LOK SABHA

JOINT COMMITTEE

ON

THE PATENTS BILL, 1967

EVIDENCE

LOK SABHA SECRETARIAT
NEW DELHI
October, 1969/Asvina 1891 (S)
Price : Re.

LOK SABHA SECRETARIAT

CORRIGENDA

TO THE EVIDENCE (VOL. I)

Joint Committee on the Patents Bill, 1967.

1. Page (ii), *for* 'Ramaiah' *read* 'S. Ramaiah'
2. Page (iv), Serial No. 10, *for* 'Pro' *read* 'Prof'
3. Page (vi), Serial No. 26,(i) *for* 'Internal Trade' *read* 'Ministry of Internal Trade'
   (ii) *for* 'affairs' *read* 'Affairs, Government of India'
4. Page (vii), Serial No. 35, *for* '1969' *read* '26-7-1969'
5. Page 7, *for* line 15 from bottom *read* 'that we decided in the Patents Bill as'
6. Page 21, Col. 1, line 13, *for* 'develng' *read* 'developing'
7. Page 22, Col. I, line 27, *for* 'Postive' *read* 'Positive'
8. Page 22, Col. II, line 23, *for* 'ave' *read* 'have'
9. Page 29, Col. II, line 30, *omit* 'and'
10. Page 31, Col I, line 18, *for* 'remeber' *read* 'remember'
11. Col. I, line 19, *after* 'per' *insert* 'cent'
12. Page 31, Col. II, line 34, *for* 'necesaary' *read* 'necessary'
13. Page 33, Col. I, line 23, *omit* 'take out'
14. Page 33, Col. II, line 29, *for* 'it' *read* 'is'
15. Page 34, Col. I, line 25, *for* 'Chir' *read* 'Chair'
16. Page 35, Col. II, line 1, *for* 'cealing' *read* 'ceiling'
17. Page 35, Col. II, line 13, *for* 'ordinaryly' *read* 'ordinarily'
18. Page 36, Col. I, line 38, *for* 'in' *read* 'an'
19. Page 36, Col. II, line 25, *for* 'explicity' *read* 'explicitly'
20. Page 36, Col. II, line 36, *after* 'developing' *insert* 'country'
21. Page 46, Col. I, line 1, *for* 'quite' *read* 'quote'
22. Page 49, Col. I, line 11, from bottom *for* 'durgs' *read* 'drugs'
23. Page 51, Col. II, lines 18 and 17, from bottom *for* 'organisasation' *read* 'organisation'
24. Page 53, Col.I, line 18, *for* 'porticularly' *read* 'Particularly'
    Col. II, line 24, from bottom *for* 'ooportunity' *read* 'opportunity'
25. Page 54, Col. II, line 10, *for* 'Limited' *read* 'Limited'
    Col. II, line 13, *for* 'amoun' *read* 'amount'
26. Page 55, Col. I, line 14, *for* 'passes' *read* 'bases'
27. Page 56, Col. I, line 20, *for* 'in' *read* 'is'
28. Page 58, Col. II, Line 29-30, *for* 'numidity' *read* 'humility'
29. Page 59, Col. II, line 28, *for* 'a' *read* 'as'
30. Page 61, Col. II, Line 3, from bottom *for* 'hearting' *read* 'heating'
31. Page 65, Col. II, line 20, *for* 'have' *read* 'are'
32. Page 74, Col. I, line 21, *for* 'Meaningess' *read* 'Meaningless'
    Col. I, line 34, *for* 'coplexity' *read* 'complexity'
    Col. II, line 8, *for* 'th' *read* 'that';
    line 22, *for* 'efforts' *read* 'efforts'
    line 38, *for* 'hs' *read* 'has'
33. Page 87, line 1, *for* 'or' *read* 'of'
34. Page 88, Line, *for* 'Minister' *read* 'Minutes'
35. Page 91, Col. I, line 12, *for* 'bet' *read* 'best'
36. Page 110, Col. II, line 13, from bottom *after* '33' *insert* 'per'

37. Page 120, Col. I, line 3, *for* 'Promteodmestic' *read* 'Promote domestic'
38. Page 130, Col. I, lines 12 and 14, *for* 'deterimental' *read* 'detrimental'
39. Page 130. Col. I, line 13, *after* 'payments' *insert* 'and if'
line 14. *for* 'connected with payments' *read* 'there they must'
40. Page 140, Col. II, line 25, *for* 'ceates' *read* 'creates'
line 32, *for* 'compet it or' *read* 'competitor'
41. Page 141, Col. II, line 22, *for* 'moderae' *read* 'moderate'
42. Page 144. Col. I, line 10, (from bottom) *for* 'enterprice' *read* 'enterprise'
43. Pages 159-60, *for* 'MR. CART ENGELHORN' wherever it occurs *read* 'MR. CURT ENGELHORN'
44. Page 177, Col. I, line 6, *for* i'is' *read* 'it'
Col. II, line 23, *for* 'in' *read* 'is'
line 25, *for* 'pplications' *read* 'applications'
45. Page 179, Col. II, line 10, (from bottom) *for* 'hac' *read* 'here'
Page 179, Col. II. Line 29, *for* 'very' *read* 'very broadly'
46. Page 181, Col. I, line 26. *for* 'in' *read* 'If'
47. Page 182, Col. I, lines 19-20. *for* yere' emphased *read* 'were emphasised'
48. Page 183, Col. I. line 4, (from bottom) *for* 'vrious' *read* 'various'
Col. II, Line 9 , *for* 'be' *read* 'the'
49. Page 186, Col. I, line 6, (from bottom) *for* 'Paten' *read* 'Patent'
50. Page 187, Col. I, line 12, *for* 'ex' *read* 'e g'.
51. Page 191, Col. I, line 5, *for* 'iaw' *read* 'Law'
Col. II, line 21, from bottom *for* 'fileds' *read* 'fields'
52. Page 192, Col. I, line 25, *after* 'that' *insert* 'it'
53. Page 196, Col. II, line 27, *for* 'Sattus' *read* 'Status'
54. Page 197. Col. II. line 7, *omit* 'ventio adequately It does not Safe'.
55. Page 198. Col. II. line 12, *for* 'Kow-how' *read* 'Know-how'
line 6, (from bottom) *for* 'indow' *read* 'inflow'
56. Page 199, Col. I, line 30, *for* 'Short-ended' *read* 'Shortend'
57. Page 200, Col. I, line 5, *for* 'assmuption' *read* 'assumption'
58. Page 212, Col. II. line 9, from bottom *for* 'got' *read* 'go'
59. Page 220, Col. I, line 18, *for* 'retrogade' *read* 'retrograde'
60. Page 222. Col. II, line 3, (from bottom) *for* 'Know' *read* 'knew'
61. Page 228, Col. II, line 12, *after* 'adjourned' *insert* 'The Committee reassembled after lunch'
line 17, *for* 'look' *read* 'took'
62. Page 239, Col. II, *for* line 30. *susbtitute* 'moment it is made into an injection'
63. Page 241. Col. II, line 1, (from bottom) *for* 'develp' *read* 'develop'
64. Page 246, Col. II, *for* line 7, *substitute* 'above change, as it would be.'
65. Page 258, Col. II, line 7, (from bottom) *for* 'Scduplous' *read* 'Scrupulous'.
66. Page 266. Col. I, line 14, *for* 'by this legislation feet' *read* 'feet by this Legislation'.
67. Page 267, Col. I. line 9, (from bottom) *for* 'evience..' *read* 'evidence'.
68. Page 269, Col. II, line 13, *for* 'propose' *read* 'proposed'.
69. Page 270, Col. I. line 23, *for* 'Case' *read* 'Cases'.
line 3, (from bottom) *for* 'demed' *read* 'deemed'
Col. II, line 13, (from bottom) *for* 'portect' *read* 'protect'.
70. Page 272, Col. II, line 6, (from bottom) *for* 'tions' *read* 'tions'
71. Page 277, Col.I, line 22, *for* 'same' *read* 'some'
Col. II, line 12, (from bottom) *for* 'recomendation' *read* 'recommendation'
72. Page 278, Col. I, line 5, *for* 'Partant' *read* 'Patent'.
Col. II, line 29, *for* 'of' *read* 'or'

73. Page 282, Col. I, line 7 from bottom *for* 'of' *read* 'case of'
74. Page 285, Col. I, lines 9 and 10 from bottom *omit* 'I was not being fautious'
75. Page 289, Col. I, line 7 from bottom *for* 'mater' *read* 'matter'
76. Page 292, *for* line 18 *substitute* 'III, Indian Drug Manufacturers' Association, Bombay'.
77. Page 297, Col. I. line 29, *for* 'of' *read* 'or'
78. Page 302, Col. II, line 13 from bottom *for* 'an-hoe' *read* 'ad-hoc'
79. Page 304, Col. I, *for* line 1, from bottom, *substitute* 'say is irrelevant. I have come across'
80. Page 307, Col. II, line 22, *for* 'Spector' *read* 'Spectator' line 7 from bottom *after* 'due' *insert* 'to'
81. Page 309, Col. I, line 28, *omit* "to way".
82. Page 313 (i) Col. I, line 5 from bottom *omit* 'or' (ii) Col.II, line 9 from bottom for admissible *read* advisable.
83. Page 317, Col. I line 10 *omit* 'be'.
84. Page 323, Col. II, line 4, *for* 'be' *read* 'he'
85. Page 325, Col. I, line 2, *for* 'basic' *read* 'basis'
86. Page 330, Col. II, line 22, *for* 'case of 8 to 10 Indians' *read* 'ratio of 10 to 15 per cent'.
87. Page 334, Col. I, line 1, *omit* 'of' line 3, *for* 'chlormycetin' *read* 'chloromycetin'.
88. Page 345, Col. II, line 5, *after* 'it' *insert* 'to'
89. Page 350, Col. I (i) lines 16, *before* period *insert* 'drugs. It goes through a lot of trial'.
(ii) *omit* line 17.
90. Page 354, Col. I, lines 5,8 *for* 'firling' *read* 'filing'
Col. II, line 20, *for* 'there' *read* 'these'.
Col. II, line 27, *for* 'weaking' *read* 'weakening'
91. Page 356, Col. I, line 26, *for* 'delop' *read* 'develop'.
Col. II, line 7 from bottom *after* 'there' *insert* 'is'.
92. Page 357, Col. II, line 3, *for* 'originally' *read* 'originality'.
93. Page 358, Col. I, line 2, *for* 'of' *read* 'or'.
94. Page 366, Col. I, line 4, *for* 'an' *read* 'and'.
95. Page 373, Col. I, line 30, *for* 'Clause 148' *read* '48'
96. Page 378, Col. II, line 5 from bottom *for* 'and' *read* 'end'.
97. Page 387, Col. II (i) *for* lines 7 and 8, *read* 'from abroad foreign technicians visiting India and our technicians going'.
(ii) line 9, *for* 'total' *read* 'and total'.
98. Page 396, Col. I, (i) line 23, *omit* 'of' (ii) line 9 from bottom *omit* 'I'
99. Page 397, Col. I *for* lines 11-12 from bottom *substitute* 'Shri Gursahani:—This would be so'.
Col. II, line 9 from bottom *for* 'Shri Shrinibas Misra' *read* 'Shri Krishan Kant'.
100. Page 401, (i) Col. II, lines 6 and 7 *omit* 'therefore, there'.
(ii) Col. II, line 9, *for* 'upon' *read* 'upon you'.
(iii) line 10, *omit* 'or common Law'.
(iv) *for* line 22, *read* 'not right....privilege of making, sell-'
(v) *for* lines 24-25 *read* 'out India, not preventing any body from using it. You have the exclusive right..privilege of making. sell—'
101. Page 402, Col. I, line 15 from bottom *after* 'not' *insert* 'to'.
102. Page 409, Col. I, line 3, *for* 'patentented' *read* 'patented'.
Col. II, line 20, *for* 'god' *read* 'good'.
103. Page 412, Col. I, line 25, *for* 'thing' *read* 'think'.
104. Page 420, Col. I, line 15, before 'meet' *insert* 'will'.
105. Page 425, Col. I, line 23, *for* 'on' *read* 'an'.
Col. II line 1, *after* 'about' *insert* 'it'.
for tibual' *read* tribunal'.

Page 430, Col. I, line 13 from bottom *for* '(b)' *read* '(1)'

Page 434, Col. II, line 16, *after* 'relating' *insert* 'to'.

line 18, *after* 'decisions' *insert* 'of'.

Page 435, Col. I, line 12, *for* 'India' *read* 'Indians'

110. Page 455, Col. II, line 29, *for* 'going' *read* 'giving'.

111. Page 469, Col. I *for* line 27 *omit* 'in'

line 28 *for* 'must' *read* 'such that'

line 30 *for* 'alter' *read* 'after'.

112. Page 470, Col. I, line 14, from bottom *for* 'exiling' *read* 'existing'

113. Page 471, Col. I, line 27, *for* 'boly' *read* 'body'.

114. Page 475, Col. I, *omit* line 9.

115. Page 479, Col. II, line 1 from bottom *for* 'the' *read* 'are'.

116. Page 480, Col. I, *omit* line 1.

117. Page 496, Col. I, line 29, *for* 'celling' *read* 'ceiling'.

118. Page 502, Col. II, line 26, *for* 'my' *read* 'by'.

119. Page 507, Col. II, line 28, *for* 'him' *read* 'me'.

120. Page 510, Col. I, (i) line 2, after 'impact' *insert* 'of'

(ii) Line 11, *omit* 'exist'.

(iii) Line 12, *for* 'to' *read* 'exist. To'

122. Page 513, Col. II, line 15 from bottom *for* 'elminiated' *read* 'eliminated'.

123. Page 519, Col. II, line 9, *for* 'amended' *read* 'attached'.

124. Page 521, Col. I, (i) line 20, *for* '47' *read* '87'.

(ii) Line 11 from bottom, *before* 'the' *insert* 'under'

125. Page 524, Col. I, line 15 from bottom *for* 'ineaking *read* 'weakening'.

126. Page 525, Col. I, lines 11, 12, from bottom *omit* 'the any'.

line 18, from bottom *for* 'roaytly' *read* 'royalty'.

Page 529, Col. II, line 4 from bottom *for* 'wish *read* 'work'.

Page 530, Col. I (i) Line 26, *for* 'indicates' *read* 'does not indicate'

(ii) Line 27, *for* 'Coment' *read* 'Current'

Page 531, Col. I, line 1, *omit* 'has taken'

127. Page 533-549 *for* 'Shri Roy' *read* 'Shri Keith C. Roy'.

128. Page 535, Col. I (i) line 15, *omit* 'an'

(ii) line 23, *for* 'count' *read* 'countries'.

Page 542, Col. I, line 2 from bottom *for* 'not' *read* 'note'.

Page 546, Col. II, (i) line 31, *omit* "more"

(ii) lines 39-40, *omit* "Patent Came in and many people"

(iii) line 41, *for* 'entail' *read* 'curtail'

(iv) line 43, *for* 'forms given' *read* 'firms gave' and *for* 'sell' *read* "sett'

129. Page 550, Col. I, line 22, *for* '335' *read* '35'.

Page 550, Col. I, line 23, before 'amount' *insert* 'like to give you a brief idea as to the'

Col. II, line 24, *for* 'body' *read* 'bably'

130. Page 551, Col. I, line 17 from bottom *for* 'scaling' *read* 'sealing'.

131. Page 552, Col. II, line 20 *for* 'sent' *read* 'seat'.

132. Page 553, Col. II, line 4, *omit* 'trial manufacture in this country'.

line 7, *after* 'Indus' *insert* trial manufacture in this country'

Page 555, Col. I, line 20, *for* 'operate' *read* 'incoperate'

line 21, *for* 'Causes' *read* 'clauses'.

133. Page 556, Col. II, line, 2 from bottom *for* miciclessly' *read* 'mercilessly'.

New Delhi,

March, 1970

JOINT COMMITTEE ON THE PATENTS BILL, 1967

COMPOSITION OF THE COMMITTEE

Shri Rajendranath Barua—*Chairman*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Kanwar Lal Gupta
5. Shri Hari Krishna
6. Shri Amiya Kumar Kisku
7. Shri Madhu Limaye
8. Shri M. R. Masani
9. Shri G. S. Mishra
10. Shri Srinibas Mishra
11. Shri Jugal Mondal
12. Shri K. Ananda Nambiar
13. Dr. Sushila Nayar
14. Shri Sarjoo Pandey
15. Shri P. Parthasarathy
16. Shri T. Ram
17. Shri Era Sezhiyan
18. Shri Diwan Chand Sharma
19. Shri Maddi Sudarsanam
20. Shri Atal Bihari Vajpayee
21. Shri Ramesh Chandra Vyas
22. Shri Fakhruddin Ali Ahmed.

Rajya Sabha

23. Shri S. K. Vaishampayen
24. Shri Krishan Kant
25. Shri R. P. Khaitan
26. Shri Arjun Arora
27. Shri T. V. Anandan
28. Shri Om Mehta
29. Shri K. V. Raghunatha Reddy
30. Shri Pitamber Das
31. Shri Dahyabhai V. Patel
32. Shri Godey Murahari
33. Shri C. Achutha Menon.

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DRAFTSMEN

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

REPRESENTATIVES OF THE MINISTRY

1. Shri K. I. Vidyasagar, *Joint Secretary, Ministry of Industrial Development and Company Affairs (Department of Industrial Development).*
2. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks, Trade Marks Registry, Bombay.*
3. Dr. B. Shah, *Industrial Adviser (Drugs), Udyog Bhavan, New Delhi.*
4. Shri R. Vasudeva Pai. *Joint Controller of Patents and Designs.*
5. Shri Hargundas, *Under Secretary, Ministry of Industrial Development and Company Affairs (Department of Industrial Development).*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

JOINT COMMITTEE ON THE PATENTS BILL, 1967

Minutes of Evidence given before the Joint Committee on the Patents Bill, 1967

Friday, the 17th January, 1969 at 10.10 hours and again at 15.00 hours.

PRESENT

Shri Rajendranath Barua—*Chairman*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Hari Krishna
5. Shri G. S. Mishra
6. Shri Srinibas Mishra
7. Dr. Sushila Nayar
8. Shri Sarjoo Pandey
9. Shri P. Parthasarathy
10. Shri T. Ram
11. Shri Diwan Chand Sharma
12. Shri Ramesh Chandra Vyas

12A. Shri Kanwar Lal Gupta

Rajya Sabha

13. Shri Arjun Arora
14. Shri T. V. Anandan
15. Shri Om Mehta
16. Shri K. V. Raghunatha Reddy
17. Shri Pitamber Das
18. Shri Dahyabhai V. Patel
19. Shri C. Achutha Menon.

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri, *Addl. Legislative Counsel, Ministry of Law.*
2. Shri S. Ramaiah, *Deputy Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS (DEPARTMENT OF INDUSTRIAL DEVELOPMENT)

1. Shri K. I. Vidyasagar, *Joint Secretary, Ministry of Industrial Development and Company Affairs.*
2. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks, Trade Marks Registry, Central Building, Queens Road, Bombay-1.*

3. Shri Hargundas, *Under Secretary, Ministry of Industrial Development and Company Affairs.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

Shri S. P. Gupta—*Section Officer.*

WITNESSES EXAMINED

I. Prof. Dr. Stojan Pretner of Ljublijana, Yugoslavia.

II. The United International Bureaux for the Protection of Intellectual Property, (BIRPI), Geneva, Switzerland.

Spokesman:

Mr. G. H. C. Bodenhausen, Director, BIRPI

Prof. Dr. Stojan Pretner of Ljublijana, Yugoslavia

(*The witness was called in and he took his seat*).

MR. CHAIRMAN: Dr. Stojan Pretner will now give his evidence. He speaks his own language and therefore there is an interpreter to interpret his evidence in English.

DR. PRETNER: We are grateful to you for having come all the way from Yugoslavia to give evidence. You have good experience behind you and I hope the Committee will be benefitted from your views. Please give a brief resume of your views as you have indicated in your memorandum, as briefly as possible. Thereafter the hon. Members will be putting you some questions.

Incidently, I would like to tell you that our rules require that your evidence is liable to be made public and when necessary extracts from your evidence may be published in papers. This is for your information, which, I suppose, you will like to know.

DR. (MISS) I. CURA: Mr. Chairman and Members of the Committee, Prof. Pretner would like to express his deep gratefulness to you for having given him this opportunity to give evidence on such an important matter. He would also like to express his regrets that he does not speak English and the translation has to be done by an interpreter.

MR. CHAIRMAN: When any specific part of your evidence should not be published, it should be indicated earlier.

DR. (MISS) I. CURA: There is no need for anything indicating confidential. If. Mr. Chairman will kindly allow, Prof. Pretner would like to start with a brief summary.

MR. CHAIRMAN: That is what we desire.

DR. (MISS) I. CURA: Prof. Pretner would like to stress before the Committee that the problems concerning the Patents Bill and Patent system are not only legal but both sociological and economic. From this particular angle, we should consider the Patents policy as not some ideology but as an integral part of a contemporary economic system and social living. The protection of inventions in contemporary society has acquired a specific importance because of the following reasons.

Modern social wealth and riches do not only depend on natural goods and natural wealth but how we employ our intellect and how the intellectual abilities are materialised. Therefore, there is no modern society which actually could afford not to put in a proper legal system the protection of

inventions. In my memorandum I have limited myself only to stress the legal views as they are conceived in socialist countries. If, Mr. Chairman and the Members of the Committee would like me to expand my views and give comparative views between Socialist and Western Capitalist countries, I am willing to do so.

MR. CHAIRMAN: We would like to have it.

PROF. PRETNER: The protection of inventions in socialist countries depends on two basic facts. Firstly they depend on State property or means of production and secondly system of distributing goods—either they are planned, planning system as it is in the Soviet Union or on the whole on mechanism—the whole establishment of the market as it is in Yugoslavia. Therefore, there is no complete or absolute uniform system of considering the patents in socialist countries. Prof. Pretner would like in a few words to explain the system he has applied in his memorandum. Prof. Pretner starts from the suggestion or he pre-supposes that all the inventions into socialist countries are of economic category and, therefore, the system of protection is very much liable to economical conditions. In the second part of my Memorandum I discussed the social conditions for the protection of inventions. I want to stress the fact that the classical concept of protection of patents has been expanded in socialist countries. In this particular consideration in Western countries the only category which is protected are inventions. But in socialist countries the protection of smaller scale inventions has been also conceived not only big scale inventions but also smaller inventions and certain countries like Soviet Union, Bulgaria and Czechoslovakia had also introduced the protection of scientific discoveries. Therefore, the protection of technical inventions is much more expanded in Socialist countries as compared to Western countries. (In Socialist countries there is also protection key of smaller scale inventions and also of scientific discoveries and in particular scientific discoveries are protected in Bulgaria, Czchoslovakia and the Soviet Union). In my further consideration, in my Memorandum I have limited myself to the problems of protection of pharmaceutical inventions.

MR. CHAIRMAN: Hon'ble Members wish to have the elaboration of the word 'protection'.

DR. STOJAN PRETNER: Protection does not imply protection only to pharmaceutical inventions but inventions generally speaking. For the last three hundred years, inventions have been protected by the patents system.

The protection of inventions represents only one aspect of protection of intellectual creations. The other aspect of intellectual inventions and creations is in the field of literature and art and that is the copyright system. The form of protection of technical creations is patents.

MR. CHAIRMAN: Many East European countries are members of the Paris Union based on Convention, but India is not a member as yet. Will you throw some light on the advantages and disadvantages of being a member of the Paris Convention? What is the Paris Convention and what is its concept?

DR. STOJAN PRETNER: I would like to underline that the Paris Convention is an expression of world economics. The Convention was signed in 1883, and it was often modified in connection with development of world economy, and the last time it was modified was in Lisbon in 1958, and in 1967, that is, about two years ago, in Stockholm. That was the year when for the first time the Soviet invention certificates were accepted; that was in 1967. At the present moment, all the socialist countries in Europe except Albania are members of the Paris Union. The main characteristics and starting points of the Paris Convention are as follows. The first is the so-called principle of assimilation. That means for instance

that every country is obliged to give protection to any foreign invention just as well as to the home-made inventions. For instance, an invention which has been established in Switzerland has also a right in Yugoslavia according to the Yugoslav law, and similarly the Yugoslav invention has a right in Germany or in Switzerland according to the German or Swiss law. These are the main leading points of the Paris Convention.

MR. CHAIRMAN: If Yugoslavia keeps away from the Paris Union, what will be the disadvantages.

DR. STOJAN PRETNER: The greatest disadvantage would be that we could not extend the different patents all over the world, if we were not members of the Paris Convention. That would be the first disadvantage. The second would be that we could not place our own inventions in the form of patents abroad or if we could do so that would be under very difficult circumstances indeed.

SHRI T. V. ANANDAN: You have stated that membership of the Paris Convention makes for easy exchange of inventions. In our country we find that foreign inventions are being introduced on a large scale. How would it help the growth of Indian economy?

DR. STOJAN PRETNER: It is not only the question of patents as a legal problem. Patents are today a part of modern capital. It is not only in India that you have more foreign patents than Indian patents. It is only the biggest countries like Soviet Russia, West Germany, France and U.K. and America which have more of their own national patents than foreign patents, I mean biggest in the industrial sense and not in the sense of geographical bigness.

I must admit that this fact shows that developing countries depend more on developed countries rather than the other way round. But this is a fact that we have to admit, and therefore, every developing country should pay great attention to this particular problem. That is, the developing countries should stimulate research work in the field of technology, and the concern should be that any developing country should try to have their own means of productivity eventually.

DR. SUSHILA NAYAR: But patents block the way to that.

DR. STOJAN PRETNER: That is right and that is a historical fact that the patent law has enabled the greatest industrial countries to reach this climax. This is particularly revealed in the fact that the importance of the patent law has been emphasised and incorporated in the American Constitution in 1778, and it has been particularly stressed that the important object of the patent is to promote industry.

SHRI T. V. ANANDAN: With your vast experience, may we know how it will act if we reduce the period or term of the patent as contemplated in the Bill? What is the period of protection generally in your country or in other socialist countries?

DR. STOJAN PRETNER: In Yugoslavia the period of protection of the patent lasts 15 years from the moment the patent has been published, but in other socialist countries there is only a slight difference, namely the period of protection is 15 years from the moment the patent has been announced and not published.

SHRI C. C. DESAI: It is 18 years in East Germany.

DR. STOJAN PRETNER: That is due to the influence of the German law because West Germany has a law giving protection for 18 years.

SHRI C. C. DESAI: In East Germany also it is 18 years.

DR. STOJAN PRETNER: In France, it is 20 years from the moment the patent is announced.

SHRI T. V. ANANDAN: From your memorandum, we find that there is no difference in the patents between food and medicine, etc., but we in our Bill desire to differentiate between them. What will be your advice on that?

MR. CHAIRMAN: We are making a distinction between food, drugs and other things in regard to patents. The qustion is whether such a distinction is prevalent in your country also.

DR. STOJAN PRETNER: This is not only a case in Yugoslavia but the case of all socialist countries, that there is no distinction in the period of protection. There is only one distinction, and that is, the drugs themselves are not considered for product protection, but the process of making the drugs, is considered patentable. This is nothing special for socialist countries. There are similar regulations also in Western countries.

SHRI OM MEHTA: When did your country actually adopt this patent law?

DR. STOJAN PRETNER: The first patent law in Yugoslavia was adopted in 1922. There is one fact which I should point out, and that is, between the two world wars—between 1914—1918 and the second world war—out of a 100 patents, only 16 were granted to Yugoslavians. There are two more important facts to be remembered. There were two adjustments to be done. The law which was brought about for the first time in 1922 was twice modified. The first time it was modified was in 1948: it was modified to socialist state ownership. The second time when it was modified was in 1961 when self government was introduced in the country. The last modification which happened in 1961 is still valid today.

I should also like to stress the fact that Yugoslavian patents, in comparison with foreign patents, are in a small minority.

MR. CHAIRMAN: What do you mean by that? You mean that the number is much less?

DR. STOJAN PRETNER: 30 per cent are Yugoslavian patents and 70 per cent are foreign. This fact which was previously stated is nothing very peculiar when we consider that 50 per cent of the whole intellectual productivity in the field of technology belongs to five developed countries and the rest to 12 developed countries. The five big developed countries are, America, Germany, Japan, Soviet Union and partly the United Kingdom.

SHRI OM MEHTA: Actually, you adopted this patent law in 1922 when Yugoslavia was in a developing stage. What was the life of the patent at that time?

DR. STOJAN PRETNER: In that particular respect, we still today can consider Yugoslavia to be a developing country.

SHRI OM MEHTA: What was the life of the patents at that time? I want to know it specifically.

DR. STOJAN PRETNER: The period of protection has not changed. It was 15 years then also.

SHRI OM MEHTA: What are the specific provisions in your law for the protection of small indigenous pharmaceutical inventions?

DR. STOJAN PRETNER: To a certain extent, all technical inventions are in big factories. Individual inventions are for the improvement of what already exists. This is stimulated whether it is done by a group or by an individual. This kind of improvement of big factory work was first done by the Soviets. This has been in a way copied by all the socialist countries and this has produced great results. For instance, in East Germany, every year there are over 400,000 small technical improvements. If these small technical improvements are new and increase productivity, those inventors get both an honorary reward in the

form of a diploma or medal and also material reward. My personal view is that in developing countries, it is of great importance that everybody should consider the improvement of what already exists and of the research and technical product he is engaged in. So, the improvement and development should start in the counntry itself.

SHRI PARTHASARATHY: What is the system in your country to pay compensation in the event of a particular patent being taken over by the Government?

DR. STOJAN PRETNER: As you surely know, Yugoslavia has a slightly different system in comparison with other socialist countries. We do not have State ownership, but self-management. The Government practically never takes over a patent on behalf of the State. This is left with the industry which has considerable interest in it. This applies to foreign patents and local Yugoslav patents. Compensation is according to the contract.

SHRI PARTHASARATHY: That is, through negotiation you decide the compensation?

DR. STOJAN PRETNER: Yes.

SHRI PARTHASARATHY: For fixation of royalties on patents, have you got any ceiling? What is the desirable ceiling you would recommend for a developing country like ours?

DR. STOJAN PRETNER: There is no limit conceived. It varies from one case to another according to the commericial value and calculation.

SHRI B. D. DESHMUKH: What is the percentage of royalty granted to foreign patent-holders, particularly those from capitalist countries?

DR. STOJAN PRETNER: The exact figures have only become evident in the last two or five years. Inventions have also become a kind of modern goods which are often sold and bought. Therefore, all the elements that are normally employed for goods sold and bought in the market are to be considered.

MR. CHAIRMAN: The hon. Member wants to know the percentage of royalty paid to foreigners in your country.

DR. STOJAN PRETNER: Foreigners are paid more than the indigenous people, not because there is any discrimination but because the patents and know-how of foreign people are generally superior to what we have in Yugoslavia. Apart from the Patents Bill we have also modified our principles so that foreign capital can take part in our economy under the condition that they introduce new technology. This is an important fact.

SHRI RAMESH CHANDRA VYAS: What will be the effect of our Patents Bill on the East-European countries? What is your opinion about clauses 48, 53, 87 and 88?

DR. STOJAN PRETNER: I will express my own views. I cannot also assume that I am here able to foretell what is going to be the attitude of the Governments of socialist countries. Every socialist country has to consider that the country is able to sell the patent or know-how only according to the principles of the world market—that is to say, the payment has to be made in dollars or in any other way according to the general principles which are predominant. A foreign country offering new technical achievements by way of technical assistance is a separate problem.

SHRI RAGHUNATH REDDI: I have a compilation before me which deals with all the laws of various countries. I would like you to look at the law of Yugoslavia as given here and tell me whether it is correctly stated.

DR. PRETNER: It is generally correct that a patent in Yugoslavia may be expropriated provided it is in the general interest. It has to be considered by Parliament and compen-

sation has to be paid. In principle, it is correct that in our Act No. 32 there is provision for expropriation of patents.

MR. CHAIRMAN: If that is so, if you say that such a provision is there in your enactment, then how do you say in the concluding part of your memorandum that no patent law of a socialist country has regulations which could in any way be compared with clauses 48, 87 and 88 of the Indian Patent Bill? How do you reconcile the two?

DR. PRETNER: There it is governed by two considerations. The expropriation has to be considered by Parliament. It has to be in the public interest and there should be payment of compensation.

SHRI RAMESH CHANDRA VYAS: In India we have mixed economy with the public sector and private sector functioning side by side. If this Bill is passed into law, what will be its effect on our public sector?

DR. PRETNER: If there is competition between the public sector and the private sector, certainly the public sector should not have the control of the patents. We are facing a similar situation in Italy and France where also there is a strong public sector and an equally strong private sector and both are competing for control of patents. In Italy, for instance, all the metallurgical and ship-building industries are in the hands of the public sector. So, the public sector in those countries is very strong, it pays a great deal of attention to research work and it has its own patents.

DR. SUSHILA NAYAR: I would like to present to you the problem as we see it, or as several of us see it. We hold that drugs and pharmaceuticals, particularly baby food and invalid food required for the care of the sick and growing children, should be as inexpensive as possible in the public interest, in the interest of the common man. As a representative of a socialist country, I am sure you will agree with this concept. The patents law, as it operates in our country, has created two problems.

On the one hand, it has resulted in very high prices. Countries that hold patents, as you might have seen in a recent note in America wherein it said that they make as much as 3,000 times the profit on some of these things. Under the circumstances, to continue with the present situation is not in the public interest and, therefore, we would like a way by which the quality of the pharmaceuticals is protected but inordinate profits are curbed.

Secondly, our own people are coming up with their inventions and researches and because of our present patents law, which is products patent, we cannot exploit some of the researches of our own people and manufacture these goods.

So, on the one hand, here is the question of inordinate costs involved and, on the other, there is the question of our own inventions not getting a chance of going into production because of the patents. The third thing that happens is that a man takes out a patent but because he has it for 15 or 16 years, for a long number of years, he does not go into production for 5, 6 or 7 years, and nobody else can produce the thing because he has taken out the patent. Thus, the people are denied the benefit of that particular invention.

It is in the light of these difficulties that we desire on the Patents Bill as it is. Of course, we have reduced the time period. Some of us feel that ten years is too long a period; it should come down still further. We have given the compulsory right of licence so that anybody else can produce the thing if the patent-holder does not do so or is charging too exorbitant prices. And there are a few other clauses that you have mentioned. Will you agree that this is in keeping with the spirit of social justice and that the provisions that have been made are in line with some of your own thinking?

DR. (MISS) CURA: Professor Pretner would like to stress the point that he has nothing to disagree with the compulsory licence because some of our own laws have also provided this consideration, but he believes that this has to be considered under two conditions; firstly, when the individual, who has the patent, does not produce it or does not produce it in sufficient amounts.

DR. SUSHILA NAYAR: Or sells the product at exorbitant prices.

DR. (MISS) CURA: The second condition is that he should be paid compensation because he is entitled to it. That is the stand point of our law.

DR. SUSHILA NAYAR: But that is provided in our law too. He will be paid some compensation which we consider fair compensation. We have provided not only compensation but we have provided a royalty so that on the quantity that a man produces and sells a certain amount of royalty will be paid. It is compensation in the form of royalty which comes to much more than a lump sum. After all, what is the object of a patent? You will agree that it is to stimulate greater effort at better invention, on the one hand, and simultaneously to ensure social justice by seeing that the benefits reach the people.

PROF. DR. STOJAN PRETNER: Yes; I agree.

DR. SUSHILA NAYAR: If the patent law, as it stands, comes in the way of the objective that I have mentioned, it has to be changed.

PROF. DR. STOJAN PRETNER: I would like to stress that the basic idea of the patent law is that research should be stimulated. If it does not give benefit or it is not used, that is considered to be a misuse of the patent. Therefore, here comes in the conception of compulsory licence. Even under the Paris Convention, in such a case, if it does not give benefit or if somebody does not sufficiently apply or exploit the big patent Protection invention that is considered to be a misuse of the patent.

DR. SUSHILA NAYAR: Agreed that there should be a certain incentive for the research worker to improve his effort at producing better and more effective goods, whatever the goods are, medicines or other things. At the same time, in your country, I think, if I remember correctly—I visited your country a couple of years ago—no individual is able to amass wealth out of patent royalties. Is that correct?

PROF. DR. STOJAN PRETNER: It is not the principle question that a man should acquire returns from patents. On the other hand, in Yugoslavia, there are a number of engineers and inventors who have done well through patents which have been applied in the country and outside the country, of course, depending on economic effects of invention, how valid it is and how important it is.

DR. SUSHILA NAYAR: You have an economic system which takes care of some of the requirements to prevent the abuse of some of these patent rights and the effects of those rights. You will agree that drugs and these invalid foods, etc., are slightly different from some of the other inventions. As a doctor, if I discover a new test for diagnosis, I cannot patent it. It is the property of all scientific men all over the world. If scientific means of diagnosis cannot be patented, scientific means of fighting the disease, why do you think these should be patented?

PROF. DR. STOJAN PRETNER: We have to make two distinctions that scientific discovery is only to affirm the existing natural laws and invention means to create something new. What can be used in industry. Therefore, invention is protected, but discovery is protected only in same socialist countries.

The question that you asked about costs is difficult to answer. Cost does not necessarily depend on the patent. If the patent system is introduced, the

very fact of introducing it offers the possibility to the other firms or industries to try to improve it and make a better invention. So, there is the spirit of competition.

DR. SUSHILA NAYAR: If the patent law, as it stands today, leads to monopolisation and prevention of other people from producing the same thing, naturally it leads to high costs. That is what is happening today. It is in order to rectify that that we are trying to introduce some of the clauses that we have done. If I remember correctly, before 1905 when Salvarsan was discovered in Germany, there was no patent on drugs and medicines. It is, therefore, necessary today, and I think you will agree with it, that enough protection is given to the people as well as to the inventor, to the people in the form of making available the benfits of science to them for promotion of health and prevention of disease. Do you agree with that and do you think that this law, as we have proposed, will help in that process?

DR. STOJAN PRETNER: Germany had a patent law in 1887.

DR. SUSHILA NAYAR: I am talking only of drugs and medicines; I am talking only of pharmaceuticals.

DR. STOJAN PRETNER: But still there is the fact that with the help of protection of patents, Germany has become one of the leading powers as far as drug production is concerned. I have the following experiences:—

For instance, drugs are very cheap in France and in East Germany but are very expensive in Switzerland; they seem to be the most expensive in Ethiopia where there is no Patent Law whatsoever. I would only like to conclude by saying that the costs or prices of the drugs have nothing to do with the patent law; they have to be considered as two separate things. As any other industry, pharmaceutical production is also an industry in development. If today a particular firm starts selling a good drug, in two months or so another firm can start selling another drug which may be better and which can compete with the previous one.

SHRI G. S. MISHRA: If it is required for community or for defence purposes, are you in favour of nationalisation of patents?

DR. STOJAN PRETNER: Yes; that is better than applying appropriations because defence purposes and good of the community can be treated as public interest.

SHRI G. S. MISHRA: You want compensation to be properly paid in such cases. We have provided the compensation in the form of royalty. That is at 4 per cent. Don't you think this is proper?

DR. STOJAN PRETNER: In every legislation and patents legislation in particular every sort of readymade schemes and limits are not considered to be very useful. Every case should be considered according to the circumstances and in that case it can be given in the form of compulsory licence. If there is no reasonable agreement between somebody who buys the patent and the person who lends it, *viz.*, the owner of the patent, then compulsory licence can be applied and in the compulsory licence you give the complete conditions and the compensation. This is the case in Yugoslav law with one restriction that it should be done by the Economy Court.

SHRI G. S. MISHRA: What is your opinion regarding the British Patents Act where any patent can be taken over for the sake of Her Majesty's Government at any time and at any stage.

DR. STOJAN PRETNER: I am not so well acquainted with all the

details of the British law, but as far as I know, detailed provisions had been made to protect both sides *viz.*, the owner of the patent and the buyer of the patent, in compulsory licence cases for the protection of mutual interest.

SHRI G. S. MISHRA: What about the patent law of Japan where processes are not patented, only the Products are not patented? In Italy there is no patent law regarding pharmaceuticals. What is your opinion regarding that?

DR. STOJAN PRETNER: Among the more developed and modern countries it is only America, France and Germany which protect the products of drugs and other countries protect only the processes of drugs. I believe in developing countries it is impossible to protect the product, only the processes can be patented.

SHRI G. S. MISHRA: By patenting the process our scientists and technicians will find out new ways for the invention of the drug. That Japan did when they found out new processes regarding Vit. B-1 and they have become the foremost producers. Will it not benefit our country if we do not allow patents of processes?

MR. CHAIRMAN: Do you think that not patenting a process will be beneficial for a developing country like India.

DR. STOJAN PRETNER: My answer is that it should not.

MR. CHAIRMAN: Processes should be patented?

DR. STOJAN PRETNER: Yes.

MR. CHAIRMAN: Not the product, but the processes?

DR. STOJAN PRETNER: This principle of protecting the processes applied to food and chemical products.

SHRI C. C. DESAI: After studying the patent law of all the socialist countries—you have underlined the word 'all' in your memorandum—and after having studied the comparative provisions in the Indian Patents Bill of 1967 you came to the conclusion that this Bill will have a serious negative effect on the further development of the Indian economy (page 24 of your memorandum). Since then you have heard the views of a number of members in this meeting. You have also heard what the objectives are, namely social justice on the one hand and encouragement of indigenous research and development in India on the other. Under 'social justice' I would put this objective of making drugs particularly drugs and pharmaceuticals available to the people at a low price and at the same time keeping in view the quality of the drugs. After having heard the views of our colleagues here, would you still maintain the position that the Patents Bill as it is, will have a serious negative effect on the further development of the Indian economy or would you now modify your views?

PROF. DR. STOJAN PRETNER: I still believe in my conclusions and I shall try to justify them. Every patent, the moment it has been declared or published, comes within the reach of everybody. And, it means, improvement and enrichment of technical knowledge. If the taxes for three years are not paid for instance, then everybody can benefit from this technical knowledge. The percentage of this tax for 15 years or 20 years in some countries reaches only five per cent. A patent is valied only under the condition that the taxes are paid. The patent is valied for 15 years only when every year, regularly, the taxes are paid. That is the first point to be considered. Experience shows that only in five per cent of old patents the taxes are paid

for in time of 15 years. In other words if taxes are not paid for 15 years, then after 3 or 4 years the patent as such is not any more valid and it is within everybody's reach: it is available to everybody. The tax varies from case to case. It varies from State to State. It is a progressive tax. It always increases. In the last year, in the fifteenth year, the tax is the highest.

