defence Department every invention which might be taken to fall within the notified classes or would you vest him with a wide discretion to make a preliminary examination of the application with the notified classes and send up only such cases as appear to him likely to be of some importance for the purpose of defence?

2. Even if there be no reference to "notified classes" in the statute, would you consider it advisable to draw up a list of classes of invention which are relevant for the purpose of defence merely to serve as a guide to the Controller in making up his mind as to the character of the invention. If you consider that it is desirable or necessary to draw up a list of the notified classes of inventions which are relevant for defence, would you desire to add a provision enabling the Controller to refer to the Defence Department inventions not falling within the notified classes, but which in his opinion are likely to be relevant for defence?

3. It is possible that even with this mode of selection inventions which might have a bearing on the defence of the country might pass unnoticed. To avoid this, would you favour the insertion of a provision directing the Controller to furnish to the Defence Department periodically, say every fortnight, a list of all the applications

for patents merely setting out their title and the name of the applicant, and empower the defence department to call for and inspect any application and on such examination require the Controller to direct secrecy in regard to applications where they consider the secrecy directions to be necessary?

4. Do you consider the provision in the Bill of 1953 under which secrecy directions were to be imposed in the first instance by the Controller proper or would you prefer the Controller acting in this matter only on the instructions of the Defence Ministry?

5. Under clause 23(5) of the Patents Bill, 1953, now lapsed, a person resident in India who makes an application for a patent in this country might file an application for a patent for the same invention in any foreign country if no secrecy direction is imposed within 6 weeks of his application here. It may be noted that an application for patent may be filed accompanied by a provisional specification only to be followed later by a complete specification or by a complete specification without prior filing of a provisional specification. If the applicant has filed in this country with his application only a provisional specification, the precise significance of the invention cannot be appreciated by Controller without looking into the complete specification. For this reason would you consider it advisable that the period of the ban on the application for patents abroad, should ensure a reasonable interval after the filing of the complete specification or do you consider the period of six weeks from the date of application with a provisional or complete specification sufficient?

6. Do you consider the provisions as to secrecy, namely, "prohibition or restriction on the publication of information or its communication" sufficient to effectuate its purpose?

7. What provision would you suggest to safeguard secrecy in cases where an applicant withdraws his application for patent. On clause 23 of the Patents Bill, 1953, as it stands, it would seem that in such cases the secrecy direction will lapse?

8. The imposition of the secrecy direction on the inventor on the terms of clause 23 of the Patents Bill, 1953 does not preclude the inventor from working the invention in secrecy. Although Government has a right to use the invention (clause 53 of the Bill, 1953) it enjoys no monopoly in that regard. Do you consider this position satisfactory or would you suggest any modification?

9. Under the Patents Bill of 1953 there is no obligation on any person who makes an invention which is relevant or important for the defence or security of the country to apply for a patent. The provisions of the existing Indian Patents and Designs Act, 1911 as well as those in the Patents Bill, 1953 in regard to secrecy directions or utilisation of patents for the service of the Government all come into play only when an application for a patent is made, would you favour a positive provision obliging persons who make inventions which they know are of value to defence or which fall within "notified classes" as relevant for the defence, to make applications for patents for their inventions or to disclose their inventions to Government in cases where no application for a patent is made. [It may be mentioned that a like obligation is cast by Section 151(c)

of the U.S.A. Atomic Energy Act, 1954 (replacing Section 11(a)(3) of the Act of 1946) in regard to inventions relating to the production of Atomic fuel and their utilisation.]

10. Have you any other suggestions in regard to the modification of clauses 23 and 53—55 of the Patents Bill, 1953?

11. In the United Kingdom there are the same provision for secrecy in regard to registered designs as to patents (Section 5 of the U.K. Designs Act, 1949). Do you consider it necessary to have such provisions in the Indian Designs Act?

APPENDIX 'C'

APPENDIX 'C'

This is the Patents Bill of 1953, which is referred to in the report and whose clauses are the subject of comment in the notes on clauses in Part II of the Report.