SHRI C. C. DESAI: It is from the income from the patent.

MR. CHAIRMAN: Irrespective of the patent. If you don't pay it for a year or two years then automatically it lapses. It is a renewal fee. If you don't pay, it lapses.

PROF. DR. STOJAN PRETNER: If a modern country does not allow the patent system, in that case, the country has to pay much higher price to get discoveries and secrets of research without patents.

SHRI C. C. DESAI: The opinion in India is that we should not have any patent law at all for ensuring the quick development of the country. In other words we may throw the patents to the winds. Let us make use of all the foreign patents and develop the country. The same will apply to patent law. Has that experience been tried in any country and if so with what results? What would you say would be the effect of the adoption of such a policy in India?

PROF. DR. STOJAN PRETNER: This is one possibility, but if you want to adopt this possibility, then firstly you have to have a perfect, systematic organisation to have all the documents available in the world. This means that you have to have all the 250.000 patents that are today in the world. If we want to limit ourselves to the most modern techniques, then India should have to buy off every year at least 100.000 patents.

SHRI C. C. DESAI: We do not want to buy patents; but we want to use them without paying.

PROF. DR. STOJAN PRETNER: The question is: How are you going to get them without payment?

SHRI C. C. DESAI: There is no question of payment. That is why I say 'we pinch'.

MR. CHAIRMAN: That means 'steal'.

PROF. DR. STOJAN PRETNER: But there is a possibility of buying in Germany or in France in a patent bureau a copy of the patent for only 3 Deusche Marks.

SHRI C. C. DESAI: What I say is that we obtain copies of patents without payment and use those patents in India for our own development. Nobody can sue us because there is no patent law here.

PROF. DR. STOJAN PRETNER: In what sense do you mean that this has a bad effect on the country?

SHRI C. C. DESAI: I shall make myself clear. There are certain processes which are patented in Germany. I get all the documents, no matter how and I use those processes in the country without paying any royalty. I go on doing so in every case. How do you think I will be at fault? Mind you, I have no patent law in my country. My proposal is such that I am afraid that Prof. Pretner is not able even to conceive of such a thing.

PROF. DR. STOJAN PRETNAR: Nobody can do such a thing. Whatever is protected in India, for that you have to pay royalty. Whatever is not protected, you do not have to pay.

SHRI C. C. DESAI: Nothing is protected because there is no patent law in our country. We want to develop

the country with the least cost and that is why I am making this suggestion.

MR. CHAIRMAN: I shall try to put it in some other way. Suppose we do away with the patent law in India. Then, will it be possible for us to get the present technical knowhow from other countries in order to develop our industry?

PROF. DR. STOJAN PRETNER: Patents are only protected in order to solve a technical problem. It is not necessarily connected with the question of industrial needs. For that it is important to have the so-called industrial knowhow. This knowhow is much more important for industrial productivity than the formula of patent itself. On the basis of one patent, you cannot develop several industrial knowhows.

SHRI C. C. DESAI: I shall put this question to Prof. Bondenhausen who is more concerned with this. He is appearing before us this afternoon.

DR. VEDARAMAN: In Italy they have no patent law for pharmaceuticals for processes. They have abolished it. They are copying or stealing, whatever you may call it. Then they manufacture and export.

AN. HON. MEMBER: By stealing.

DR. VEDARAMAN: You can put it in any way you like. Generally the patents are copies and sent out from Italy. This is what C. C. Desai wants to know. Would you advocate that? This is exactly what he wants to know. Can you answer that question?

PROF. DR. STOJAN PRETNER: At present in Italy there is a great deal of discussion going on concerning this problem which you have. Prof. Pretner is not advocating that personally and he is going to give you the reasons. Firstly, there is no protection and the big pharmaceutical industries do not invest a great deal of their capital in the research as they are afraid that somebody else may be copying that out without any compensation. That is the reason why the Italian Pharmaceutical industry does not make any new invention and there is no progress made. The Italian plastics can be considered to occupy the second or the third place in the whole world. You have also to admit that where there is no Patents' Law, the drugs are very expensive. Comparing Italy and Yugoslavia I only want to underline that there is no relationship between the Patent's Law and the cost of the drugs. I would like to explain how it is in Yugoslavia.

We have patents. But, before a particular pharmaceutical product reaches the market, it has to be accepted or confirmed by the Government. Usually, the quality and other characteristics of the product are under control. And the drugs in Yugoslavia are cheap although the Patent's Law exists.

SHRI C. C. DESAI: Now, on the question of royalty, Professor Pretner said that in Yugoslavia there is no fixed royalty; it varies from commodity to commodity. In our Bill, there is a ceiling of 4 per cent.

Now, is it possible to standardise the royalty at 4 per cent? And does it not depend upon the nature, cost of development, research and other factors which go into the cost of a patent? What is the range of royalty in other countries? From what percent to what per cent does it vary?

PROF. DR. STOJAN PRETNER: The fact that Prof. Pretner knows is that in almost all the countries, there is no such figure of royalty. But, it varies from commodity to commodity. We have only to consider the economical effect of the commodity.

SHRI DAHYABHAI V PATEL: Have you a system of compulsorily

under the licence? Can you give us any idea about the number of such patents that are acquired in Yugoslavia?

PROF. DR. STOJAN PRETNAR: Yes. After the war there was not a single case. But, before the war, there were two cases where compensations were finally awarded.

MR. CHAIRMAN: How do you calculate your compensation award? What is the percentage of compensation that you award?

PROF. DR. STOJAN PRETNAR: The figures quoted are between the two parties and the two parties have to come to an agreement by using contacts. The measure of compulsorily acquiring the patents under the licence exists in Yugoslavia to avoid abuse.

SHRI DAHYABHAI V. PATEL: Does it exists in all socialist countries?

PROF. DR. STOJAN PRETNAR: In socialist countries, there is compulsory acquiring of patents or expropriation of patents under licensing.

SHRI DAHYABHAI V. PATEL: If a person is not satisfied with the compensation paid, has he a right to go to court and ask for justice?

DR. STOJAN PRETNAR: Yes.

SHRI DAHYABHAI V. PATEL: India is not a member of the Paris Convention and we do not recognise patents. Do you think that it would be in our advantage to recognise patents at this stage of our development, particularly when we see that the socialist countries have only very recently become Members of the Paris Convention, in 1965?

DR. STOJAN PRETNAR: In my personal view I think it would be a great advantage if India could become a member of the Paris Convention, because today already among the Members of the Paris Convention developing States are in majority and that could lead to certain modifications with special considerations and advantages for the developing countries.

SHRI DAHYABHAI V. PATEL: My question is motivated by this feeling. We have two systems of medicine—unani and ayurvedic systems. The pecuniary advantages derived from these drugs should have come to India, but the facts are otherwise. But these drugs are used outside India and to that extent it is a loss to us. For instance, the drug being used for the treatment of blood pressure, completely an Indian invention,—this drug was given to Mahatma Gandhi—has been processed by the foreigners and they have made large amounts of money on this; no doubt they took the right for that. But, all the same, India has not got any advantage out of this. That is the feeling here—whether we should at this stage join the Paris Convention or not.

DR. STOJAN PRETNAR: This is a crucial problem, because if India can organise, highly organise research work, then patents can be obtained for her drugs and then sell them to the 80 members of the Paris Convention. Then India can get the licence. This will be very useful and has prospects for future development.

SHRI PITAMBER DAS: I would like to ask four questions regarding the conclusions and the summary. The first question relates to the patent period. I would like to know whether you agree that the more the period of patent the more advantageous to the patentee; and the lesser the period the more advantageous to the public at large because of the availability of commodities in plenty and the prices going down. What do you think about this?

DR. STOJAN PRETNAR: I personally believe that for developing

countries the life-time of patent should be about 15 years as an extreme period; that does not mean that it cannot be less than 15 years, and for already developed countries about 20 years. This is a kind of compromise. This does vary in various countries.

SHRI PITAMBER DAS: About compensation, what do you think who is nearer to the socialist concept of society—payment of compensation or no payment of compensation?

DR. STOJAN PRETNAR: Socialist countries are also liable to social and economic laws. Experience has shown that inventions have increased in the Soviet Union from 53,000 announcements per year in 1960 to 1,00,000. Modern doctrines of socialist countries are based on material stimulation of inventors.

SHRI PITAMBER DAS: I would like to know by payment of compensation who gains more the individual patentee or the society?

PROF. PRETNAR: Much more society gains, of course.

SHRI PITAMBER DAS: The next question is about compulsory licence. On page 26 you say that in the socialist countries, when compulsory licences are provided for, they in the main meet the requirements of the Paris Convention, i.e. they cannot be applied for earlier than 3 years after grant of the patent. What is the difficulty about that our Clause 84 also provides for a period of three years.

PROF. PRETNER: In all the world legislation, and of course also in Yugoslavia legislation, there are the following conditions to be considered; Firstly, the inventor of the patent does not sufficiently exploit his own patent. Secondly, the individual or the factory or the party who asks for the licence has more ability to use it. And thirdly, compensation has to be paid.

SHRI PITAMBER DAS: My question was not about the propriety of these three years. My question is what is your objection about that? Our Bill also provides a period of three years.

PROF. PRETNAR: Once I believed that one has to have some reservations considering these three years. Now I believe that a certain period is necessary before . . .

MR. CHAIRMAN: There is no contradiction in between?

PROF. PRETNAR: No. There is no contradiction between your Bill and the Paris Convention.

MR. CHAIRMAN: What about the licence of right?

PROF. PRETNAR: As far as the licence of right is concerned, we have a different law.

MR. CHAIRMAN: There is no time-limit?

PROF. PRETNAR: No.

SHRI PITAMBER DAS: I would like to know what reasons can be more important than those laid down in clause 84.

PROF. PRETNAR: There could be public interest. That is the reason.

SHRI PITAMBER DAS: A very wide term. What do you mean by "public interest"?

PROF. PRETNAR: 'Public interest' has to be agreed by Parliament.

SHRI PITAMBER DAS: Last question is about the royalty which has already been put to you. What figure would you like to suggest?

PROF. DR. PRETNAR: This question should be left open and no limit should be given because in certain cases 4 per cent can be little and in certain cases it may be too much.

SHRI PITAMBER DAS: Should it have any relationship with the

economic conditions of the country concerned?

MR. CHAIRMAN: Should this compensation have any connection with the economic condition of the country?

PROF. DR. PRETNAR: Of course it should be closely related to the economic conditions of the country and if no agreement is reached, then the question of compulsory licence arises.

SHRI PITAMBER DAS: On page 10 of the Memorandum you have used two words—in line four 'on reasonable term' and in line seven 'appropriate compensation'. I would like to know as to how 'reasonable' and 'appropriate' is to be determined unless you lay down some broad principles.

PROF. DR. PRETNAR: It is not theoretical but a practical question depending on how much money has been put in the research. If somebody puts 100 Dollars and somebody does it just a routine work, that makes one mindful of the difference.

SHRI HARI KRISHNA: How will it result in your economy if patent and research are abolished?

PROF. DR. PRETNAR: We would find ourselves immediately isolated from the world contacts. Moreover, this question has never been discussed in our country.

SHRI C. ACHUTHA MENON: What possibly can be the reason that the country like the Soviet Union did not join the Paris Convention upto 1965 or so. We have been feeling that unless a country has reached a certain level of technological development and economic strength, it may not join. That is why we are hesitant. My question is whether for this reason Soviet Union waited and joined very late.

PROF. DR. PRETNAR: In case of Russia there is an exception. Russia, before Revolution, was not a Member of the Paris Convention but it has taken part in the preparations for the Paris Convention. After the War there was a sort of falling back on the old tradition not to become Member of the Paris Convention. But since Russia has now become a very strong industrial country she is extremely keen to sell her own patents and today it is quite impossible to take part in the world technical inventions and developments without being a Member of the Paris Convention. This is my firm belief.

MR. CHAIRMAN: Russia waited till they achieved economic status so that her reciprocity with other countries is possible. But how can India afford with what she is today?

PROF. DR. PRETNAR: This has to be faced by all the developing countries. There are other 40 developing countries which are Members of the Paris Convention. It is an interesting fact that except for the Soviet Union, none of the other Socialist countries has considered to leave the Paris Convention or not to be a Member of it.

SHRI C. ACHUTHA MENON: Some of my colleagues have apprehension. With regard to conscionable rate at which the drugs and pharmaceuticals are sold in our market. But you are observing that unless patent rights are protected, it will have the effect of discouraging development of techniques, scientific discoveries etc., and this will have an overall retarding effect on the development of the economy. But the question still remains with regard to the prices of these drugs and pharmaceuticals. These are sold at unconscionable rates of profit. Have you any suggestions for controlling these prices or bringing them down consistent with the need for development of the economy?

DR. PRETNAR: One possible measure is mass production; another is to buy off and exploit cheaper

patents because they are available in the market; a third is not to let the prices rise by introducing other Bills, not a patent Bill. For instance, such a thing has been made possible in America under the antri-trust legislation. It is very difficult to give ready-made recipes, but this is my personal opinion.

SHRI SRINIBAS MISHRA: Invention is considered new knowledge. Is it considered personal property in socialist countries needing State protection?

DR. PRETNAR: Not as personal property, but definitely as a personal right. It is a kind of moral right, moral advantage which means that the authorship is conceded. On the other hand, the honour of society demands that material compensation for such inventions should be given, for his contribution to that development.

SHRI SRINIBAS MISHRA: Do you consider the grant of patent right as a monopoly granted by the State in lieu of knowledge imparted by the inventor?

DR. PRETNAR: A particular patent in Yugoslav law gives the monopoly of exploitation. But in spite of this, there are compulsory licences against abuses of monopoly.

SHRI SRINIBAS MISHRA: In all countries, specially in socialist ones, defence and other inventions of national importance are not patented or can be compulsorily acquired. They are put in a separate class. What is the objection to food and drugs being classified separately in a country where we need these two badly?

DR. PRETNAR: Mostly an awful lot of food has not to be protected at all. Therefore, there are no practical reasons for such protection.

As for pharmaceuticals, if there is any special need, would it not be possible to make use of drugs which are not patented? And if there is a very specific drug which absolutely essential, then there could be compulsory licence or expropriation.

SHRI SRINIBAS MISHRA: My question is this: we have made a distinction between the period of life for food, pharmaceuticals and drugs and prescribed a lesser period for them as against for other patents. In your memorandum, you object to this distinction. I wanted a clarification of that.

DR. PRETNAR: 'protected' should be only something which is quite new, not known before. If there is a short period of protection, there arises the danger that industry is not going to patent and not invest further capital in its development.

MR. CHAIRMAN: Social justice cannot be brought about without development and *vice versa*. In the context of a modern economy, do you think that a planned economy must be related to patent laws in order to draw investment and transmit scientific knowledge?

DR. PRETNAR: The patent system is very important indeed for a planned economy. If India is planning her own pharmaceutical industry and wants to invest capital, she should definitely support the idea that from her own capital products should be made which can be exported. In contemporary planning systems, a great deal of money is set apart for research purposes; Researches lead to inventions and patents. This is actually the result of investment. In other words, the product of research work should be for industrial advancement.

SHRI RAGHUNATH REDDI: We are extremely grateful to you for your evidence. We are also aware that we have kept you for so long. But I have to ask two or three questions.

It is almost a consensus of opinion of expert bodies in England, America and Canada that the high prices of drugs are directly related to patents.

DR. PRETNAR: I do not say that there is absolutely no connection between the two; but I believe that is not so relevant. It is not a fact that in all cases high prices are attributable to this.

SHRI RAGHUNATH REDDI: I would only invite your attention to a passage in the Report submitted by the Restrictive Trade Practices Commission of Canada in 1963:

"The Commission recommends that patents with respect to drugs be abolished".

DR. PRETNAR: I am not so very well acquainted with Canadian laws, but would like to stress that in Italy, where a similar solution has been brought about, at present they are again seriously considering and discussing the possibility of introducing the patent system.

SHRI RAGHUNATH REDDI: In Yugoslavia what are the respective percentages of inventions exploited by private individuals and the State?

DR. PRETNAR: There is no private industry there practically.

SHRI RAGHUNATH REDDI: In other words, the entire means of production capable of making use of these inventions by individuals are exploited by State machinery.

DR. PRETNAR: Yes.

SHRI RAGHUNATH REDDI: We were drawing a distinction between process patents and product patents. In countries where the means of production are not owned by the State but by private individuals, the private individual pays the compensation or royalty to the inventor and exploits it and gets the benefit of it. There are three parties here: the person who invents the capitalist who produces and the inventor who invents it.

DR. STOJAN PRETNAR: Yes; that is a fact, but what is your point?

SHRI RAGHUNATH REDDI: If once this is conceded, namely, that the relationship between an inventor and the State in a socialist country is such that compensation is to be paid by the State to the inventor and in the case of a private producer who exploits the invention, he has to pay then, the rate of profit which a private capitalist would demand for the purpose of production of the goods for his own benefit also would be different from the rate of profit which the State would get on the product which the State produces by the utilisation of the invention.

DR. STOJAN PRETNAR: The only possible answer to this question is the concrete economical system of a particular country.

SHRI RAGHUNATH REDDI: Taking a country where there is private enterprise or a mixed economy, in such systems of social and economic structure, if there is a patent given both for the process and the product, the economic cost as well as the rate of profit would be different.

DR. STOJAN PRETNAR: Mostly, in several countries, patent is obtained only for the process, not for the product.

SHRI RAGHUNATH REDDI: In order to increase competition in other products, you suggest only obtaining the process and leaving the product free.

DR. STOJAN PRETNAR: Yes.

SHRI RAGHUNATH REDDI: What is the highest compensation that the State would pay to an inventor in Yugoslavia? Can you give an illustration in concrete terms?

DR. STOJAN PRETNAR: It is not the State but the firm which pays; the firm pays it. So it comes to the same.

SHRI RAGHUNATH REDDI: If ready information is not available, I shall be grateful if you can kindly send us the information in regard to it.

DR. STOJAN PRETNAR: Statistical evidence does not exist. There are cases when it is very highly paid and there are cases when the rates are not so high.

SHRI RAGHUNATH REDDI: The compensation paid to an inventor would depend on the circumstances and merits of each case, but if you can help us by sending us some figures it will give us an idea as to how the compensation is paid.

DR. STOJAN PRETNAR: Are you specifically interested in knowing how much is paid in Yugoslavia

SHRI RAGHUNATH REDDI: Yes.

DR. (MISS) I. CURA: Dr. Pretnar will send the answer, but he would like you to formulate the question and give it to him typed in a letter form.

SHRI RAGHUNATH REDDI: Do you advocate an inventor's certificate being issued, and why was the system of inventor's certificate discontinued in your country?

DR. STOJAN PRETNAR: Yugoslavia does not advocate this because of self-management; there is not a Central Government, but self-management. It is given in section III of the memorandum.

SHRI RAGHUNATH REDDI: What is your opinion about the patentability of technical knowhow?

MR. CHAIRMAN: Well, Mr. Pretnar, we are very grateful to you. You have come a long way from Yugoslavia and given us the benefit of your evidence; we are grateful to you also for your patience. We have kept you detained for more than three hours. On behalf of the Committee, I extend my thanks to you, and also to Dr. (Miss) I. Cura who put on a smiling face throughout and was interpreting what you said. I wish there was no language barrier at all. Thank you.

DR. (MISS) I. CURA: Prof. Pretnar would like to thank you all and to stress his regret that he could not answer all the questions put to him but he would always be glad to send you in greater detail any information which may interest you.

(The witness then withdrew.)

II. United International Bureaux for the Projection of Intellectual Property Geneva.

Spokesman:

Mr. G. H. C. Bodenhausen

(The witness was called in and he took his seat.)

MR. CHAIRMAN: Professor Bodenhausen, we are very glad that you are here and we hope that our Committee will be benefited from your views and the evidence that you will be tendering here. But before you tender your evidence I want to tell you that whatever evidence you tender here is liable to be made public and if, for any reason, you want that any portion of your evidence should not be made public, you will have to indicate that.

Now please give us a resume of the patent law and its effect in the present economy of the world. Thereafter our Members will put you questions as they like.

You should also give us an introduction of the organisation BIRPI—how it came into existence what are its purposes, how it fulfils the economic and social needs of different countries, both developed and developing. A sort of resume of that also will be very helpful to the Committee.

PROF. BODENHAUSEN: With your permission, Mr. Chairman, I shall start with the last point, that is, explaining the history, existence and purposes of the organisation I have the honour to direct, BIRPI. BIRPI is a very old organisation because the treaties granting international protection to, on the one side industrial property, that is, patents, trade marks and related subjects, and on the other side, copyright, date from the last century. The treaty regarding protection of industrial property dates from 1883 and the treaty regarding copyright dates from 1886. By the way, India has been for a long time a member of the second treaty on copyright but is not yet a member of the first treaty which concerns protection of industrial property. The administration of both treaties was combined in a United Bureau and this bureau, according to the abbreviation of its French name, is called BIRPI. BIRPI came into existence in 1891 and has served the intergovernmental organisation ever since.

The main tasks of BIRPI are to administer the conventions, that is, to correspond with member States, to reply to questions they may wish to put regarding the protection of copyright or industrial property, to assist them, if they so wish, in preparing national legislation, and to prepare revisions of the treaties—in this case, the Paris Convention for the Protection of Industrial property—whenever needed.

This convention deals not only with patents but also with other subjects relating to protection of industrial property which are not now before the Committee. The treaty contains three main principles. First of all, the member States have to grant to nationals of other member States the same treatment that they give to their own nationals in the field of patents, trade marks and so on. It may be possible that countries discriminate against foreigners and the treaty provides for non-discrimination.

The second important principle is that under the Paris Convention for every right of industrial property one can claim priority on the basis of an application in his own State in all the other member-States if one applies for the same protection within a certain term. For patents this firm is 12 months and for trade marks it is six months and so on. All these are details which are of no interest to you.

A third set of rules gives a sort of minimum protection. There are some rules which oblige countries to see to it that a certain minimum of protection should be granted to patentees. This is agreed to by all the member States of the Union.

BIRPI has worked on these subjects now for more than three quarters of a century, but the scope of the work of BIRPI has drastically changed in the last ten or even six or seven years. In the old days the member States of the Paris Convention were mainly States situated in Western Europe and North America—United States, Canada and Mexico—and very few others. In the last decade the membership has doubled because many new States on acquiring their independence have joined the Union. The number of the member States is now almost 80.

We have member States of really all types; for instance, member States that are commonly called capitalist States or States of market economy, such as, the United States, Federal Republic of Germany, France etc., or countries with socialist systems like Soviet Russia, Czechoslovakia, Rumania etc. We have all the Communist States as members, including even Cuba. Only China, for reasons which you can easily understand, and a few others, such as, North Vietnam and North Korea, do not figure on our list of members.

We have, of course, also very different types of members regarding their degree of development. We have the most advanced States of the world as members of the Union and we have also a great number of member States—more than half—who are in somewhat earlier stages of development. We have even a few smaller African States of which you can say that they are only beginning to develop industrially and commercially.

This panorama may show to you that the Paris Convention gives rather an acceptable middle way of protecting all the main subjects of industrial property. With respect to patents, which are now of interest to you, the rules of the Paris Convention are simple and are acceptable to almost any State. The membership of the Union contributes to a certain extent to a climate of confidence because a State that has accepted the rules of the Union is supposed to live up to these rules and give the minimum protection which patentees should have so that industrialists and inventors can safely trust that their treatment will be correct and satisfactory.

I hope, Mr. Chairman, this is what you wanted to hear about BIRPI and the administration of the Paris Convention. If I may now add a few other remarks, thanks to the kindness of Shri Chawla, the Secretary, my paper which I have prepared will be distributed to you; so, it is not necessary for me to read from my notes. When you receive the new paper, you should not mistake it for a new copy of the old paper. The old paper is PY|65 which will be re-distributed for the sake of completeness, but three others will be added. One is PY|66, a very short statement which I will now paraphrase to you, and the others are two annexes to this new paper. One of them, PY|67, contains some suggestions for amendment of the Patents Bill, 1967, should the Committee think that some amendments still would be in order and the other one, PY|60 is a survey of prices of pharmaceutical products in different countries. That seems to be one of the problems uppermost in your mind. I had the honour to testify already on the 1965 Bill; so, I know from the discussions that took place then which were the subjects which were of interest to the Joint Committee.

Now, may I add a few remarks about myself. I have been a barrister specialising in patent law since 1931, more than 30 years ago, and in my native country I was a professor of the law of Intellectual Property including patent law for 16 years till 1963. In January, 1963, I took up my present position as Director of BIRPI. I have been working on patents for all these years and it has become part of my way of life. I have devoted particular attention to international aspects of patent law.

Coming back to the memorandum that has been forwarded to you, I may recall that general principle universally accepted in all countries is that any patent law has to fulfil two purposes. One is that it has to stimulate inventions and encourage investments in research and industrialisation. The other is that it has to prevent abuses of the temporary monopoly to exploit an invention granted by a patent. Otherwise, its purpose will be defeated. This is not only my personal view. You will find a very interesting study of the subject with the same conclusions made and published by the United Nations under the title "The Role of Patents in the Transfer of Technology to Developing Countries", a report of 1964 which I believe, is in the hands of the Committee. This is not a publication of BIRPI but it is a publication of the United Nations to which, however, we have contributed and which reflects our views as well.

In the memorandum which I have submitted on behalf of BIRPI, I have stated that the Patents Bill, 1967, although slightly more encouraging

to patentees that the earlier one of 1965, still in our view does not strike the right balance. As I have submitted, on the one hand it should have a positive influence and, on the other hand, it must prevent abuses. The Bill, in this respect, is different from the Model Law for developing countries which was prepared by us and I say "by us" with hesitation because in reality the Model Law was prepared by a committee of experts coming from developing countries. We wanted to have the views of developing countries represented in that Model Law and not to be influenced by industrialised countries which might impose their views. It would not then really be a model law for developing countries.

There are a few differences between the Model Law and your Patents Bill which could be pointed out. I hope the Committee may wish to reconsider whether it could be useful to introduce some of the ideas of the Model Law into the bill before it is enacted. The Patents Bill, 1967, does not contain any provisions regarding contractual licences as does the Model Law. In our experience, one of the positive effects of a patent law particularly in developing countries, is the working of patents under licence. The Committee that prepared the Model Law took special pains to introduce a set of provisions relating to contractual licences. This is an appropriate way to cause exploitation of patents in developing countries.

I would like to draw your particular attention to the fact that these provisions include very important possibilities of governmental and judicial control. Such provisions are lacking in the Bill. You have little control over contractual patents in the Bill. The Model Law has made these provisions for the purpose of protecting the interests of the country which may adopt such law.

MR. CHAIRMAN: You may please elaborate the point further about the contractual part of it.

PROF. G. H. C. BODENHAUSEN: Yes. In our experience, one of the ways in which patents can work to the benefit of all countries, specially developing countries, is the possibility of granting contractual licences so that local industry not only obtains the opportunity of exploiting patents but also the know-how necessary for exploiting them in the best possible way. That is why the Model Law committee considered it useful and necessary to introduce a set of provisions concerning contractual licensing providing, at the same time, for necessary control on two points. First concerning licence contracts involving payment of royalty abroad, the Government has to approve every licence in order to avoid too heavy a burden on the national economy and, secondly, there cannot be any abuse or misuse by creating limitations of competition which are outside the field of the patents or the patents which are subject to licence. I would draw your attention to sections 32 and 33 of the Model Law which contain these two possibilities of control. One of them also figures in your Bill, in clause 140, which is not worded in the same manner. Personally, I would prefer the text of the Model Law.

Another difference between your Patents Bill and the Model Law is that the Model Law provides for some protection also of unpatented technology or knowhow which, in many cases, specially in developing countries, is even more important than the patented one. There are many industries which really do not work on the basis of patents. Either they have no patents or their patents have expired. That is why the Model Law contains in Sections 53 to 57 some provisions on protection of unpatented knowhow. It is protected in a way which is different from the protection of patents, because regarding unpatented know-how no monopoly is granted; there is only protection against unlawful acts: for instance, when somebody strals secret know-how, anyone who obtains it cannot

use it legally, cannot communicate or publish it legally. It is an important thing in our view and according to the experience of the people who worked on the Model Law Committee, that some protection is given to knowhow in order to create a climate of confidence under which knowhow can be transferred by foreign industries to anybody in a developing country. Then, these industries can give the knowhow and be sure that it cannot be manipulated in a way which is harmful to their interests. This is the second difference between the Patents Bill and the Model Law to which I have drawn your attention.

The third point which I want to underline attention is this. In my view, the Model Law strikes a better balance between the positive influence which a patent law should have, and the curbing of abuses, than the Patents Bill. In my view, the Patents Bill over-emphasizes the fear of possible abuses and under-emphasizes the salutary postive influence that a patent law should have.

In view of these differences, I fear that the Patents Bill, when enacted according to the lines on which it has been drafted now, would cause grave disappointment to every one. I think, this Bill would not lead to a Patent Act which would give you satisfaction. Why? A normal patent law should encourage industrialists to invest in research and industrialisation; under the temporary protection of a patent. Such industrialists would not have to face the immediate competition from third parties. In order to create an advantage for a patentee, the patent law should give him an assurance that he can for some years be protected against competition by people who have not contributed to new technology, in order to make good his efforts and investments on research. This is from the point of view of the inventor and the same is true for those who obtain patents and take the risk, under their protection, of inmportant investments in industrialisation. As I see it, under a patent law enacted in conformity with this Bill, that would not be sufficiently assured.

I sincerely fear that under the system of this Patents Bill you will not find many people to take out patents in India, in the first place because of the exceptionally short duration of protection. Protection should last longer. Ten years for pharmaceuticals and foodstuffs are very short terms by international standards.

Then there are the enormous exceptions for the Government, and not only for the Government but also for undertakings notified by the Government, which are very wide exceptions and could lead people to hesitate and ask: "Shall I invest?". These are very dangerous clauses. I know that some of them figured also in the British Act, but they ave been enormously enlarged here in this Bill so that somebody else's patents can be freely exploited in many cases.

Then there is a series of measures against patentees in the form of compulsory licences, licences of right and so on; it is almost a museum of penalties and Draconic threats against patentees. Of course, you must have provisions to curb abuses, but there should not be so many as these. These would frighten people away so that hardly anybody will take a patent and if one takes it, it will be used to protect importation and not be exploited, at great expense, in the country itself. I fear that this will be the effect of the Patent Act if it is to be in conformity with the Bill as it stands now.

Then I come to one of the last points and that is what has been uppermost in your mind when this matter was considered last time and probably still is now; there is a great fear in India concerning the possibility that patents will enable industrialists to maintain high prices, for example, in the field of pharmaceuti-

cals. Seeing the way in which this Bill has been drafted, it appears that [illegible] is one of the motives. I recognise that this is one of the abuses to which the protection of patents may lead. I cannot deny that when you have a monopoly you have more freedom to keep prices high than when you have no monopoly or the monopoly is restricted by all sorts of measures. The only question that remains is whether really patents or the absence of patents in the pharmaceutical field play such a dominant role as apparently has been thought here. We have a strange example in Europe. Italy has no patent law for pharmaceutical products or processes. In that case you would expect the prices of pharmaceuticals there to be lower than in other countries because of free competition. But if you see the list of prices of the British pharmaceutical association you will find that the prices are higher in Italy although perhaps exportation occurs at lower prices. This is because, in free competition, enormous sums are spent on advertisement and propaganda; so, the prices would not be falling because of the absence of patents. Therefore, it is not certain that patents play a very distinctive role in the scheme of higher prices. So, is it really necessary or desirable, in order to fight high prices of pharmaceutical products, that one must destroy the patent law? I could imagine other means. I think, the measures should be price control and compulsory licences. If you want to encourage industrialisation, I think that you should be careful in making your patents weak. It would be perhaps better to keep patents strong, less over-emphasising the dangers, keeping some healthy influence in the law and at the same time providing for a set of compulsory licences. A good system of compulsory licences can solve the problem sufficiently. Government can order that in certain fields compulsory licences can immediately be applied. That will solve the problem and it is not necessary to have very numerous clauses. After the last war, all countries were faced with the same set of problems. Why do you want to control the prices of pharmaceutical goods which are patented, whereas there are so many non-patented ones, of which the prices may be also too high? Why should this not be extended to other products which are equally important for your national economy? I think the whole object of the Bill can be served by keeping strong patents with a good set of compulsory licenses. That will be better from the Indian point of view and Indian interests. Of course, this problem should be looked at from the point of view of India's interests only. You have to find your own solution for your problems here. When you consider Indian interests the conclusion would be that this Bill could be improved upon in order to have a positive effect on the Indian economy, encourage inventiveness and investors and at the same time prevent abuses. I think that would be the conclusion to which neutral experts like myself would come to, after reading the Bill.

Finally I would like to say, my organisation, BIRPI has no particular interest in this matter. India has not yet decided to become Member of the Paris Convention for the Protection of Industrial Property. I still hope that this decision will be taken soon. You can adhere to the Paris Union, on the basis of the Bill because the Paris Union does not create too many obstacles or rules.

MR. CHAIRMAN: Being a lawyer on the patents side you must have read clauses 88 and 102 of the Bill. I want to know your positive comments for or against, what improvements you suggest on these clauses regarding licences, compulsory licences and such others?

PROF. BODENHAUSEN: You will find my remarks in the amendments which I have the honour to present to you. Please see Py|67, point F. This is regarding Sections 82 to 98. That Chapter XVI contains a set of drastic measures which I have never

seen in any other patent law in the world. They will cause disappointment; they are far too strong. You can make them simpler, and you can still have the same effect. That is why I have written here: "This chapter should be completely rewritten because it is in itself sufficient to scareaway any inventors or investors who may be contemplating taking out patents in India. The Chapter could be replaced, to great advantage, by Sections 34 to 45 of the Model Law, which provide entirely sufficient safeguards against abuses of patents, including unreasonable prices for patented products, while at the same time preserving the incentive to research and investment." Once you decide to adopt the system of the Model Law, there should be some adaptation of language of course. Because, this Bill is drafted in other language than the Model Law. But that is a problem which can be solved in just 24 hours; it is a matter of legal drafting; only that.

Now, my special remarks are these. Clause 86 deals with Licences of right. It gives to the Government the right to make application to the Controller. If you want this you may have this rule. But it is illogical that the patentee himself cannot open his patent licences of right. The patentee must also be able to apply for such endorsement. The Bill gives all powers to the Government and Governmental institutions and forgets about the patentee.

My next remarks concerns clauses 87 and 88.

Coming to sections 87 and 88, the Bill discriminates rather severely against foods, pharmaceuticals and drugs. I suppose that you are having the question of abuse always in mind. However, one should not exaggerate in devising measures against such abuse. You can adopt such measures with less dramatic effects and maintain at the same time under the positive influence of the law. Here I am afraid you are throwing away the baby along with bath-water. I believe that sections 87 and 88, as they stand, go too far. May I add here that I do not represent in any way the pharmaceutical industry. For me all industries are the same. If you ask me the question: Is it justified to discriminate in the patent field with regard to pharmaceutical products, I cannot give you a simple answer. I think the pharmaceutical field is such that some discrimination might be justified. But this is so not only in regard to pharmaceuticals, but also in regard to security, defence, etc. They all concern vital national interests. National interests can be greater than the interest in patents. This is so in other countries too. For instance, in Arab States they have the problem of extraction of oil. In your case pharmaceuticals take the same place. However, it is not only pharmaceuticals that might be discriminated against. There can also be other matters. That is exactly what paragraph 35 of the Model Law provides for. It provides for the same possibility of discrimination in regard to vital matters such as defence of the country, economy of the country and public health. But you should not over-react. It is too harsh when you say that royalties should never go beyond 4 per cent. In some cases it is fair that they should be higher than that. In other cases they should not be as high. It is too axiomatic. I would advise you to rethink the problem and find out a solution different from this. The solution in the Model Law works in a simpler way, without scaring away the interests of people whom you might need for industrialisation.

The ceiling prescribed is unrealistic and so also is section 89 dealing with revocation of patents. In several countries the provision for revocation of patents has recently been deleted in the patent law because revocation really does not solve the problem. The problem is solved by a good system of compulsory licences. Once

you take away the patent, industrialisation becomes even less probable because there is no protection.

MR. CHAIRMAN: So you suggest compulsory license.

PROF. BODENHAUSEN: Yes, a good system of compulsory license. Neither in the Model Law nor in the recent Laws of the Scandinavian countries, the Netherlands and France would you find this provision for revocation. People do not believe in it any longer. Instead, you have to have a very good system of compulsory licenses.

Section 93(3) is unusual and is most harsh. I think you can do away with it because the purpose can be served by the terms of compulsory licences. These are few remarks which I wanted to make.

SHRI SRINIBAS MISRA: Does the witness consider invention as a simple intellectual knowledge or does he consider it as any other property to be protected by the patent law?

PROF. BODENHAUSEN: It is difficult to compare it with property because it is intangible. I am not prepared to deal with this philosophically. At the same time it is not merely an intellectual property. It is something in the national interest and therefore it should be protected. If you protect it, it will be to the benefit of the general public.

SHRI SRINIBAS MISRA: We are worried because in our Constitution there are provisions for protection of property. If this is held to be property, then we may not make such a law without paying compensation. Therefore, I would like to know from you whether it is a property or only a knowledge which is not property and patent has to be given in exchange of that knowledge which he imparts to the society. Which of these do you approve of?

PROF. BODENHAUSEN: Both, because it is property also and that is why I am against clause 48. But it is not only a property, but also something which is intended to stimulate inventiveness. Both these factors have to be considered.

SHRI SRINIBAS MISRA: This theory of patent being property raises certain other questions. If it is really a property, the patent period should be there....

PROF. BODENHAUSEN: It is property too to a certain extent. It is property for the purposes of public interest and therefore it is limited in time.

SHRI SRINIBAS MISRA: Somebody has some knowledge. If in exchange of that knowledge, the country gives certain privilege, for instance, monopoly right, is it more acceptable to you? Somebody has the knowledge. We want that knowledge for which we give him some monopoly right.

PROF. BODENHAUSEN: As I said, it is property to a certain extent. And for practical purposes it is subjected to a set of rules and limitation of time, which do not apply for every property.

SHRI SRINIBAS MISRA: I have seen your present memorandum—the one submitted earlier—and on page 4 of that memorandum you have observed that 'the Bill provides for an unusually short duration of patents—14 years—and in the case of patents for processes of manufacture of foods or drugs even only 10 years—from the date of the patent! What according to you would be the reasonable period?

PROF. BODENHAUSEN: I think it would be a great improvement if you were to have one or two solutions ...

SHRI SRINIBAS MISRA: What according to you is reasonable?

PROF. BODENHAUSEN: 16 years from the date of filing of the complete specification or 14 years from the date

of sealing would be a reasonable period. But, I would prefer the last solution because every patent would have the same term of 14 years after the sealing without this term being influenced by the duration of the examination.

SHRI SRINIBAS MISRA: May I draw your attention to four or five countries which have the following period as the duration of operation?

Bulgaria	15 years
Czechoslovakia	15 years
Poland	15 years
Rumania	15 years
U.S.S.R.	15 years
Yugoslavia	15 years
Italy	15 years
Japan	15 years

In these countries the operation is from the date of filing of the applications. So, why should we depart from it and make it 14 years?

We want your reasons.

PROF. BODENHAUSEN: May I also cite examples of certain countries where the period is longer?

Federal Republic of Germany—18 years after filing of application.

Australia—18 years after publication of specification.

Belgium—20 years after filing of application.

Brazil—20 years after filing of application.

Canada—17 years after grant of patent.

Denmark—17 years after filing of application.

Spain—20 years after grant of patent.

France—20 years after filing of application.

SHRI SRINIBAS MISRA: Now do you agree that there are variations in the whole world? Why should you particularly want us to adopt a period more than the proposed period of 14 years?

PROF. BODENHAUSEN: I have cited the example of another developing country, Brazil, where the period is 20 years after filing of application.

SHRI SRINIBAS MISRA: You also take Hungary.

PROF. BODENHAUSEN: In Latin America, the duration is generally rather short, for example only 15 years. However, you know that patents do not play a very important role in Latin America.

SHRI SRINIBAS MISRA: My question was this. When there is variation in the whole world, why should you particularly ask us to adopt a period longer than 14 years? We want your reasons. What reasons have you so that in India we can adopt a longer period?

PROF. BODENHAUSEN: The reason why the duration of a patent must not be too short and that otherwise industrialisation is not encouraged.

SHRI SRINIBAS MISRA: According to paragraph (b) of your memorandum, the Bill provides for an unusually broad exception to patent's protection. This is what I have found in countries like Italy, Netherlands, Switzerland, Federal Republic of Germany, U.S.S.R. and U.K. In the present Act of India and Czechoslovakia they have provided for these exceptions. Government are in favour of this for the Government undertakings. And so, it is not very unusual to have these provisions in the Patent Law itself.

PROF. BODENHAUSEN: I think these are unusual clauses. You cannot cite the cases of Communist countries in the same category with regard to Government undertakings. Normally you will not apply for a patent there but you will receive a certificate of invention and the Government undertaking has the right to exploit. So, you cannot compare this with the countries where there is no Communist economy. I think that in your Bill the exceptions for Government undertakings are wider than usual. For instance, I do not find clause 48 in any other law. In clause 99, it is not only the Government which has the right to exploit the patents but also such class of industry as the Government will notify, which is completely free from licening by order of the Government. You will not find many industrialists who will invest under this system.

SHRI SRINIBAS MISRA: In India, under the present Act, in section 23(b) and (c), there is provision for acquisition by government all inventions. Have you come across any instances where this has worked against the interests of the country?

PROF. BODENHAUSEN: I think these are acceptable exceptions and I think the present Act goes far enough.

SHRI SRINIBAS MISRA: In paragraph (c) you have again stated that the Bill provides for unusually radical measures. For example you have spoken about compulsory licenses of right and right of revocation of patents. We find that some of the provisions are in existence in other countries. They also are the usual feature in some patent laws.

PROF. BODENHAUSEN: But, you have combined all of them here. This is an unusual combination of all drastic measures.

SHRI SRINIBAS MISRA: That means your objection is that all these measures are combined in this Bill. In Poland also it is there.

PROF. BODENHAUSEN: But the Polish Inventions Act is still very different from your Bill.

SHRI SRINIBAS MISRA: One more question I want to ask. In India, under the existing 1911 Patent Act, there has been a provision for licences of right.

Have you come across any instances to show that it has worked against the interests of the country in regard to industrial progress?

PROF. BODENHAUSEN: I think the cases where licences of right have worked against the interest of the country are rare. This is also true for a system of compulsory licences. The number of cases where compulsory licences are granted is limited. But the menace is there. Therefore, the parties concerned agree on a contractual licence. The system of compulsory licences of right works the same way.

SHRI SRINIBAS MISRA: There is Paris Convention. That also provides for the licence of right. For example whether in the U.K., Federal Republic of Germany and Czechoslovakia, have they also suffered on account of endorsing their patents as licence of right?

PROF. BODENHAUSEN: I am not aware of any example of this. I believe that the system of licences of right in these countries has not created much difficulties. I think it is mostly under special circumstances that licences of right are given.

SHRI PITAMBER DAS: I would like to know as to what remedy would you suggest in cases "when reasonable requirements of the public with respect to patented inventions have not been satisfied or when the patented inventions are not delivered to the public at a reasonable price?"

PROF. BODENHAUSEN: You can find an answer to this in Article 34 of the Model Law which is very near to existing Indian Patent Act. This was accepted by the Model Law Committee as sufficient.

SHRI PITAMBER DAS: Is it from any book that you are mentioning this?

PROF. BODENHAUSEN: It is in section 34 of the Model Law.

SHRI PITAMBER DAS: With regard to the suggestion that there should not be any Patent Law, what are your reactions? And how shall this affect our economy or the incentive to the inventors?

PROF. BODENHAUSEN: There are some countries where there is no Patent Law. Take for example Thailand and the Republic of Sudan. I do not think they are happy with the system of having no Patent Law. You cannot of course compare the same countries at the same time with or without Patent Law, but the impression is that industrialisation in these countries is suffering from the absence of a Patent system. It is very interesting to note that in Thailand, where there is no Patent Law, people try to have some protection anyhow by filing their domestic patents at their consulate. They hope that unauthorised use of these patents by these parties will be considered unfair competition.

In Sudan, where there is no Patent Law, the Government is preparing a new Trade Mark Law, but they have recently informed me that they want to have provisions for patents too.

SHRI D. C. SHARMA: There are three fundamental things we have done in this. We have devised a system of licensing. We have also devised to some extent a system of price control. Thirdly, we have devised some system of not putting down the incentive to explore new domains. Can you suggest any method by which the licensing system can be made as foolproof as possible? Can you also give one or two remedies for making price control a little more effective? Thirdly, the patent law acts in some ways as a dead weight on exploration of new fields. What are your suggestions about it?

PROF. BODENHAUSEN: These are difficult questions. In your patents Bill the emphasis has been so much on steps to prevent abuses that the positive influence of encouraging inventiveness has suffered or almost disappeared. About the licensing system, frankly I do not know and I cannot answer why it has not worked satisfactorily in India.

SHRI D. C. SHARMA: Can you cite any country where it has worked satisfactorily?

PROF. BODENHAUSEN: It is difficult to say. I have no figures or facts to support or deny any conclusion on this point. It is impossible to say whether it has worked well or not, even less to say why.

About price control, I know it is really difficult. In many countries it is a great problem to keep prices under some kind of control. I believe the best system would be where you would keep the Patents Act relatively strong with the necessary measures to check abuses and try to deal with the price problem outside of it.

SHRI C. C. DESAI: You said in Italy, in the absence of a patent law, their internal prices are low and their export prices are high.

PROF. BODENHAUSEN: It is the other way round. Their export prices for pharmaceuticals are low and their domestic prices are high.

SHRI C. C. DESAI: Even then a country which does not have a proper patent law cannot expect much by way of export.

PROF. BODENHAUSEN: Exports will be in continuous trouble, because infringement of patents in other countries. So far as exports of pharmaceuticals from Italy are concerned, they are in trouble in many countries. They have dozens of law suits all over the world.

SHRI C. C. DESAI: What is the recent trend of amendment in patent laws in the world? Is the trend in favour of making it more harsh or liberal?

PROF. BODENHAUSEN: The last amendments in patent laws were mostly in Europe—for example Poland, Rumania, the four Scandinavian countries, West Germany and France. All these have tried to improve the patent system, making the patents stronger and not add to the measures against abuses. They have tried to encourage investments and research.

SHRI C. C. DESAI: What about the position in communist countries?

PROF. BODENHAUSEN: Because only State enterprises exist in those countries, the patent law plays a very different role. In the Soviet Union, you have the option to take out a patent or an inventor's certificate, which is only a title under which the inventor can have a financial remunerations, whereas the right to exploit the invention belongs to the State. The whole economic system is so diffrent that the impact of patents becomes quite different too.

SHRI C. C. DESAI: Even in some communist countries, a large number of patents are held by individuals. If they are taken over by the State, some sort of compensation is payable to the holder.

PROF. BODENHAUSEN: I do not believe many patents are held by individuals anywhere, because more than 80 per cent of inventions are made in big industries and laboratories. In Communist countries also, the number of patents held by individuals is very small.

SHRI C. C. DESAI: There is a body of opinion in this country which feels that in the formative stages of our economy it is perhaps better not to be hamstrung by patents and so on and we should have free access to inventions and discoveries made in other countries and we should be free to exploit them in this country. According to them when you have reached a certain higher standard of development of the economy particularly in the pharmaceutical side then is the time for regulation of patents because then is the stage when you may have something to give and also something to gain. At the present moment you have all to gain and nothing to give. What do you think would happen if a policy like that were adopted by this country?

PROF. BODENHAUSEN: It is quite conceivable that in a certain stage of development a country should not have patents. But the trouble is that even in the absence of patents it is not easy to copy an invention. You will need know-how, which you can only obtain from the patentee.

SHRI RAMESH CHANDRA VYAS: What is the difference between the international trend of patent law and and the impact of our present Bill?

PROF. BODENHAUSEN: In my view this Patents Bill goes against the prevailing trend. The prevailing trend is to strengthen patents in order to encourage inventions and industrial development in the country. It is a matter of emphasis. The emphasis of this Bill is different from the trend that I have seen in recent years in others countries.

SHRI RAMESH CHANDRA VYAS: You said that ten-years limit for a pharmaceutical patent is too short. What, according to you, is the proper limit?

PROF. BODENHAUSEN: I do not think there should be any difference between pharmaceutical and other industries as far as duration of patents is concerned. If you want to have special measures it should be in the

field of compulsory licences. The duration of patents is of minor importance. A short duration only frightens people away and in many cases it is immaterial because an invention can be important during only five years, ten years or twenty years.

SHRI RAMESH CHANDRA VYAS: In India 90 per cent of the patents are taken out by foreigners and only 10 per cent remain with our people. Even that 90 per cent is not fully patented. Don't you think that it deters our growth?

PROF. BODENHAUSEN: The same situation occurs in nearly all countries. There are very few countries where national patents are more numerous than foreign patents. USA, Germany and Japan are the countries where national patents are more numerous. In all other countries the total number of foreign-owned patents is much higher than the number of national patents. I refer to the Netherlands. There also more than 80 per cent of the patents are in the hands of foreigners but still I believe that the patent system fulfils a very useful function there because under the patent system licences are taken and licences have enabled industries to develop to the satisfaction of the people concerned. I am not of the opinion that a large number of foreign-owned patents is necessarily disadvantageous for any country. It should lead to licensing by foreign patentees in favour of the local national industry.

DR. SUSHILA NAYAR: You mentioned a little while ago that you are happy India would soon be a member of the Paris Union. What are the characteristics and the benefits of joining the Paris Union to a country and to the world?

PROF. BODENHAUSEN: The benefits are two-fold. Firstly, the inventions of a member country get the same protection as the inventions of other member countries. Also the trade-mark for a particular product in one country will not be misused in any other country. Secondly, by becoming a member of the Union a country creates a situation where, when a foreign enterprise wants to invest in that country to help in its industrialisation, it will find this easier and it will have more confidence.

DR. SUSHILA NAYAR: Can't you enlighten us by narrating how industrialisation has been stimulated in some of the under-developed countries by joining this Union?

PROF. BODENHAUSEN: No. It is not possible to give exact information of this because it is not possible to calculate scientifically the effect of a patent law in a country which joins the Union. In many cases you cannot compare countries which have a patent Law and countries which do not have a patent law just as you cannot compare countries which have joined the Union and countries which have not joined the Union. When a country has a patent law and joins the Union, then you will observe that this country is slowly but surely industrialising. But whether it is due to the patent law or due to the membership of the Union, one can never say.

DR. SUSHILA NAYAR: But you may know of similar countries in and out of the Union. I see that you have no information on this subject.

PROF. BODENHAUSEN: It depends on many other factors. When one country is a member of the Union and the other not, that might be a factor for investment possibilities in these countries. However other factors also may have effect on investment. Same country may have a particular tax system or labour problems which may dissuade investors. However, one of the many elements for considering whether one wishes to invest in a country or not is the existence of a good patent law.

DR. SUSHILA NAYAR: You mean to say that without joining the Union

the other countries will not be giving any protection.

PROF. BODENHAUSEN: They are not bound to.

DR. SUSHILA NAYAR: They generally do, when there is a genuine case like Assam tea.

PROF. BODENHAUSEN: It depends on national legislation. When the national legislation is very liberal and gives protection to foreigners on the same level as to nationals of the country, then of course you don't need the Union. But the Union guarantees it.

DR. SUSHILA NAYAR: You said that patents are necessary to stimulate expenditure on research. You are aware that the expenditure on research as a general rule is only a fraction of the expenditure on advertisement. If I remeber correctly, the international figures are: 6 per on research and 25 per cent on advertisement. This is what the evidence before this Committee brought out. Now, this 25 per cent for advertisement they are able to afford because of the exorbitant benefits conferred by the monopoly given by the patents. Is that desirable?

PROF. BODENHAUSEN: It is perhaps not. But it is no direct effect of patent protection. In Italy where they don't have patents in the pharmaceutical field they spend even more on advertisement.

DR. SUSHILA NAYAR: Italy is a class by itself in many ways, but the fact remains. You mentioned yourselves that Italian products of equally good quality we can get at a fraction of the cost that we have to pay to others. So, obviously, it is possible that when they don't have this type of monopolisation to produce drugs at a cheaper price they may be selling at a high price within their country. Here, in India I can tell you one example. The small scale industry made some machines and the cost of the machine was Rs. 3,000; but the very same machine produced by Kirloskars sold at Rs. 10,000. The machinery which has been set up by the Government to help the small scale units advised the small scale industry to sell the machine at Rs. 7,000. The price has been brought down this way. Here there is this problem that the collaborators have insisted that you shall charge so much price which is several hundred times more than the production price. Don't you consider that this is immoral because drugs are something to save human lives? The patent binds you to go by the patentee's wishes. What is the remedy?

PROF. BODENHAUSEN: The remedy is compulsory licensing.

DR. SUSHILA NAYAR: So that somebody else can produce.

PROF. BODENHAUSEN: Or import if you wish.

DR. SUSHILA NAYAR: Importation is no answer.

PROF. BODENHAUSEN: But you need industry to make the product here.

DR. SUSHILA NAYAR: We have tried that. When we tried to manufacture ourselves, and when we needed the necesaary raw materials, the countries from where we require them will say that the completed drugs are cheaper than those raw materials so that the cost of production within the country becomes exorbitant. It is a vicious circle. What is the remedy?

PROF. BODENHAUSEN: There is no remedy as long as the price remains what it is. You cannot control everything, but these are exceptional cases.

DR. SUSHILA NAYAR: Not entirely exceptional.

PROF. BODENHAUSEN: But, what do you achieve by this patent Bill? Do you remedy that problem?

SHRI OM MEHTA: To some extent.

PROF. BODENHAUSEN: I don't think so.

DR. SUSHILA NAYAR: To a considerable extent, the situation is remedied.

PROF. BODENHAUSEN: You will never be able to get the intermediate substance at a cheaper price.

DR. SUSHILA NAYAR: If we are not bound by the patent law, we can fix what price we like. Here also it will have effect upon the overall price structure.

SHRI C. C. DESAI: There is even now price control. Every new product has to be approved by the Price Advisory Committee of the Ministry of Petroleum and Chemicals.

DR. SUSHILA NAYAR: I know that. We will talk about that later. Prof. Bodenhausen, you mentioned that 10 years is a little period for pharmaceutical industry. Even 14 years is too short a period for patents.

PROF. BODENHAUSEN: If you count from the sealing of the patent, it is all right.

DR. SUSHILA NAYAR: When progress is being made at such a rapid rate, if you have long periods of patents, it is likely to stand in the way of progress. The people in industry have awful vested interest. When they invest money they are not likely to let you change even if better methods are available. Therefore, it is better that we don't have such long periods. You might have come across a news item that serious thinking is going on in the U.S.A. and they are proposing to reduce the patent life to 7 years.

PROF. BODENHAUSEN: There will be no chance of that.

DR. SUSHILA NAYAR: There can be difference of opinion about what is too short and what is too long.

PROF. BODENHAUSEN: It is a question of balance in a way.

DR. SUSHILA NAYAR: Some people may think that 14 years may be too long.

PROF. BODENHAUSEN: In some cases, in 3, 5 years, another product which is much better than the patented product is found and then the patent has no longer any importance. In some other cases, the duration of the patent is more important, when the invention will remain useful for a long time. There, if its term is too short, people may not be tempted to invest. If you make the term too long, you might create other problems. It is a question of finding a balance. My personal opinion is that the period provided in your Bill is too short.

SHRI OM MEHTA: There may be many industrialists who may be ready to have it.

PROF. BODENHAUSEN: I hope so, for your sake; but I do not think so.

SHRI OM MEHTA: There are a few countries which had no patents but were able to develop their industry to a considerable extent. Previously there were no patents in Russia and Japan; still, their industries developed and after development now they are having the patents law. Why can we not do that?

PROF. BODENHAUSEN: You can try if you wish. The Russian system

as so different, with a centralised economy and only State enterprises, that you cannot really compare; it is very a different situation. The Japanese have their particular habits; they have been very happy with copying.

DR. SUSHILA NAYAR: They improved the copy.

PROF. BODENHAUSEN: Yes. They have invented; we have to admit that. I think, in Japan even without a patent law, they would have invented a lot of things; but, on the whole, the standard impression is that a patents law contributes to salutary effects. It makes inventiveness more probable. That is all we can say.

SHRI OM MEHTA: At present the patent is granted not only for one process but for many processes. One of the most unhealthy practices is that the big manufacturers will not take out take out a patent for one process but to stop competition they will take out a patent for all possible processes under the sun. Can a patent not be granted only for one process?

PROF. BODENHAUSEN: That is the famous question of the unity of invention. I think, there also, you have to strike a balance. You may not, in one patent, cover an entire chemical field. Basically it should be limited to one invention; that means, one basic idea with possibly several methods to obtain the results.

SHRI PARTHASARTHY: You think that clauses 48 and 99 are identical.

PROF. BODENHAUSEN: No, they are not.

SHRI PARTHASARATHY: You say that clause 99 has the same effect as clause 48.

PROF. BODENHAUSEN: I think, clause 48 is not necessary because you have clause 99 which is very wide because it is not only the Government itself but also industries notified by Government which may use patents under clause 99. I do not think you need clause 48 in addition to that. Of course, clause 48—I come back to the property question—is really expropriation.

SHRI PARTHASARATHY: Speaking about clause 88 you have commented that the ceiling of 4 per cent is very arbitrary. What do you think the ceiling should be?

PROF. BODENHAUSEN: I would not put any ceiling at all; I would leave it to the competent auhtority to fix the royalty.

SHRI PARTHASARATHY: You want the Government to have the right of fixing the royalty on each commodity or patent.

PROF. BODENHAUSEN: Yes. In some cases it might be 1 per cent; in others it might be 10 per cent. It depends on many factors and each case it should be decided on its merits.

SHRI C. C. DESAI: Provided that it is justiciable.

PROF. BODENHAUSEN: Yes. One of the big improvements in this Bill over the old one it that you have done away with appeals to the Government. It was a very strange rule because it looked like an appeal from Caesar to Caesar. Now it is a decision of the Controller with an appeal to the Court, which will give satisfaction to everyone. When the royalty is fixed at 4 per cent, it can be examined by the Courts and you will arrive at a just decision.

MR. CHAIRMAN: In the United Kingdom, I am told, Parliament has appointed a committee to go into the patents law in order to get rid of some of the abuses. They have not yet come out with a report. Can you give an idea of their thinking about how to stop abuses of the patents law?

PROF. BODENHAUSEN: No, I cannot. We have made a statement

to the Banks Committee—it is called the Banks Committee because its chairman is a Mr. Banks—but I do not know how far they have gone with their work and in which way their work is developing.

MR. CHAIRMAN: There are two opinions: one is that the products should be patented and the other is that the process should be patented. For the Patents Office to determine whether the processes are overlapping each other or not may be a problem. What is your suggestion in this regard?

PROF. BODENHAUSEN: I do not think for processes there is a special problem of overlapping; it is the same for products and processes and it does not make any difference for the Patent Office. The choice, whether you will protect only processes or also products, is mainly in the chemical field. You will always protect a product, like a chir or a bulb, when ever it represents an invention. It is only in the chemical or pharmaceutical field that the problem arises whether you will protect only the process of manufacturing it or you will also protect the product. Opinion is almost equally divided on this.

DR. SUSHILA NAYAR: I think—product protection binds us hands and feet that we cannot produce it by any other process.

PROF. BODENHAUSEN: When you need the product for another manufacture, you can have a compulsory licence. The main trend for some countries is to go over to products protection. For instance, the new German federal law gives product protection whereas it did not exist in Germany before. Ireland is another example where they give product protection which they did not give before. Here the trend is exactly opposite. You have it in your Act. I have no strong feelings on this. You can say that in some cases you like product protection and so you have it; in other cases and in other situations it might be better to protect processes only.

MR. CHAIRMAN: So, it does not make much difference.

PROF. BODENHAUSEN: It makes a lot of difference. It makes patents much stronger when you also protect the products because, as has been said by the Hon. lady Member, every other means of making the product and every use of the product will be covered by the patent.

SHRI C. ACHUTHA MENON: You said that prices in Itlay, in spite of there being no patents law, were very high while they were selling their products at low prices abroad. That may be a sort of dumping by means of which they can defeat other countries in the international market. Does that not show that they are in a position to produce at much lower costs than if they had a patents law? What is the exact position Will you be in a position to produce a list for purposes of comparison of prices in Italy and m other countries?

PROF BODENHAUSEN: No; I have only one set of figures provided by the British pharmaceutical industry. I cannot even be completely sure if whether figures are correct. I take them as they are; but, I think they are correct. The difference between the Italian system and other ones is this. Of course, under the Italian system you can produce cheaper because you have no expense for research, you just copy what somebody else has made. On the other hand, it is generally believed that the Italian chemical and pharmaceutical industry has a very curious lack of inventiveness. They do not seem to invent many new processes or products. They have a first-rate automatic industry, textile industry and many other industries. They are first-class in many fields. Only in the pharmaceutical industry, they mostly seem

to wait for someone else to invent something and copy it. The lack of patent protection is a great factor in it.

SHRI C. ACHUTHA MENON: But you agree that they can produce it much cheaper.

PROF. BODENHAUSEN: Yes; this is because they do not have to pay for research.

SHRI C. ACHUTHA MENON: One of the reasons stated in your memorandum is that patent laws are intended to stimulate investment in research. So far as the country like India is concerned, the investment in research by private industry is not very much. For investment in research and other things, the Government has to be depended upon. So far as the private industry is concerned, the drugs and pharmaceutical industry, in the matter of evolving processes and inventions, does it work so much as to require a liberal patents law so as to give incentive to people to evolve new process and to invent new things?

PROF. BODENHAUSEN: Of course, the Government can take over quite some part of investment in industry, but even then it is important to see whether the industry has resources to survive. The patent protection generally, an important factor in this.

SHRI C. ACHUTHA MENON: I can understand an individual being compensted in a certain way for inventing new processes and new products and it should be encouraged. But do you think that the entire development of the industry depends upon this?

PROF. BODENHAUSEN: It is one of the factors only. The labour situation can be as important, if not more so.

SHRI C. ACHUTHA MENON: You seem to be entirely against fixing any ceiling so far as royalty or compensation is concerned. Here, the ceiling of 4 per cent is put. You can put any other ceiling. You can devise some method in order to make a distinction between different processes, the difficulties and the amount of research done. All these things can be taken into consideration and a ceiling can be worked out and fixed. I feel some sort of a ceiling is necessary because the prices, as we have been arguing, should not be extra-ordinaryily high. We have to take care of that also. So, provided these things are taken care of, would you still be against a ceiling being fixed?

PROF. BODENHAUSEN: I do not see any advantage in having a fixed ceiling. The remuneration for the patentees may be fixed from case to case. It can be high and it can be low, depending upon the case. Then, you have the decision in the hands of the Controller with appeal to the Courts. I think, that is safe.

SHRI RAGHUNATHA REDDI: The trend of opinion in England, Canada and America seems to be to reduce the period of patents, as it is evidenced by some of the reports of some committees. There are some reports of London committees and there is a Canadian committee report also which deals with restricted practices in relation to prices. There is also another committee report which is still to come up with special reference to high prices of Indian drugs. The trend of opinion seems to be to reduce the period of patents for drugs and, in Canada, the committee seems to feel that the patents with respect to drugs be abolished. In America also, the opinion seems to be the same. We have heard the explanation from you with regard to these matters. Do you think that these committees did not take all these factors into consideration, the other instruments of controlling the prices, and come to the conclusion that this law also can be an additional instrument for the purpose

of controlling prices when other instruments could not properly succeed. I consider this as one of many instruments, not the sole instrument that will do the magic.

PROF. BODENHAUSEN: It is true that every possibility has its advantages and disadvantages. I also recognise that in the pharmaceutical field and in other fields as well, there may be a necessity for controlling prices by any means. But I feel the way chosen in the Bill goes too far. It aims at an effective control on prices but it is a disincentive to a great extent. There should be an incentive to make inventions and to attract investment in research. A proper balance should be struck.

SHRI RAGHUNATHA REDDI: It may be a matter of language only which may be drafted better.

PROF. BODENHAUSEN: It is not a matter of language only. The 'Mode' Law wants exactly the same result as you want. It is a matter of choice of means. I personally think that in this Bill, the argument against the abuses of patents is over-emphasized. I feel a better solution is indicated in the Model Law.

SHRI RAGHUNATHA REDDI: We have got a report from *London Times* —it is not still authentic—that the percentage of profit in America in the drugs industry is 3000 per cent. I find it difficult to believe.

Now, in inventor can be a person or a laboratory or an industry, that is, it can be an individual effort or it can be a collective effort. We need foreign technical know-how also. Some persons who take a patent for processing have got sufficient capability of implementing it. But there are countries which import technical know-how also. They pay for the technical know-how. We also import technical know-how and pay for it by way of royalty or by way of straight purchase. We enter into a collaboration. The technical know-how also includes the process. The person who parts with the technical know-how is amply compensated. So, no patent law can be disincentive in that regard because we pay him for what we get. Therefore, as far as industrialisation in that regard is concerned, the patent law cannot be a disincentive. We will be able to develop as Japan has done or Soviet Union has done because here also the public sector is quite prominent and research work goes on. So, is it not conceivable to imagine that by that method we are likely to benefit more while keeping the balance of purchasing the technical know-how and paying what is due to them by way of compensation?

PROF. BODENHAUSEN: It is conceivable.

SHRI RAGHUNATHA REDDI: To put it more explicity, will it not constitute a better balance?

PROF. BODENHAUSEN: I do not think so. The same position exists in several countries. One of them is Algeria. There they recognise a need to go through the phase of obtaining licences under foreign-owned patents still they are able to stand on their own feet. It is impossible scientifically to say that one thing is better than the other. The usual way of thinking is that, for a developing industrially, patents play a useful role. Please read the United Nations' report which is a very convincing document.

SHRI RAGHUNATHA REDDI: In other words, the strategy of development is many-sided, and patent law will have to be drafted in such a manner that it would suit that strategy of development, it would fit in with that strategy of development.

PROF. BODENHAUSEN: Yes.

MR. CHAIRMAN: In a developing country like India, in the stage that

we have reached today, do you feel that a restrictive patent law is going to scare away investment and transmission of scientific knowledge and know-how from foreign countries?

PROF. BODENHAUSEN: I fear that a restrictive law would have an adverse effect on industrialisation; it would not encourage industrialisation in many cases.

MR. CHAIRMAN: Is this psychology prevailing in the countries with which you are dealing?

PROF. BODENHAUSEN: Yes.

SHRI RAGHUNATH REDDI: It would be very helpful if you can suggest some specific amendments to our Bill; not now, you can send them later to us.

MR. CHAIRMAN: In regard to both language and substance.

PROF. BODENHAUSEN: Certainly; that could be done by correspondence.

SHRI RAGHUNATH REDDI: In quest of information, I would like to put one question. Is it possible for our country to be a member of BIRPI without being a member of the Paris Convention?

PROF. BODENHAUSEN: India is a member of BIRPI, because it is a member of the Convention on Copyright. India is also a member of our Inter-Union Committee.

SHRI SRINIBAS MISRA: We find that Latin American countries like Peru grant patents for five years in the first instance. They are also members of Paris Convention and the other two Conventions. How do they manage it? Have you any idea about their working? Sometimes they extend it by five years and sometimes they do not extend.

PROF. BODENHAUSEN: In this system you have a patent for five years and you have to apply for prolongation for another five years and in many cases also for a third period of five years. However, Peru is not a member of the Paris Union and it is not believed that its patent system is very strong.

MR. CHAIRMAN: That is all. We are extremely grateful to you for having taken the trouble of coming all the way and given the Committee your pragmatic views. I hope that you have enjoyed your trip to India. We thank you once again.

(The witness then withdrew).

(The Committee then adjourned)

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967

Monday, the 20th January, 1969 at 10.00 hours.

PRESENT

Shri Rajendranath Barua—*Chairman*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Kanwar Lal Gupta
5. Shri Hari Krishna
6. Shri G. S. Mishra
7. Shri Srinibas Mishra
8. Shri P. Parthasarathy
9. Shri Ramesh Chandra Vyas

Rajya Sabha

10. Shri Krishan Kant
11. Shri T. V. Anandan
12. Shri Om Mehta
13. Shri K. V. Raghunatha Reddy
14. Shri Dahyabhai V. Patel
15. Shri C. Achutha Menon.

Legislative Counsel

Shri S. Ramaiah, *Deputy Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS (DEPARTMENT OF INDUSTRIAL DEVELOPMENT)

1. Shri K. I. Vidyasagar, *Joint Secretary, Ministry of Industrial Development and Company Affairs.*

2. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks, Trade Marks Registry, Central Building, Queens Road, Bombay-1.*

3. Dr. B. Shah, *Industrial Adviser (Drugs).*

4. Shri Hargundas, *Under Secretary, Ministry of Industrial Development and Company Affairs.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

National Association of Manufacturers, USA and Pharmaceutical Manufacturers Association, USA.

Spokesman:

Mr. Herman Seid.

(The witness was called in and he took his seat).

(Direction No. 58 was read out to the witness)

MR. CHAIRMAN: Mr. Herman Seid, we are very pleased that you have come to give evidence before this committee. I hope you will give an introduction of yourself and a resume of the documents you have filed before this committee. Thereafter, members will be putting questions to you for elucidation of the points which they think fit in connection with this Bill.

MR. HERMAN SEID: Mr. Chairman and hon. Members of the Joint Committee, my principal office is in New York City. We have a small office in Syracuse also. I am a member of the Bar of the State of New York and the State of Pennsylvania, I am also a member of the Bar of the Supreme Court of the United States, which is our highest court, situated in Washington. I have practised patent law for over forty years and my principal professional activities are in the field of patent law and company law. I have represented large and small companies in most of the principal countries of the world. For about twenty years I have been a member of the Patents Committee of the National Association of Manufacturers. I have been interested in education and in the United States I was a Vice President of the Connecticut Association of Boards of Education for five years. I have also done work in the field of public health. In connection with my professional activities I have been Chairman of the Foreign Patents Committee of the New York Patent Law Association. I have, more particularly, during the past two years taken an active interest in what is known as PCT—Patents Co-operation Treaty—drafted particularly by the staff of BIRPI which is an international organisation headquartered in Geneva.

In connection with my representation here, I am appearing particularly for the National Association of Manufacturers. I was asked also to appear for the Pharmaceutical Manufacturers Association of the United States and hence I am here in a two-fold capacity. But I would like to make it clear that I am not here on behalf of any company, not on behalf of any product and I am here more to expound the nature and philosophy of the patents system, how it is operated in my experience, how I view it and perhaps what I will present here may be helpful to this Committee.

Two presentations have been filed with your Committee. One is on behalf of the Pharmaceutical Manufacturers' Association dated 22nd October, 1968 and signed by Mr. Joseph Stetler who is the President. The other one dated 24, October, 1968 is something with which I had to do for a number of years, in 1965 and now. It was presented on behalf of the National Association of Manufacturers by Mr. Frederic O. Hess. Mr. Hess as Chairman of the NAM Patents Committee has done tremendous amount of work not only on behalf of industry

in the patent field in the States but he has been a dynamic force in connection with PCT. I may add that his experience is mainly with small companies. However, I wish to make it clear that in the Pharmaceutical Manufacturers' Association and in, more particularly, the National Association of Manufacturers you have a wide variety of companies. You have some real giants of industries. General Motors is not a small company. You have a lot of small companies also which employ in the order of 100 to 300 employees. Therefore, what I hope to give you is an exposition of patents and their philosophy which go not to one particular group of companies, not to one area or society but to what we consider the industrial well-being of world in general in which, obviously, a country like India is widely interested. In view of the fact that these two presentations are already in your record I would like, Mr. Chairman, to have an opportunity to have a presentation which in effect explains to you my views in a somewhat different way and which point also to practical application of patents as manufacturers view them and as manufacturers are affected by them. This I hope will not impose upon you but, as I said before, it is presented in the belief that it will be as helpful as possible from the standpoint of philosophy of patents, why they are good, and why they should be of interest to India and the reasons for that. In that connection I shall point out several of the features in your Bill in an endeavour, again, to be helpful and not critical.

As I said before, it is a great privilege to appear before this Select Committee to discuss the pending Patents Bill. This Bill is a matter of great importance to India—perhaps holding more opportunity for the well-being of your country than of the foreign entities whose representatives you will hear this week. And, after sober consideration of its implications, I submit that it is also fraught with grave handicaps to the future progress of this great country if its provisions are not in keeping with international standards which the test of time have proven to be socially constructive and economically sound.

As the representative of the National Association of Manufacturers of the United States, I should like to point out that the membership of this Association comprises companies of all sizes—from very small to very large enterprises engaged in virtually every field of industrial endeavour—embracing approximately 75 per cent of the industrial capacity of the United States.

I believe, it may fairly be stated that members of both the associations I represent engage in foreign operations in all areas of the world. Their export sales from the USA is in the billions of dollars per annum. Their investment outside the USA is also measured in the billions of dollars. Their research and development, technical assistance and manufacturing collaboration activities, at enormous cost, cannot merely be measured in terms of money, but also in the widespread benefits to human beings and their societies which has wrought changes otherwise impossible of achievement.

Creation of new technology, scientific triumphs which create not only material wealth but unheard of advances in health, education, food, shelter, transportation, revolutionary advances in energy production—and countless products too numerous to mention—these are the real dividends—the true sources of wealth of which money is an inadequate measure.

It is a remarkable phenomenon that the tremendous advances in technology, which bring about kaleidoscopic changes in product, processes, methods of production and distribution, and all manner of improvements in the things people need or desire, have one common denominator. Economists may differ with respect to its motiva-

tion, but few can deny that this denominator is a combination of recognition and reward. And the patent system which has evolved and grown, and which is virtually universally employed in varying forms by countries throughout the world, has been a potent mechanism for granting the recognition and reward without which our society would hardly have achieved its present industrial accomplishments.

There are some who say that patents are desirable for developed countries but undesirable for the undeveloped or partially developed countries. They forget that many of the developed countries of today were the undeveloped countries of yesterday. And if we look at the least developed nations, those recently born in Africa, we find that even there the philosophy of recognising and rewarding inventions by grant of patents has been accepted and is being practised as an aid to growth and development.

On this point I think it might be worth mentioning that there is an old saying, which is prevalent in different forms throughout the world, which goes like this. "Beware of those who would destroy ancient manuments", and patents are indeed ancient monuments. Patents go back for centuries. They were granted in England both as a token of recognition and as a reward for services in the 17th century.

In the United States, when the country was struggling in its birth-pangs, and adopted a Constitution which rang with the precepts of newly free man who believes in recognition and reward, the founding fathers felt the need to encourage invention in order to build a sturdy nation. Thus, they inserted in the Constitution of the United States, right at the start, a provision for recognising and rewarding inventors and this is still the foundation of the patent system of the United States. The first patent was granted in 1790, only one year after Washington was inaugurated as the first President of the United States.

The incentive to invent, to invest, to produce and to grow in newly created fields, generation after generation, was encouraged and rewarded by the grant of patents. Whole new fields of technology, industries never dreamed of before, conquests of diseases, and now even the exploration of outer space as shown by what has taken place in the last few weeks, resulted from the aspirations of men; and being men, the motive power is recognition and reward. The patent system in a great measure provided the catalyst and the machinery for such recognition and reward.

In recounting the long and important role of the patent system in the United States, no slight is intended with respect to original work and significant inventions of men in other nations during the same period throughout the world. But it is significant that in virtually all countries where industrial growth and scientific achievement took place, a patent structure existed to give recognition and reward to those who toiled, invested and commercialized the practical developments which were produced.

At this point, it may be helpful to a discussion of the role of patents briefly to summarize the steps employed today in the development of an invention. While I shall refer to the procedure usually employed by a manufacturing company in the United States, essentially the same steps would have to be taken by companies elsewhere including India in order to function realistically and responsibly. I shall refer to an actual case involving the development of a new type of tubing, widely used in many industries. In order to make the tubing cheaper and more efficient, manufacturers in different parts of the world have applied fins to the outer surface of the tubing so that heat exchange may more rapidly take place. Because

such tubing is used in the field of refrigeration, heating and in connection with various manufacturing processes in coolers, condensers, air conditioning units, some types of boilers and for a wide range, of heat exchange purposes, it is important that a maximum amount of surface be provided in order to dissipate heat or cold at a maximum rate when it is necessary to bring about rapid interchange of the hot or cold fluid passing through the tubing to air, water or other fluids which contact the outer surface of the tubing.

For many years various industries laboriously affixed fins to the outer surface of tubing by slow processes of winding and by unsatisfactory methods of soldering the fins to the tubes. Numerous inventors made attempts to speed up the process. Some succeeded in affixing fins more rapidly to the tubing, but breakage of the fins often occurred, with much waste of metal and interruptions to production. Soldering slowed up production and often did not provide good contact between the tubing and fins. The need for using different metals for different purposes, such as copper, aluminium and various alloys specified for tubing by different industries complicated the problem. Costs were high and without new methods of application of fins to tubing and without new machines for making such methods practical, no major reduction in costs could be brought about.

In the early 1950's an inventor, after working for two years on an experimental basis in the laboratories of a USA corporation, conceived a machine and method of operation which completely revolutionized the production of this type of tubing, but here is what was required to achieve commercial success.

First, an experimental model was produced to see whether a thin piece of metal could be processed at a high speed of 3,000 RPM without breakage. The metal had to be reduced in thickness from about 15 to 20 thousands of an inch to as little as 4 thousandths of an inch, which is paper thin. This was finally accomplished with the aid of metal specialists, but took about six months. Thus, from the time of conception to this point approximately two and a half years had elapsed. A prototype of the machine to test whether or not it is feasible to produce it for commercial purposes was built. The object of building the prototype was to test automatic winding of the fin or metal ribbon around the tubing at relatively high speeds. This was accomplished after considerable work by the inventor and a team of assistants who helped him with adjustments, control devices and know-how. Why was this necessary? This was important in making the machine versatile enough to handle different sizes of tubing and different widths of fin material. By this time over three years had elapsed. The management of the company, at this point, decided to proceed with the production of the machinery for commercial use. Then the question was whether you can have production which is sizable to meet the needs of a varying market and whether it can be sold in a competitive market. I assure you that there is a lot of competition in this field.

The management of the company decided to proceed with the production of a machine for commercial use. Because of practical commercial considerations it was essential to link the machine, which did the principal operations with devices which would slit the fin or metal ribbon and feed it to the running machine, so that proper length of fin or ribbon would be correlated with the rapidly revolving tubing as it advanced through the machine. Without such ancillary equipment, the process would still be too expensive, because fin material when purchased as such is expensive, whereas when slit from a strip is much less expensive and its thickness more uniformly controlled.

At the end of four years and ten months from the conception of this invention, a commercial machine was put into production. After minor adjustments, small batches of tubing were delivered to a few selected customers for field use. These customers installed the tubing; some of the tubing was found to be lacking in strength or too brittle at the tips or outer edges of the fins. After further work by metallurgists and the inventors, the final answers with respect to high speed operation of the machine, utilizing a wide variety of metals of different sizes and performance characteristics, were attained. After these trials and tribulations, a commercial machine was produced; commercial scale production commenced and the first shipment of commercial quantities took place almost seven years subsequent to the conception of the invention.

May I emphasize at this point that the various steps enumerated and the risks involved in this case fortunately produced a highly successful result, but it took seven years of time, much labour and a very substantial amount of money to achieve the final result.

This company and others, not only in the field of tubing but in industries embracing countless machines, products and processes, have laboured on many projects with the percentage of success often lower than 10 per cent. and, in some cases, less than a fraction of 1 per cent. In the pharmaceutical industry, for example, as set forth in the written presentation addressed to the hon. Chairman of this Joint Committee by Mr. Stetler, it was pointed out—and I quote—

> "The drug industry tests more than 1,00,000 promising substances anually which—with costly development effort—may yield about twenty completely new and marketable drugs."

Records of many industries, from capital goods such as steel, with which I am familiar, to consumer products such as drugs, with which I am not familiar, indicate that the average time for developing a successful machine, process or product is about six years from the time of conception to the time when it may safely be sold with assurance in respect of performance and quality. Thus, if "recognition and reward" are to be accorded the inventor as well as the company which risked much manpower and investment, then patent protection, if it is to be fairly and realistically granted, must cover a period of years sufficient, firstly, to justify the great amount of effort; secondly, to enable the investment to be recouped; and, thirdly, to provide adequate compensation to those who take the risk.

Some people still believe that the individual inventor is the potent force in the development of inventions. Modern technology has weakened this concept. I think, we must take cognisance of that. In the light of complexity of inventions and the interdependence of different technologies in producing new methods, machines and products, it is imperative that the new inventor have the essential support of research and development facilities, as well as production and distribution organisations which alone can bring reality to newborn ideas no matter how brilliant those ideas may be. You cannot stand alone to do it; you have got to have a vast organisation to produce those things. An examination of the patent records of patent offices throughout the world will show how vastly different the course of invention is today compared to that of our forefathers. The individual standing alone is now under enormous handicaps. That is terribly important in a developing country. In many respects you are a highly developed country but you are a developing country in other respects. The individual standing alone, without organisations ready to take those risks, is under enormous handicaps. Rarely can a man standing alone achieve commercial success. It takes

skilled organisations and substantial financial resources to enable new-born ideas to grow to maturity, and even with much skilled help and financial strength, the chances of survival are small, and the majority of ideas despite years of effort and careful sifting, do not meet acceptable standards of novelty or utility. I repeat, the majority of ideas despite years of effort and careful sifting, do not meet acceptable standards of novelty or utility. For this reason, I believe, countries throughout the world, in recognition of the need for encouraging inventions have geared their patent system to provide an adequate number of years for the tenure of a patent.

In Western countries the term of a patent averages about 16 years. The average term of a patent in the Communist countries is about 15 years. In Hungary it is about 20 years. In the United States it is 17 years. BIRPI, to which I have alluded before, advocates, a 20-year term for patents. In the United States, legislation has been drafted for a 20-year term from the time of filing to the date of expiration of the patent.

I submit that a reduction of term of a patent in this country, India, is surely against the trend; and a reduction to ten years in the case of the pharmaceutical industry would, in effect, make a nullity of ostensible patent protection which from a practical standpoint would allow no time or completely inadequate time for required recognition and reward, on which the patent system stands.

In considering the adequacy of the term of a patent, its life span, may I point to the significant passage on p. 4 of the presentation of the Pharmaceutical Manufacturers Association I quote:

> "Developing a drug, providing its safety and efficiency, standardizing dosage forms fulfilling legal requirements, informing professionals, keeping supply lines filled—these are essential steps which subsequently apply to a new drug discovery. It is estimated that the drug industry spends on an average approximately $ 7 million in research and development costs for each new drug discovery. Research costs continue to mount."

In connection with the term of a patent in the USA almost no voice has ever officially advocated a term such as 5 or 7 years for pharmaceutical or other products. In the Health, Education and Welfare Department, a memorandum with no official standing at one time made such a suggestion. It never emerged for serious consideration. On the contrary, both government and non-government opinion is agreed that the term should be lengthened and as a result, as before stated, legislation has been drafted to change the term from 17 years from the date of issue to 20 years from date of filing.

May I now turn to a fundamental precept, which is considered throughout the world to be an essential protection to be enjoyed as a matter of right. This is the concept of due process. It is inconceivable that any person or company in a civilised country such as India should be deprived of property without compensation or be deprived of the right of judicial appeal when property is taken by Government action.

It is true that in time of emergencies, or where the public interest is misused, that Government should have the right to step in and protect itself or its citizens. We are considering here, however, a situation where ordinary commercial enterprise is involved. We are talking about ordinary activities which take place in India the same as they do elsewhere, and where the precept of due process should be upheld and not arbitrarily discarded. Therefore, may I urge that the provision in the pending Bill, clause 48, be revised since this appears to be repugnant

to fundamental rights, which surely you would not wish to abrogate or impair. As it stands, clause 48 allows the use, making or importation of a patented article or process by the Government or on its behalf without making such action an infringement of the patent. This amounts to appropriation. There is no provision for compensation. And of equal, if not greater import, no appeal to the high court is afforded.