Bill No. 59 of 1953

THE PATENTS BILL, 1953

(As introduced in the House of the People)

A

BILL

to amend and consolidate the law relating to patents

Be it enacted by Parliament as follows:—

CHAPTER I

Preliminary

1. **Short title, extent and commencement.**—(1) This Act may be called the Patents Act, 1953.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

2. **Definitions.**—In this Act, unless the context otherwise requires,—

(a) 'Advocate-General' means an Advocate-General appointed under the Constitution;

(b) 'assignee' includes the legal representative of a deceased assignee and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person;

(c) 'Controller' means the Controller of Patents and Designs appointed under section 5;

(d) 'district court' has the meaning assigned to that expression by the Code of Civil Procedure, 1908 (Act V of 1908);

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

(f) 'High Court' means,—

(i) in relation to a Part A State or a Part B State, the High Court for that State;

(ii) in relation to the States of Ajmer and Vindhya Pradesh, the High Court at Allahabad;

(iii) in relation to the State of Bhopal, the High Court at Nagpur;

(iv) in relation to the States of Bilaspur, Delhi and Himachal Pradesh, the High Court of Punjab;

(v) in relation to the State of Coorg, the High Court of Mysore;

(vi) in relation to the State of Kutch, the High Court at Bombay;

(vii) in relation to the States of Manipur and Tripura, the High Court of Assam;

(viii) in relation to the Andaman and Nicobar Islands, the High Court at Calcutta;

(g) 'India' means the territory of India excluding the State of Jammu and Kashmir;

(h) 'invention' means,—

(i) any new and useful manufacture;

(ii) any new and useful composition of matter;

(iii) any new and useful improvement of any such manufacture or composition of matter;

which is capable of being used or applied in trade or industry and which is not previously known or used in India;

Explanation I.—An invention shall not be deemed to be new unless it involves an inventive step.

Explanation II.—An invention shall not be deemed to be useful unless it achieves the object which is claimed for it and makes a definite contribution to the existing stock of technical knowledge in India on the subject-matter of the invention;

(i) 'legal representative' means a person who in law represents the estate of a deceased person;

(j) 'manufacture', includes—

(i) any art or process—

(a) for producing, preparing or making an article by subjecting a material to manual, mechanical, chemical, electrical or any other like operation, or

(b) for producing any new material or for preserving or modifying the properties of any known material;

(ii) any method or process of testing applicable to the improvement or control of manufacture;

(iii) any machine or apparatus used for any of the purposes specified in item (a) or item (b) of sub-clause (i); and

(iv) any article or material produced, prepared or made by manufacture;

(k) 'patent' means a patent granted under this Act;

(l) 'patented article' means an article in respect of which a patent has been granted;

(m) 'patentee' means the person for the time being entered on the register of patents kept under this Act as the grantee or proprietor of the patent;

(n) 'patent agent' means a person carrying on in India the business of acting as agent for other persons for the purpose of applying for or obtaining patents in India or elsewhere;

(o) 'patent of addition' means a patent granted in accordance with section 31;

(p) 'Patent Office' means the Patent Office established under section 4 and includes any branch thereof;

(q) 'prescribed' means prescribed by rules made under this Act;

(r) 'priority date' has the meaning assigned to it by section 10;

(s) 'true and first inventor' includes a person who first imports an invention into India, or to whom an invention is first communicated from outside India.

3. **What is not patentable.**—The following shall not be patentable under this Act:—

(a) an invention the use of which would be contrary to law or morality;

(b) the mere discovery of new properties of a known substance;

(c) a mere duplication of known devices or juxtaposition of known devices which function independently of one another;

(d) a substance prepared or produced by a chemical process or intended for food or medicine other than a substance prepared or produced by any method or process of manufacture particularly described in the complete specification of the invention or by its obvious chemical equivalent.

Explanation.—In relation to a substance intended for food or medicine, a mere admixture resulting only in the aggregation of the known properties of the ingredients of that substance shall not be deemed to be a method or process of manufacture.

CHAPTER II

Patent Office and Establishment

4. **Patent Office and its branches.**—(1) There shall be established for the purposes of this Act an office to be called the Patent Office

and such number of branch offices as the Central Government may deem fit.

(2) The Patent Office shall be under the immediate control of the Controller who shall act under the superintendence and direction of the Central Government.

(3) There shall be a seal for the Patent Office.

5. **Controller and other officers.**—(1) The Central Government may appoint a person to be the Controller of Patents and Designs and as many Deputy and Assistant Controllers as may be necessary.

(2) The Deputy and Assistant Controllers shall be under the superintendence and direction of the Controller and shall discharge such functions of the Controller under this Act as the Controller may from time to time authorise them to discharge; and any reference in this Act to the Controller shall include a reference to a Deputy Controller or an Assistant Controller when so discharging any such functions.

(3) The Central Government may appoint for the purposes of the Patent Office such number of Examiners, Assistant Examiners and other officers as it may deem fit for the purpose of carrying out the provisions of this Act.

CHAPTER III

Applications for Grant of Patents

6. **Persons entitled to apply for a patent.**—(1) An application for a patent for an invention may be made by any of the following persons, that is to say,—

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

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

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

and may be made by that person or legal representative either alone or jointly with any other person.

7. **Form of application.**—(1) Every application for a patent shall be made in the prescribed form and shall be filed at the Patent Office in the prescribed manner.

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

(a) a declaration signed by the person claiming to be the true and first inventor or his legal representative, stating that he assents to the making of the application; or

(b) the original deed of assignment executed by the true and first inventor or his legal representative.

(3) Every application under this section shall state that the applicant is in possession of the invention and shall name the person claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes the person so named to be the true and first inventor.

(4) Every such application shall be accompanied by—

(a) a provisional or a complete specification; and

(b) the prescribed fee.

8. **Provisional and complete specifications.**—(1) Where an application for a patent is accompanied by a provisional specification, a complete specification shall be filed within nine months from the date of filing of the application and if the complete specification is not so filed, the application shall be deemed to be abandoned:

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

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

(3) Where an application for a patent is accompanied by a specification purporting to be a complete specification, the Controller may, if the applicant so requests at any time before the acceptance of the application, direct that such specification shall be treated for the purposes of this Act as a provisional specification and proceed with the application accordingly.

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

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

(2) Subject to any rules that may be made in this behalf under this Act, drawings may, and shall, if the Controller so requires, be supplied for the purposes of any specification, whether complete

or provisional; and any drawings so supplied shall, unless the Controller otherwise directs, be deemed to form part of the specification and references in this Act to a specification shall be construed accordingly.

(3) Every complete specification—

(a) shall particularly describe the invention and the method by which it is to be performed;

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

(c) shall end with a claim or claims defining the scope of the invention claimed.

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

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

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

10. Priority date of claims of complete specification.—(1) Every claim of a complete specification shall have effect from the date specified in this section in relation to that claim (in this Act referred to as the 'priority date'); and a patent shall not be invalidated by reason only of the publication or use of the invention so far as claimed in any claim of the complete specification, on or after the priority date of that claim, or by the grant of another patent upon a specification claiming the same invention in a claim of the same or later priority date.

(2) Where the complete specification is filed in pursuance of a single application accompanied by a provisional specification or by a specification which is treated by virtue of a direction under sub-section (3) of section 8 as a provisional specification, and the claim is fairly based on the matter disclosed in that specification, the priority date of that claim shall be the date of filing of the application.

(3) Where the complete specification is filed or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in sub-section (2), and the claim is fairly based on the matter disclosed in one of those specifications, the priority date of that claim shall be the date of filing of the application accompanied by that specification.

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

(5) In any case to which sub-sections (2) to (4) do not apply, the priority date of a claim shall, subject to the provisions of section 83, be the date of filing of the complete specification.