May I point out that the Model Law on inventions drafted by an expert committee of BIRPI recognises the principles of judicial review and fair compensation or payment of royalty for Government use. A similar principle *i.e.* of compensation by the Government, is found in the laws relating to patent of most, if not all, of the Communist countries.

I have already discussed the hardship as well as the practical nullification which would result from reduction in the term of drug patents to ten years. This is particularly onerous because it would not only cut down the life of new patents to a pitifully inadequate term but it would impose hardship upon present drug patentees because of the retroactive effect of the provisions in clause 53. It is obvious that expected return on capital, and amount of investment, made in good faith, are based at least in part on existing patent rights. If these are cut down as proposed in clause 53, then it is also obvious that patent holders adversely affected by this provision will have no recourse but to consider this action in connection with future investment policy.

We have already pointed out in this discussion how fraught with risk and how expensive is the devlopment of a new idea from experimental laboratory to point of commercial sale. To mitigate the risk, it is essential that trained personnel be used in every step of development. Chemists, metallurgists, physicists, engineers, scientists engaged in pure research—all must be utilised to assure the desired result. Thus, such production and even commercialisation especially in the field of drugs cannot be left in the hands of any entrepreneur who may seize upon a successful product and then usurp it as his own with little or no compensation—and I need not add that such entrepreneur gambles very little because he is obtaining virtually free of charge that which others have spent years and much money to produce.

Now, because of these considerations, clauses 87 and 88 give great concern because they provide that all drug patents, both those in force and those granted after commencement of the Act, automatically shall be endorsed with the words "licences of right". Furthermore, clauses 87 and 88 provide that any person interested in working the invention may do so upon application to the Controller. Let us consider what "any person" may be. A company without any experience in the drug industry is "any person". A company without adequate or no laboratory facilities or quality control experience or adequate financial responsibility, or even worse, without conscience as to what it sells and what claims it makes for what is sells—all fit the term "any person"; and without limitation the Controller under the provisions of these clauses is obligated to grant a licence of right under all drug patents to any such person. Drug patents cover a multitude of uses, from the harmless to the vital, subject to misuse, and as it often the case, subject to replacement and change in the light of clinical experience.

I am unaware of any similar provision in any other country. The BIRPI Model Law contains no provision for automatic endorsement of "licence of right" as is here proposed.

I understand that the drug industry is extremely important to this country. Let us consider the powerfull effects of such unrestrained encroachment on the property rights of

prudent investors. I quite from our presentation:

> "No industrial firm would risk immense research and development expenditure without some guarantee that an invention is adequately protected against exploitation by imitators who need not even show commercial, financial or technical capabilities or facilities as a condition precedent to use of the patent."

Is it not in keeping with accepted tradition that these provisions be deleted entirely?

Turning to another aspect of clauses 87 and 88, which again bears upon the risk, competence and investment required to develop inventions, may I point to the remuneration fixed in the Bill under the proposed "licences of right". The remuneration is arbitrarily fixed at 4 per cent of the net ex-factory sale price in bulk of the patented drug

May I here revert to the tubing example whose development I recounted earlier in this presentation. Tubing is not in the same class as drugs, because health and life are not directly involved. However, the principles of compensation are the same. In the factory end of production, cost is usually measured as the sum of labour cost, plus material cost, plus factory overheads. Such sum is the equivalent of the 'net ex-factory sale price in bulk' to which the provisions in the Patents Bill refer. However, when the bulk drug, the same as the bulk shipment of tubing, leaves the factory area, it is but a skelton on which other costs must be applied. Research and development expenses, engineering expenses, general expenses for insurance, taxes, maintenance, etc., must be provided; administrative, field testing, advertising and sales expense which is essential for successful marketing, servicing of distributors and dealers must be provided, and finally the investor of capital must be paid and some profit derived in order to operate and maintain a successful business.

Thus, I need not belabour the point that net ex-factory sales price in bulk' is a far cry from the final cost and a far cry from a fair sales price on which compensation is normally based.

Not only is such an arbitrary small percentage inadequate, but I respectfully submit that it is wholly discriminatory. Not even the wisdom of Solomon can set in advance a fixed royalty or fixed compensation which is fair and not discriminatory. I say this without any reservation; I have had 40 years of experience in licensing, manufacturing and drawing up collaboration and technical assistance agreements from the Far East throughout the Western world and I say again that not even the wisdom of Solomon can set in advance a fixed royalty or fixed compensation which is fair and not discriminatory. There may be thousands of items involved, thousands of drugs, countless processes and systems which advanced technology produces in forms too complex to describe, and the proliferation of new inventions with all their complexities will progressively increase in the future. Fair compensation must be based on the merits, and this cannot possibly be fixed at a stationary number universally to apply to the wide variety of different forms of inventions—all varying in value to the public. All are entitled to a fair return if invention is to afford the fundamental 'recognition and reward' without which invention will not be forthcoming.

I now come to an area which is somewhat sensitive, but I think that you will ponder this. It is to be expected that some voices will say that India will be better off without patents. Or they may proclaim that India has been exploited by foreign patents. Or they may take the view that there must be an intervening period before patents are given adequate compensation. They may point

to the meagre supply of hard currency. They may refer to high prices. They may claim the right to exceptional treatment. Let us consider these serious aspects by asking a few questions in return.

If we assume that India would divorce itself from the family of nations and make its patents system unattractive or undesirable, how would it benefit India? Would investors now in India add to their facilities? Would progressive companies, whether Indian or foreign, be encouraged to invest substantial sums in research and development? Would they make substantial investments in manufacturing facilities, in new processes, in new fields of endeavour? What would happen to existing products and facilities which perforce of time and circumstances will become absolete and non-competitive because of decline of invention at home and little co-operation from the outer world, which will not make its research and development and proved creations available without fair compensation?

I have stated before that the developed countries of today—certainly many of them—were the undeveloped countries of yesterday. Human beings and companies operate about the same throughout the world. Japan was a developing country yesterday. I know Japan well; I have worked in Japan when I was a very young man, in 1930, and there negotiated my first manufacturing collaboration treaty. It was a developing country yesterday. It is a developed country today. Japan at one time was reproached for copying the developments of others. Today it is producing new and superior products in many fields which are the envoy of those whose developments it copied yesterday. Japan is but an example of a developing country which embraced a patent law giving encouragement to its own and other inventors, whether person or companies. It considers inventions on the basis of merits, and grants compensation accordingly.

This is something to ponder. India is a great country in my opinion. I have been here many times and I have worked with your people. India is making giant strides in many scientific fields. A strong patent law which respects due process, which shuns discrimination, which grants fair compensation, and which joins in a comity of nations, operating in accordance with tested precepts, is bound to make treasured progress—but if followed in reverse is fraught with unfathomed risks. As is well stated by Mr. Frederic D. Hess, Chairman of the Patents Committee of the National Association of Manufacturers in his letter of October 24, 1968, to your honourable Chairman—in referring to the disturbing aspects of the Patents Bill—

> "Our Association is convinced that unless these are eliminated from the Bill the new Indian Patents law will adversely affect the best interest of India as well as that of the international community, and instead of stimulating, would seriously hamper India's economic growth and prosperity."

MR. CHAIRMAN: I want to put one question. In the Memorandum presented by the National Association of Manufacturers, it is said that the Patent Bill of India is attracting the attention of the world. It gives an excerpt in which runs thus:—

> "Our company has been actively considering establishing a manufacturing facility in India to service the Indian and adjacent markets. However, we have recently been disturbed by the proposed new Indian patent law, not only because of confiscatory patent provisions but because of the business climate indicated by the consideration of such a measure."

How is it that the Bill is attracting the attention of the world and

how has it disturbed the psychology of the investors outside India?

MR. SEID: This passage to which you referred to is in a submission made by Mr. Hess in connection with the Patents Bill of 1965. At that time a meeting of the Patents Committee was held in New York. About 150 members attended that meeting. At that meeting Mr. Hess referred to the fact that the companies operating in India who are members of the NAM were disturbed by some of the provisions in the 1965 Bill and they urged NAM to take a position on behalf of industry in general in he United States and make known the feelings of industry. As a result of that a number of letters were received. Some people, as you know, are operating here and some people have manufacturing collaboration agreements here and obviously anybody contemplating investment is cognisant of what may affect the investment and what may affect the future of investment. As a result of that meeting and as a result of the correspondence between the various companies doing business in India, Mr. Hess wrote up this representation.

MR. CHAIRMAN: Does it hold good even to-day?

MR. SEID: More so to-day. There is more thinking of investment abroad to-day because, as many of you may be cognizant, along with technology investment follows and as technology goes up, investment abroad goes up.

SHRI C. C. DESAI: Dr. Seid described the nature and philosophy of the Patents law and the patents system. We have also been told that Japan was a developing country and to-day it is one of the most developed countries in the world. Japan went through the same system which some of us here are wanting to go through namely a weak patent system developing technology and finally after the technology has been developed, formulate a strict patents law. This apparently has been the philosophy of the patents law in Germany. On page 2 of the NAM memorandum it is said that one of the most outstanding features of this revised law in Germany is the provision of full product patent. In other words, what is happening is that countries begin with a weak patent law, develop that technology, take advantage of an apparently weak patent law.

Once they have developed they can go for a strong patent law. How is it that the same experience will not hold good in the case of India?

MR. SEID: We are talking about two different things. First of all we are talking about not a weak patent law here but we are talking about a punitive patent law. I consider this as a very harsh patent law and if I may use that expression, it "overkills" the incentive for investment. Your penal provisions are so harsh that virtually anybody who is going to put a substantial amount of money will hesitate. It is true that you have to protect the public and certainly every Government has a duty to protect the public but if you do it with harsher measures, then you will have a penal rather than a weak patent law.

Now we are talking of 1969 and not before the war. It is true that before the war patents and technology were such, especially in a country like Japan, that it was possible to make an advance in technology which was at a snail's space compared to present day advancement. By this perhaps you may develop small industries. That is impossible to-day. Since the end of the war, the progress of technology has not been at a snail's space. You know what has happened in the fields of space, aeronautics, metals, metallurgy, computers, and electronics You are not facing the same technological facts of the world. Let us look at as of to-day. What would happen? Investment from abroad depends upon the

way you treat the investment, the way you compensate for training of the people and the way which you protect research.

SHRI C. C. DESAI: How did Japan olve these difficulties?

MR. SEID: They solved it in two ways. Firstly they have a patents law which gave you some protection. The next is that they encouraged investment by having their legislation establish fair administrative machinery. You get a fair hearing with respect to what you can make and the technology you can supply at a fair price which they are willing to pay. They have a patents law under which you can have a manufacturing collaboration agreement, technical assistance agreement, and various provisions for training people. The facts of the matter are submitted to MITI which is the government agency there. It fairly deals with the problem, fairly concedes compensation which is reasonable and fairly set the terms of agreement which will enable the recoupment of the investment and justifies the risks. There is no reason why India could not do the same thing. You do not meet to have a penal law in order to safeguard India. Nobody can abuse India and the Indian public. You can establish administrative machinery which can give you what you want and you can do it at this time. Otherwise you won't have a practical law. To have a weak patent law would not produce the desired results.

SHRI C. C. DESAI: There are two concepts. If there is a weak patent law we may have to pay less for the patents. The prices of durgs and pharmaceuticals may be reduced. This is a desirable objective considering the poverty in India. Life-saving drugs and pharmaceuticals should be made available to the public at as low a price as possible. This is one point. The second point is this. We should develop, we should encourage our indigenous industries. These are the two points of view. Could you tell us how these points will be adversely affected by the patent law which is contemplated in this Bill?

MR. HERMAN SEID: The Bill will not encourage the Indian or foreign entrepreneurs to put money in research or development because anybody could appropriate it.

SHRI C. C. DESAI: You know the number of foreign companies which are operating in India.

MR. HERMAN SEID: Yes.

SHRI C. C. DESAI: During the last few months they have been increasing their investments in the country not withstanding the fact that the 1965 Bill was there which created a fright and the same Bill has been repeated in 1967. Take the case of Parke-Davies and many others. They are saying on the one hand that investments will be deterred but in actual practice they see the fine market in India and they have collaboration agreements with various people. Some of them have got more than majority capital participation which was the practice in the old ways. They are increasing their capital participation in the country. What is the reason? Why is that so?

MR. HERMAN SEID: I am not familiar with all the facts. But I know in a general way why a company would put money into some other country. If it is putting money into a product for example that does not need protection obviously patents have no great interest. I am talking in general terms, not only about pharmaceuticals. My experience is that perhaps 90 per cent of production is not based upon patents but it is based upon existing products and processes. May be these companies are making investment just to sell their existing products. If so you do not have to be concerned with getting protection. But in respect of new things I can assure you that no one will pay for research and development or anything else which involves risks unless there is protection. That

is the basic fact. If you are talking about salt, pepper and wood, and common things of that kind, you don't have to worry about patents. But if you want to become progressively a modern nation with products that will compete with products which can sell abroad and which can have a foreign market you must continuously improve your standard. That can be done only by improving your technology. I will give you one illustration. In developing an air-conditioning system for aeroplanes such as the 707 and DC. 8, a compressor had to be developed which would be small in size and yet take care of the great problems involved in air-conditioning an aeroplane. After much effort and enormous expenses, a compressor of the size of my first was produced. This compressor revolves at 150,000 RPM and it was only after many years of effort and the solution of many technological problems that the matter was finally brought to a successful stage where that could give dependable service in today's planes. You also have the machine tool industry for example, which is very important, and you will not have any export business in South-east Asia and other markets, unless you have computer control of machine tools. For that you need technology. It would be not only risky but ill advised for a country like India to try to do the entire thing itself when you can pay less and yet obtain the other man's investment as well as the training given for your personnel. Once you have production, you may be paying little or nothing.

SHRI C. C. DESAI: How would you explain the tendency in your own country for having a weak patent law? I have seen from the papers circulated to us that there is a demand that the period is sought to be reduced from 10 years to 7 years and this is the case in Canada which is a developed country. How could you explain this tendency?

MR. HERMAN SEID: I can say this. Take Canada. In Canada, some five years ago, there was a statement in a report published.

MR. CHAIRMAN: That is about the Restrictive trade practice commission.

MR. HERMAN SEID: That is right. But, there has never been legislation or even serious consideration either on scrapping of the Patent Bill or about reducing the life of a patent. But, we are talking about something which is no more than an isolated.

DR. VEDARAMAN: This was about a report concerning the manufacture distribution of some drugs made. May I read out the statement published in 1963?

MR. HERMAN SEID: Was it published six years ago? I thought it was published about five years ago.

DR. VEDARAMAN: The Commission recommends that patents in respect of drugs should be abolished. This was the recommendation.

SHRI HERMAN SEID: I remember the report and I also remember some of the things which took place in connection with that. But I must tell you that the recommendation made was neither followed nor adopted.

MR. CHAIRMAN: That means you know about that very well.

MR. HERMAN SEID: Let me tell you something about U.S.A. In respect of U.S.A. you will find in some particular report some statements have been made about a number of things. I will tell you right now that no effective action has ever been taken in respect of scrapping of the Patent Law or to amend the Patent Law so as to reduce the period of patents.

SHRI C. C. DESAI: There is a Bill which is before Parliament.

MR. HERMAN SEID: There is a Bill before our Congress to long then

the term of a patent. In the U.S.A. there is a report to which I shall refer of the Health, Education and Welfare Department. As you may know, we in the USA have many departments such as the Secretary of State, Secretary of the Treasury, and others. We have one department called Health Education and Welfare —an enormous organisation with enormous staff. It has enormous activities to carry out. There was a paper which was drafted by somebody in that Department. They advocated a five or seven year period for patents.

MR. CHAIRMAN: He says the view was to have a seven year period instead of a five year period.

MR. HERMAN SEID: Though this report of the Health, Education and Welfare Department was published, it does not have any authoritative standing on anything. I know that a Bill is pending before Congress to increase the term of a patent. The Commissioner, Mr. Brenner, has been advocating an increase in the patent's period from 17 years from date of issue to 20 years from date of filing.

SHRI DAHYABHAI V. PATEL: Mr. Seid, have you been in India before?

MR. HERMAN SEID: Yes, I have been to India before. But India is a vast country.

SHRI DAHYABHAI V. PATEL: The reason for my asking this question is this.

The feeling here is that this country is to pay a very high price for some of the drugs which are basically Indian. We had a very fine system of medicine in this country. The vedic system is the indigenous—old—system; then we have the unani system which came in the Mughal's period when they came over here. And we feel that many of the drugs have been taken from India. And perhaps they have been developed and practically bottled up and sold in a more presentable form. If we have to pay a very high price, it is impossible for this poor country to buy that. We find in many places here inadequate sanitation or health measures as you have in the advanced countries. And, therefore, we have to pay a high price for these drugs. This is the feeling. And, therefore, in the background of this feeling, what have you got to say about that. I may point out one case where the drug has become more famous in the treatment of blood-pressure. That acquired fame when it was demonstrated to Mahatma Gandhiji for his treatment. Its name is Serpina. It is being sold in India and it has also been sold elsewhere. It is a kind of root from where the medicine is taken out. Ours is an indigenous system of medicine. Perhaps it does not look very attractive. Perhaps it is not so simple as to take it out and bottle that. If anybody has to use this in the form of a pill or any medicine the people have to pay a higher price. The feeling in this country is because of the higher price that the people have to pay for this. The origin is from this country. That is why there is a strong feeling against the patent's role. What have you got to say to this?

MR. HERMAN SEID: I know something about the problem, I am a Director of the North-Eastern Dispensary in New York City. This is a charitable and non-profit organisasation which gives dental services particularly to children and old people. Therefore, I am conscious of the problem of drug prices. With respect to drug's prices, I share your concern which was expressed. If you compare many non-brand drugs with brand drugs, you may find that prices may not be too different. My experience in this is that patents have nothing to do with prices. You may go round the world and get the statistics of all countries and you will come to this same conclusion after comparing the prices of drugs in western Europe, U.S.A., U.K., Italy and India. For example Italy has no patent laws in

respect of pharmaceuticals and yet its drug prices are high. You come to the conclusion that actually there is no relationship between patented drugs and their prices. It is true that India is a poor country so you have to safeguard your people with regard to drugs. We in the USA believe for example in establishing anti-trust laws concerning this. The courts are very diligent in enforcing over anti-trust laws to safeguard the public. In all these matters, your experts can keep in touch with what is going on in the U.S. and if you read the decisions of the Supreme Court of the U.S., you will see how stringent the laws are. Anyhow carefully they are enforced by our courts? The public must not be abused. The government through such laws can safeguard the interests of the people. I submit that adequate powers may be provided to deal with abuses. But this has nothing to do with the question of patents being responsible for pricing where no abuses are involved. With respect to organisations developing invention development is a time-consuming process. It is also an expensive process. How can you deal fairly with a large number of enterprising organisations? You cannot single out the pharmaceutical industry alone when you deal with so many people. Further more I say that you should not on the question of patents single out the pharmaceutical industry on a basis that has nothing to do with prices. I think you have got to divorce prices from Patents. Patents and prices are two separate problems. May I also assure you that prices have just as much to do with non-patented drugs as they have to do with patented drugs. We have found that bad agreements can have provisions in restraint of trade, can have arbitrary allocations of territory, can have production restrictions, can have all sorts of abuses. There are bad people in the US as well as in your country. It is up to government to make sure that business behaves itself. You have to treat the problem realistically and not blame it on patents.

SHRI DAHYABHAI PATEL: Can you indicate the role played by private industry, particularly the inventors in private laboratories and research in private laboratories as in government laboratories? How does it progress?

MR. SEID: When you talk of individuals, obviously in view of what I have stated, development of inventions today have taken a vastly different turn from what has happened. say, yesterday. The individual inventor alone has great difficulty today. He needs metallurgists, scientists, technicians, engineers before he can, with modern technology, produce the results that are acceptable. Therefore, whether it is private indusry or government organisation, today you have vast organisations. In the US, for example, where billions of dollars are expended in research and development, you find that various government bureaux are doing remarkable research in all fields. This is, of course, very very costly. In areas however where, for one reason or another, private industry simply cannot foot the bill or assume the responsibility, as in "space", for example—I think in the last budget for space we spent 5 billion dollars—that is certainly a government function. Whether it will bring reward to our civilised world. I do not know. But the fact of the matter is that that is a function engaging the attention of literally thousands and thousands of people in government service. They in turn let out contracts to a great many firms in private industry, who in turn also sub-contract much of the work. Thus it goes down the line. But the initiative there is with Government.

Now you come down to private industry. Even in small industrial establishments today there is some engineering, research and development done. In the big, organisations, this expenditure runs into fabulous sums. I am told in the pharmaceutical industry this runs into millions and millions of

dollars. Mention was made of Mercks. My guess would be that they would be spending an enormous sum on research and development. In the new industries with which we are all familiar—refrigeration, air-conditioning, heat exchange—there is not a company worth its salt that does not have a strong research and development department plus engineering which supports that plus necessary field testing and all the other adjuncts of development of new products, without which you cannot compete.

SHRI DAHYABHAI PATEL: What would be the effect of such legislation, as proposed on investment by foreign countries, porticularly US, in India?

MR. SEID: Very adverse, especially in advanced technology. My opinion, based upon certainly the practices of companies that I work for and of others with which I am familiar, is that the reaction would be adverse and very harmful to this country.

SHRI KANWAR LAL GUPTA: You say on p. 5 of your memorandum that the proposed legislation will be a severe blow to India's technological and economic progress and undermine its creative industry, discourage a growing number of brilliant scientists and engineers who would no longer find adequate protection for their invention etc. Generally speaking it may be correct. But experience in India is absolutely different. If you see the statistics, the number of patents registered in India by Indians is negligible while the number registered by foreigners here much more. So in a way the legislation is a handicap but the main reason is that our research facilities are not adequate, we cannot spend more being a poor country. Therefore, it is impossible for us to compete with foreigners with the result that Indian scientists cannot create result. So in a way the result is different from what you say in your memorandum.

MR. SEID: If I put down a few facts, it might be helpful. I believe that in most countries of the world—there may be two or three exceptions you will always find that there are more foreign patents filed than domestic ones.

SHRI KANWAR LAL GUPTA: It is a question of degree. It may be 60 or 80, but here it is 90.

MR. SEID: Take the countries of the Paris Union. Not all of them would, I think, file a patent in India, but a great many would, so that if you have a burst of activity, say, in the field of chemicals and fertilisers, you may have two patents coming from USA, one from UK, two from Germany, one from Japan—France has now got a strong Patent law; you may or may not get any from there—and you may get one from a number of other places. Thus, assuming you have some comparable research, and development here in India you may have one application here but you will obviously have many more coming from all over the world. But do not be disturbed by the other people filing here. That does not show that your people are less efficient. Number alone is no gauge; the gauge is whether you have ooportunity to develop scientists here. Development is costly. Obviously, you are not going to proceed in all fields. It would be beyond the cost of any country. You do so in fields where you can develop an industry, where you feel it is profitable and will get a return on your investment. Therefore, suppose you have six or eight or 10 fields that are promising, the position is this. I should like to recapitulate what has been told me in the last few days by the Ambassador for the United States. He said that here is India which needs certain industries or which needs advance in certain industries or an enlargement or development of certain industries. If somebody else comes in and aids with money and puts up plants and equipment and trains the people here to become technologists and scientists, all the aid that is given to India is without expense to India. In return

India gets production and trained people and a chance for export and it gets an enlargement of its economy. But what does it give? It gives only a part of that which it produces and if it does not produce, it does not give anything. Therefore, coming back to your question if you will enlarge your industries with foreign investment and give them patent protection, and give a fair return, you will have an enlargement of your scientific talent and your scientists and engineers will be impelled or encouraged to make inventions as in many other countries. Also, they will get rewards. In the end you will profit.

Let me try to summarise. If you do not get investment, if you do not train your people and enlarge your production, will you be better off?

SHRI KANWAR LAL GUPTA: Your thesis, generally speaking, may be all right, but can you give some figures which may prove your contention that our scientists have been trained without any cost. Can you give some statistical figures so that many Indians scientists have been trained in the industries which are protected and how much money has been drained out? That is also important. How much money from here has been sent outside? In that case, we will be able to know what the actual cost of training has been. Can you give some figures available with you, to show that this particular industry has trained some scientists and so much money has gone out. Then I think it will be better. Generally speaking, it may be all right.

MR. HERMAN SEID: I think in the representation of Mr. Stetler, he does give some statistics for which I cannot vouch, because I do not know the facts. I feel sure that it was based upon the facts. He says as follows:

"It is interesting to note that today the pharmaceutical industry is the largest chemically-based industry in India. It is estimated that by 1971 capital investment will reach almost Rs. 200 crores. Pharmaceutical production today is Rs. 175 crores, ... Investments in India by PMA member firms were and are being made in the expectation of a reasonable return under the protection of a patent law which would provide, for a limietd time, the exclusive privilege to work inventions."

SHRI KANWAR LAL GUPTA: A large amoun of money goes outside.

MR. HERMAN SEID: You can have an administrative machinery to make the inflow and outflow reasonable. Mr. Stetler continues—"the drug industry in India now employs over 60,000 people who receive advanced training in a technically sophisticated industry." Therefore, you have a priceless asset of trained people. If you can train 60,000 people in another industry and 60,000 in yet another industry, you can have millions of trained people, because the 60,000 trained people are the core.

You asked what about the statistics on my part. I do not have any statistics. I suppose your Government Bureau has much in statistics, but I do not know that in connection with some of the technical assistance agreements in India, nobody should really be concerned about paying out fees. If you pay out Rs. 5 but produce Rs. 100, is not that a good position?

SHRI KANWAR LAL GUPTA: That depends upon statistics.

MR. HERMAN SEID: Yes, there are different situations in different industries. But I come back to the premise which I think is most important, and that is, you are a sovereign power, and if there is any abuse you can cure the abuse. You have the right in connection with every technical assistance agreement.

with every manufacturing collaboration agreement, to state what is reasonable. It may be one per cent or 50 per cent, depending upon the product. It may sometimes be an electronic equipment which is priceless and justifies a large per cent but in other products it may be two per cent or four per cent, or some other appropriate per cent.

I have referred to an illustration from Japan. In Japan, you have different agreements with different pases. In some agreements, with which I am familiar, you have a percentage on the whole turnover of a company, because it is the easiest way to do. You give them the technology and the spare-parts and the training for the whole of the factory. In other instances, you have a different percentage on a product basis; one product may be well-known, and you have a small advantage, say, three to five per cent. In respect of a product which is quite advanced it has gone up to 18 per cent. It depends on what you get in return, and if you do not get any return, you need not agree to pay.

SHRI SRINIBAS MISRA: Supposing there is no patent law in the United States, still, can an invention be protected against its infringement?

MR. HERMAN SEID: Your question is, suppose there was no patent, law in the United States, would the invention be protected against infringement? You have to have something which is new, novel and useful in order to get a patent. If you get the patent, then for a brief period of time, you are protected against others. If there is no patent, anybody can produce what you make and you have no recourse against them. For example, take this watch. If it is unpatented, it can be copied exactly in regard both to its working and its design, and you are free to do so.

SHRI SRINIBAS MISRA: Without a patent law, a new invention will not be protected so far as the United States is concerned. It will not be a piece of property which is protected.

MR. HERMAN SEID: Invention is a very valuable piece of property. Without a patent Act, it is not.

SHRI SRINIBAS MISRA: In the United States of America, only giving the description or the specification of the patent does not include the know how. Is it not?

MR. HERMAN SEID: Theoretically the specifications should disclose how the invention may be practised, but in practice it is almost always necessary to have the practical know-how which is not and cannot be included in the specifications in order to practice the inventions and cause the patent to be valuable up to the end of 17 years when the term is up. Know-how is very important and without it you really will not achieve any economic advantages.

SHRI SRINIBAS MISRA: Therefore, without the know-how, the specification supplied to the patent office at the time of granting a patent is of no avail in manufacturing that article?

MR. HERMAN SEID: In some cases like some consumer goods, for example, perhaps you would not need any know-how. But generally it would be very ill-advised to take a patent or to have a collaboration agreement without getting the know-how.

SHRI SRINIBAS MISRA: Therefore, even if a patent is not granted, the original inventor will have an advantage over the others in the manufacture of the article?

MR. HERMAN SEID: But if he does not have a strong patent you will find that the advantage will soon evaporate because other people will copy it. You do need patent protection.

SHRI SRINIBAS MISRA: Our experience has been that in the manufacture of articles which are not patentable and are not patented, the foreign capital has been flowing. How do you say that without patent, there will be curtailment of flow of foreign capital in this country?

MR. HERMAN SEID: Technology is advancing at an enormous rate in fields where India certainly must participate if it is going to be a modern nation. In those areas, without patent protection, very few sizeable responsible companies will risk their research, training, development and investment. In the case of certain consumer goods, patents may not be necessary, but in the areas where technology in advancing, patents are necessary.

SHRI SRINIBAS MISRA: You are aware that the Kefauver Committee pronounced that India is the mostly highly priced country, so far as drugs are concerned?

MR. HERMAN SEID: I do not know whether drug prices in India are higher than in the UK or Europe or USA etc. I read the report of the Kefauver Committee in the newspapers. But experience has shown that in Italy they are dumping their drugs abroad to get foreign currency and yet the prices at home are high. In fact, I have an article entitled "Italy's exports built success feeds home dissatisfaction" which appeared in the *Herald Tribune* of Paris dated January 16, 1969. The people outside Italy who have built the pharmaceutical industry have become dissatisfied with these dumping procedures and I understand they have initiated counter-measures. I think there are over a hundred law suits pending. I do not think India is that kind of country.

SHRI SRINIBAS MISRA: On 9-12-68 there was a news item that the U.S. Department of Health Education and Welfare has recommended that the period of patent will be reduced to 7 years from 17. Have you any comments to make on that?

MR. HERMAN SEID: I think that is completely without factual basis. It is a huge department and there was no such official pronouncement. As a matter of fact, officially a Presidential Commission has recommended an increase of the term of patents from 17 to 20 years. A Bill was presented to the last session of the Congress based upon the recommendation of the President's Commission. As you know, we now have a new Congress. Our new President is going to be inaugurated today. This same Bill to increase the term from 17 to 20 years will have official sponsorship in the new Congress and my feeling is that it will be adopted. The Bar Associations are for it. It has, additionally, the backing of the Commissioner of Patents. In other words, it has the official standing which brings promise, normally, of successful adoption by the Congress.

SHRI SRINIBAS MISRA: The same department has stated that the drug manufacturers are getting three thousand per cent on their investment. What are your views about it?

MR. HERMAN SEID: My view is, if it is true it is unconscionable, and I do not think it is true.

SHRI SRINIBAS MISRA: In so far as the United States of America is concerned is it correct to say that 75 per cent of the inventions are in the private sector?

MR. HERMAN SEID: Inventions by the public sector have today grown enormously and most of those applications are secret. There are, for example, the inventions in atomic energy, in space and in certain forms of electronics. Those applications are

confidential. But I will say this that in my opinion the majority of inventions and applications are by private companies. As to what the percentage is, in view of the enormous amount of research and development work by the Government especially in the field of atomic research, space and so on, it is difficult right now to make a positive statement. You must appreciate that when a big contract, for example, is let by NASA or the Atomic Energy Commission, it goes to a number of companies. Those companies have inventors who file applications. Normally, depending upon the negotiation with the Government; the Government may have certain rights. These companies also retain certain rights. So, despite the fact that the invention may be assigned or may not be assigned there is a division of rights. But the vast number of inventions and applications are by the private sector.

SHRI SRINIBAS MISRA: What according to you are the effects of law of restraint on monopolies of trade and special privileges of TVA and Space Research Programme on the Patent Law of USA?

MR. HERMAN SEID: I do not believe it has had any substantial effect on the Patent Law. As I have said before, in the field of those agencies you have a special situation and you now usually execute an agreement form and practices which have been adopted to safeguard the Government.

SHRI C. ACHUTHA MENON: We feel that the prices of drugs and pharmaceuticals in India are very high. A certain product whose cost of production is about two paisa is being sold at 50 paisa. One of the reasons why it is so is that these things are patented and these companies have a monopoly of these processes. I do not know whether you face a similar situation in the United States. If you are having such a problem, how do you propose to solve this problem in the United States?

MR. HERAN SEID: For the people in the United States of America, so far as prices of pharmaceuticals are concerned, the problem is no different from the problem faced by the people in India, in the United Kingdom or elsewhere. They would like to have the prices brought down. I suppose that goes for pharmaceuticals perhaps more than it does for other items because of the health aspect. However, we do not have in the United States a system of compulsory licences. But once a manufacturer comes out with a product which meets commercial success our normal experience is that his competitors then get to work and come out with a competing product. Then the medical profession and the people have to choose from among three or four products and very rarely will you have a monopoly. When three or four similar products are brought out there is a reduction in the prices. However, in your country you have a different situation. You have a system of compulsory licences. If after three years you find that because of one circumstance or another the drug is not in sufficient supply, or somebody tries to keep it as a monopoly product, then somebody else could get into the business. You should also ensure that the quality and dosage are correct. But it seems to me that the question of prices and patents are two different things. The control of prices and supply could be ensured by administrative controls; by judicious use of compulsory licences mentioned in the model patent law, which is now widely recognised. You may control that problem that way. We do not have it, because we believe in unsheltered competition . We find that times straighten things out

whenever somebody wants to capture a market. Very few markets in the United States are captured by any one company.

SHRI C. ACHUTHA MENON: You have dwelt at length on the enormous amount of time and money taken for the development of various processes, even after a patent has been filed, in order to bring about final commercial production. Your point seems to be that the duration of the patent should be sufficiently long. But there is the other side of the picture. There are instances where, after a patent has been failed, steps are not taken for the manufacture of the product. Should there not be some power with the government to see that the patentee takes steps to begin manufacture of the product failing which the patent can be obtained by a compulsory licence?

MR. HERMAN SEID: In the United States we do have safeguarding a provision. Where a company restricts production in order to control prices, or keeps a product to a certain geographical area, or goes into combination with some other company in the same field or a different field to restrict competition, strict action is taken against them under the anti-trust laws. You can even have a civil suit, not only government suit, for damages. In this country also, if such a situation arises where some party unduly restricts production then, certainly, as a sovereign power, India has the right to control the use of patent of that party and give licene to somebody else to produce it so that it can be sold to the public. I am sure somebody here must have a copy of the model law which provides for situations. There are very well thought-out provisions to deal with it. Britain and other countries have struggled with this problem for years. If you will study these provisions you will find that they provide real safeguards so that what you fear is not permitted to take place.

SHRI PARTHASARTHY: Are you satisfied with our present Patent Bill, which incorporates provisions for arresting the abuse of our patent system growing into a monopoly?

MR. HERMAN SEID: It would be assuming too much on my part to tell you how to write your patent Bill. All I can do is to point out the deficiencies in the Bill which would make it harmful, if you adopt it. The penalties which you have prescribed are too harsh. The Bill also includes certain discriminatory features. It denies due process of law. It does not provide essential judicial review, and so on. These are not in keeping with current patent laws and you do not have to have these punitive and harsh measures in order to control monopoly.

SHRI PARTHASARATHY: Do you not think that the compulsory licence enumerated in clause 84 of the Bill will help us in developing and modernising our patents?

MR. HERMAN SEID: With all humidity I say that I believe it would be a disaster for you to keep these provisions in this Bill.

SHRI PARTHASARATHY: You are so vehemently objecting to clause 48. You describe it as expropriatory. Is your objection not met by clause 102?

MR. HERMAN SEID: Clause 48 is expropriation. Clause 102 is a different story. It talks of a negotiated agreement under the terms of which you will give reasonable compensation.

SHRI PARTHASARATHY: Negotiation means give and take. Compensation would be determined by an understanding or agreement satisfactory to both parties. So, your objection to clause 48 can be met by clause 102.

MR. HERMAN SEID: I would doubt it. Clause 48 needs complete revision. A man might have devoted a great

deal of time and money to invent and obtain a patent. If he knows that such a patent in India can be taken over by the government without judicial review or payment of compensation to be decided by government, from which there is no appeal, he will think twice before venturing. In the face of clause 48, he will think why he should risk his money in India when in the United States he can sit back in his chair, invest his money in a bank or big company and earn interest without any risk whatsoever. Then he need not worry about training people, travelling expenes and a lot of other things involving risky investments. This is the realistic situation which, I think, as practical men we have to consider. Your situation is no different than the situation in any other place. The fundamentals of doing business are the same. I think, if you accept those fundamentals, then you will reasonably provide against abuses and you will have a good Patents Bill and a good economy.

SHRI PARTHASARATHY: Recently, I believe, France, the Netherlands, Denmark etc. have launched a programme of modernising their patents law; so also Japan. They never had any faith in the philosophy underlying the patents law. Why have they taken so much delight in this now? Is it that they only wanted time for their inventions?

MR. SEID: Germany wanted to strengthen its patent law because of their technology and their competitive position; and their common market problems had become dominant. I think, that was the real reason for strengthening their patent law.

France felt that it had a patents law which was not in keeping at all with modern practice. It had a registration law instead of a law which will actually have patents judged on their merits with an examination system. They now have that.

The Holland Government found that the administrative difficulties were so great that they had to go to, what is called, deferred examination. The Scandinavian countries felt that they were four little countries, all with different laws and in effect said let us gather together and have one law which will make some sense.

So, in all these cases there was the urge to have strong and better uniform patent laws which are in keeping with modern trends. The modern trends today are to have strong patent laws, to have a length of time in keeping with the needs of galloping technology, so that people will not be afraid and will take change and make their investments in new things. These were the inspirations, it seems to me, which brought about the changes that you mentioned.

SHRI RAMESH CHANDRA VYAS: Did Madam Curie, Edison and Einstein obtain patents for their inventions and discoveries?

MR. SEID: I do not know about Madam Curie; as you know, she was a French lady. As for Einstein, he worked in pure research and, a you may know, had little to do with taking the results of his pure rsearch and putting them into practice. But Edison was a prolific inventor and he obtained a great many patents.

SHRI RAMESH CHANDRA VYAS: If the present Patents Bill is passed and it becomes a law, what impact will it have on the trade of your country?

MR. SEID: I believe that the impact would in time be very great and adverse to India because you only have a certain amount of money with which to work. When a company sits down and makes up its budget every year—some of these companies, budgets are on a five-year basis—you have to decide where you should put your money. This is a big world and the demand for money is enormous everywhere. You put your money in a big market—and this is a big market —but you also put your money in a place where you have a chance to get the things which you could get

elsewhere without any increased risk. It you cannot get the things which you can get elsewhere and if the risk is greater in India, the money will not come to India.

SHRI RAMESH CHANDRA VYAS: If an inventor puts his invention in the public sector and is not paid any compensation, what will be the effect?

MR. SEID: He will be discouraged from making any inventions or making any effort.

MR. CHAIRMAN: If he voluntarily gives, well and good.

MR. SEID: It may be of interest to you to know that in the United States, and elsewhere too, in a great many industries even when there is not a patent involved you may have a development on a machine which brings about greater safety so that a man who operates the machine will be safe and will not for example be cut. It is not patentable; but we have, what is known, as a suggestions system. The suggestion is made to make an improvement on the machine which enables the machine to work just as well but it is a safer machine. Most companies of any repute will reward the man or woman who makes the suggestion even though it may not be patentable. In the companies or corporations, where I work, we normally give the inventor a certain amount of money depending upon the nature of the invention even when we merely file an application. Maybe, after examination the patent is not issued because it is not patentable or the art has changed, technology has advanced and it is not good any more; or, it is not economical. Despite that, when the patent issues, we give him another reward. It is not unusual to reward inventors as well as those who make suggestions that are not patentable in order to stimulate invention and new ideas.

SHRI RAMESH CHANDRA VYAS: A patented product, like a radio, sells for Rs. 500 or Rs. 600 whereas a non-patented radio sells for Rs. 65 in the market. If that is the position, why should people prefer to go in for patented things?

MR. SEID: People only go in for patents because they can make some money, to be perfectly frank with you.

MR. CHAIRMAN: He was talking about the consumers. Why should people in general support the proposition of a patent when a non-patented thing sells at a much less price?

MR. HERMAN SEID: For example, I have a radio in my house. I have paid very little for it because there are a great many companies which compete in the radio field. Therefore, the prices in the States and also in Germany, and on the Continent of Europe etc. are very low. Supposing somebody tried to put a high price on a patented product and there is a non-patented product just as good as that, the people will buy the non-patented one. Take the case of a colour T.V. When the colour T. V. came in the States, the RCA spend a tremendous amount of money on it and they suffered great losses. The colour T.V. was very very expensive and very few people bought it. But now, because a great many manufacturers have entered the field, and because they are able to reduce the size due to use of semi-conductors and other great improvements, the cost of a colour T. V. now is less than was the price of a black and white T. V. when it came out first.

SHRI B. D. DESHMUKH: Have you applied your mind to Chapter XVII, sections 99 to 102 of the Bill?

MR. HERMAN SEID: I understand, they are based on the premise that reasonable compensation will be paid and the manner of negotiation will be set so that when an invention becomes the subject of compulsory licence, it will not be usurped by the Government or anybody else but would be paid for on some reasonable basis. That is in line with what the western countries are doing.

SHRI B. D. DESHMUKH: Have you got similar provisions in your country?

MR. HERMAN SEID: No. We do not have any compulsory licensing at all.

MR. CHAIRMAN: What are the specific clauses that you want to be modified or repealed or re-cast?

MR. HERMAN SEID: I think, in line with the philosophy that I have tried to expound, you have need to pay particular attention to clauses 48, 53, 66, 87 and 88. I might say I had a discussion informally with some of your people on another section which is an administrative section and they feel that that is not a problem. I think that will be handled well by your officials.

MR. CHAIRMAN: You feel that Chapter XVII, clauses 99 to 102, is in accord with the normal practice.

MR. HERMAN SEID: If you wish to take advantage of the experience of real experts in drafting, they will aid in redrafting provisions of the Bill for you. BIRPI is a well-established organisation that appreciates the cannotation of words and legal problems. If you go to BIRPI, they have got people who know English and the languages into which provisions are translated and they can help you in drafting. The wording is exceedingly important.

MR. CHAIRMAN: Is it your case that the spirit behind the drafting of sections 99 to 102 goes counter to the spirit behind section 48?

MR. HERMAN SEID: Yes, there is no question about it.

MR. CHAIRMAN: That is all. We are thankful to you for having come all the way to give evidence before the Committee. The Committee will give due consideration to it.

MR. HERMAN SEID: May I in turn express my deep appreciation to all of you because you have been very kind and very patient to give me a hearting? Thank you.

(The witness then withdrew)

(*The Committee then adjourned*)

Minutes of Evidence given before the Joint Committee on the Patents Bill, 1967

Tuesday, the 21st January, 1969 at 10.00 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Kanwar Lal Gupta
5. Shri Hari Krishna
6. Shri G. S. Mishra
7. Shri Srinibas Mishra
8. Shri K. Ananda Nambiar
9. Dr. Sushila Nayar
10. Shri P. Parthasarathy
11. Shri Maddi Sudarsanam
12. Shri Ramesh Chandra Vyas.

Rajya Sabha

13. Shri Krishan Kant
14. Shri T. V. Anandan
15. Shri Om Mehta
16. Shri K. V. Raghunatha Reddy
17. Shri Pitamber Das
18. Shri Dahyabhai V. Patel
19. Shri Godey Murahari
20. Shri C. Achutha Menon.

LEGISLATIVE COUNSEL

Shri S. Ramaiah, *Deputy Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS (DEPARTMENT OF INDUSTRIAL DEVELOPMENT)

1. Shri K. I. Vidyasagar, *Joint Secretary.*
2. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks.*

3. Dr. B. Shah, *Industrial Adviser (Drugs)*.

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary*.

WITNESS EXAMINED

Association of the British Pharmaceuticals Industry, London.

Mr. R. F. Haslam.

Association of the British Pharmaceuticals Industry, London

Spokesman: Mr. R. F. Haslam

(*The witness was called in and he took his seat*).

MR. CHAIRMAN: We are glad that you have come here to give your evidence. But before you proceed, I shall just read out the relevant rules about evidence.

(Direction No. 58 of the Speaker was read out to the witness).

We have gone through your memorandum which has been circulated to the Members of this Committee, I hope you will give a brief summary. Let it not be too long. The Members will be interested to put in questions for eliciting further information.

MR. R. F. HASLAM: Thank you, Sir. I quite appreciate your point about confidentiality. But I do not see any reason why anything that is said here by me should not be made public. First of all I would like to say that I appreciate the opportunity of being allowed to come here to give evidence. I think everybody who has been connected with this is impressed that a country like India should receive evidence from all directions on a matter which concerns its economy. And I think this fact has impressed the people about the tolerant attitude of India on this question.

I would also like to say that having been here a little while and having made other visits to India, I can see from my experience what a tremendous problem which you have all to deal with. My coming here is not just to say from a distance what we think should be done but we have come here with a genuine desire to find out what India requires in this direction. We are now in a different world from the earlier part of the century and it is in the interest of the whole world that India should develop.

Now, I am a representative of the Association of British Pharmaceuticals Industry (ABPI) and I am a Patent's Adviser to the wellcome Foundation Limited and I have been dealing with patent applications in the pharmaceutical field for nearly 20 years. During the course of my work, I have seen the effect of patents and have been involved in the actual talk going on about patents. The fact is that I have taken part in negotiating agreements and all considerations which are involved in this sort of work. However, I would like to say that I am not an economist and I hope you will pardon me if I do not answer any questions which are directly related to any figures of economics of the industry or royalties I have had nothing to do with the actual assessment of the royalty figure. Except for general considerations I would not be able to advise you on specific economic questions.

In our memorandum we have made some comments on various clauses of the Bill, treating each clause individually. I think that I have nothing to add to the comments on individual clauses. What I would like to amplify slightly from the memorandum before you is how in the U.K. we see that the provisions of this Bill as a whole will have detrimental effect on transfer of technology into India. Perhaps that might help you if I might add one or two remarks about the way in which the Patent Laws have an influence on the general transfer of technology from one person to another and from one

organization to another and thereby from one country to another.

I would like to start with some simple ideas about the functions of patents about which there may be some misconceptions. The first function of a patent is of course to give a monopoly, but the word 'monopoly' has a lot of implications which people do not like. And I think it is important not to stop at that point, otherwise one can be led to the conclusion that people possess the monopoly and there is an adverse feeling against the monopolist. Everybody is free to do what he likes. I think it is better to regard the function of a patent as a means for encouraging inventions by guaranteeing a market to the patentee. Let us suppose you make an invention and you wish to commercialise it. You know that the inventions is a good one, but the people fear that no sooner you market it than everybody copies it. If once you have developed the inventions, your efforts will be next to market them. This will not be worthwhile if everybody else is going to jump on to the band wagon. Immediately you will have success. And therefore the patent system grants this monopoly on this guaranteed market to the patentee for a limited time during which he can establish his invention and get some reward for it. And it is only under the umbrella of this guaranteed market that companies which have put into development a large amount of money are willing to share it with others and to pass on their knowledge by a licensing agreement and so on without this cover, the whole operation becomes impossible.

MR. HASLAM: I have seen in my work many types of agreement and over and over again the successful and useful ones (those in which the licensor has strong patent position and the licensee is willing to pay substantial fees for a good invention) are those which are well protected. On the other hand I have seen also other cases where for some reason or the intending licenser has a weak patent position and the licensee is not willing to pay very much for it and not willing to embark on the exercise because once he starts he may have no good position at all. He may decide to spend his time and money on those likely to be more remunerative.

I think, as far as drugs are concerned, there are one or two special considerations. Many countries have legislation which only allow drugs to be patented by a certain process which puts severe limitations on drug patents. This sort of legislation came into being in the beginning of this century when the position was very different from what it is now in respect of drugs. Then there were only a handful of drugs and for many diseases there were no drugs at all. Now a number of drugs are available for any particular disease. This kind of legislation which discriminates against one type of product and the other is no longer valid in the present day world. However, I quite well understand that India has her own problems in this direction and far be it from me to say how India should deal with her problems. Nevertheless, I think one must bear in mind this fact when one talks about particular problems of a country. The next is that the economic laws, the laws of development are in my opinion something independent of the political organisation of a country or of its stage of development. The laws of economics apply as well in the United States, in Great Britain, in India, in Ghana and in the Soloman Islands and we all have to operate under the same conditions. In the document produced by the United Nations, one of the United Nations organisations, on the role of patents in developing countries some reference was made that particular countries might feel the need to lay down particular legislation and also broad definitions for inventions in certain classes. For example, in the Oil States, in the Persian Gulf,

I can well understand that patents on processing the oil would have very vital significance for those countries, as compared to patents on Television. All countries have put broad restrictions on patents in the field of atomic energy because the whole world realises that it is an issue which is outside the field of normal commercial development. I would not say that that situation applies to India which has potentialities for development in all fields of technology and does not have an economy which is based on a small group of products. I know, of course, in my country we also, have a system of compulsory licensing for medical products. We are putting forth before the Banks Committee—this is the view of my industry—that this is an outmoded system and is not doing the economy any good to make this differentiation. Now, in your law, you are making a double differentiation because you are subjecting these patents to shorter term and also having the patents endorsed licenses of right and even stronger measures than compulsory licensing system that we have in the U.K. You have shortened the term of the patent and in Clause 48 you are proposing to give the Government very wide powers to utilise patented inventions. In Clause 88(5) there is the ceiling of royalty and in clause 90(3)(iii) and 95(3) there are some rather fearsome looking penalties written down. What I want to express is the effect of these clauses as a whole on persons and organisations outside India wishing to develop their inventions in India. I think the net effect is most discouraging. A slight indication of this may be that since 1965 there has been a full in the number of Indian patent applications whereas upto 1965 they were rising annually. Unless there are some other factors which I am not aware of, this must be some indication that the restrictive clauses of this Bill are having this disincentive outside India to file patent applications in this country, as that is of course the preliminary move to develop these inventions in India. Let us, for example, take a chemical process which is a good invention that my organisation has developed and which we wish to exploit and develop all over the world. Let us suppose that that is one for which our own facilities are insufficient to work completely or to attract licencees to work and we wish to develop this invention in as many fields as possible elsewhere. The question comes up of setting up a plant in Asia, in the eastern part of Asia. Our first task will be to see whether we have got this process well patented and whether we can get good terms, creditable terms, from people who have interested in taking licences. It may well be that in India there would be people who would be interested in taking licences. But the patentees will say, "yes, but we are afraid that this is not so interesting as operating this process, for instance, in Japan or Australia. We are afraid the whole proposition does not look very promising. We would much rather take our invention to Japan where we could negotiate a licence in mutually acceptable terms without the danger of anybody else's coming in and we will allow the Japanese to manufacture and give them a licence under our patent to import into India. This would be a much more attractive proposition." This will be what we feel that cumulative effect of the clauses of the Bill to which we have drawn attention in our memorandum.

I would just like to end up by saying that, in my view, clause 85 suffers from a misconception in that, I think, it is not a place of a patent law to lay down economic limitations for the operation of that law. I think the express limitation on royalty in the Patent Act is wrong way of dealing with the problem, and that, if it is necessary, such limitations should be placed in other legislations or rules.

It is my experience that a country does not frequently amend its Patent

laws. You yourself have realised that this is not an easy operation to do. In the U.K., we are also just having a review of our Patent Law for the first time in 20 years. I think it is the general opinion that Patent laws are not likely to be amended more than once in 20 years.

Thank you very much. Now I would be very pleased to answer any questions.

MR. CHAIRMAN: You have raised objection to section 48. But don't you think that for the defence of the country, and in certain emergencies cropping up, the Government should have the power to do that?

MR. HASLAM: I think there should be no objection to the Government having access to inventions under exceptional circumstances of this kind. The clause as worded has nothing written in it on these lines, and as it is worded, could be applied under any circumstances whatsoever.

MR. CHAIRMAN: Does this clause need re-drafting?

MR. HASLAM: Yes, Sir. If drafted, so that it would enable the Government to have this power under exceptional circumstances—like famine, epidemics and so on—I think nobody would have any objection.

MR. CHAIRMAN: I would also like you to elaborate your objective with regard to clauses 93(3) and 95(3).

MR. HASLAM: In the case of 93(3), I think the objective is simple.

I think it is the feeling and the experience in U.K. that such drastic penal clauses produce an atmosphere of threat and uncertainty, which again, adds to the total picture of discouragement. That I have mentioned in my opening remarks.

MR. CHAIRMAN: Don't you have some provision in your law as it is? We have taken it from the U.K. Act. What is your objection?

MR. HASLAM: I would say nothing about it . . .

MR. CHAIRMAN: You said clause 48 needs re-drafting, according to you?

MR. HASLAM: Yes.

SHRI C. C. DESAI: You talked about the effect of the Patent Bill as is now before us. You talked about the Japanese goods to be imported into India. You perhaps do not know that there is an import control in this country. If it is found that these devious means have been adopted to bring into India goods manufactured in Japan, that should really have been manufactured in India, there is the possibility of the goods being not allowed to be imported. What the effect of the Bill would be on the development in India rather than on the investment or the entrepreneur abroad. What is vital for us to know is what the effect of this Bill would be on the economy in India?

SHRI R. F. HASLAM: I think one has to realise that the invention described in the Patent specification is described against the background of certain level of technology. In the case of inventions in which India is already fully equipped to take over at the present level of technology here, I think that the sort of conditions that exist in the present Act would be adequate for the development of invention in India. You already have compulsory licence clause. Anybody can apply on the ground that the patentee is not working for invention and here you would have no problem. The problem as I see it arises that there are inventions in areas of technology in which there is no existing organisation in India to take over as such. Therefore, in these cases what India would need is not only—the invention and the

patent rights but may be training and development of experts. That lies behind the invention. That is necessary before the invention can be carried out in a commercial way. This is where the development arises. This is the whole problem for India as I understand it to get these new technologies going in India.

SHRI C. C. DESAI: I find that during the last five years there has been no discernable investment in India. A number of people still come up with Project investment in the phamaceuticals and they know this Bill has been before Parliament. Well I find that there is no practical disincentive of investment in India and the reason is that India wants vast market for personal goods export particularly in communist countries. If they get good quality goods on rupee payment, they would do so rather than importing it from Italy, etc. Patent consideration is comparatively a small factor about investment in India.

SHRI HASLAM: Yes. Thinking on these terms, if India abolished the Patent Act altogether, things would not come to a stop. Some economies in some countries go on. The Patent Law is one of those factors which are relevant to the whole development of economy. It is my firm conviction that the weakening of the Patent Law, or the application of restrictions on right of a Patentee simply is a discouragement. It would be in the interest of India to have a strong Patent Act. My view is that in critical and vital stage as India's development is at the moment, India should not have a weak patent system. That weak Patent system will not advance the economy but will have slowing down effect on the economy. As Mr. Desai says, this will not stop everything. Everything will not stop if Patent Bill is passed in present form and patern.

SHRI C. C. DESAI: We look from the point of view whether such a law would reduce prices to the consumers and encourage development of research within India. These are the two main objectives from which we look at the Patent Bill. We can do without foreign investment provided this Patent Law would really and effectively bring reduction in price to the consumer as also development of indigenous research. What do you think of such a Patent Law on these objectives?

SHRI HASLAM: I think if I put myself in the position of a Patent agent in India advising Indian client on how to handle affairs in India, I think I would find even from the point of view of inside India the provisions of this Bill as discouraging and not encouraging.

I think I would advise people to file patents on their inventions because without patents, they have no rights whatsoever. But I think as a patent lawyer I would be warning them—do not think that because you have a patent, everything is clear. Particularly in the chemical field, I have to warn them that by cl. 87 all patents are going to be endorsed with the title 'Licences of right', so that anybody can come in and make use of it if it is a good one. I would have to seriously warn them that unless there were very great prospects, investment of capital in this invention would have to be seriously considered. Not being an economist, I would not presume to advise them on any of the general economic factors that would have to be brought into consideration. I would advise them that it would be no good deceiving themselves that they are going to have a clear market with their patents because the legislation is hedged round with so many restrictions that they might find themselves meeting competition rather quickly. This is particularly so in the chemical field with the restrictions in 87 and 88.

SHRI C. C. DESAI: Our Bill provides for discrimination between

food and pharmaceutical drugs on the one hand and other products on the other in the matter of duration of patent life. Our law also provides as a maximum royalty of 4 per cent. Is there any justification for this discrimination? You criticised the 4 per cent figure. What in your judgment would be the proper course for India, provided that the general concept of the law is accepted.

MR. HASLAM: On the last point, I have already said that the Patent Bill is not the right place to have restrictions on royalties. If there is any need for such economic restrictions, the right place is in other legislation.

As for the duration of patents, there are two points on 53. One is that you are lowering the patent life from 16 to 14 years in one case and to 10 in the other. This is against the general tendency happening in the world today. While many ideas have been mooted for the reduction of terms of patents, I think you will find that whenever a well-constituted body of people have examined the patent law in any country and this consideration has resulted in new legislation, in no case I know of has the term of the patent been reduced, and there are many thoughts towards increasing the life of the patent. For example, in the European Patents Convention which discussed the matter, they definitely suggested a 20 years term. Nobody believes that a term of 16 years is any too long.

SHRI C. C. DESAI: The latest tendency in the US and Canada is to limit it to 10 to 7 years. They are talking about it; I do not know what the final outcome will be. This runs counter to your statement.

MR. HASLAM: My understanding is that this is not a thinking that is approved by the administration or by anybody in close touch with the working of the patent system. I think many of these suggestions that get round are baloons from the periphery of the patent system and they do not get anywhere. I think it is the firm conviction of the American administration that in whatever direction the American law may need revision, it certainly is not to question of the term of the patent or any of the sort of matters you are talking about.

You have made a distinction between the life of a patent being used as a food or medicine—where it is sought to be made 10 years—and patents relating to other things, where it is reduced to 14 years. There is one administrative difficulty which is going to reflect on the general convenience of the public very much. While it is in many cases quite clear whether an invention relates to food or drugs or not, there are inventions in the chemical area which might or might not be capable of being used in the production of food or medicine which would not appear from the surface of the specification, and yet the Controller is going to be asked to distinguish between these two groups and grant two different terms.

Secondly, the public are going to look at the patent specifications and are going to have to decide for themselves whether the rights under the patent are going to last for 10 or 14 years, without it necessarily being indicated in the specification that the invention is capable of being used in the production of food or medicine or not. The problem arises in cl. 88. In clause 87, the problem does not arise because I think it will be quite clear whether patent falls within clause 87 or not. Whether it falls under the restriction of a particular section of 88 which deals with food or medicine again will not necessarily appear from the patent specifications. In the United Kingdom we have solved this problem in a way in our section 41 which deals with the right to grant licence under the patent relations to food, medicine,

etc., where the Controller has a right to grant a licence on an invention in the field of food, or medicine or part of a surgical device but for no other purpose. If you have a process which could be applied to make medical products and also to other non-medical purposes, the Controller can grant a licence for medical purposes, under section 41, but not for the non-medical purposes.

I would like to put forward the suggestion that if it is necessary to have a different term for two classes of patents, it is not necessary that the whole patent might be given a different term, but the patent rights in relation to the food or medicine on the one hand and the rights in relation to the other invention on the other hand can split it up in its applicability but not the patent as a whole.

SHRI B. D. DESHMUKH: In your memorandum in paragraph 11 you have expressed your views about Chapter XVII, but the views are not so clear as they ought to be. Do you oppose that Chapter?

MR. CHAIRMAN: Or, do you suggest any modifications?

SHRI B. D. DESHMUKH: Are you opposed to the provisions of Chapter XVII?

MR. CHAIRMAN: Have you got a basic objection to Chapter XVII?

MR. HASLAM: This has some difficulty. In our law, we have section 46 which allows the Government to use inventions for the purposes of the Crown, the equivalent to the Government in your law. But we in England are faced with the problem such as the National Health Service and so on, certain nationalised industries, and it is a question of how wide these Government powers should be. The original concept of this section was that the Government should have access to inventions freely, for example for military purposes, which is the sphere in which the Government had a direct interest in the manufacture and buying of goods. But now the Government has very wide powers and, in India, the activities of the Government extend even more widely than they do in the United Kingdom. I think we feel that while the Central Government and the State Governments should have the right to use inventions on the payment of a recompense to the patentee, if you allow such rights to all organisations which are controlled in any way by the Government, this is rapidly becoming in effect a grant of potential licence to a very large part of the Indian industry. And this means that the essential attraction of a patent, namely, the grant to the patentee of an exclusive market for a certain limited time is again taken away by the inclusion in this chapter of the very wide industries in India which will have access to these inventions, so that again you are creating in another direction a disincentive which is another facet of the general disincentive that I mentioned in my opening remarks.

SHRI RAMESH CHANDRA VYAS (Question in Hindi as interpreted by the Chairman): In India we have research fields in the public sector, but in the private sector we have neither the requisite money nor the requisite resources. What is there in your country: have you any Government sector with such research facilities, and what about the private sector there? Have you got any such research facilities there in the co-operative sector?

MR. HASLAM: Yes, we have. Research goes on both in the private sector and the public sector to a very large extent. I think we can say that research, and by this we also include practical development as well which can give rise to patents,—takes place throughout the economy, and these developments are patented. For example, our Gas Board, Electricity

Board, Coal Board are three organisations in England which, I suppose, would correspond to your Government undertakings, and these bodies do research work and they take out patents on these inventions. Government itself in some establishments where the matter is not of a secret nature can also take out patents, and of course, the private sector is doing a very large amount of research which is being covered by patents.

SHRI RAMESH CHANDRA VYAS (Question in Hindi as interpreted by the Chair): In your country, when a patentee takes out a patent, the royalty is fixed through negotiation or according to some provision in law?

MR. HASLAM: There is no provision in our law which puts any restriction or limit or prescribes in any way as to what royalty should be paid under a patent. This is entirely a matter for negotiation. There are certain provisions in the Act whereby, if the patentee and licensee cannot agree, they can take the matter to the Controller or to the court for a decision. But my experience is, those provisions are very seldom used. Royalties which are paid under agreements may vary very widely. You may have a situation where a patent may not be very strong. It is potentially open to attack and it may not be a very good invention. But nevertheless the patent exists. Then the licensee would say to the patentee, "You are not offering very much by way of protection. I am willing to settle it for a royalty of a few parent." On the other hand, if the licensee is obtaining a patent on an invention of very great importance and is being put in a possession of something which looks like being a great commercial success, he may be willing to pay very much higher royalty—upto even 40 per cent. You have every situation in between depending on so many circumstances. The actual figure of royalty will have to take into account so many different circumstances—economic, technical, the degree to which the patent is or is not strong, the amount of information the licensee requires from the patentee, etc.

SHRI RAMESH CHANDRA VYAS (Question in Hindi as interpreted by the Chair): If this Bill becomes an Act, what impact will it have on your investments in India? Will there be further investments in the form of capital and know-how?

MR. HASLAM: We must not imagine that if this Bill is enacted, it is going to put a stop to the interests of foreign investors in India. It will have, however, a slowing down effect. In some cases, it may have no effect at all.

I do not think we will be able to put into actual figures what the effect will be. I can say from my experience of negotiating agreements between one party and another in different countries that the strength of a patent in the country concerned plays a part in the negotiations. Certainly with India having what we call a weak patent system in which the grant of patents is hedged around with a great many conditions, this will always have a deterrent effect on the inflow of information and technology.

SHRI OM MEHTA: In clause 53, we have proposed that the life of the patent should be 10 years and you say that it is inadequate. Why? How is it that USSR and Japan have very well developed pharmaceutical industries without having a patents law?

MR. HASLAM: My reason for saying that 10 years is inadequate is, in the pharmaceutical area, the development of inventions is possibly the longest of all technical fields. All countries are finding it necessary to impose severe restrictions and want firm evidence and assurance that the drug is effective and safe to use; be-

fore they will allow it to be sold. These tests take an enormous amount of time to carry out and are extremely expensive. I have no actual figures to support this, but it is certainly my impression that development costs in pharmaceutical industry are as high as in any other industry. This means that a drug may not be marketed for a large number of years from the time the patent application is filed and granted. The patentee will enjoy the protection for his actual commercial operations only for a few years. He would be lucky if he got five years' protection under a 10 year term patent. This could have an adverse effect due to the fact that the patentee will feel that he has only a short time to go and, therefore, he has to cover his research and development costs in a very short time. This is bordering on the question of prices on which really I just say that it is a factor which would come in, although I cannot take any particular position on it.

SHRI OM MEHTA: What have you to say about the development of the pharmaceutical industry in USSR and Japan?

MR. HASLAM: In Japan the pharmaceutical industry has developed and, what is more, has developed its own products under the benefit of a strong patent law. In Japan processes for making pharmaceuticals can be patented, and I believe I am right in saying that there are no compulsory licence provisions apart from those general provisions which apply to all patents. In other words, pharmaceuticals are not differentiated in the matter of patents in relation to compulsory licence. This law has been in existence for quite a considerable time, since the beginning of this century, I believe, if not the end of the last century, so that the Japanese pharmaceutical industry has grown up under what one may term as a strong patent law. Moreover, it is a country in which patents are respected; that is to say, once a Japanese company realises that wht it does may infringe a patent, it very quickly stops it, because there is generally a high regard for patent protection in that country.

On Russia, I am afraid, I am just not qualified enough to say anything because I do not know anything about the development of the Russian pharmaceutical industry.

SHRI OM MEHTA: You have been saying that when you apply for a patent it requires a considerable time to put the product into the market. Is it not a fact that nowadays science is progressing so rapidly that in three or four years a drug becomes obsolete and a new drug comes in?

MR. HASLAM: I think this question of obsolete drugs is one of the ideas which, if I may say so, is not really borne out by facts, so far as the pharmaceutical industry is concerned. In my own company, drugs which were introduced and patented in the 1950's, which are now falling out of patent protection or beginning to, are still in the market and have not been superseded. I think this was an idea which rose in the early days just after the war, with the development of new drugs, when drugs were coming one after the another, that this would be the future pattern of the pharmaceutial industry. In fact, to everybody's surprise, it is not borne out by facts. People have been surprised that drugs once introduced continue to be used for years.

SHRI OM MEHTA: In India 90 per cent of the patents are held by foreigners. Does it not unfavourably affect and inhibit local research and development? It also creates a vicious circle in which the people at large are required to pay very high prices for the patented drugs.

MR. HASLAM: Nearly all countries, with one or two exceptions, have

more patents held by foreigners than are held by the people of the country. This is because research and development is going on throughout the world and one country represents only a small proportion of the whole world. Since it is possible to file patent applications in all the major countries of the world, naturally every country takes it patents beyond its boundaries. So, excluding I believe, the United States and Germany, almost every country has more foreign patents than domestically owned patents. But this is something which is not necessarily a disadvantage at all. This is an essential part of the general picture of the flow of technology round the world, and every country is in need of the technical development of other countries. In this way, Britain, just as much as Germany, Japan and France, we do not expect to make all inventions in all technical fields by our own initiative. We are doing research and development and leading in various fields. But we cannot lead in all fields. So, we want to take advantage of any technical development that occurs anywhere in the world. I think everybody believes that India will produce this technical development. This question of the transfer of technology or patent will be one of the factors which will encourage this technology from the rest of the world to flow into India and not a deterrent to the technology coming into India.

SHRI OM MEHTA: What are your reactions to our making a product patent rather than a process patent?

MR. HASLAM: My honest opinion is that process protection in the pharmaceutial field is now out of date. It was relevant in the early part of this century when the number of chemical processes available to the chemists to make a substance were relatively limited. Chemistry has progressed so quickly that now once it is known that a certain drug is effective it is possible to devise and formulate many processes for its manufacture. Therefore, to my mind, pure process protection is really fundamentally out of date.

There is another problem in this. It has to be realised that the laws of technology and the economic situations are the same for all of us and the technological problems that exist in developed countries are not different from those which exist in the so-called under-developed countries such as India. Technology is the same all over the world and there is no difference between the technical problems in India and in the United States. However, there are probably many other questions behind this and, I think, that is all I wish to say on this point at the moment.

SHRI NAMBIAR: You are very much experienced in the pharmaceutical industry in Great Britain. In this industry once a given capital is put in and a certain branch is taken, for other produce that you get as a by-product, the cost will be very much less. Therefore to say that you want to have a patent right for a period greater than ten years to meet the expenditure involved is not convincing. May I know what you have to say on this?

MR. HASLAM: I think, this question involves questions of economics which I am not properly qualified to answer.

SHRI NAMBIAR: The economics involved is the economics of production of that particular drug which comes out of a process. Capital has already been put into it and you get so many other products as by-products in the process of invention. Therefore the comparative expenditure necessary for that will be less and the patent guarantee required may be for a lesser period and not ten years or more.

MR. HASLAM: I do not think there is any drug in existence which comes out as a by-product from some other process. Every drug has to be made as a special product on its own. But that does happen in the general chemical field; that is to say, by treating petroleum in certain ways you may get quite a number of different chemical substances which can be separated from each other and sold to chemical manufacturers to be transformed into still further things. Sometimes one substance is produced in embarrassingly large amounts and nobody seems to want it; it is relatively cheap. This can happen although not very frequently. But in the pharmaceutical field the chemical processes have to be directed to the substance that you want and there are no by-products which could be made use of. Certainly I do not know of any drug which can be taken from the by-product of any chemical process.

SHRI NAMBIAR: In paragraph 12 you have mentioned that the provision for compulsorily acquiring the patent is an invasion of the patent rights, even though it is after paying compensation. If a country wants a particular patent right to be taken over for its own purposes for its own industrial development and technical know-how—I do not mean in an emergency only but in the normal course; what the Chairman had asked was about the emergency—if fair compensation is paid, what is the objection? I can understand it if it is done without paying compensation; but when compensation is paid and you have got the right to go to the court, what more do you want? How can it be invasion of the patent right?

MR. HASLAM: The concept we are working on is that inherently the invention belongs to the inventor or, if he works in an organisation, to the employing company. Let us make it simple by saying that it belongs to the inventor and the patentee. This is something which he has developed by his own initiative and work and, may be, expenditure of money. It is something which should belong to him over which he can exercise control and, subject to these conditions, can license anybody. The idea that the Government can take over the whole patent right is, we feel, a bit drastic. I know, it occurs, for instance, in the taking over of land and many other things but I do not think that circumstances should arise where such a clause as this would have to be written into a patents Act.

SHRI NAMBIAR: In paragraph 13 you object to clause 8 and clauses 25 (1)(h) and 64(1)(m) saying that you will have to fill up certain forms and satisfy certain conditions before you get your patent right registered in this country. You say that this is not proper. But when you apply for a patent right, naturally the Controller will have to satisfy himself as to whether your claims are genuine, that they are not fictitious and so on. I think, no other country will allow that without all these satisfactory obligations being met. This is a formal thing. What is your objection to this?

MR. HASLAM: I think, the intention behind this clause, clause 8, is something which nobody would object to were if it possible or feasible to carry it out in practice; that is to say, the public should be put in possession of the history of the patenting of the invention not only in India but throughout the world. But I may say, as the manager of a patents department, that this is the sort of thing that we do ourselves at great expense, time and trouble every time we consider taking out a licence under some patent. We wish to assure ourselves that these patents do exist and have the force and validity that they are reputed to have. Our objection to this, as it is written, is twofold. First of all, we believe that the sheer administrative effort needed to fulfil the conditions of this clause will be insuperable both for the Indian Controller and for the applicant. If it were

a matter of just informing the Indian Patent Office of how two or three foreign patent applications had gone along, this would not be too difficult. In our industry if we have a really important invention, we may file it in 65 or 70 countries of the world, and our files on this would occupy two drawers of a filing cabinet. This clause would mean that the bulk of the contents of those two drawers would have to be passed over to the Indian Patent Office. Not only that, in its extreme form, were our clerical staff to slip up and fail to send any of these papers over to the Indian Patent Office, our patent could be rendered invalid.

Thirdly, I think, even where this information is to be sent over, a lot of it would be meaningless and irrelevant to the Indian patent situation. The general considerations in the Indian patent law follow those of the Commonwealth as a whole. In Germany and Japan, for instance, you have a patent law which in its fundamental concepts differs very much from the British patent law. Therefore, the arguments and documents which apply to the German situation would have no relevance to the British situation. You would have such coplexity of things that I do not think will do you any good. I think, the controller wil be overburdened with having to look after the vast mass of papers which will be of no use. It is all information which in a really important case can be found out by anybody interested by other means. We have no complaint about the purposes of the section. I just feel that administratively it will be an impossible burden for the Controller.

DR. SUSHILA NAYAR: You have emphasized the point over and over again that any weakening of the patent law acts as a disincentive both for research and investment. Has it struck you that money is not the only incentive in the world? I am a medical woman. As a doctor, as a surgeon, as a medical scientist, we all work day and night to find better techniques, better methods of diagnosis, treatment and so on. None of these things is ever patented. The knowledge that we discover is available for humanity. Don't you think that the same philosophy is applicable to another tool of relieving humn asuffering, tht is, drugs, invalid foods, baby foods and so on? Why do you think that these tools of relieving human suffering should be treated differently than the tools that a doctor, a surgeon, a medical scientist, is everyday finding and developing and making available to humanity all over the world without any patent of any kind.

MR. R. F. HASLAM: Nobody wishes to decry the efforts made by research people, the general philosophy that inspires research in medicine and the valiant efforts of the medical profession to relieve human suffering. If it were possible to provide these tools; the drugs they need to carry out their work, without economic considerations, I think, everybody would be only too pleased to do so. There are many pharmaceutical houses who retain drugs on their list simply because these are needed by certain special class of patients even though it is no longer economically possible to make money out of these drugs. But we have the difficulty that drugs need capital to produce and research costs money to carry it out and this money hs to be found from someawhere. Therefore, the economic and commercial business of making drugs is one which has to be carried out under the normal laws of economics that apply to all undertakings, whether they are making wireless sets or whatever else it may be.

You have to run a business in a business-like way. If you don't, it will simply collapse and no one will be able to make the drugs. Therefore, the drug business has to run in a business-like way. If it is a question whether it should be nationalised or not and so on, these are all questions which are quite outside the Pat-

ents Bill itself. The basic considerations of patents and the patents law that exists in the world are very similar fundamentally irrespective of the particular economic system exists in a particular country. I may give you an example. The patent laws of Czechoslovakia, Hungary and Poland and other countries in Eastern Europe were all laid down before the First World War. When these countries changed over to quite a different economic and political system, these countries went on with the existing patent laws. These have not been modified to any great extent except possibly in one or two cases with the introduction of concepts of certificates and all that. That is beside the issue. The patent laws are substantially the same all over the world. This shows that the same type of patent law is needed throughout the world irrespective of a particular economic and political system that exists in the country. I am sorry I have gone a bit away from your immediate question.

DR. SUSHILA NAYAR: I was not in any way referring to any particular economic or political system. You had mentioned earlier that India has its problems and, therefore, India may need a particular type of laws and so on and so forth. I wanted to bring to your notice that it is not merely the problems but there can be a different philosophy, a different ideology, and India may well think—at any rate, some of us in India may well think—that the thinking that money is the only incentive, that everything has to be done in terms of economic profits and loss, may be an outmoded thinking. You have yourself said that in atomic area, there are no patents. That is a significant statement.

I want to bring to your notice that before 1905, if I remember correctly, there was no patent in drugs. It was in 1905 that Germany discovered Salvarsan to treat siphilis and then the drug patents were introduced and there was commercial exploitation of the patents. What was before a tool for relieving human suffering became a source of economic exploitation. You have said that after that the number of drugs has increased very much. I would like to ask you whether you think it is an unmixed blessing that the number of drugs has increased. You must be well aware that in people's nouses—may not be in Britain because there is the National Health Service—in India and in other countries also, there are 10 or 15 bottles in the cupboard. One doctor says you take this and another says, this is not so good and you take that. The poor patient does not konw what is good and what is not good; he is squeezed unnecessarily. It is in view of this that Norway does not allow more than a certain number of drugs to be imported into the country; they have set a limit. Don't you think that this business of over-stimulation that you mention is not necessarily in the interest of the people in any country? So many drugs are very similar.

MR. HASLAM: I think, you have mentioned a number of problems that are exercising the minds of the people all over the world. These are problems which are not going to be solved through a patent system. The answer to these problems has to be found in some other legislation and not through patent system; the solutions for these really lie elsewhere. The function of the patent system is one of economics, to assist in the economy of the country and to promote the commercial exploitation of inventions. It has no concern with those types of human endeavour such as research and so on which do not have economic implications. Here the area is a limited one. I would say that the grant of patents on drugs has nothing to do with the question of how the drug should be manufactured in the country, under what system it should be distributed, what law should govern its use and all the rest of it. These are matters which can be dealt with by other legislations; let us take them

out of the medical field. For instance, let us take the case of a patent on fire arms; you can have a patent on fire arms; but this does not necessarily mean that anybody can make a gun and go on firing off in the streets of Delhi as he pleases; he must not use it to injure the other people; it may be subject to laws relating to the possession of fire arms; but these are matters outside the patent; the patent can only be granted for that particular weapon to be used in whatever way the government of the country regulates.

DR. SUSHILA NAYAR: I do not quite agree with you. The patent law, for instance, in India prevents us from importing a drug which we may be able to obtain for a fraction of the price at which those holding patents will sell in India. Under the present patent law, the Health Ministry or the Government of India or anybody in India is forbidden to import a drug on which the patent holding are making as much as 200 to 300 per cent profit. In Britain your Government can import those drugs for the national health service. Under the circumstances, I do not agree with your statement that distribution, prices and various other things have got nothing to do with patents. Don't you think that it is not in agreement with realities, with facts?

MR. HASLAM: The question of the price that anybody may or may not charge for a particular product, is one which could be controlled by Government.

DR. SUSHILA NAYAR: How? You are the only one who has the drug and I have to pay the price at which you give.

MR. HASLAM: Surely in India it is not so. No pharmaceutical company can sell a drug at any price they like. The point is this. Control of prices does exist in India.

DR. SUSHILA NAYAR: The patent law prevents it. The man who has the patent charges the price.

MR. HASLAM: I am sorry I cannot agree that the grant of a patent gives him any right to charge any particular price.

DR. SUSHILA NAYAR: Suppose you say that it costs 20 pounds. You have the patent. How can I say that it does not cost you 20 pounds unless I get somebody else to make it? That is why we have given this licence of right, so that we can see for ourselves what it costs.

MR. HASLAM: Under your present law, you can ask for a compulsory licence under section 23, and one of the considerations in this is that the medicine shall be available to the public at the lowest price consistent with the patentees' deriving a reasonable advantage from their patent rights. There are already provisions whereby excessive price charging by people can be remedied. You have your price regulations.

DR. SUSHILA NAYAR: Don't you think that the definition of what is 'reasonable' may be different with different people! Time does not permit me; otherwise, I could give the names and other details where profits of 250 times or even more are made and they justify on the basis of expenses on research, this and that. I will ask one more question. You are aware that the expenses on research in a drug industry, on an average, is no more than 6 per cent and the expenses on what they call 'promotion', advertisement, etc., are as much as 25 to 27 per cent. Do you think that this is reasonable? Do you think that it is good that so much money should be poured into advertisement which leads to perhaps cut-throat competition on very similar products? It is not to the benefit of the people, at any rate. I hope, you agree.

MR. HASLAM: You may be quite right. All I am suggesting is that if

there is a problem here, it is not to be solved by patent legislation. There are many drugs which are not covered by patents at all. The question is how much we are developing and what profit we make. All these things apply to all our products whether they are patented or not. Many products which we sell in India are not patented at all. Many of the products are not made by any other firm at all. They are perfectly at liberty to do so, but they do not. This has nothing to do with patents. With all these complexities the drug industry is operating. This is an extremely complex area which brings the whole question of human desire, human needs and all this requires controlled regulation. All I am saying is that I do not think that these problems can be solved through patent legislation.

SHRI NAMBIAR: This is one of the legislations which the Parliament is going to bring. This is one of the restrictions which we are putting.

SHRIMATI SUSHILA NAYAR: I hope you will agree that if there are more than one source from which a person can obtain the products, that itself will reduce some of these difficulties to a certain extent, that you have mentioned. You will not disagree with the statement, I hope.

MR. HASLAM: No. No. I think what you have to do is partly an economic problem on which I cannot say anything as I am not an economist You will have to find some balance. It is my belief that apart from these aspects whether it is meeting a human need, it has to be soundly and economically based and if in your opinion certain amount of control and limitations on the rights of patentees in the drugs field is necessary, I simply want to bring to your notice the fact that if the economic considerations are made so unfavourable, then you do not assist your own drug industry to develop and produce its own drugs. It is my contention that the Patent Law is one of the means by which the development of technology that you want and I want in India to happen will happen. And this weakening of patent rights will in fact amount to dilution of interest, dilution of efforts in the phamaceutical field.

I think where I disagree with you is simply on the question that you are contending that the restriction of patent rights will have a beneficial effect. My opinion is that the same object which we want to achieve would not be achieved.

SMT. SUSHILA NAYAR: Do you agree that economic laws and industrial development is ultimately aimed at providing certain human needs and human values have to be respected, perhaps to a greater extent than the economic values. The third point is that the Patent law is likely to serve the objective that we have. But you will agree that we are the better judges of our position in India than you can be. After all your interests are primarily the interests of the drug industry whom you represent.

MR. HASLAM: I do not differ from you and I am not in a position to prescribe any solution for India's problems.

SHRI PARTHASARATHY: I do not want to go into details. Under clauses 87 and 88 of the present Bill an applicant makes an application for securing the compulsory licence right. Is it your recommendation that Government should have the right of screening the applicants to see whether they are genuine, whether they are solvent or effective of producing the same patents that we are not exploiting before. I go there and ask for a compulsory right of licence. Now under this clause I automatically get the right. But would you not suggest that this right cannot ereate automatically but it can be screened by the Government or any other agency appointed by legislation to go into the question of efficiency of the man or solvency of the man and whether he has the capacity to undertake this.

MR. HASLAM: I think there can be certain disadvantages in the freedom with which people can get licence under patents. This can have an adverse effect. In my country under Section 41 of our Act which corresponds to Section 23(c) of the present Indian Act, we have had a large number of licence applications particularly in the last few years and of this a very large proportion have been complied with. We found that two companies recently have completely gone into liquidation and the Manager or Director of these companies has left the country and the companies have gone bankrupt. I am not saying that all applicants for compulsory licences are of the same kind. There are very reputable companies. What I say is that this incident in the UK particularly shows that the too free licensing of patents can be a great attraction to people who are not serious in their business intentions and can have as many disadvantages as it can have advantages.

SHRI PARTHASARATHY: Do you think there should be distinction in the term with regard to chemicals, drugs and foods? There are two distinct terms: one for 10 years in the case of drugs and chemicals and another 15 years or 14 years in the case of certain others. Are these distinctions obtaining in other countries? Is it good?

MR. HASLAM: One of the South American countries has short term for patents. This is the only country in the world which I think makes any distinction in the term of patents for one class of technology as against another. In my view the 10 year term is not adequate in the pharmaceutical field, taking into account the long time which it takes to develop the drug. That is my view.

SHRI PARTHASARATHY: You want one term for all products, industrial, chemical or whatever it is.

MR. HASLAM: Yes.

SHRI PARTHASARATHY: You mentioned about weak patent law. What does it mean? Do you think the present Bill is a weak patent law or a strong patent law?

MR. HASLAM: That is a jargon which I tend to use which may not always be clear. What we mean by a strong patent law is one which gives the patentee rights which he can enforce and which gives him protection without restrictions and without obligations. In this term 'strong' is that of using the word in the sense it is used in the United States where the patentee is granted patent for 17 years from the time it is used. It is not subject to any renewal fees, any compulsory licensing whatsoever and the patentee can if he wishes sit on his inventions and do nothing with it and nobody can stop him. In drugs, he gets complete monopoly over the drugs. We in the British Commonwealth are all agreed that there must be some restriction on the obligation of the patentee to work his invention. If he does not do so the people should have a right to step in. We, in the U.K., have Section 41 corresponding to your present Section 23 (CC) which allows the compulsory licensing for drugs although it is the opinion of the pharmaceutical Industry that this section certainly in the U.K. has outlived its usefulness. It was all right when it was first put in. But the circumstances have so changed now that it is not applicable now. What I mean by the weak patent law is the addition of still further restrictions on the right of the patentee. Your Clause 48 allows for the importation by the Government. It takes away part of the patentee's right, and the automatic licences. Each one of these steps, accumulating in each case, take a bit away from the patentee. That is what I meant by saying so.

SHRI PARTHASARATHY: They are capable of improvement. Government would step in in emergency.