11. Examination of application.—When the complete specification has been filed in respect of an application for a patent, the application and the specification or specifications relating thereto shall be referred by the Controller to an Examiner for making a report to him in respect of the following matters, namely:—

(a) whether the subject-matter of the specification or specifications is an invention within the meaning of clause (h) of section 2;

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

(c) the result of investigations made under section 12; and

(d) any other matter which may be prescribed.

12. Search for anticipation by previous publication and by prior claim.—(1) The examiner to whom an application for a patent is referred under section 11, shall make investigation for the purpose of ascertaining whether the invention so far as claimed in any claim of the complete specification—

(a) has been published before the date of filing of the applicant's complete specification in any specification filed in pursuance of an application for a patent made in India and dated within fifty years before that date; or

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

(2) The Examiner may, in addition, make such investigation as the Controller may direct for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, has been published in India before the date of filing of the applicant's complete specification in any other document.

(3) The investigations made under this section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by the Central Government or any officer by reason of, or in connection with, any such investigation or any proceeding consequent thereon.

13. Controller to take into consideration the report of Examiner.—When, in respect of any application for a patent, the Controller has received the report of the Examiner under section 11, he shall, after considering the report, dispose of the application in accordance with the provisions hereinafter appearing.

14. **Refusal of application in certain cases.**—Where the Controller is satisfied that the subject-matter of the specifications relating to an application is not an 'invention' within the meaning of clause (h) of section 2 or is not patentable under section 3, he shall refuse the application.

15. **Order of refusal or amendment of application in certain cases.**—Where the Controller is satisfied that the application and the specifications relating thereto do not comply wih the requirements of this Act or of any rules made thereunder, the Controller may, subject to the other provisions of this Act, refuse to proceed with the application or require that the application or the specification be amended to his satisfaction before he proceeds with the application.

16. **Other orders on application.**—(1) Where a specification relates to more than one invention, the application shall, if the Controller or the applicant so requires, be restricted to one invention and the other inventions may be made the subject-matter of fresh applications; and any such fresh application shall be proceeded with as a substantive application, but the Controller may direct that any such fresh application made before the acceptance of the original application shall bear the date of the original application or such later date as he may fix, and the fresh application shall be deemed, for the purposes of this Act, to have been made on the date which it bears in accordance with such direction.

(2) At any time after an application has been filed under this Act and before acceptance of the application, the Controller may, at the request of the applicant and upon payment of the prescribed fee, direct that the application shall be post-dated to such date as may be specified in the request, and proceed with the application accordingly:

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

(3) Where an application or specification filed under this Act is amended before acceptance of the application, the Controller may direct that the application or specification shall be post-dated to the date on which it is amended, or if it has been returned to the applicant, to the date on which it is refiled.

(4) Where it appears to the Controller that the invention so far as claimed in any claim of the complete specification has been published in the manner referred to in sub-section (1) or sub-section (2) of section 12, he may refuse to accept the application unless the applicant either—

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

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

(5) If it appears to the Controller that the invention is claimed in a claim of any other complete specification referred to in clause (b) of sub-section (1) of section 12, he may, subject to the provision hereinafter contained, direct that a reference to that other specification shall be inserted by way of notice to the public in the applicant's complete specification unless within such time as may be prescribed either—

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

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

(6) If it appears to the Controller as a result of an investigation under section 12 or otherwise—

(a) that the invention so far as claimed in any claim of the applicant's complete specification has been claimed in any other complete specification referred to in clause (a) of sub-section (1) of section 12; and

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

then, unless it has been shown to the satisfaction of the Controller that the priority date of the applicant's claim is not later than the priority date of the claim of that specification, the provisions of sub-section (5) shall apply in the same manner as they apply to a specification published on or after the date of filing of the applicant's complete specification.

(7) The power of the Controller under sub-sections (5) and (6) to direct the insertion of a reference to another specification may be exercised either before or after a patent has been granted for an invention claimed in that other specification, but any direction given before the grant of such a patent shall be of no effect unless and until such a patent is granted.

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

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