MR. CHAIRMAN: One point is agitating us. Apart from the price we

find that during the last 20 years 90 per cent of the patents are taken by foreign collaborators. After taking the patents they do not exploit it. There are no facilities given to our research people. That is one thing that we are hesitating about this license of right. The price aspect of course is there. Our scientists find that they are obstructed by the patent already taken out by some company. They go on paying the fees but they do not exploit it, may be, on economic reasons; may be for some other reasons. But whatever it is, it is an obstruction to our own scientific organisation. What have you got to say with regard to these? This is directly related to our license of right. It is not necessary for fixing the price only. It is also for helping our own people to go ahead with the research. We are very much worried about it.

MR. HASLAM: I am not sure about your existing law but it is certainly a general provision of patent laws that a patent cannot be directed to prevent research and development activities. For making a substance, anybody in the laboratory can repeat that experiment and improve upon it and develop it and so on and research and development can never be hindered by the existence of patents.

MR. CHAIRMAN: Our experience such patent is that our students cannot go beyond a certain point. They are obstructed because patent has been granted to a foreign company. How to get out of this difficulty? What would you suggest?

MR. HASLAM: There is a section in the present law....

MR. CHAIRMAN: They can evolve certain processes. But they find there is already a patent. So they cannot exploit it. The patentee is not exploiting it for commercial purposes. This is the position. This is contradictory.

MR. HASLAM: This is something which can be dealt with even under present legislation, by Section 20 or 23(CC). The same conditions are put in your Bill in Section 84. We have it in the UK Act. It can arise in any country. You have this in your present Bill.

MR. CHAIRMAN: Automatic license of right is not necessary when we have compulsory license. That is what you say. But it is a very mild one. Automatic license will at least put the patentee on the guard. He will see to it that he will not obstruct indigenous researches.

MR. HASLAM: I think this question of obstructing researches is a bit of a bogey because in my experience it does not exist. Nobody in his senses would want to use his patent in such a way as to restrict the development of economy or the chance of another person's invention.

MR. CHAIRMAN: This is a problem faced in many countries. We have been facing it during the last 20 years. This arrangement is not very encouraging for us in the field of research in pharmaceuticals. I am not raising the emotional questions of price or property.

MR. HASLAM: We have in our Act—I think it is part of your Bill also, but I am not sure whether it is in your existing Act—a provision which says that if somebody has a good invention which falls within the terms of the already granted patent, then that person can demand a license from the owner of the patent for using that patent for improving his own invention.

DR. VEDARAMAN: It is in Clause 48 (d) in the Bill and in Section 22 of the old Act.

MR. HASLAM: This exists in the U.K. law and it exists in the laws of most countries. This is a recognised situation and it is dealt with by the right of the second inventor to get a license from the first patentee for the improvement of his invention.

SHRI C. ACHUTHA MENON: In spite of the existence of a patent law in India during the last 100 years, there has not been much of a development in the field of invention either in the industrial or pharmaceutical sector. One of the reasons for having this Bill is, as the Chairman has told you, that the existing law, instead of acting as an encouragement in the development of indigenous industry, is on the other hand having adverse effects. This has been our experience. What would be your reaction to the suggestion to do away with the patent law in our country?

MR. HASLAM: I would like to question the correctness of that thought in your question that the law as it exists at the moment has failed to provide any development in the field of inventions in India.

SHRI C. ACHUTHA MENON: In Italy they have done away with the patent law.

MR. HASLAM: I think it is very easy to say that the patent law has obstructed development of research or inventions. In fact it is not due to the patent law. Many factors economic, political and social factors—are responsible for it. In India especially there are so many factors. It is unfair to blame the patent law.

SHRI C. ACHUTHA MENON: You cannot argue for the existence of a strong patent law because in your view a strong patent law is one of the elements which encourages development in industry. That is what you said.

MR. HASLAM: To turn round and say that the patent law is responsible for all the ills is not fair. My argument is that one has to be very careful before coming to that conclusion. It will require a deep analysis of the situation before making such remarks. I think Italy's experience has shown to everybody what can happen by removal of patent laws in one specific area. Italian industry has produced very few developments and prices are certainly not remarkably distinct from the prices elsewhere in the world. What the Italians hoped to achieve by liberalising their patent law in the pharmaceutical field have not been achieved by them.

SHRI C. ACHUTHA MENON: I would draw your attention to certain observations made by the Kefauver Committee of the U.S.A. You are aware of the report submitted by them. In that report, this sentence occurs:

> The conclusion would appear to be warranted that in this industry, the mere existence of patent protection is not a guarantee of invention, nor its absence much of a barrier.

MR. HASLAM: The last part is not being followed by the United States Government. It continues to give patent protection for pharmaceuticals. I think it is worthwhile to say a few words on the first aspect of it because here again one can have a wrong conclusion. It has been said—various figures have been given—that 90 per cent of the patents are not worked in India. I don't know whether this figure of 90 per cent is really true or not. But it is true that certainly a large proportion of granted patents are not worked. But you have to realise why this is so. It does arise from the fact that an inventor has to file a patent application and take out a patent before he knows whether his invention is really going to be put into commercial operation. It might take longer to develop it to a commercial stage than it takes for the patent to be granted. A patent or invention may take a very long time to be commercially exploited. In the beginning of this century there were many suggestions for long playing gramaphone records. Until the new plastics were developed these inventions could not be put into effect. Those inventions died on the way.

Many inventions are hopes and aspirations and bright ideas, but eventually they collapse under their weight; they are not just good enough. You will never find that under any system 100 of the granted patents are exploited. But this is no harm. These bright ideas are published in papers for what they are worth. They may be picked up later or neglected. Except for the fact that a lot of paper has been consumed, there is no harm in that. It is better to have a certain amount of flexibility and to allow these sort of things to happen.

SHRI SRINIBAS MISHRA: Supposing there is no patent law in the United Kingdom, would the inventions still be the property under the common law?

MR. HASLAM: Not as we understand it under the Patents Act.

SHRI SRINIBAS MISHRA: What according to you are the principles for determining the quantum of royalty to be paid for the patentee?

MR. HASLAM: This is something very difficult to answer.

SHRI SRINIBAS MISHRA: Some broad outlines.

MR. HASLAM: There are so many factors in this. Earlier on I mentioned one or two. One is the strength of the patents, that is to say, does it cover a good invention and is it free from the likely attack under the clauses of the Acts which provide for revocation of the patent in the Courts. This is one thing. Secondly, there is the likelihood of commercial returns, commercial success on the product itself. Thirdly, there is the competition already existing in the market. There is the amount of money that the patentee has or has not spent on developing the invention. For example, in our field where the patentee has got a fully-developed product and can give us everything including all the medical data, then naturally that patent would fetch a fairly high royalty. On the other hand, if a patentee came to us with his patent and said: "look, I have done this work and I am also sure that this substance might be very useful, but I cannot prove it and I have not got that much facility, will you take it and develop it", in this case all the subsequent work of development will have to be done by us and naturally the royalty will be low; the major expenditure in developing it will have to be met by us. These are the considerations. I can only speak about the industry in which I have been operating. In other industries other considerations will play.

SHRI SRINIBAS MISHRA: In J. A. Geigy S.A's Patent case the royalty was fixed by the Court at 18 per cent; that was on the cost price. Do you know what amount of royalty was fixed in 1967 in Patchett's Patent case by the High Court and the Court of Appeal?

MR. HASLAM: In Canada?

SHRI SRINIBAS MISHRA: That was in the United Kingdom.

MR. HASLAM: I am sorry I don't know off hand. But I will let you have this information.*

SHRI SRINIBAS MISHRA: It has been referred to in the paper supplied by your Chartered Institute of Patent Agents, but it has not mentioned the amount of royalty.

MR. HASLAM: If this information is available I will let you have it.

SHRI SRINIBAS MISHRA: You say that our Patent Bill is weaker. Is that your view?

MR. HASLAM: Yes.

SHRI SRINIBAS MISHRA: All the clauses that you attack as tending to its weakness are taken almost entirely from your Patent Act of 1949.

Vide Annexure at page. 86.

MR. HASLAM: No. Sir, not all of them. If I may call it the worst sections, Sections 87 and 88 have no parallel in our Act at all.

SHRI SRINIBAS MISHRA: You please take your Act. Section 35 of your Patents Act of 1949—Licences of Right: I am reading the first three lines—At any time after the sealing of a patent the patentee may apply to the comptroller for the patent to be endorsed with the words "licences of right" and where such an application is made, the comptroller shall notify, etc. etc. Let us come to Section 37—compulsory endorsement: At any time after the expiration of three years from the date of sealing of a patent, any person interested may apply to the comptroller upon any one or more of the grounds specified in the next following sub-section for a licence under the patent or for the endorsement of the patent with the words "licences of right." Then Section 38—Provisions as to licences under section 37. Section 39: Exercise of powers on applications under section 37. This also speaks of the same thing. Section 40: Endorsement, etc. on application of Crown. A special provision is there. Section 41: Inventions relating to food or medicine etc. Without prejudice to the foregoing provisions of this Act, where a patent is in force in respect of (a) a substance capable of being used etc. etc. and (b) any invention, etc. etc. the Comptroller shall, on application made to him by any person interested, order the grant to the applicant of a licence under the patent on such terms as he thinks fit unless it appears to him that there are good reasons for refusing the application.

Only on this basis we have provided for licence of right in our Bill.

MR. HASLAM: Your provisions are not on the same basis. Section 35 of the U.K. Act says that the patentee may apply to the Comptroller for the patent to be endorsed. In other words, it is a voluntary act on the part of the patentee. It is in fact saying to the public "please come along and take a licence." But in your section 87 you say that notwithstanding anything contained in this Act every patent shall be deemed to be endorsed with Licences of Right.

SHRI SRINIBAS MISHRA: What about section 37?

MR. HASLAM: Section 37 does not say every patent. It says that any person interested may apply to the comptroller for a licence or for the endorsement. But you say that every patent shall be deemed to be endorsed with Licences of Right. Here it is a very different situation. There it just happens and nobody has to do anything about it.

SHRI SRINIBAS MISHRA: What about section 41?

MR. HASLAM: Having gone that far to endorse every patent with the Licences of Right, of course you don't need now to have a special section like 41 because you have already done that and a lot more in Section 87. That is why you don't need a corresponding Section for 41.

SHRI SRINIBAS MISHRA: According to you, the only difference between our provisions and your provisions is that under your Act after the sealing of a patent at any time a patentee may apply to the comptroller for a patent to be endorsed with the words "licences of right", whereas our Bill provides that there should be automatic endorsement of licences of right. That is not a very serious difference.

MR. HASLAM: That is all the difference in the world.

SHRI SRINIBAS MISHRA: According to your memorandum, section 41 has been rarely applied in the U.K. After the decision in the House of Lords in Patchett's case many applications under section 41 have been withdrawn excepting only 9. The extraordinary provisions in the Indian Bill also will have rare application.

MR. HASLAM: The actual number of times that this Section is used in the Courts is not necessarily an indication of its effect on the general business of licensing patents. Section 37 has been very seldom brought into effect directly, *i.e.*, very few applications have been made to the comptroller for licence under this section, Nevertheless, its very existence has a very big effect on the way in which licence negotiations are conducted. Supposing one company is applying to another voluntarily for a licence, the company applying knows that if the patentee company is very harsh, even then it can get a licence because the applicant can go to the comptroller. This has a very big effect in negotiations.

SHRI SRINIBAS MISHRA: Under your Defence Contract Act, there is a provision that for the purpose of defence the Crown can use any invention without paying any compensation. Is this correct?*

MR. HASLAM: I am not entirely familiar with this.

SHRI SRINIBAS MISHRA: You have a look at this and answer this question. Your Sainsbury Committee remarked that the patent period now granted, *i.e.* 16 years is, rather too long. They felt that this could be shorter. As we have been for the last 100 years following your ideas, we have reduced it from 16 to 14.

MR, HASLAM: While the Sainsbury Committee made some observations about patents, it has really left the whole question to the later formed Banks Committee, which is at the moment investigating the patent law of the country right from one end to the other. This question of term of the patent is naturally one which this Committee will consider; whether they will accept the Sainsbury Committee recommendations or not, I just don't know. The whole deliberations are at a very early stage. Much evidence has gone into the Banks Committee. I believe they are now having some oral hearings. But, it is unlikely that their report will issue till at least the end of this year. So, the whole matter is still being considered.

SHRI SRINIBAS MISHRA: Three more short questions. Will the knowhow be transferred as a result of granting patents? Supposing we grant patent to some company, some inventors in another foreign land, will that also necessarily imply transfer of knowhow to this country?

MR. HASLAM: Not necessarily. This is a matter whether the licencee wants the knowhow or not. One can have everything from what is termed in legal language a bare licence that is to say: the patentee merely says: I give you licence and you give us so much royalty. The cost of technical knowhow, the training of personnel etc.

SHRI SRINIBAS MISHRA: The cost is the question. While granting compulsory licence, will it also include the power of importation?

MR. HASLAM: I think not. Under Section 37 of our Act corresponding to section 20 of the Indian Act, the aim is to develop the industry in the country. The importation is naturally something which deprives the country's industries. The right to import under compulsory licensing is really self-defeating.

SHRI SRINIBAS MISHRA: According to your Chartered Institutes of Patent Agents, this compulsory existence of such a provision as compulsory licences has an incentive for the exports of a country. Are you of the same opinion?

MR. HASLAM: Yes.

SHRI SRINIBAS MISHRA: Regarding the definition of invention, would you like to include the new use of an already known substance in the definition of invention you would not?

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* *Vide Annexure at page* 86.

MR. HASLAM: I think in certain circumstances the new use of a known substance can be a very valuable contribution to the technology and in certain circumstances could be the subject of Patent rights. This is an extremely complex question. The law of different countries varies enormously. In some countries, including the U.K., for instance, they take a different view as regards the use in medicine....

SHRI SRINIBAS MISHRA: I will give you an example. 'Raolofila Serpentina' was used in this country for snake bite. Now it is being used for blood pressure. Can any country by legislation prevent the use of a substance itself for blood pressure by granting patent to persons who are using it for blood pressure?

MR. HASLAM: The use of the same substance in the same preparation for another medical purpose is not patentable in the U.K. The only place where this is patentable is the United States.

SHRI RAGHUNATH REDDI: Is the U.K. likely to join the Patent Co-operative Treaty? What are the advantages therein?

MR. HASLAM: Everything is being done to make it possible for the U.K. to join this Patent Cooperative Treaty and many are greatly interested in it, as we see in it the possibility of overcoming some of the weaknesses in our Patent system in the way of the examination and solving some of the problems that exist with the ever increasing number of patent applications that are being filed and have to be examined in the Patent office, and achieving greater uniformity of patent procedure between one country and another.

SHRI RAGHUNATH REDDI: The United Nations made a study under item Transfer of Technology in different countries. They made an observation at page 49, Para 304....

MR. HASLAM: I think that is referring to the sort of limitations that exist already in the Indian Act and exist in the U.K. Act.*

SHRI RAGHUNATH REDDI: What I want to bring to your notice is that this type of legislation has been resorted to by a number of countries. I do not think the Bill is drastic. In the Model Law also similar provisions have been made from which an inference can be drawn that what we are doing is more or less on par with the modern development in various countries.

MR. CHAIRMAN: Now, my last question is that so far as licence of right is concerned, the concept is already there. Somebody has to apply to get it. I quote from section 45 of Model Law for Developing Countries on Inventions: "This system may be specially attractive to developing countries because once a patent is thrown open to licences of right it will no longer depend on the will of the owner of the patent whether the patent will be exploited in the country: anybody can obtain a licence and on the basis of that licence, work the patented invention in the country or import into the country the patented product (or the product manufactured by a patented process)."

Can you have a basic objection to the licence of right which we have now contemplated in the Bill?

MR. HASLAM: My view is that this paragraph is more attractive to the idea of getting individual inventions worked in a country rather than the much deeper problem of general, advanced technology and the development of the country's industry in the broadcast sense. My own feeling is that in a country like India which has enormous potentialities these considerations do not apply.

MR. CHAIRMAN: We have restricted it only to the pharmaceuticals.

SHRI HASLAM: 'Production of chemical substance including alloys'— that brings in every chemical. So, you

Vide Annexure at page 86.

are opening not only the drug field but the whole of the chemical field.

MR. CHAIRMAN: Supposing taking your view into consideration, we omit clause 3, it will help our immediate need in the light of the observation as I have pointed out.

SHRI HASLAM: This particular point, I feel, has gone rather too far. It is very difficult to generalise. The BIRPI Report said that it could not solve the problem in a general way. It would apply to small African territories rather than to India. India is far more developed industrially. She has two kinds of industry. India is not an undeveloped country—she may be underdeveloped or have need of developing. India has resources and I would not think that it is in the interest of India to go further along the path on which they have already gone. Let us have a strong system which is in India's interest to progress along this line. That is my opinion.

SHRI SRINIBAS MISHRA: Do you remember the question? Will you send the reply?

SHRI HASLAM: Yes.

MR. CHAIRMAN: We thank you, Shri Haslam, for coming all the way from England to our Country and giving this evidence before this Committee. We hope the Committee will take it's due consideration.

(The witness then withdrew.)

(The Committee then adjourned.)

ANNEXURE

R. F. Haslam, A.R.C.S., II. Sc.
Chartered Patent Agent

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Telephone: EUSton 4477
Telegrams: TABLOID LONDON,
TELEX

14th *March*, 1969

Shri M. C. Chawla,
Deputy Secretary,
Lok Sabha Secretariat,
Parliament House,
New Delhi,
India.

Indian Patents Bill, 1967

Dear Sir,

During my evidence on January 21st 1969 I was asked certain questions on which I promised to give information later. I am now replying to these questions as far as possible and I shall be glad if you will convey my reply to the Chairman.

1. Shri Srinibas Mishra (page 86 supra) asked what was the royalty fixed in the case of Patchett's patent.

Answer. The royalty was fixed at 5 per cent (see 1967 Reports of Patent Cases, at page 248). This is an example of the "bare licence" case which I referred to earlier in my evidence.

2. The same member asked about the Defence Contracts Act 1958 (page 83 supra). Section 1 of this Act amends subsection 6 of Section 46 of the Patents Act 1949. This Section 46 deals with use of inventions for the services of the Crown, and original subsection 6 dealt with the use of inventions needed to supply defence materials to governments with whom the U.K. has agreements, and specified that use for such purposes shall also be regarded as being for the services of the Crown. As now amended by the Defence Contracts Act, the United Nations brought in and it also gives the Government the right to use designs, copyright material, drawings and other information relevant to an invention which becomes subject to an order under Section 46(1).

The member suggested that in the Defence Contracts Act "there is a provision that for the purposes of defence the Crown can use any invention without paying any compensation". I respectfully beg to disagree with him, though I must say that Section 1 of the Defence Contracts Act is by no means easy to interpret. I am quite sure, however, that no *patented* invention can be used by the Crown without compensation.

3. Shri Raghunath Reddi asked (page 84 supra) about the United Nations report "The role of patents in the transfer of technology to developing

countries"—page 49, para 304. I will quote this paragraph for the sake of clarity:—

> "In the third place, in countries where development of technology and rapid spread of original experience are so crucially important, great care must be taken that *the patent system should not be used to retard and block local production and invention rather than promote it.* In spheres of production vitalto the national interest and the development of special resources, or to public health, limitations on patentability or provision for limiting the scope of the patent grant by special working or compulsory licensing in the public interest are natural, as is evidenced by the presence of such limitations in the legislation of many countries". (My underlining).

The crucial words are, in my opinion, those underlined. This study is a quite general one and not make with reference to any particular patent system. My interpretation of this passage is that it is a warning that dangers may arise if the patentee is given an unfettered monopoly, as for example in the U.S.A. But in both the U.K. and the present Indian Patents Act obligations are put on the patentee to work his invention in the country as far as is possible, together with penalties if he does not. In my evidence I expressed the opinion that the existing provisions went for enough, that Section 23CC (=Section 41 of the U.K. Act) was an anacronism, and that the provisions of the present Bill went too far and would fail to achieve the aim of the United Nations report.

Please let me know if I can be of any further assistance to the Committee.

Yours faithfully,

R. F. Haslam.

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967

Wednesday, the 22nd January, 1969 at 10.20 hours and 15.00 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Kanwar Lal Gupta
5. Shri Hari Krishna
6. Shri G. S. Mishra
7. Shri Srinibas Mishra
8. Shri K. Ananda Nambiar
9. Dr. Sushila Nayar
10. Shri P. Parthasarathy
11. Shri Diwan Chand Sharma
12. Shri Maddi Sudarsanam
13. Shri Ramesh Chandra Vyas

Rajya Sabha

14. Shri Arjun Arora
15. Shri K. V. Raghunatha Reddy
16. Shri Pitamber Das
17. Shri Dahyabhai V. Patel
18. Shri C. Achutha Menon.

LEGISLATIVE COUNSEL

Shri S. Ramaiah, *Deputy Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS (DEPARTMENT OF INDUSTRIAL DEVELOPMENT)

1. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks.*
2. Dr. B. Shah, *Industrial Adviser (Drugs).*
3. Shri Hargun Das, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

I. Swiss Society of Chemical Industries, Zurich, Switzerland Mr. O. H. Nowotny.

II. Prof. Dr. A. Kraft, Department of Law and Economics, Johannes Gutenberg University at Mainz (W. Germany).

I. Swiss Society of Chemical Industries, Zurich, Switzerland.

Spokesman:

Mr. O. H. Nowotny.

MR. CHAIRMAN: Mr. Nowotny, you will have to give a brief summary of what you have stated in your memorandum. You have divided it into two parts, general observations and specific points.

Please note that your evidence is liable to be made public; therefore, nothing remains secret. If, however, you want that any portion of your statement is not to be used publicly, you will have to make a request for that; but that again is dependent on whether it can be allowed or not.

Please also give an introduction of yourself.

MR. NOWOTNY: Mr. Chairman and hon. Members of the Joint Select Committee, on behalf of the Swiss Society of Chemical Industries, I would like to thank you for having invited us for oral testimony.

The Swiss Society of Chemical Industries was founded in 1882 as a private non-profit-making association comprising today practically all, that is, over 200 Swiss chemical and pharmaceutical manufacturers and dealers.

You have before you our written statement submitted to you on October 24, 1968 in which we have presented in some detail the reasons why we object to certain clauses of the Patents Bill, 1967.

Because of the limited amount of time available for discussing our mutual problems, I shall not re-read our written statement but shall merely emphasize its most important aspects. In addition, I would like to bring a few points to your attention which should help us to see the things we are talking about in their proper perspective.

I wish to underline that in all my explanations I shall restrict myself to the effects of some of the proposed changes in the Indian patents law on the pharmaceutical industry. My reason for doing so is, of course, that drugs are particularly discriminated against by many of these proposed changes and that their patent protection is to be weakened more than that of most other groups of inventions for which patents might be granted.

In our written statement, you will see, we have enumerated three reasons why we believe that patent protection for drugs should not be reduced from its present duration of 16 years to the considerably shorter period of ten years.

Firstly, we have supplied you with a representative sample of some 30 countries which shows that patent protection in most nations is granted today for a duration of 15 to 20 years from the date of application. At a time when international co-operation is more important than ever before in order to help each country achieve the best possible standard of living and when many nations, for the sake of such increased co-operation, are trying to standardise their patent laws around a commonly acceptable denominator, it would seem highly

regrettable if India would decide to step out of line and walk away in exactly the opposite direction.

Secondly, we have drawn your attention to an international study by the Organisation for Economic Co-operation and Development, the well known OECD, headquartered in Paris, where it is shown that for major innovations the average time span from discovery to large scale acceptance is today generally assumed to be 15 years. Because innovations in the drug field must since several years meet particularly severe standard in respect to their safety and efficacy, the average time span from discovery to commercial success for drugs alone is likely to be above the just mentioned average for all major innovations. This truth has, in fact, already been recognised by a number of countries which are now trying to increase their patent protection to 20 years.

Thirdly, we have quoted to you from the so-called Hinchliffe Report which was published by the British Ministry of Health in 1959, where it says that "really outstanding drugs are still very few in number and if a firm makes one major advance in 10 to 20 years, it is doing very well." As can be seen from the declining number of drugs containing new chemical substances, which are coming to the market each year, the chances of shortening the average time span of 15 years between major advances must have actually worsened during the past decade.

Because it is an established fact that pharmaceutical manufacturers conducting their own research depend to a large extent on their major advances to finance their research activities and to provide the necessary funds in order to meet the rising demand, it would be most unfortunate if patent protection would be shortened. The research-based drug houses must be able to count on a fairly stable income if they are to conduct their research efficiency. A company requires many years to build up a competent research team and it would be most unfair to the scientists it employs if their livelihood would be threatened in more or less regular intervals because of excessive ups and downs in their employers' income.

This is no mere theory. It actually happened just recently to an Internationally known American drug manufacturer whose patent protection on its major advance expired before he had come up with another to take its place. The resulting drop in income was quite dramatic. Within two years net profits after taxes declined by more than 33 per cent and the company had to curtail its research activities and actually to dismiss some of its scientists. This has happened in the United States where patent protection is granted for 17 years. Imagine how many more cases like that would occur if patent protection was dropped to merely ten years.

Nowadays we hear so much about the responsibility of the drug industry to the public. But responsibility is not a one-way street. The public in return has also a responsibility towards its scientists on whose creativity it has always depended so much. A scientist working in the field of drug research must sometimes commit 5, 10 or even 15 years of his life to solve just one problem effectively. In order to do so he needs peace of mind and should not have to worry about the security of his employment. He should not even have doubts as to whether or not the necessary funds will be forthcoming to let him carry out his project to the very end.

There is nothing more demoralising to a scientist than to have his project stopped half-way through for lack of funds. A good scientist can accept defeat. He can accept nature's 'No' to the ways he has chosen. He

will rise from such a defeat and try out new ways to arrive at his aim. But his creativity may be crippled for ever if he is forced to attack each new project half-heartedly knowing that financial support might easily come to a halt before his work has been completed. It is the responsibility of the public to see that as little as possible is wasted of this precious resource called human creativity. The bet way to do this is to give generous protection to new inventions. In this way, the public can never lose. It pays only when the results have been achieved.

On top of the three reasons we have given in our written submission in order to prove that patent protection should not be shortened but lengthened, I would now like to add a few figures which, I believe, will illustrate to you even more convincingly why present patent protection for drugs can be considered barely sufficient.

First of all, industry experience shows that 6 to 8 years are required from the moment the patent for a new active substance is filed until this very substance can be put on the market in the form of a finished speciality. A drug marketed today must pass extensive toxicological and clinical tests to assure its safety and efficacy and, with requirements in both areas rising, this time-lag between invention and introduction cannot be compressed but is likely to grow even bigger in the future. Following introduction, a drug then usually has to sustain losses for 2 to 4 years until the initial heavy outlays to make the new drug and its qualities known to the medical profession can be reduced and sales of the new drug have reached the potential which was projected. Then, another 1 to 2 years are usually necessary to recoup the losses made during the first 2 to 4 years following introduction.

All in all, therefore, 9 to 14 years are likely to elapse for a drug from the day when the active substance it contains was patented until the drug actually starts to improve the financial condition of the patent holder. Under the present system, therefore, only 2 to 7 years are left for a drug to help financing the patent holders' continued and increased research efforts and to provide the funds for any necessary expansion of the business.

When you consider what has been said before, namely, that major advances for an individual drug firm rarely occur more frequently than once in every 10 to 20 years, you can see that even under the most optimistic assumptions, a company must expect to experience at least a few years where it has no patented major advance on the market. This is why several countries, conscious of the desirability to stabilise the earnings in highly research-oriented industries, are now intending to expand their patent protection up to 20 years.

I would also like to draw the Committee's attention to at least two effects a shortened patent protection would have on India's pharmaceutical industry in the public sector. Firstly, the public companies, where millions of rupees have already been invested, are using less advanced technology than the private, mostly foreign-owned companies, and are, therefore, likely to have a greater time-lag between invention and introduction of a new drug which, with decreasing patent duration, would put them at a proportionately greater disadvantage vis-a-vis their privately-owned competitors. Secondly shortening of the patent duration would cut down the number of years during which Indian inventions in the drugs sector could collect royalties from foreign licencees. This seems most undesirable at a time when the first Indian research efforts in the drug filed are bearing fruit.

I do not think I am going too far when I state that those who advocate

a reduction of patent protection for drugs in India to merely 10 years are, in effect, saying, "Whatever our own scientists engaged in drug research may find, it cannot be worth as much as any of the foreign inventions; therefore, we can afford to give it a lesser protection". This attitude, of course, is only half-way down the road to complete patent abolition which then, in effect, means: "We do not need any protection because our own people will never find anything worth protecting." To close this chapter on "patent duration", I can only say that I do not share this indirect expression of disbelief in the creative capacity of Indian scientists.

Let me now turn to an equally important point, namely, the 4 per cent royalty which the Patents Bill envisages as maximum compensation for any compulsory licences which might be granted. Instead of merely telling you that this is too little, I think, it is worthwhile to illustrate with actual figures why a 4 per cent royalty of "the net ex-factory sale price in bulk of the patented article" is indeed equivalent to expropriation without compensation.

It is sufficient to take a quick look at the cost structure of the pharmaceutical industry as we have presented it in our written submission. As you can see, the manufacturing costs for drugs amount, on the average, to not more than I/3 of their selling price. Compulsory licences, however, are never sought for the drug of average success but nearly always for the exceptionally successful drug. This is the high volume drug with above-average profitability and below-average manufacturing costs. Let us assume that for such a drug, the manufacturing costs do not amount to 1/3 but only 1|5 of its selling price. Let us further assume that about half of these total manufacturing costs, which are now only 20 per cent of the drug selling price, constitute the cost of producing the active substance the drug contains, while the other half comprises the cost of inactive ingredients of making the tablets, of bottling and of packaging them. Under these assumptions, we come up with the possible manufacturing cost of the active substance of 10 per cent of the finished drug's selling price.

Assuming that the licensee applying for a compulsory licence can manufacture the active substance just as efficiently as the patent owner and that he will require a mark-up of 100 per cent—a mark-up customary for bulk chemical producers—on top of his manufacturing costs to cover his manufacturing overheads, his selling and administrative expenses, and to leave him some profit, the "net ex-factory sale price in bulk of the patented article would amount to exactly 20 per cent of the patented drug's selling price. Thus with a 4 per cent royalty to be paid on that selling price, the patent owner would receive 0.8 per cent of his drug's selling price as a compensation for (a) his research expenses amounting to more than 10 per cent on sales, (b) his medical information costs, which have made the drug known to the medical profession and which amount to at least another 10 per cent or more, and (c) whatever profits he has lost.

I think you will agree that when it can be shown that compensation for a compulsory licence should be in the range of 30 per cent + 10 per cent of a successful drug's selling price, any compensation which amounts to less than 1 per cent can, without any exaggeration, be called expropriation without compensation.

In addition, I would also like you to consider the unfavourable effects a maximum royalty of 4 per cent on the net ex-factory sale price in bulk would have on the pharmaceutical companies in the public sector. Now that the first Indian research efforts are showing results and voluntary licences have been granted to foreigners, for which I understand royalties of 6 to 8 per cent of the finished drug's

selling price are collected, I wonder how these companies will, in the future, be able to claim such a level of royalties, if in the field of compulsory licences their own country offers only less than 1 per cent of the finished drug's selling price in return. Not only should the royalties for these voluntary licences—because of international reciprocity—have to be equal to the ceiling laid down in the law for compulsory licences, but they would actually have to be lower, because fair compensation for *compulsory* licences must, as a rule, be above compensation for strictly *voluntary* licences.

Having given you substantial factual evidence why we believe that neither patent protection should be shortened nor royalties of compulsory licences should be limited to an arbitrary maximum, I would now like to add a few general remarks in order to help you to put your thinking on drug prices and the related aspects into perspective. This is most important because otherwise it may easily happen that in trying to save a certain part we are finally sacrificing the whole.

I think you will agree with me when I say that there could be three reasons why India might find it in her interest to reduce or to abolish patent protection.

(1) If present patent protection could be shown to be so strong as to provide excessive incentive to inventors and would, therefore, stimulate drug research beyond public requirements.

We can dismiss this possibility immediately because we all know that although mankind has won important victories against infectious diseases, there are still many diseases which we have not been able to control, particularly as far as parasitical and degenerative diseases are concerned. From a global point of view we need still more and not less drug research.

(2) If present patent protection could be shown to harm either the development of local research or local industry.

This, again, cannot ever be the case. I have already indicated how important patent protection is to provide the fairly stable flow of funds on which all successful research depends to such a large extent. As far as the development of local industry is concerned, I would like to point out to you that for the pharmaceutical industry, the risk of *staying* in business is already higher than for other industries. The risk of *getting* into business as a newcomer from the outside is, however, of such a magnitude that chances would be practically nil for anyone with a new drug invention to produce and market his drug in competition with the established international pharmaceutical houses with their superior organization and decades of experience.

I have seen in New Delhi an ingenious device you have come up with to protect your young trees. Why are you so willingly accepting to protect what is young and fragile when it comes to your public parks, yet are so hesitant when it comes to apply the very same principle to the much more important problem of assuring the best conditions of growth for your local industry? With *one* new invention, which is not protected by patents, you can go nowhere in the drug field. But with a right to exploit this invention for a certain number of years all by yourself, you can then obtain the necessary funds to finance the expansion of your research and production facilities and, before you know it, have a sound and strong drug industry of your own.

Thus, the contention that a strong patent protection stifles local research and local manufacture does not stand up to close examination. Exactly the opposite is true.

(3) And finally, if patent protection could be shown to

lead to higher drug prices than would exist had been no patent protection at all, a case could be made for reducing or abolishing patent protection.

There exists a lot of confused thinking on that point, and I would appreciate if you would give particular attention to what I have to say.

The fact that the price of a drug will frequently drop after the patent which protected it has expired does not mean that the price would actually have been lower had patent protection never existed. Without patent protection any new invention is immediately imitated and marketed by dozens of manufacturers and this leads to such an excessive fragmentation of the market, with resulting higher production and marketing costs, that selling prices could even turn out higher without, than with patent protection.

Italy where no drug patents exist is a shining example for such a situation. Every time a new drug has been developed and patented outside Italy, the numerous domestic drug manufacturers have rushed to the Italian with their own imitations, often arriving there before the original inventor had time to introduce his own drug. This has led to such an unnatural fragmentation of the market that drug prices in Italy are today just as high, and in some cases even higher, than in countries where drug patents are being granted. A detailed study comparing Italian drug prices to those in France, the U.K. and Germany once and for all does away with the motion that drug prices would be lower had no patent protection existed.

Mind you, I do not deny that drug prices would fall if, in a country with patent protection, this protection would suddenly be abolished. Prices would certainly fall, just as they usually do fall when a drug patent expires. But as soon as new drug inventions are ready to come to the market, the disorganized scramble we have watched in Italy would start and prices for these new drugs would, on the average, not be any lower than had patent protection remained in force. In addition, there would now exist the considerable disadvantage that no funds would be channelled into research and development activities. Thus, the possibility of future major advances in the drug field would have been exchanged for a price reduction on existing drugs of a mere few percentage points. In India where out of over 800 drugs on the market today only 12 per cent are patented, the possible and, as I pointed out, temporary savings due to drug patent abolition would not even be considerable at the present time.

There is another point I would like you to consider. The drug industry when compared to some other industries still consists of a very large number of enterprises. This is the typical characteristic of a young and growing industry. As this industry will grow further and mature, a considerable number of these firms will have to merge to form larger, more competitive production and marketing units. Patent protection helps the most creative firms to survive in this competitive struggle, and makes sure that the markets for new development are not fragmented into many inefficient segments, but can grow to an economic size before they may again be broken up to some extent by competitors, who might want to step in when the patents protecting these new developments have expired. Thus, patents actually help the orderly development of industry and this should be of particular interest to you in India where you want to *plan* your industrial development and avoid unnecessary havoc.

Mr. Chairman and Hon'ble Members. I have now talked a lot about drug prices and this might leave you with the impression that the drug price issue is the crucial one. Nothing could be further removed from truth.

In trying to find the best means to assure the health of your nation, it is not important that drug expenditures per se be at a minimum for a certain standard of medical care. You must make sure that the sum of all expenditures for hospitals, doctors and drugs is at a minimum for the level of medical care you can now afford and eventually want to achieve. It is the *total* cost of medical care which must be minimised for the level of care you desire, and not the cost of any of its three major components.

Because, each of these components accounts for a different part of the total and, in addition, changes in one may influence the weight of the others, it should be interesting for you to know in an approximative way how hospital, doctors and drug costs relate to each other. An international study conducted by the International Labour Office in Geneva has shown that about half of the total costs of medical care are accounted for by the costs of building and operating the hospitals, one-third by the costs for doctors and the remaining one-sixth by the cost of drugs. These figures compare well to results available from the National Health Service in Britain, where after 20 years' of operating experience, drug costs have never amounted to more than 10 to 12 per cent the total health care bill. Drug expenditures in the USA and Switzerland are of a similar order of magnitude.

If you now consider the fact that new drugs have helped to reduce the average hospital stay in Britain from 49 days in 1949 to 34 days in 1961, and that new drugs have helped the doctors to treat more patients by healing them quicker or having to see them less frequently, you will realize how dangerous it can become to start saving in the smallest health care sector, the drug sector. Even if you wipe out all the profits of the drug industry you will not have saved more than 1 to 2 *per cent* of the total cost of medical care, but will certainly lack at a later date the new drugs which would have helped you to reduce costs for hospitals and doctors by a much greater percentage. A mere 5 per cent reduction in hospital costs would reduce the total cost of medical care by about 2½ per cent, which is already more than could ever be achieved by making the pharmaceutical industry into a profitless undertaking and condemning, it for ever to the *status quo*.

In India where you have about 5,000 people per doctor as compared to 1,000 in Switzerland, the U.K. and the United States, and 2000 people per hospital bed as compared to about 100 in these three countries, the provision of increased facilities in the hospital and doctor sectors of medical care will require not only enormous sums of money but also a considerable amount of time. One of the quickest and cheapest ways to increase your nation's level of health will, therefore, be in a rapid expansion of the drug sector. Expansion, however, means profits to finance such an expansion, and they will only be generated either in the private or the public sector of the industry, if the industry's creative efforts are protected by patents and the existing restrictions of price fixation are lifted in favour of a much more flexible and reasonable control. Thank you.

MR. CHAIRMAN: You will agree that in the present age the development in the pharmaceutical industry is taking place at a galloping stage. It has also to be noted that research is possible only if the big firms come in and invest their money. There is the possibility of abuses also. They can as well misuse the patent law and block others from doing research. Therefore it is necessary to take some action against abuses. That is the reason why in Germany they also have to come back to compulsory license and license of right. May be, the terms are different. Don't you agree that in India the possibility is still more. In India, naturally, we have to go to the big industry. Don't

you agree that some check is necessary? This will obstruct indigenous improvement in a developing country where the capital is scare and the know how is yet to be developed on the right lines. What is your view?

MR. NOWOTNY You are completely right when you say that you need some protection in the patent law against abuses. Nobody will object to your including compulsory licenses in the patent law. What is important is this. You should not put in so many restrictions that the patent law becomes of no use at all. What you want to do is to avoid the abuses of monopoly. That is what you want to avoid. But you still must leave some room there to use the patent law for protecting the inventions of the industry.

MR. CHAIRMAN: Do you mean to say that the right of licence which we have visualised in our Bill will automatically be disincentive to you and if so, what improvements do you like to provide in the licence of right?

MR. NOWOTNY: We do not like the idea at all of having a licence of right.

MR. CHAIRMAN: These two things *viz.*, compulsory licence and licence of right are necessary in order to develop the drug industry.

MR. NOWOTNY: I do not think so. Our main objection is to the fixing of a limit on royalty. For the reasons I have explained in our statement, this 4 per cent royalty just amounts to expropriation without any compensation.

MR. CHAIRMAN: You have said that the 10 year period is too short. Why do you think it is short? From the date of invention and till the marketable exploitation of the invention, what period should normally be there? Not in exceptional cases.

MR. NOWOTNY: I think right now you have a patent protection in India of 16 years.

MR. CHAIRMAN: You forget it for the time being. Now under the provisions of the law, you make an invention and you get it patented. From that time till the exploitation of the patent, how much time is required?

MR. NOWOTNY: In the pharmaceutical industry, experience may vary from one country to another. If we look at the markets of the world and take an average, including the British market and American market, we find it will take about 6 to 8 years from the moment we apply for the patent and until we are ready to market the finished drug.

MR. CHAIRMAN: Supposing it is 5 years, don't you think these five years will lapse in between the application and the final product being put to the market? Within a period of 5 years will it not be possible to get the necessary outturn in terms of production? On the other hand, you have also to remember that to-day the cycle of invention is so quick that if you patent an article to-day, immediately a similar article may come into the market and by the time you complete the 10 years, your patent may become obsolete.

MR. NOWOTNY: I would like to pick up the second remark first—*viz.*, the obsolescence. In the 1950s and early sixties drugs became obsolete fairly quickly I think obsolescence has now slowed down. But even if we accept the idea that drugs do get obsolete fairly quickly, this is only proof that you need a longer patent term. When a drug gets obsolete it goes out of the market and therefore you are left with even less drugs on the market, and then these few drugs that remain need the fullest protection. Therefore, I think, obsolescence in the drug field actually makes a case for a longer patent term and, I think many countries have now realised that there are very few long-lived drugs and these few drugs have to be protected as well as possible.

SHRI C. C. DESAI: There are three persons who are involved here. One is the research worker who really invents something, discovers something or produces it and the other is the producer, the manufacturer and the third is the consumer. These are the three necessary parties in this process.

The way you expounded, it looked to me that you are more interested in the producer, the manufacturer rather than the research worker or the consumer. Actually speaking the person who should be rewarded most in order to encourage research is the research worker, not the producer so much, but in any case one must also pay adequate regard to the interests of the consumer. In this country we have a system of very liberal fiscal compensation for research. We have a provision under which all research expenses are deductable item of expenses for the purpose of computation of income tax and therefore whatever you spend on research is really borne by the Government because there is no tax on it. The research is fully protected and fully compensated not by the consumer or the producer, but by the Government.

MR. NOWOTNY: I think this is the case in all European countries and also in America. Whenever you have research expenses, you show them on your income statement and they are just as deductible as labour costs.

SHRI C. C. DESAI: That is why if you accept compensation for the research worker through the income-tax Act and also through the price of drugs, it is really double compensation. I do not understand how you would justify double compensation for the same drug. Patent protection is intended to compensate the research and put more money in the pockets of the producer. I do not see how substantial portion of that money will go to the research. How would you ensure that the payment of compensation or payment of research or payment of money to the producer will ultimately reach the research worker who is the man whom we should like to encourage most.

MR. NOWOTNY: I think there is a little misconception. You pay the price of the drug. You mean why should the pharmaceutical industry make any profits at all.

SHRI C. C. DESAI: The compensation is directly related to the patent protection. You said that if you have a weak patent law as is contemplated in the Indian Bill, then there would not be adequate compensation for the producer or the research worker.

MR. NOWOTNY: If you do not have patent protection, many producers will immediately rush in as soon as one invention is half ready. Without patent protection you can have wide fluctuations, i.e. ups and downs in the income of the manufacturers which will then lead to instability. As an example I have cited an internationally known American drug company.

SHRI C. C. DESAI: In my concept of priorities, research worker gets No. 1 position; consumer the second position and the producer the third position. Right or wrong, this is how I will arrange the order of priorities.

MR. NOWOTNY: 'Producer' is a very abstract concept. Who is the producer? He consists of research and production workers and the financial people sometimes Drug production is the result of a common endeavour.

SHRI C. C. DESAI: Supposing there is strong patent protection in the country by which I mean the period is longer and the royalty is higher. Then more money gets into the hands of the manufacturer of patented drugs. How does the benefit reach reasearch worker?

MR. NOWOTNY: I suppose that the research worker is already paid decently. Otherwise, he would probably not do this work. When I say that the patent protection is necessary,

I mean that it is necessary to protect the income of the producer and allow him enough profits in order to finance the expansion of his industry. In the last decade or so the pharmaceutical industry has grown between 10 to 15 per cent per year. And I assume that in India you would have the same rate of growth. If you want to finance this growth, you just need profits of the same magnitude. I have with me a little document which I came across sometime ago. It is called "The Financial and Economic Obligations of the Nationalised Industries". This was published in London in April, 1961. If you allow me, I will quote one sentence from it which is very interesting. It says:

> There are powerful grounds in the national interest for requiring these undertakings.... The reference is obviously to nationalised undertakings.
>
> ....to make a substantial contribution towards the cost of their capital development out of their own earnings, and so reduce their claims upon the nation's savings and the burden on the Exchequer: this is particularly so for those undertakings which are expanding fast and which have relatively large capital needs.

So, when we talk about profits in the industry, we do not mean that these profits should go in the form of dividends to the shareholders. These profits are requires for the expansion of the industry, whether it is run by private owners or is in the hands of the Government. It is impossible for the industry not to face this problem, and it will have to provide sufficient funds to finance this rather rapid expansion.

SHRI C. C. DESAI: I do not want to pursue the matter further. But there is one more point. It has been said that if we go ahead with the patent law as proposed, that may have adverse effects on foreign entrepreneurs because they may be frightened. But don't you think that when a foreign entrepreneour comes to any country, he looks at the overall picture of profits on his investments and not merely at one particular aspect. Now here is a country which is very large, stretching upto China. It has immense market potential and what he might lose by way of patent protection, he will make up by way of increased sale and theerfore, profitability on his investment will not be adversely affected. If that is so, why should he not come to this country and invest?

MR. NOWOTNY: In the case of drug industry, it is a fact that without protection, it is not easy to give his guarantee that there will be an adequate return.

SHRI C. C. DESAI: If drugs are produced without patent protection and without additional compensation which becomes part of the cost, drugs will sell at a lower price presumably. This will mean that what you lose by way of patent protection, you will get by way of bigger sale of your drugs.

MR. NOWOTNY: I think it is a bit of an illusion to believe that because the price is lower, the sales of a drug will increase, because drug consumption depends less on the price but more on the standard of living of the country and the health care habits there. It is not easy by lowering the price to expand the market of a drug. Suppose you take drugs worth Rs. 3 per head. If the price of these drugs is lowered, I do not think you will consume more drugs. It is a question of standard of living and the health care habits that you have.

DR. SUSHILA NAYAR: You emphasised a good deal on the necessity of research and we agree with you. But then you went further and said that the research worker is already paid a decent salary and otherwise he would not go into research laboratories. Has it occurred to you that

the research worker may have a different motivation than money? You know the best brains today are going into atomic research where there are no patents of any kind. Will you therefore agree that the research worker is not necesarily attracted merely by money, but by the desire for research?

MR. NOWOTNY: I completely agree that the research worker is not necessarily attracted by money. But I have said in my oral statement that the research worker needs a certain peace of mind. He does not want to be preoccupied with thought, about his income or his future. It has happened that, in some cases, companies have dismissed research workers. I do not think this is a good thing to do. That is why we look at patent protection as a stabiliser which will protect their future and this will give scientists the calm and peace of mind they need in order to give their best to the country.

DR. SUSHILA NAYAR: And that is why in India, by and large, the research workers are being carried to the research cadre by different laboratories set up by the company. We do not want the research workers to be at the mercy of the private industrialists.

As you rightly say, they may or may not be interested or be in a position to support the research workers. We agree with you when you say that the research worker has to be supported. I hope you will also agree that it is not necessary to ensure rich dividends or rich profits or whatever you may like to call that, to the industrialists in order to protect the research workers. The protection of research workers and the protection of the patents are not necesasrily linked together.

MR. NOWOTNY: When you talk about dividends and profits, I can only re-state what I have already said. I said that the pharmaceutical industry to-day is, in the most profitable drug market in this world in the U.S. probably earning on an average something like 13 per cent of the sales after taxes. Now, if you have an industry which is expanding between 10 to 15 per cent per annum, how do you go about financing this expansion? To illustrate, I have just read to you, from the White Paper in the U.K.

DR. SUSHILA NAYAR: I will come to the next question. So far as the first question is concerned, I take it that we are in agreement. Now we come to the question of profits and the expansion. In your own submissions you said that in a popular drug which has a good market, the production cost—manufacturing cost—is 10 per cent of the sale price and you brought out this point while discussing the question of royalty.

MR. NOWOTNY: Let us be careful about the figures. What I said was that on a successful drug, it might so happen that the bare production cost of the active substance amount to 10 per cent of the drug's selling price.

DR. SUSHILA NAYAR: Active substance and other things may be 20 per cent. You said that it is 10 per cent. But, for the others which are not successful, the manufacturing cost is one-third—33 per cent

MR. NOWOTNY: The fact is that on the average it may be one-third but in some cases it might be much higher.

DR. SUSHILA NAYAR: The manufacturing cost is not more than one-third for good products. But what about the cost of a med ocre product?

MR. NOWOTNY: I said the average would be about one-third.

DR. SUSHILA NAYAR: The sale is 200 per cent higher than the manufacturing cost. Now, this 200 per cent extra, you will agree, is a very big margin on any account.

MR. NOWOTNY: I think that in our submission, we have given this

kind of a chart, a circle divided into three equal segments. First comes the one-third of the manufacturing cost which you have just now mentioned; then another one-third consists of research expenditure, medical information and selling expenses.

DR. SUSHILA NAYAR: May I take a moment here? It is wellknown that after a very careful study, it has been brought out that on research it is 6 per cent. but your medical expenses—rather your promotional expenses—or advertising it is from 25 per cent to 30 per cent.

MR. NOWOTNY: It is a fact that in the U.S. all the companies that do conduct research and spend a little more than 10 per cent of their sales for research.

DR. SUSHILA NAYAR: That is what the Congressional Committee has brought out. The Congressional Committee had gathered the information. They have brought out the prices; the average expenditure on research is 6 per cent and on advertising it is something like 25 per cent. But, one of the other witnesses who appeared before us yesterday or day before told us that it was 25 to 27 per cent. Now this 25 to 27 per cent according to you, is necessarily a legitimate expenditure and do you think that this will be the promotional expense of a very small product. This may be mines or somebody else's. But, suppose I want to sell my product and I spend a huge amount on advertisement and on free samples and on medical representatives and all kinds of things. Is it not that the interest of the consumers should also be looked into?

MR. NOWOTNY: Let us look at this thing. It is really an interesting point. First of all I do not agree with you that expenditure on research is 6 per cent.

DR. SUSHILA NAYAR: I am only quoting what the National Committee of the U. S. said. Of course they are very exactly.

MR. NOWOTNY: The figures are not as exact as one would wish to be. They of course, included everyone even the houses that do not do research. It is easy to take in all the houses. But, all houses not do the research work. adding them on top of it of those who do it, you of course lower percentage. Here I am speaking of industry in Switzerland where research costs on sales are above 10 per cent—or between ten and 15 per cent.—Recently it used to spend something like 14 per cent. on research. Of course you are right when you ask a question as to why do you only spend half of what is spent on medical information or research. I think this problem stens from the fact that marketing in general is a very expensive proposition. If you have medical representatives and they go to the doctor individually one by one and spend an hour or so with him talking with him over the effects and side-effects of a drug and relay to him information from the pharmaceutical industries. Then, they pass this information back onto the manufacturers. This is an expensive process and about half of the medical information costs of let us say, 20 per cent i.e. 10 per cent account just for this activity of the detailman going to see the doctor. So, when you talk about advertising, this is only a small part of the whole of the medical information cost.

DR. SUSHILA NAYAR: I do not want to take much more time for this argument. But, I hope you will agree with me that instead of this type of methodlogy that you follow, there should be something which is in the interest of the professionals and in the interest of consumers. These people have a different way of informing the medical profession of new drugs because, after all, in some of the countries like the Soviet Union

and others where there are on democracies, they do not have this type of representatives going and informing each and every doctor. They too inform their profession through the medical industry, medical associations etc. They can play a very important part but a difficulty arises when you need all these things. When the products are very similar, each one wants to sell their own product. For that, this type of activities is necessary.

But, I want to come to another point. You said that drug prices are not crucial. May be they are not so in your country. I hope you know that in India we are doing a good deal to find our original ways of dealing with medical care. We are taking the medical care to the people. We give domiciliary treatment to those suffering from leprocy and T.B. For this, a number of other things has become a very important activity to the health authorities. In this field, the drug prices are of utmost importance to us. Now do you agree that if there is more than one—if there is some kind of a competition—drug, the price of one product 'B' or any other product is likely to be lower than if there is a complete monopoly as under the strong Patents Law?

MR. NOWOTNY: I am not so sure. If you look at other industries, for example the automobile industrv and when you look many years back you will see there were lots of cars on the market some of which were actually more expensive than they are today. This industry has gone through a certain stage of concentration and because it is now concentrated, it can produce cars very efficient.

DR. SUSHILA NAYAR: Now that you have touched a sore point let me tell you something about car industry. You know here we have to pay a very high price for the cars through our nose.

MR. NOWOTNY: Here I am taking an example—I am not talking of other industry as such. In America, a car producer could probably produce these cars much more efficiently and market them more effectively than anybody here.

DR. SUSHILA NAYAR: Here, in India a few years ago when we first started producing penicillin at our Pimpri factory the price of penicillin was terrific. Immediately after we started our own production, the price fell to one-tenth of what it was before, when it was the patent-holders' monopoly. In spite of the fact that the price was brought down to one-tenth there were substantive profits. Even at the lower rates, the profits were so much that the growth rate at the Pimpri factory went up by 200 per cent. From the point of view of profitability, I hope you will agree that it is not necessary to have long long years of giving an opportunity for this kind of terrific profits at the cost of the consumer.

MR. NOWOTNY: I must reply to this point of terrific profits. Do you consider it a terrific profit if an industry is earning on the average 13 per cent. on sales after taxes?

DR. SUSHILA NAYAR: There may be some earning 13 per cent. If I remember correctly. I think it was "LIBRIUM" which we imported from Italy. The patent-holders were quoting 500 times more than what we paid for the Italian import. We got it from Italy at one fraction of the cost.

MR. NOWOTNY: I remember well this case of "LIBRIUM". The Company that produces this drug has even submitted a memorandum to the previous Joint Select Committee in 1966. In that memorandum there was also a graph included. You have to take into account the price of the finished "LIBRIUM' solcidity and that of the imitation product. When you take into account the quantum of import duties that are levied on the imports of the active substance you will find that the price of the finished imitation pro-

duct was exeactly 18 per cent cheaper than that of the original invention. This is not too big a margin.

DR. SUSHILA NAYAR: That is not correct to say. I don't have the figures in front of me.

MR. NOWOTNY: They were submitted to this Committee. When you compare the final selling price in the market of both the imported original "LIBRIUM" and the imitated product, you will find that there was only an 18 per cent difference in price.

DR. SUSHILA NAYAR: One last question. You said something about the effect on our public sector. You also said that if we don't stand by strong patents, our pepole will never discover anything worthwhile. That is a reflection on our confidence in our young scientists. But we have very great confidence in our bright young scientists and in some cases they are brighter than their counterparts in other parts of the world. There can be a different motivation. Our scientists may produce something for the relief of human suffering and might consider that a greater incentive than merely profit incentive. You will also agree that the profit incentive is not the only incentive for work whether in the public sector production or research. To find something for the relief of human suffering can itself be a good incentive.

MR. NOWOTNY: I am not saying that you need the profits to motivate your research work. I say you need the profits to stabilise the income and to increase it in order to let you conduct your research work efficiently and peacefully. The Industry must have funds for expansion of its production and also funds for increased research work obviously. You cannot in India provide all the necessary medical care, and as you said, a lot of it has to be done in homes. To finance the expansion of this industry so that you can provide all the drugs, you need profits. If your industry is to expand by 10 to 15 per cent p.a., you must get a profit of 15 per cent per annum because everything your finished products, your capital equipment, and all other items on the balance-sheet have to go up in a parallel way. Then it will still be possible 1 or 2 per cent. (out of the 15 per cent) dividend for the shareholders. If you take the position that the Government will do this, even the Government without paying any dividends on the money obtained from the public would have to have profits of the same order because otherwise it would just have to run back to the tax-payer every year. This is exactly what the British were trying to underline in this White Paper I mentioned before. I don't want you to fool yourselves. You must have the necesseary margin to finance the expansion of the industry. If you want to have a 10 per cent or 15 per cent growth rate, you definitely need a 15 per cent profit. You are at liberty to say we don't want to make any profit. But then, you have to go back to the tax-payer for the expansion of any industry.

DR. SUSHILA NAYAR: You say that 15 per cent or whatever it is you should get as profit instead of through taxation. The drugs are generally needed by the section of the population which is less able to bear the burden. Therefore some discrimination is necessary there. If you say that 15 per cent gives you a dividend of 1 to 2 per cent, then you are not to object to the royalty of 4 per cent straightaway because you are not getting more than 1 or 2 per cent out of your 15 per cent. When we are prepared to pay 4 per cent that should be considered adequate. Don't you agree?

MR. NOWOTNY: I don't agree at all.

SHRI RAMESH CHANDRA VYAS: For the same product several patents are obtained for different processes and after having obtained the patents you don't produce the product.

Or at least you produce one and leave aside 3, 4, 5, 6. This obstructs the improvement of our indigenous research and marketing.

MR. NOWOTNY: You have different kinds of patent protection. You can have one extreme, product protection, which is the most comprehensive and strongest protection; the other extreme is to have no protection at all. In the middle, you have process protection which several countries have. Switzeland for example also has it: I think process protection is probably a very good in between way of protection for a country like India, because it does permit you to search for new processes and you can not be blocked in doing so. Actually it does the contrary; because you can work out alternative processes and come up with some improvement. I think this gives you a wonderful chance to get an entry into the research field. You do have a chance to conduct process research and come out with new and better processes.

SHRI R. C. VYAS: What have you got to say about patented medicines costing more than non-patented ones?

SHRI NOWOTNY: I have tried in my oral statement to put this point before you and I can only repeat it. It is true that if the patent expires, drug prices can fall because competition rushes in and brings prices down. But what I do not believe is that if you would not have had any patent protection at all, prices would actually have been lower. We have seen it in Italy. You have no patent protection there. As soon as some company comes out with a more or less promising invention, immediately all the others rush in and try to copy the same invention and get it to the market. The result is that the rather small market is split up into many small segments and there is such a duplication of effort that prices usually are as high as if not higher than, they would have been had there by patent protection.

Unfortunately, there is this misconception prevalent. People are working backwards. They say that because prices drop when a patent expires, therefore they would have been lower at the very beginning had there been no patent. I think this is a wrong conclusion to draw.

SHRI R. C. VYAS: Supposing we abolish the patent system or make it weaker, don't you think that the prices of products will go down?

MR. NOWOTNY: I do not think so. Making it weaker is just half-way down from giving no protection at all. In this extreme case where you do not protect, drug inventions you just get at the very biginning a fantastic scramble for the market where everybody tries to rush in and get a share of the market. This makes it very uneconomical and you arrive at such a duplication of production, marketing and distribution costs that your prices cannot possibly be lower. The best example is Italy. There they have not been able, in spite of the fact that they do not have patent protection, to give the people lower drug prices than in the UK. France, Germany etc.

SHRI R. C. VYAS: Patent protection creates a monopoly; monopoly increases prices; the result is that poor people suffer. What is your view?

MR. NOWOTNY: This question has often been raised, namely, does patent protection permit the patent-holder to fix his prices arbitrarily high? I think one can state clearly that this is not the case. A drug manufacturer cannot set his prices at the level he wants to. This is not an arbitrary matter because through patents you do not exclude all competition. You still have a lot of competition left. First of all, you have competition from drugs that are not produced by the same process. In your country where you have process protection, the same drug can be produced by another process.

DR. SUSHILA NAYAR: Here it is product and process protection at present.

MR. NOWOTNY: You have "product by process" protection which means that if somebody finds out some new process to produce a certain product he can follow this other way if it is not yet patented and produce the product.

DR. SUSHILA NAYAR: At present it is complete protection; no other process can be attempted.

SHRI R. C. VYAS: What is your view about cl. 88(5)?

MR. NOWOTNY: This is about the 4 per cent royalty to which we object. I have been trying to show you with figures how inadequate it is. I know it is a little bit tedious, but I was doing that for the sake of actually showing that 4 per cent is not enough. It is easy to say it is too little. But I wanted to prove to you that statement.

SHRI B. D. DESHMUKH: We think the competition will help to lower down the prices of medicines and, therefore, we want the weak patent system in India, in the present conditions prevailing in our country. Do you support it or not? As a result of it, we think that there will be a competition between various companies dealing with medicines and the prices will go down.

MR. NOWOTNY: I do not think that a weak patent system would help you very much. I was trying to show in my oral statement—that you need patent protection if you want to get entrance into the field of drug manufacture. You are a large country and, as somebody said, India represents a very vast potential and this is I think one of the reasons why you should be paying more interest to the drug field than some other small countries, because with an assured market, one day, of 500 million people or more, you would already be able to produce efficiently and effectively for the home market alone. When you can eventually compete with anyone outside, I think you should now actually be interested to get as good a protection as possible; if you have a strong patent system, then you can use your own inventions in licensing them to foreign companies. I understand, that you are already doing that. There are some companies, anti-biotic companies, who have given licences to American companies and are collecting royalities on them. I think this is only the beginning and you should continue to go in this direction, the best way to do it is with a very good patent protection, if you do not have these clauses that limit your royalty at four per cent, you can, of course, ask for higher royalties in return. I think you limit your freedom of negotiation with the other countries.

SHRI C. C. DESAI: I can ask 10 per cent from America. Why not?

MR. NOWOTNY: If you in India have a maximum of four per cent., probably your partner during negotiations may say, "We do not see why you should just offer us four per cent in return for a compulsory licence, and we should pay you much more for a voluntary one."

SHRI B. D. DESHMUKH: In your written memorandum you did not touch Chapter XVII of our Bill. Have you gone through that chapter? Page 57, clauses 89 to 102. You have not referred to it.

MR. NOWOTNY: This is one of the problems that we had in our presentation. There are so many people presenting their views to you that instead of commenting on the whole Patents Bill, we have on purpose limited ourselves to what we considered the two crucial issues which we would like to consider under all circumstances. That does not mean that we agree with all the others. As a matter of fact, in relation to licences and prices, we are not in favour of that, but in order to facilitate the work and to make sure that at least the two most important points will be considered, we have concentrated on these aspect of patent duration and royalty, which we think are rather important.

SHRI NAMBIAR: In your arguments, your main emphasis was on this: that your scientists in this industry should have the guarantee of continued attention and continued concentration so that they may do their best and if there is a restriction on these patent rights or reduction in the number of years, that incentive will lapse. When once this drug manufacture and storage is by itself an industry, there is already a competition in that industry among their own partners. Therefore, what happens is the best survive and the others fade away. So, thereby, the scientists are already out of the picture and only it is a question of the survival of the fittest. When that is so, the result which gives benefit to the people in supreme, and not the money factor. If the money factor comes in, those scientists who take up this industry, collapse. therefore, it is the concentration on the benefit of the people. And who helps that? The nation which supports. After all, necessity is the mother of invention, and not profit. When the nation accepts the scientists in this manner, ultimately the poor consumer is made to suffer by high prices, and your whole theory gets lost in the argument; but for the support you get from the consumer by way of high prices, the scientists may not do the work.

MR. NOWOTNY: I have not been saying that you need high prices to finance research. What I said was that you need such prices, that you will come out with a margin of profit which is enough to permit you to finance your expansion. I again come back to that point, because I think it is the crucial point. Your industry here in India will have to expand to satisfy the demand of your population. Therefore, in order to finance this expansion, your industry, in one way or another, will need to have sufficient profits to finance this expansion. You do not get these profits if you abandon all protection and everybody rushesh into the market and copies whatever he wants to. You can only get these kind of profits if you give protection for the really, new inventions and then give a chance to the creative company to get a decent return on those inventions and use this return to a very large extent to finance this expansion. That is all.

SHRI NAMBIAR: Your analogy of Italy is different from that of India. In Italy when many producers came to the market, the market being small, the prices had to be greater because of cut-throat competition and more men come into the production line, whereas in India, the market is big. There is no comparison between the Indian population and the Italian population. The Indian population is so big. Therefore, the market will not shrink. So, if more competitors are there, the prices may come down

to the benefit of the people. The Italian comparison cannot be right.

MR. NOWOTNY: When you say the market is big, you mean the potential is big. There is a large part of the population still unable to purchase the available drugs.

When you talk of reducing prices, you must realise what is the magnitude of reduction you are talking of. If you have a net profit of 13 per cent after taxes, you will need something to put into the business at the end of the year for expansion. We cannot have the cake and eat it.

SHRI NAMBIAR: If the State pays that 15 per cent of profit, there is no harm. The State is in charge of public health.

MR. NOWOTNY: Of course, you can go the way of the British. They said in 1948 that they want a public health service and they would pay for everything—hospitals, doctors and drugs. You can take that decision. But you should realise that by doing so you will spend much more than you think you will, because, if the experience of the British is any guide, when you give health care free, you immediately augment the demand for it. You must see the things in their proper proportion. You can give it free, but you must get the money for it through taxes or some other means. Please do not think that you can achieve a considerable reduction in prices by just eliminating profits from the pharmaceutical industry. You are not helping the man in the street if you reduce the price he has to pay for a drug from Rs. 1 to Re. 0.85, *i.e.* by 15 per cent.

SHRI NAMBIAR: Even your chart shows that only one-third is spent on manufacture, including the scientists' share. That means, two-thirds of the cost represents expenditure other than production. That means the prices can be reduced considerably. This 13 per cent is a fictitious figure.

MR. NOWOTNY: Let me take the one-third which represents profits, taxes and administrative expenditure. If you eliminate profits, you do not have anything to provide for expansion. If you take off another 11 per cent which goes towards taxes, it means the Government loses this amount and it will have to make it up from another source. Some administrative expenses are inevitable because you cannot run a plant with workers alone, and nobody keeping the books, paying the salaries, etc. Thus, about 10 per cent for administration is certainly not too much. Then, let me take the one-third which goes to research, medical information and selling expenses. If you produce a drug, especially in a big country like India, you have to take it to the consumer. So, some distribution expenses have to be incurred. Regarding medical information, a suggestion has been made that some medical societies can take care of it. I did not have the time to reply to Dr. Nayar who said that in many countries, there are no medical representatives. But in Russia, they actually complained that in this respect they are spending too little. When you produce a drug, what help is it if the doctors do not know about it? Maybe you can save a few per cent on medical information by using other methods like visual presentation, television, etc., but for the moment, the possibilities of cutting these costs down are very small. I also do not think you can cut down the 10 to 15 per cent which some big drug companies are spending on research, because research really becomes more difficult every year, not only because there is the Government sitting in control to ensure the safety and efficacy before the drug is used, but also because the more you get into a field, the more difficult it becomes to improve further. The first steps are always the easiest. To

become a good piano player, it takes a certain amount of time. If you want to become a very good player, you will have to spend, say, three times that amount of time. To become an outstanding player, the time required could be 15 times or more!

SHRI PARTHASARATHY: A lot of arguments have been put forward for and against the 4 per cent royalty. Do you think it is better for Government to have flexibility in the matter of compensation for acquiring these rights?

MR. NOWOTNY: I think it would be much more fair to you and to the industry if you would provide for absolute freedom in this area because in some cases you might find that you would only like to levy a low royalty and in many other cases you would like to put a much higher royalty. As I have indicated in my oral statement, I think compulsory licences—I must underline it again—are usually only asked for exceptional drugs, exceptionally successful drugs in the medical and commercial sense.

SHRI PARTHASARATHY: What do you think the royalty should be?

MR. NOWOTNY: If you look at these successful drugs I think you can state as a general guideline that royalties should be 30 per cent plus or minus 10 per cent. When you look at the compulsory licences awarded in the United Kingdom the last awards have been between 20 and 28 per cent.

SHRI PARTHASARATHY: That is a fantastic figure compared to 4 per cent.

MR. NOWOTNY: If you want to know how they have arrived at these figures it is very easy. If you look at the various cost items you will find that research cost is of the order of 12 to 14 per cent. Medical information cost for several years is of the order of 15 to 20 per cent. You must somehow get compensated for these items and by adding up these two you get into the range of 20 to 30 per cent. Still you have the capital invested in research and medical information. As a private enterprise you have to show some return on investment on these two items and that goes on top of that. Thus we arrive at these figures which seem high but they only seem high in comparison to voluntary licences. This was one of the points I was trying to make between *compulsory* licences and *voluntary* licences. They are two different things. Under voluntary licences you give something because you want to give it and when you want to give something you have some reason for it. You must be able to profit out of these voluntary licences. These licenses are usually given when you have no access to a market and you want to use some local manufacturer or distributor to help you to get access to that market. Under compulsory licences everything is established and they mean little profit to you.

SHRI PARTHASARATHY: Why is it that our present Bill is attracting mostly drug and pharmaceutical organisations rather than other commercial interests?

MR. NOWOTNY: It seems that you seem to be more interested in drugs. I have appeared in 1966 and I have heard your preoccupations about drug prices. That is why we have directed ourselves to that point. Also, we feit we were particularly being discriminated against in this Bill in respect to patent duration because from 16 years it has been brought down to 10 years instead of 14 years.

SHRI PARTHASARATHY: The whole philosophy underlying this Bill is to develop our own economy by creating our own indigenous inventors rather than import foreign patents. What objection can you have to this?

MR. NOWOTNY: I think you have to do both. First of all, in giving good patent protection you, of course, inspire confidence in your country and people will not only give you access to patents but they will also furnish know-how information. That is a very important thing which has not been brought out clearly here. If we abolish all patents then we just can take whatever we want. I have a rupee here. You tell me "I do not want to pay for your patents". So, you tear up this rupee of mine and take half of it. But I still have the other half of it, which is my know-how. Now, if you give me 5 paise, do you think I will sell you the other half of the torn rupee? That is a simple illustration as far as foreign patents are concerned. For your own industry here you want patent protection. Your scientists are just as good as those of other countries. It is a question of technological development and possible opportunities to apply their brain to certain problems. That is all. These people also need a good patent protection system to have their ideas covered, protected. I would say that even if you do not have at one particular moment the necessary technology to use a certain patent you might, even then, having developed it make use of it in licensing it to somebody else and, in the meantime, profit from these ideas.

SHRI C. ACHUTHA MENON: You have been saying that in a country where there is patent protection immediately after it is removed lots of competitors rush into the market and there is an immediate tendency for prices to fall. But you also said that this competition does not in fact reduce the prices. I do not quite understand your arguments at all. When there is a rush in the market for a particular product, there will be competition among the producers to produce the same thing. Naturally, some are successful while others go to the wall and are destroyed. That is inherent in the system of competition. But I should think that it is a fundamental law that where there is competition the prices are bound to fall. Why do you say that it will not fall? I do not understand your argument at all.

MR. NOWOTNY: It seems a difficult point to understand. So, let me try it again. Let us say that a patent has been going on for 16 years and then it expires. It may so happen that at that time some other producers, who are also capable of manufacturing this drug, will come into the market. Because they are just coming in, they will have to offer something to capture a share of the market; that 'something' may be in the form of price reduction. They will reduce their prices to get into the market. Then the patentee, whose patent has just expired, not wanting to lose too much of his market, will reduce his prices also. So, the moment a patent expires the prices may go down and do go down; there is no doubt about that. But what I do say then is this. 16 years ago when this drug was first patented, suppose you had no patent protection, what would have happened? At that time, your market was not anything like what you have now after 16 years. It would have been a much smaller market. It had to develop during the 16 years. Then, in the absence of a patent, for this smaller market, immediately there would have been many more people rushing in, because every company is looking at what the other company is doing and the moment a product is successful in the market the other companies start imitating it. That is exactly what is happening and what has happened in Italy. People rushed into the market. There are 20 to 40 people rushing to the market with their products and everybody wants to have his piece of the pie. The market in drugs is relatively inelastic and the fact that so many people are in this field does not mean that they will expand the

market; not at all. They just divide it up among themselves. Then, what happens? Because of the rather small volume of production, the production costs of each drug manufacturer are higher. Then, because of the smaller volume of sales, his administrative and other expenses take a much bigger share.

SHRI C. ACHUTHA MENON: When 20 or 30 parties are competing for the manufacture of the same drug what happens is that the party which can put the drug in the market at the lowest cost succeeds.

MR. NOWOTNY: I do not think this happens. Because, usually when you come with a new product to the market you cannot fix your price arbitrarily. You must look at the other drugs which are therapeutically similar. A Shulphonamide in one way or another does compete with an anti-biotic because in some cases it can be applied to treat the same disease. So, there has to be always this "look to the market" to determine what the price can be. People will fix their price in comparison at that level. Then, when many people rush in with their products, the inventor cannot change his price because he will have to compete with 20 or 30 other manufacturers and at that price he will not have enough money left to channel into research. So, you see that your prices are just the same without patent protection as with patent protection; but without patent protection you do not have any money going into research. It seems a little difficult to understand that point. This confusion arose out of the fact that prices drop when patents expire and, therefore, people were just reasoning backwards believing that because there is a fall in prices now, prices could have been actually lower 16 years ago. But that is not really the case as facts have proved it.

SHRI C. ACHUTHA MENON: Anyhow, let us leave it at that. You have objected to the differentiation that is made in this Bill on the duration of a patent for drugs as distinct from other patents. Is there not an important distinction between drugs and pharmaceuticals on the one hand and other products on the other? The drugs are meant to cure people or alleviate their suffering. So, from the social point of view it is very important that drugs and pharmaceuticals should be made as cheap as possible, a point which we have argued earlier. So, why do you object to this distinction being made?

MR. NOWOTNY: I agree with you that drugs should be made as cheap as possible. There is no doubt about that. But I cannot see how you can achieve that if you lift patent protection. By lifting patent protection you will not reduce the price. Then, if you want to reduce the price by some other means, like price control or some other device, I have shown you what kind of reduction you can really expect. A reduction of something in the order of 13 to 15 per cent will be about the maximum that you can get. So, what is all that talk about reducing drug prices?

I know very well where these stories about reducing drug prices start, because I have been working in this field now for about ten years. I have read the whole of the Kefauver hearings—10,400 pages, 22 volumes—and have also read some of the Canadian and the British hearings and so on. This idea that terrific profits are made in the drug industry sprang from the misconception of some journalists who missed their accounting lessons. I think, it was only recently that somebody said that profits were made of a few thousand per cent or somewhere near that. This is where all this starts, somebody sending out the idea into the world that on a certain drug profits are made of a few thousand per cent.

SHRI C. ACHUTHA MENON: So you do not agree with the finding of the committee that some of the drugs

are selling at a thousand or 1,700 times the cost of production. The committee found that generally the profits in the drug industry were larger than the profits in other industries. Do you contest those findings?

MR. NOWOTNY: I will take up both of your points in succession because they are both important. First of all, when people say that there has been a profit of 1,700 per cent on the production cost, what does the word 'profit' mean? The difference between production cost and selling price is not profit. They used to call it 'gross profit' in accountancy, and because they called it 'gross profit' some people dropped the word 'gross' and started calling it 'profit'.

SHI C. ACHUTHA MENON: Do you mean to say that in industry there is no norm at all about the difference in the cost of production and the selling price?

MR. NOWOTNY: I was trying to give you that norm in our pricing. When I said that on the average production costs are one-third the selling price, it gives you a margin of 200 per cent on the average. When you come to a margin of profit of 1,700 per cent or, let us say, 1,000 per cent, it just means that the production cost of a drug is about 10 per cent of the selling price. If the production cost amounts to 10 per cent. the margin that you are left with is 900 per cent. But this margin is not profit; this margin is there to contribute to all your costs, apart from your production cost. This is where I think, the big mistake is made.

SHRI C. ACHUTHA MENON: Your argument....

MR. NOWOTNY: It seems high to you.

SHRI C. ACHUTHA MENON:....is that anything more than 900 times should not be premitted.

MR. NOWOTNY: I was giving you this as an illustration. Do you know what was the suggestion of Senator Kefauver, who during two years investigated the US drug industry up and down, with all the details? I will tell you. He said that compulsory licences should only be granted when prices are excessive. And what was his definition, after two years of investigations of an "excessive" price? He said that the price of a drug should not amount to more than the production cost *plus* the research cost multiplied by 5. That was his formula. If you take the research cost of 10 to 12 per cent, you are left with for production costs with an amount of 8 to 10 per cent. 8 per cent production cost *plus* 12 per cent research cost multiplied by 5 gives you 100. Therefore, even Senator Kefauver, who was such an ardent critic of the pharmaceutical industry, in the very end, after two years of through investigation, recognised that you need this major advance, this above ave-age successful product 'rush-hour business' in the bus example cited, to permit you to run the whole system more of less adequately. Therefore when you say that it is quite exorbitant to have mere production cost of 10 per cent on some drugs and sell the whole for 100 Senator Kefauver would not agree with you and many other people would not agree with you because this is the exceptional product and it is the very exceptional product that we are talking about.

When it comes to compulsory licence, applicants do not want the average drug where your production cost is 30 per cent or 33 cent. Everyone wants that successful product where the production cost is 10 per cent or even lower so that they can make some nice money, because this is the "rush-hour business" I was talking about.

SHRI C. ACHUTHA MENON: You were saying that in the case of a compulsory licence, 4 per cent royalty is very inadequate. Suppose I concede that argument, would you suggest any other system whereby proper remuneration for the patentee could be work-

ed out? Some witness has stated here that in some cases even 4 per cent royalty may be higher than what you require and in some cases it may be very inadequate. So, some witnesses were objecting to fixing the ceiling on royalty. They said that it should be worked out in each case. Have you any proposals or principles with regard to working out a proper royalty?

MR. NOWOTNY: I think, one should leave this to the courts or—I do not know how you would like to handle it administratively—to the Controller of Patents to decide what the royalty should be. In general, we can say that you must recognise certain principles of compensation that are now already recognised in other countries. First of all, the patent owner will have to be compensated for his research costs. If he is spending something like 10 or 15 per cent on sales on research, in one way or another he must be compensated for that. The patent owner should also be compensated for the effort and the money that has gone into making that drug known. Usually people do not ask for compulsory licence when a drug is being introduced. They wait a few years and when all the money has been spent by the patent owner to make the drug known within the medical profession, and when they are sure that this is not only a medical success but also a commercial success, they ask for compulsory licence. They do not want to apply for a drug for which the market is not big enough; they only want to get in where the profits are. So, I would say, you should leave the door open for each case to be judged on its own merits. In some cases, it may be that some firm stumbled on one invention accidentally without having any big research organisation and, therefore, has very low research cost. It may happen that somebody may ask for a compulsory licence from that patent-owner and he may find that he is only to be compensated for a little amount. But in other cases, where research cost is much higher, this will have to be taken into account. There are three elements that have to be considered in setting the compensation for a compulsory licence, that is, the research element, medical information and lastly the need to a fair return on investment.

SHRI PITAMBER DAS: You say that compulsory licence would be justified when the cost is excessive and the excessive cost, as defined by you, is, the cost of production namely, 8 per cent *plus* expenses on research, namely, 12 per cent which comes to 20 per cent multiplied by 5, that is, 100. If it exceeds 100, then it would be considered excessive cost. Now what about those drugs the selling price of which is more than 700 per cent of the cost of production? Would compulsory licence not be justified in those cases?

MR. NOWOTNY: I was citing the example of Senator Kefauver. This is an American example. I am not saying that you should have that. I gave you this example to indicate what Senator Kefauver, who had been very intensely interested in this industry, was thinking at the end of his two years study. In the United States, as you know, compulsory licences do not exist at all.

SHRI PITAMBER DAS: My point was entirely different. I am not asking whether the provision is there or not. If in a country like the United States, the price which is 12 times the cost of production is considered to be excessive, why then in India which is economically much less developed a country, a price which is 700 times the cost of production should not be considered to be excessive? The moment it is considered to be excessive, the compulsory licence will be justified.

MR. NOWOTNY: Actually, the figures that have given are not existing. You can take 8 per cent or 10 per cent or whatever you like.

SHRI PITAMBER DAS: I do not mind that. You can have a safe margin. You can multiply it by 20 instead of 5. But what about cases where it is 700 times the cost of production?

MR. NOWOTNY: I do not know about the countries where it is so much. As I told you, from what I have seen, from my knowledge of the pharmaceutical industry, there are not many products which come even under Senator Kefauver's formula.

SHRI PITAMBER DAS: I come to another point. While making inventions and producing goods, the main consideration is economic and monetary. Just to safeguard that interest, we give them the patent. In case of drugs and medicines, there is additional consideration apart from economic and monetary considerations and that is the service of the suffering humanity. Since that additional consideration is present in regard to drugs and medicines, if there is a discrimination in the patent period provided to them, is it not reasonable? In view of the fact that there is an additional consideration of service to humanity, does it not justify the discrimination between the two patent periods?

MR. NOWOTNY: This argument of service to humanity is brought forward frequently. It has a very strong emotional appeal.

SHRI PITAMBER DAS: But emotions have their own value in human life.

MR. NOWOTNY: Yes. But they do not really change the actual economic situation. You cannot solve economic problems on an emotional plane.

SHRI PITAMBER DAS: You will agree that in a country whose approach is not entirely materialistic but is also spiritualistic, this has a greater value.

MR. NOWOTNY: I do not deny that. But let us see the economic problems. The profits in the most profitable part of the drugs industry in the world which is the American drugs industry—because they have in the U.S. a very strong patent protection, they have a very big market, a high standard of living and a high standard of health care and so on—are of the order of 13 per cent on sales after taxes. I do not know exactly what the profits are in India. But I am sure they do not come up to that level. When you talk of the suffering of humanity, the question is, how far can you go? You can say that we do not want any profits in the drug industry. If you say that, you will be able to save something like 13 per cent in America, and in India it should be less. But then afterwards you will be stuck with the problem that I already mentioned to Dr. Nayar that you will have to finance your expansion and then you will have to come back to the taxpayer and get the money.

SHRI PITAMBER DAS: Yes. But between these two extremes, one of abolishing patents altogether so far as drugs are concerned and the other of providing the same patent protection as in the case of others, is it not wise to take a middle course and reduce the period?

MR. NOWOTNY: I would recommend to you what you call a middle course, if you would have to deal with an industry where you do not depend really on big progress and large expansion. But if you want to meet the drug needs of the Indian population, you will have to expand this industry by about at least 15 per cent every year. The only way to do this is to let the industry keep profits of 15 per cent to 20 per cent after tax on an average; of course, even a patent does not give you any guarantee that you will be able to make such profits. It is just one kind of protection.

Then I would say you should not take too short a period of protection because if you do that, you will not be able to have drugs on the market that will contribute the necessary funds which you will then be able to channel into your expansion. The more you shorten the protection period, the less chance of course, you give to the manufacturer to profit from his inventions.

SHRI PITAMBER DAS: What would be the use of expanding or enlarging that industry the results or the products of which people find it difficult to purchase? After all, you expand an industry in order to procure material to the people. If they are not in a position to pay that much price for it, what is the use of expanding it?

MR. NOWOTNY: There may be a stage in the development of a nation where you cannot pay for the drugs even if the prices would be one-tenth of what they actually are. The only way-out then is to nationalise the health service and pay for every health need. You can always get what you want if you are willing to pay for it. What I was trying to point out here in our meeting today is that you cannot get something for nothing.

SHRI PITAMBER DAS: With this background that the Government should be able to pay for the people, what objection have you for this provision that the Government can acquire a particular product or industry?

MR. NOWOTNY: First of all, there is quite a bit of illusion when you say that the Government, operating at no profit, would really be able to lower drug prices appreciably.

SHRI PITAMBER DAS: What objection have you for Clause 48? It is in the interest of the people when they cannot afford to pay. You also recommend that it will be for the Government to pay for them. This is what has been sought to be done under Clause 48.

MR. CHAIRMAN: Mr. Dahyabhai Patel.

SHRI DAHYABHAI V. PATEL: You are familiar with the history of drug industry. The drug industry has made rapid progress in certain countries about the time a few years before the Great War and after the War. War it not due directly to the steps taken by Hitler to oust scientists from Germany? Perhaps some of them went to Switzerland and some to America. Therefore, the drug industry, with the help of the knowledge of those scientists, made rapid progress in these countries. Would you say that this is a correct proposition?

MR. NOWOTNY: I do not know to what extent this has played a role. As far as I understand, the Germans have always had quite a good drug industry even after the War....

SHRI DAHYABHAI V. PATEL: We will be having a German witness in the afternoon.

MR. NOWOTNY: He may be able to inform you better about this.

SHRI DAHYABHAI V. PATEL: We had a drug industry which was, more or less, in an infant stage. After the War, we got independence. If we had made it attractive enough, we could have got some of the best German scientists. I know, some did come, but the conditions in India, one of them being the patent protection, not being attractive enough, they left the country and did not stay. If they had stayed, perhaps we would have had a good drug industry.

MR. NOWOTNY: This has been mentioned in my presentation when I said that you might, through a strong patent protection, attract people and foster local research. It would also depend on other factors, of course; the climate factor for example.

SHRI DAHYABHAI V. PATEL: The other factors were not attractive enough.

MR. NOWOTNY: Patent protection and, of course, to some extent also the technological know-how, play a role.

SHRI DAHYABHAI V. PATEL: I know, some did come and then went away.

MR. NOWOTNY: Yes; this might have been so.

SHRI RAGHUNATHA REDDY: You have been pleased to mention about Kefauver Committee's report. We find some remarks of the Kefauver Committee with special reference to prices in India. It has been said:

> "India which does grant patents on drug products provides an interesting example. The prices in India for the broad spectrum antibiotics, Aureomycin and Achromycin, are among the highest in the world. As a matter of fact, in drugs generally India ranks among the highest priced nations of the world—a case of an inverse relationship between *per capita* income and the level of drug prices."

What are your observations on this?

MR. NOWOTNY: I think, this comment was made in 1961 or 1960. I do not have any comparison of prices at that time. But I think that, if you take Indian drug prices today and compare them with the prices in other countries, you will find that they do not compare unfavourably. You do not have extraordinarily high drug prices in India.

SHRI RAGHUNATHA REDDY: You were pleased to mention about the profit that can be made reasonably by the drug industry. We find a remark in Kefauver Committee's report about this. Of course, I do not have the report here, but as published by the *London Times*, a profit of 3,000 per cent is made on drugs. I do not know whether it is true. You may confirm this.

MR. NOWOTNY: All that I can say is that probably I could come out with a profit of may be 10,000 or 20,000 or even 100,000. Suppose, I want to produce an ampule with distilled water; here the raw material is water which I can get for nothing. Anything on top of nothing is infinite. I can come upto with an infinite margin. Here, as I said, you only take a bit of water; then you have to distill it, then you have to screen it, pack it and distribute. That is how these fantastic margins come about. But there is nothing like that in the drug industry because U.S. drug the industry, which as I told you is the most profitable, is just making an average profit of 13 per cent after sales-tax. It all comes from the misconceptions that somebody at one moment just takes the raw material costs of the active ingredient and then puts them in relation to the selling price of the finished drug which is, of course, completely wrong.

SHRI RAGHUNATHA REDDY: I just wanted to know whether there is any truth in this report.

MR. NOWOTNY: I do not want to say anything disrespectful about what Senator Kefauver has said. He has also changed his approach during the two years of his investigation of the U.S. drug industry.

SHRI RAGHUNATHA REDDY: They are making a profit of 3000 per cent. I am not in a position to say anything because the report is not here. The confirmatory evidence to this kind of conclusion is provided by the Canadian Restriction of Unfair Trade Practices commission's report. Similar observations have been made by Sainbury Commission report. The Committee is inclined to feel that the present period of patents is rather high and they are inclined to reduce it. In the case of the Canadian Commission they have made a recommendation that as far as drugs are concerned, there should be no patents.

MR. NOWOTNY: I would like to make another comment. The fact that these things are published does not mean that there is any likelihood that they will ever be implemented. But as far as the Sainsbury Commission is concerned, another Committee is now studying this question and they have not yet come to any conclusion. As far as Canadian report is concerned, I may inform you that this report was one of many reports since 1963. After

that there was Harley report. There is nothing in this report all which concerns the reduction of patent duration. These are just "trial balloons" politicians and they have been shot down.

SHRI RAGHUNATHA REDDY: It is possible that the recommendations of the authoritative Committees may not find a place in the legislation, but, we, sitting as a Committee, have nevertheless to take into consideration various observations made by various Committees in respective countries. We have got one small question. A person invents a process and it may be translated into production for the benefit of mankind. When he comes to the patent office, he will not stop only with taking a patent for that particular process which may normally find into production but by his imagination he makes various combinations of formulation or permutations and combinations by which the same product can be produced and he takes patents for these processes also which can be derived from one process. Therefore, while he may ultimately make use of only one process which he considers reasonable, he puts a stop on the other processes being implemented.

MR. NOWOTNY: This is one aspect of process protection as compared to product protection. That is why recently various countries have switched over to product protection. But there is still no blocking at all. You can always resort to compulsory licence provision.

SHRI RAGHUNATHA REDDY: Will it be possible for you to send us a comparative list of prices in various countries of drugs so that we may have an idea as to how prices are determined.

MR. NOWOTNY: I think we can do it. I do not know if any of the local organisations will be able to give it.

SHRI RAGHUNATHA REDDY: Will it be possible for your organisation to supply these figures. We would like to know the position.

MR. NOWOTNY: We will try to submit to you a list of the drug prices in various countries—Italy, U.K., Germany and so on.

MR. CHAIRMAN: We are grateful to you for sitting with us for three long hours and giving us the benefit of your experience. We also want to thank you for taking the trouble to come all the way from Switzerland to India. We hope that you enjoyed your trip.

MR. NOWOTNY: Thank you, Mr. Chairman and I also thank the hon. Members.

(The witness then withdrew)

(The Committee then adjourned)

II. Prof. Dr. A. Kraft, Department of Law and Economics, Johannes Gutenberg University at Mainz (W. Germany).

Spokesman:

Dr. A. Kraft

(The witness was called in and he took his seat).

MR. CHAIRMAN: We are very happy that you are here. The papers that you sent have been circulated amongst Members. It is fairly long. You can pinpoint on any portions and you can also dilate on the portions which you feel important. Otherwise it would take a long time if you go over the whole document. I should also tell you that the evidence you will be giving is liable to be made public.

DR. A. KRAFT: Thank you, Mr. Chairman and Hon. Members of the Committee. I would like to think you very much for your kind invitation for me to appear here before this Committee, and for giving me the opportunity to say what I personally think on patent law and on the Bill you are now discussing. First of all, I would like to say a few words about my own background. My

name is Dr. Alfons Kraft and I am Professor of Law in the Department of Law & Economics at the University of Mainz in the Federal Republic of Germany. After my studies of law and to some extent of economics in Munich I joined a middlesized company doing business in the chemical and pharmaceutical field. In this company I had the position of the head of the legal and patent department handling mainly all matters concerning intellectual and industrial property. I stayed in this company for over 9 years. After that, and after having written a book on German Unfair Competition Law, I became professor at the Technical University of Darmstadt and since 1967 I am teaching at the University of Mainz. Ever since I had finished by studies special object of all my work was the industrial and intellectual property and right now I am working in German on a study referring to the relations between patents and free competition.

I have been asked by the Assn. of Chemical Industry of Germany which represents the German Chemical Industries in the Federal Republic to prepare an expert opinion on the basic aspects of the German patent system and on the presumable effects of the proposed amendments of your bill. I have worked out this study as an absolutely independent scientist based only on my knowledge that I got from my studies. I must also point out that as a Professor of a State University I would not be allowed to work as a mere employee of such an organisation. Probably these statements will help to make clear my approach in this matter.

I am not competent for technical details of research or production or sale of products; I am not competent for exact figures in which you probably may be interested. In my memorandum I have also tried to make clear the aims and functions of a patent system and to show their adequate regulation by the German Patent Act. I have tried to compare the aims, your Government apparently is struggling at, when proposing. This new Bill with the legal means contained in the proposed Bill. The result of my studies was, as you know from my memorandum, may I say this with all respect that the proposed amendments, at least a number of them, can hardly meet with the ends aimed at and with the well-understood interests of your country.

Please regard my written opinion and what I say here today in this sense and only as a contribution to the discussion, which you, as this procedure already shows, carry on with all care and impartiality.

Now I would like to give you a short summary of the points which I feel would be of interest to you. The Patent Law in the Federal Republic of Germany provides for a patent system which gives the owner of a patent the exclusive right to commercially use or not to use the patented invention and to exclude any other person from such use. This is the basis. That exclusive right is justified in our opinion by various reasons.

(1) Our Constitution is based on the protection of individual integrity and the safeguarding of property. Property in the sense of our Constitution comprises also intellectual and industrial property and that means invention. As Invention is the result of intellectual efforts. Such results belong, as soon as they are found, to the inventor alone and the law only assigns—by granting a patent—also the economic value of his invention to the inventor by giving him a chance to make profit, more than a chance even the best patent law not able to give to the inventor.

(2) It is the inventor who gives his new idea, his solution and discloses his technological knowledge. Such a disclosure justifies a reward. How will you measure this reward? We feel that normally adequate reward or compensation is reflected in the price which the inventor may gain for his invention in the market.

(3) Research is of vital interest and importance for today's industry. There is no doubt about it. Exclusive patent right and the chance to make profit out of it are the necessary and indispensable incitements to invest intellectual effort and money in order to come to technical progress, that means, to new inventions.

(4) Last not least, the exclusive patent right is of utmost importance for technological progress also because third parties are not allowed to use the invention and are therefore forced to try to find new and even better solutions for the same problem. This, in the German literature, is called the "whip character" of the monopolistic patent system.

Now I think the technical boom which took place in Germany and other countries after the introduction of even a patent system seems proof enough that the judgment of such system, as given by me, is at least to some extent justified. Its advantage may be seen in the new technical solution contained in an invention and disclosed to the public as well as in the incentive effect to other persons, which are by law excluded from the use of the patented invention.

Now certainly one has to admit that any exclusive right may be misused. There is no doubt about it. As far as Germany is concerned, complaints of misuse have been, however, scarcely heard. At no rate, the possibility of misusing a right, justifies the abolition of such right. Otherwise, you may be in a position to grant no right to human beings because they always might abuse such rights.

As I have tried to point out, the German Patent Act adequately takes into consideration the interests of the inventor and of the patent owner as well as the interests of the public. By doing this, our German Law carefully avoids to excavate exclusive right in order not to endanger the advantages which in our opinion result of or are connected with the exclusive patent right. All possible restrictions of the patent right are in Germany admitted only under strict and narrow presuppositions. Restrictions without adequate consideration are unknown to the German Law and last but not least any order of the Patent Office or any other authority is subject to control by independent courts.

As far as I can see—I have in mind the Indian situation—in your country two forms of alleged misuse of the exclusive patent rights are especially emphasised. One is increase of prices and the other is non-working of patents.

With regard to price, I have already pointed out to you that I am not a man who can give you figures because in the last few years I have never done business in this field. But the assumption that patent protection alone or at least mainly would be responsible for high prices, is in my opinion—and I think it has been proved already simply not true. As already stated in the UNESCO Report on the role of patents on the transfer of technology to under developed countries (page 19) patents are only one among many other factors which may bring about higher prices. That means and that is the only thing I can say. Changes in the Patent Law are at no rate adequate remedies against high prices.

Now, regarding the non-working of patents in India, at first I would like to draw your attention to the fact that in Germany also only about 15 per cent of the granted patents are really worked—this is relatively a small rate. Often, patents for the simple reason of priority, are applied for long before the applicant knows, whether the invention ever will be of an economic value. This point is quite important with regard to your country. You know probably that countries belonging to the Paris Conven-

tion grant to any inhabitant of a country belonging to this Convention a one year term within which he may decide to file an application in this foreign country and if he files it within one year, he gets the priority of his own registration on application. India is not a Member of such Convention. Any applicant for example in Germany, if he has the intention to have his invention protected also in India has to apply for patent protection immediately. If he waits it might happen that after the application in Germany, his ideas are published in India and he will never get a patent in India. Therefore this may be one of the reasons why so many patents are applied for even if it is not known whether the patent can be used or not in India.

There are many other reasons why a patent is not used. For example, it may be due to lack of technical and financial facilities. This fact has been mentioned even by your Government answering the questionnaire of the U.N.O. General Secretariat, Assuming this statement is correct I think it is a very important point. You can't use patents because they are described as wrong. Also you have to have the necessary technical and other facilities. Further more it may be that an invention already patented is still not ripe for being used in a big technical scale. You know that a solution probably is found if it works in your laboratory. But from the laboratory to technical scale and to a marketable product, there is a long way. Therefore, it might be that some of the patents which are not working are still in the stage between solution of the technical problem and solution of the other problems. That means before the development to a marketable product. In case of real misuse by non-working of patents, a compulsory licence system like the one we have in the Federal Republic of Germany seems to be the most adequate remedy.

Also the aim of the Indian Government is to promote the economical and technological development of your country. An effective patent system certainly is not the only but at any rate a very efficient means in reaching of such a target. As far as I can see, your main interests are to stimulate domestic inventors and to promote domestic industry in order to improve at a long range the economic conditions of the Indian people and secondly to induce the foreign companies to make available their technological knowledge and financial funds to India. At least I think it is against your aim. If a clause is to be inserted in the Bill, which could be detrimental to such purposes.

Now, I hope that what I have said here and what I have already stated in my memorandum. It has clearly shown that in a liberal and democratically organised country like India, the granting of an exclusive right of patent is one of the most apt conditions in reaching such targets. This however only under the pre-supposes that—

(i) all necessary precautions are taken to prevent real misuse;

(ii) these precautions do not exceed the necessary and adequate measures and are fixed in their pre-suppositions as exactly as possible; and

(iii) that all measures taken by any authority are subject to control by independent courts.

Now, if I look at the provisions of the proposed Bill under these aspects there are at least, with regard to some clauses, serious doubts whether such a regulation would not rather hamper than assist the Government in reaching its declared targets. The relevant clauses of the Bill I have already mentioned in my memorandum. To-day I shall limit myself to a few additional remarks. My first remark refers to clauses 87 and 88. These

clauses provide, as far as I understand them, that every patent in force as well as every patent granted under the new Bill, as far as they refer to drugs, food, medicine or to the method or process for substances produced by a chemical process, shall be deemed to be endorsed with the words 'licences of right'. That means that any person interested in working such patent in India shall be entitled to apply for and to obtain a licence the terms of which, shall be, in case of disagreement, settled by the Controller. No appeal to the Court is provided for.

May I respectfully say that in my opinion this regulation discriminates a whole branch, a branch, which is of special interest and importance for your country? As far as I can see no precedent exists for such a regulation which practically means abolition of patent protection in this special field. In addition, when granting a licence under this provision, the Controller is not bound to check the ability of the applicant and to take into consideration the justified interests of the patentholder. If such a provision becomes law, it has to be feared that (a) any incitement for doing research in this field ceases because there is no longer a chance to obtain an adequate reward and because no body is compelled to respect the exclusive right but is entitled by law simply to imitate. (b) Further it has to be feared that foreign companies will at least hesitate to introduce new products or processes in India or even publish new inventions by applying for patent protection because they do not even have a fair chance to regain their expenses. (In this connection, this 4 per cent ceiling for royalties in the pharmaceutical field seems to me specially disadvantageous) further because the foreign companies have to reckon with detrimental effects on their goodwill, if the licencee is unqualified. (c) It must also to be remembered that at a long range, the Indian chemical industry will become a mere imitator and fall back behind the development in other countries and can hardly get new products interesting for the export market. The danger of isolation in the field of international protection of industrial property should only be mentioned here. (d) Further more, it has to be feared that the prices of products may rise, as according to general experience smaller industrial units will hardly be in a position to produce and sell products at the same price level as companies having a big programme of production, being able to produce big quantities.

Finally, I may respectfully state that the lack of control by independent courts is absolutely in contradiction to the liberal and democratic organisation of your country. A regulation like this would be absolutely impossible in summary and against the Constitution of the Federal Republic of Germany. Now, I have only to say a few words on Clause 84 which deals with Compulsory Licence in connection with Clause 93(3) giving some special rights to the Controller. The Clause 84 is dealing mainly with compulsory licence, which I think in principle would be a good means to prevent misuse of the exclusive right granted to the patentee but only, if the presuppositions are defined more precisely and if the consequences are not excessively detrimental to the owner. Both these conditions do not seem to be fulfilled by the proposed bill. Especially harmful in my opinion is that the Controller has among others the power to deprive the patentee not only of his entire patent rights but also of his right to use his own invention. Furthermore, he has the right to revoke all already existing licences. That is specified in clause 84(6) together with clause 93(3). This regulation is able to shock the confidence in the Indian patent system. Furthermore, the possibility of granting compulsory licence even for the importation of patented products, *i.e.*, clause 95(3)—(also in connection

with clause 84)—seems to me to be contradictory to the targets of Indian Government, *viz.*, to promteo dmestic industry.

There are some other clauses in the Bill which will in my opinion weaken the position of Indian as well as foreign patent owners to such an extent that will create a deterrent effect on research in the country and on the import of technology know-how and capital from abroad. May I refer to Clause 48 granting almost unlimited power to the Government to infringe patents; to Clause 66 granting the right to revoke a patent without fixing precise the conditions for such revocation to Clause 100 gives the right to the Government to use patents and to Clause 102 granting the power to the Government to acquire almost any patented invention for a public purpose without defining what is a public purpose. In all these clauses except Clause 102, no appeal to Court against the measures of the Government is provided for.

Mr. Chairman and hon. Members of the Committee, I fully realise how difficult it will be for you to come to a solution of the problems as at the same time you have to take into consideration the interests of the patentees and the interests of your country. In every case I think your decisions should be based on a non-emotional approach and in respect primarily of the economic interests of your country. In doing so you will certainly realise that the development in a number of countries, for example in Germany, shows that the patent system granting an exclusive right to the owner is particularly useful for the development of industry and technology. This is true I have to admit only if all necessary steps are taken to prevent misuse, and to prevent serious disadvantages for the domestic economy. The Patent Law in the Federal Republic of Germany represents a suitable compromise and combination, and a fair balance of the interests involved. The restrictions of the exclusive right in our country don't have a deterrent character since the conditions are precisely defined; and all measures appealable before independent courts. In my opinion also the model law of BIRPI constitutes a well-balanced solution.

The discriminatory treatment of individual sectors of inventions is avoided and the patentee should enjoy adequate protection. It is still my opinion that the limited objectives of the Indian Government can be better obtained if you try to realise the priniples mentioned in my memorandum. The research and development of technology is international in character. India must therefore fall in line with the international thinking. The Committee should realise the adverse effects that such law may create. If you discuss the provisions in your proposed Bill I thank you very much and will now be very glad to answer your questions.

MR. CHAIRMAN: Admittedly the present technical know-how is getting more sophisticated and needs more investment and as a student of economics you will agree that India also needs to stabilise her economic position and to grow forward. That being so, how do you feel the foreign technical know-how will be of assistance in the development of our economy and to what extent the proposed legislation will come in its way?

DR. KRAFT: There is no doubt that even patented inventions cannot be worked without a certain amount of technical know-how which is not always covered by the written-down patent. There is certainly a lot of such know-how known only to the owner. If you want to work a patent, you have also to have the know-how. If you do not give the patent owner enough security and protection for his patent, he will hardly be willing to disclose the know-how. What is

in his mind cannot be forced out. Even if he has disclosed the laboratory solution, he may keep back the know-how that means his additional information. Patent and its know-how are closely related, and putting a restriction on patent protection also means hampering the flow of the know-how.

MR. CHAIMAN: In the present world, to work out a patentable invention, it needs a huge organisation. It is not given to an individual, but to big organisations as you have in Germany. We in India cannot afford to have such big things as we are yet in the developing stage. Big organisations tend towards concentration of wealth and confrontation between haves and have-nots. If patents protection is afforded it goes to benefit people who are by and large in the big organisations. How can we reconcile the two.

DR. KRAFT: It is a very wide question. It is true that today most invention at least in the chemical or pharmaceutical fileds are not the work of single men but of big companies with big research organisations because one needs so much money to do that. These companies also get the patents and therefore there is concentration of economic or intellectual power. I cannot deny it. But you cannot overcome this difficulty by abolishing patents. Because this would probably mean that for a certain period you can satisfy the needs of your population simply by imitating the processes which have been developed by others, but you will never reach a stage where you will have your own inventions and patentable ideas. I think this should be to your target for the future in order to become able even to export some of your own inventions.

You spoke of the gap between haves and have-nots. That is absolutely true. But it is not a consequence of patent law. The only solution to that would be to assist your domestic industry by some other means, by way of financial assistance or taxation relief etc. so that they become economically more strong and able to do research. Also please realise that if you abolish the system or weaken the patent protection, even an invention by your own people will not have adequate protection and those people may lose all their work and the investments already made.

SHRI SRINIBAS MISRA: In the Federal Republic of Germany, is patent right a property right?

DR. KRAFT: It is a property in the sense of our Constitution which seeks that the individual property has at any rate to be protected.

SHRI SRINIBAS MISRA: Please illusrate your statement that the provision for compulsory licence is a deterrent to abuse of patent monopoly.

DR. KRAFT: Normally, the owner of a patent has the right to prohibit any third person from using his invention and he has this right in principle even if he himself is not using it. That is the basis of our system. But if the non-use goes against public interest, then in Germany you can apply for compulsory licence and if the public interest is really affected, you will get the compulsory licence. Misuse is blocked because the licensee will work the patented invention.

SHRI SRINIBAS MISRA: What is 'public interest' under your law?

DR. KRAFT: Our law uses a very wide word 'public interest'. But it is upto the courts to define it. It is not sufficient if the individual who applies for compulsory licence is interested in getting it. That means his own financial or commercial interests are not sufficient.

Secondly, making use of the absolute patent right is *per se* not misuse according to our court' decision. They have said very generally that the licence must be of interest to the community, and there have been residual decisions of our high courts be-

fore the war on this question. For example, technical progress on a field of special interest to the public. It was an invention to be used in coal mining, and at that time, it was of vital interest that as many as possible of coal could be mined. Therefore, the patent-owner who did not use his good intention was forced to give a compulsory licence.

In another case the question of security of the workers was involved. If there is an invention which would make labour safe for the employees and the patent-owner would not use it an applicant could get a compulsory licence. Another example: an intention made if possible to save important raw material but such invention depended on an already patented invention using some other material. The new inventor got a compulsory licence. Otherwise, he would not have been able to use it. In all these cases the applicant for the compulsory licence had found a new solution and was blocked to use it by an elder patent.

SHRI SRINIBAS MISRA: Stimulation of export—is it in public interest? Granting of compulsory licence for stimulation of exports—does it come under public interest?

DR. A. KRAFT: Up to now, no case has been decided saying so. But I have to admit: if stimulation of export would be of vital interest to the general economy as a whole, not only to a company but for the whole economy, if the economy would urgently need exports, compulsory licence might be regarded justified in the public interest. But just keeps in mind only if the owner is not able to cover the demand. If the patent-owner produces and exports the patented product there is no reason to give a compulsory licence to a third party.

SHRI SRINIBAS MISRA: Granting of compulsory licence for during unemployment. It is necessary?

DR. A. KRAFT: There have been cases. That does not mean that if a single factory has to dismiss employees a compulsory licence may be granted. The case was decided in a time where unemployment was a big problem for the German economy namely between the two world wars. In this special case, where the total economy was involved, a compulsory licence was given.

SHRI SRINIBAS MISRA: The introduction of an important invention into the commercial life. Can a compulsory licence be given for this purpose?

DR. A. KRAFT: If this invention is important in the public interest, if it is important for the whole economy of the country, the answer is yes. But it would not be sufficient if the introduction would result only in day a better coats or more comfortable cars.

SHRI SRINIBAS MISRA: Please refer to page 8 of the memorandum, 15th line. "The Courts have maintained that the stimulation of exports, the cure of unemployment and the introduction of important inventions into commercial life, may costitute sufficient reason for the grant of a compulsory licence." They are all supported by the decision of the courts?

DR. A. KRAFT: Yes but it is said with deliberation. "*May* constitute." That means there are some additional requirements. Most of these cases are like this: there was a main patent, and the man who was trying to get a compulsory licence had made some additional inventions which he only could use if he got also a compulsory licence on the first patent. You have an invention and somebody else has done something which is called an improvement. He gets a patent in Germany, but he can work it only when the owner of the first patent is in agreement. The owner of the first patent did not agree, and then a compulsory licence was applied for. In most of these cases the applicant had done something creative by himself. He has made some effort. He has found some solution which could

however, commercially be used only with the agreement of the old owner of the former patent.

SHRI SRINIBAS MISRA: Non-manufacture of patented articles in the country of patent: will that constitute sufficient reason for the granting of a compulsory licence?

DR. A. KRAFT: As the German law now stand non-working *per se* is no reason for granting a compulsory licence. Only if the non-use is deterimental to the public interest in the sense that it is deterimental to the German economy or the social interest of the whole country, then the answer is "Yes." But non-use by itself is no reason.

SHRI SRINIBAS MISRA: I shall give one example. You know there is a medicine which is sold under the brand of hydrotone. Somebody has got a licence from the original patent-holder. But that is not available at a fair price in India. Some other persons who were interested applied to the original patent-holder for a licence. The original patent-holder has refused to grant that licence on the ground that they have got some other licensee in India although he is selling it at a high price. What is your solution to this?

DR. A. KRAFT: Your point is, there is a patent-owner who has given a licence to the person in India, but this company is not working and now others come in.

SHRI SRINIBAS MISRA: At an exorbitant price.

DR. A. KRAFT: Is he sure that the other person now coming will be able to sell it at a reasonable price?

SHRI SRINIBAS MISRA: Yes.

DR. A. KRAFT: In Germany, high prices have never been regarded as a reason for the compulsory licence. We are of the opinion that prices are as a result of the market. If one demands for a high price, he will get it only if there is sufficient need on the consumer side. If not, prices will go down. In India, as far as I have been informed, you have price control to some extent. I was told that you have to show to the Government all your calculation and your price. Even the royalty fee has to be approved here was also this exorbitant price approved? Please do not blame me for that. I am not criticising your Government. At any rate the patent law can never be used to regulate such questions. You just use other means. After the second world war, we had price-controls in Germany for certain products. But they had nothing to do with the patent law.

SHRI SRINIBAS MISRA: We have come across cases where life-saving drugs have been scarce in the country and the patentee or their collaborators are not willing to manufacture it here and supply it at reasonable prices. In those cases, will not Government be justified in permitting importation of patented drugs?

DR. KRAFT: If you decide to have a legislation, you can never get the best out of every system which may be in existence and then simply continue it in your law. There is always a compromise. In my opinion, if the patentee takes more than a reasonable price, there may be other means to meet the situation, to import the drugs is not an adequate remedy. When you import drugs, you have to be sure that they come from a source which is absolutely good in quality. You also need the research and medical experience of the inventor to apply it in a good manner. Both these things cannot be achieved if you import it from a patent free country like, say, Italy. If you import from a country where patent protection exists, the price will hardly be low.

SHRI ACHUTHA MENON: One of the arguments in favour of a strong patent system is that it will promote and encourage original research. You have stated that the part that the scientist or inventor plays is only a

small part and he has got to receive the assistance of people who are prepared to invest money. Ultimately the lion's share of the benefit goes to the man who invests money and develops it into a manufacturing business. Neither the consuming public nor the real inventor gets much benefit. That is what we are trying to remedy through this Bill. What is your reaction to this?

DR. KRAFT: You are right that only inventing a product does not mean you have a marketable product or an industry, you need some additional funds which can be given only by persons who have it. But the basis of all these developments is the invention. These inventions are today made exclusively in the research laboratories of big companies. If such companies from the beginning do not give enough money to enable intelligent people to invent something, there will be no inventions, no patent and no industry. Inventing is not the only thing involved. But of course, it is an indispensable pre-supposition. Whether the inventor gets adequate return or not depends on the law. According to German law, the invention of an employee belongs to the employee. He is the owner of the invention. As an employee of the company, he has to give it first to the company against adequate remuneration, which is normally based on the turnover of the product which finally results. If the employees and the company do not agree on the quantum of remuneration, they go to the court and the court will fix an adequate remuneration. Then the patent belongs to the company by law. In other words the company becomes the owner of the patet. The company then invests again and again money in order to make out of this invention a marketable product. If the company would not do it the public never would obtain advantage of such inventions because the people cannot use a technical solution which works only in the laboratory, they need a product. Therefore, I think it is just fair, while we talk of the price of articles and patent production, to take into consideration the expenses of the owner also who has taken the invention to the stage of bringing out a marketable product.

Monopoly in the sense of economic science means economic power. A patent itself is never able to create a monopoly in the economic sense of the word. Only in very few cases where you have pioneer inventions, and nobody else has similar products it might be that your patent leads to monopoly. In today's economy, within two or three years at the latest and mostly after a few months you have some competitive or substitute products on the market by which the owners of the patents is presented to demand unreasonable prices. I think it is a little bit of misunderstanding to assume that the exclusive right by itself creates a monopoly position. I think the only means to secure reasonable prices would be to strengthen competition here.

SHRI ACHUTHA MENON: If a man has a patent he can produce and sell his product in the market. He has the exclusive right of selling it in the market and charge whatever price he thinks fit. Our experience in India is that drugs are very highly priced. That is one of the problems we have to solve. In order to solve it we have to encourage some sort of competition also.

DR. KRAFT: Only 12 per cent of your drugs are patented. That means, as far as I am informed, the prices of patented and non-patented products do not differ too much. In other words, it is not the patent which makes the prices high. Naturally, you can bring down some prices just by taking away things from anybody and selling it cheaper. But one has to decide in the economy of a State on what basis one would like to stick.

SHRI ACHUTHA MENON: There is only one consideration for a country like India. We are still industrially a very backward country. If we give

this patent right freely to countries which are already advanced like USA or other countries they will be able to produce and sell their products in India freely making huge profits whereas our industry being undeveloped we will have to go back to the wall. Therefore, we have to protect our industry and develop it also. Some people even said that we may as well consider the abolition of the patent system altogether.

MR. KRAFT: What would be the real result? Who do you think would then manufacture your drugs in India? Apparently it is not a question of patents but it is a question of technology and economic refunds but means of money. I think you will not get it if you abolish the patent system. Even if you abolish it you still depend on the aid of the man who has the money. If you take away the protection do you really expect that then anybody would be very happy to give away his mony. You know that in Italy since the happy days of Mussolini there was no patent protection for drugs and medicines, and we know definitely that the Italian industry in this field is in development behind other countries which have a patent system and Italy is struggling now definitely towards getting again the patent protection for such products. India has its special problems. Naturally one has to find some solution but the means now provided in the Bill, of taking away property only for the benefit of the country may be frankly speaking a nice target but at no rate a decent means. Even if there would arise price competition in the first stage is you import from a patent free country and sell at lower prices, one competition at any rate will stop at that moment and that is the competition of intellectual ideas. Inventing things will no longer be of any interest to anybody here because it is much better to take what other persons have invented and bring out these products.

SHRI ACHUTHA MENON: In the summary that you have supplied to us you have said, describing the patent law in Germany, that patent does not apply in cases where the Federal Government orders that the invention is to be used in the interest of public welfare or security of the Federal Republic of Germany. So in the law there is provision for compulsory use by the Government or acquisition by the Government of patent rights. In our Bill here we have some analogous provisions. Why do you criticise those provisions?

DR. A. KRAFT: I think you are referring to section 8 of our patent law, which gives the Government of the Federal Republic on certain circumstances the right to use an invention. But that might is hedged in by specific pre-requisites as stated in the law. The public interest must be still more urgent than in the case of a compulsory licence. That is a severe restriction on the government. Menace to the security of the Federal Republic would be one ground. The other would be epidemics and other events of such nature. In addition there is a good procedure provided for to recure also the patent owner. Only the Central Government could make such an order. This order is also subject to control or appeal by High Court. Then, the Government cannot do it without paying compensation. May I add that this provision has been applied in several cases but only during the war? During peace time we have no example of application of this clause. If clause 48 of your Bill could be re-drafted stating two or three examples, giving the right to compensation and judicial review, then there would be no objection to such a provision.

SHRI ACHUTHA MENON: The question of public interest is to be decided by Parliament.

DR. A. KRAFT: Why do you think that Parliament has the right to decide on public interest? It decides on its own interests.

SHRI PITAMBER DAS: In your country the exclusive right to use or not to use a patent has been accepted

and your legislation is based on that principle. In our country one of the problem is the non-working or non-using of patents and the other is the increase in prices. So, with this difference in our two situations, don't you think that it is very natural for the two legislations to differ, so far as this particular problem is concerned?

DR. A. KRAFT: I could not quite get the point. I have said that the exclusive right to use includes the right not to use. To overcome non-use one may apply for compulsory licence under section 15 i.e. public interest makes it necessary.

SHRI PITAMBER DAS: In your country you accept the principle of the right to non-use. In our country the patentees do not use the patents and we want to remove the difficulty.

DR. A. KRAFT: Even in Germany only 15 per cent of the granted patents are really worked. That is the position in a highly industrialised country. I think that should give you an idea that non-using is not always bad, or always criminal. There may be some very good reasons for it.

SHRI PITAMBER DAS: Non-working of a patent may have certain consequences for the condition of a country.

DR. A. KRAFT: Naturally. If the non-working really turns out to be against the public interest, which term you will have to define, you can still grant compulsory licence. What I am against is your giving to anybody the right to take away from the owner or inventor something without giving him any compensation or an opportunity to go to a a court. But if you come to the conclusion that non-working in such and such a case is against the public interest then say to the patent owners. If he still does not work his patent give a compulsory licence to an qualified applicant and you have the solution.

SHRI PITAMBER DAS: Then I take it that your objection is to the procedure of it and not the principle behind it.

DR. A. KRAFT: The difficulty is that public interest is not defined and we do not know how you will interpret it.

SHRI PITAMBER DAS: That term has occurred in your legislation also without a definition.

DR. A. KRAFT: But you have brought in additional grounds dealing with high prices.

SHRI PITAMBER DAS: So, you say that public purpose should be defined and it should not be left undefined. Do you agree that the term public purpose has come to acquire certain meaning? For instance, it serves public interest.

DR. A. KRAFT: In our legislation; even in public interest compulsory licence can be granted only against payment of compensation which is subject to review by courts I personally would never object to such a clause. I felt that compulsory licence is an adequate remedy for misuse.

SHRI PITAMBER DAS: You say that it should be made justiciable.

DR. A. KRAFT: Yes.

SHRI SRINIBAS MISRA: Clause 103 makes it justiciable.

DR. A. KRAFT: As far as I can see, it refers only to clause 100. I think we were dealing with clause 84 concerning compulsory licence at the moment. There is no appeal against it, as far as I can see. It refers only to clause 100 and not to clause 84 dealing with compulsory licences.

SHRI DAHYABHAI V. PATEL: Was there any inquiry about the concentration of industries in Germany made in 1964 and were not provisions made in the Bill as a result of that to stimulate competition and economic growth?

DR. KRAFT: I have to admit that there have always been certain circles also in Germany, specially the so called Freiburg school, which say that, firstly, economic concentratiion is bad *per se* and, secondly, patents are, among others, strong inducements for economic concentration and power. Therefore the German Bundestaag passed a Bill giving to the Ministry of Economy the power to make an inquiry all over the country and try to find out whether there existed concentration and, if so, whether this concentration was based on patents. There is a big book that came out afterwards which I could not bring with me to India. But I would say—I cannot give you the exact words—that as a result of this inquiry the Government stated that it had been proved that in Germany patents were not the cause of concentration and, therefore, it is not necessary to alter or to amend our present Patents Bill. This was the result or the report of Government given to Parliament after the study of the inquiry reports.

SHRI DAHYABHAI V. PATEL: In the research laboratories in Germany is any work being conducted jointly in collaboration with other countries?

DR. KRAFT: Yes. I personally cannot say too much because I know only of my own experience in a relatively small company. Even we had joint research with some American company. The invention, however, belonged, according to the agreement with the American company, to the inventor; that is, if he was a German, he was the inventor and if it was an American, he was the inventor and he had to assign it to the company according to the Germany law. But we did have joint research facilities and, I think, in bigger companies it is much more than in small ones. But, as I said, I do not know exactly.

SHRI DAHYABHAI V. PATEL: As you may know, we in India have a mixed economy; that is, we have a public sector and a private sector. How far do you think the provisions of this Bill will help the public sector undertakings in our country?

DR. KRAFT: It is one of the special features in India that you have such a mixed system but as far as I am informed you do not intend to make the whole economy State-owned. However, as to your question as to what extent the State-owned industry could be helped by this Bill, I would say 'None'. Neither the State owned nor the private industry, seen at a long range, would have any profit out of this Bill. In my opinion, if the provisions of this Bill are enacted, it will be detrimental to the flow of technology and money and in some years this will result in the going back of Indian industry and technology. The system you propose in your Bill works only as long as there are enough stupid persons to invest money in research in order to enable other persons to take the results of it away. But it becomes known if in a country things are taken away. Then nobody will invest anything any more and sooner or later there will be nothing more to be taken away. In the long range the State-owned companies will have no more advantage and no more disadvantage out of this Bill than those which will result for all enterprise in India.

SHRI DAHYABHAI V. PATEL: I suppose, you know that in India 90 per cent of the patents are held by foreigners and foreign companies. Does this not enable them to stifle national development?

DR. KRAFT: I think, the Indian Government wrote it also in its report to the UN Secretariat, but you certainly know that this is not a unique situation in India. In Germany, for example, in 1967, 45 per cent of the patents were owned by foreigners and in the Netherlands 80 per cent of the patents are owned by foreigners. That means, even in highly industrialised countries also foreign patent applications amount to a relatively big amount. It is of no disadvantage to a country at all if these patents are worked in that country because then the know-how, the technical knowledge and development will become effective in that country. The problem arises only if

those patents are not worked in the country where they are protected. But then we are back to the question of non-working. You can only say that non-working is a misuse if the patent is not worked for any unhonest reason. But please do not be bluffed by the figures. See what are the reasons and whether the non-working patents are patents which could be used according to your facilities used. Only after having checked all the details, when you can say that a patent could be worked and non-working against public interest. Then give a compulsory licence to an applicant who is able to work under adequate conditions.

SHRI DAHYABHAI V. PATEL: One last question which, if the witness feels awkward, he need not answer; but if he can, I would like to have his answer. Unfortunately, the situation is that Germany stands divided into two parts after the last war. West Germany recognises patents but I do not think they recognise them in East Germany.

DR. KRAFT: East Germany has not, so far, a different patent system from ours.

SHRI DAHYABHAI V. PATEL: Do they also recognise old patents?

DR. KRAFT: East Germany has not adopted up till now the Russian system but sticks, with some minor changes, to the system that we have in the Federal Republic. East Germany has a mixed economy having private enterprises and State-owned enterprises and, I am sure, that a patent system as they have in Russia could work only if you have a completely State owned industry. If you have a mixed one, I personally think that you should better stick to the system that we have in Germany. If one wishes to have a system under which all patents are owned by the State—I do not think, you are striving for it—then you may change it; but please realise that even the Russian patent system grants an exclusive right, the only difference is that the State is the owner. For foreigners, even the Russians had to introduce the normal patent system, that is, granting an exclusive right to the patentee, because otherwise no foreign company would be prepared to give its inventions to the Russians.

SHRI C. C. DESAI: You have recommended the German patent law to us for adoption saying that it has led to technological development and growth of research in Germany. Could you give us an idea of the evolution of the patent law in Germany—it could not have remained stationary over a period of years—particularly, whether the law has become stronger or weaker?

DR. A. KRAFT: That is an interesting question. It is not so easy to be answered. Under the German patent law, there is a patent-owner who has got an exclusive right to use it. That has been so from the very beginning, from 1877 onwards. At that time, as in many other countries, the misgivings about the working of patents in the country were greater than today. Today, if it is a worthwhile patent, it will be worked. In the beginning, there was a clause which entitled the Government to revoke a patent, if not used within 3 or 4 years or so in the country. About 35 years later, that is, in 1911 approximately, the law was changed and a provision for compulsory licensing was inserted. In this respect, I would say, our system has become a little bit stronger.

SHRI C. C. DESAI: I thought compulsory licence will weaken the patent law. We have been told by other witnesses here that any diminishing of proprietorship means weakening of the patent law.

DR. A. KRAFT: If you revoke a patent, you make it absolutely weak. If you grant a compulsory licence, you at least give the owner a right and, under the German law, he may

probably get the decision reviewed. I am against a clause which enables you to revoke a patent. The granting of a compulsory licence means a little bit strengthening of the position of the patent owner with the possibility to revoke the patent. From 1911 to 1967, the patent system has remained almost the same. Then, as you know, we also introduced the product patent for chemical substances. This provision also means some strengthening of the patent system at least in the chemical and pharmaceutical field. That is all, I think. I do not remember any other substantial changes made since then.

There is one thing which might interest you. In regard to the Government making use of the patent in case of emergency and security of the country, before the war, there was no appeal provided. Until 1948/49, we had no appeal against the Government saying, "We need the patent for the purpose of the security of the country." After the making of our new Constitution, possibility of appeal has been provided for also in this case. You may call that also a certain strengthening of the patent system.

SHRI C. C. DESAI: You also said that by having a weak patent law like the one we have before us. You may deter foreign capital or foreign entrepreneur making the investment. But my own feeling is that the foreign entrepreneur thinks of the overall profitability on his investment. He does not go into individual items of patent law, this or that. He weighs how far and to what extent his investment will bring him a return. If from that point of view, the Indian market, the Indian resources and the Indian skill give him that confidence that in spite of a weak patent law or the abolition of the patent law he has a very good market here, that his investment will give a good return, why do you think he will not come here?

DR. A. KRAFT: Certainly, the patent law is not the only means to induce somebody to come to a country to invest. I quite agree. But, naturally, you cannot attract foreign companies to invest on new things. If he finds these clauses under which, at any moment, he can be denied the exclusive right to use the patent, I hardly believe they will do it even if you guarantee him a certain profit. If you take away his exclusive right, you take away his only chance to get profit out of it.

SHRI C. C. DESAI: Unless a patent is backed by technological knowledge or know-how, that is really meaningless.

DR. A. KRAFT: That is right.

SHRI C. C. DESAI: Suppose he is a partner with me and he brings it here. There is no patent law here. He gives is know-how and we produce that item here and sell it and we sell it very well. He probably gets more profit out of dividends, on his investment, than as royalty on his inventions. Why should he fight shy in such an investment.

DR. A. KRAFT: If you are able to give him a guarantee that the know-how and everything that he brings is not taken away from him....

SHRI C. C. DESAI: How can it be taken away? It is a separate factory where there is general secrecy.

DR. A. KRAFT: If it is a patent, it is published and it can be taken away.

SHRI C. C. DESAI: A patent is a formula. Know-how goes into the implementation of that patent and that is known only to him and me, not to anybody else. It is only theoretical that the knowledge of patent can be taken away. But in actual practice, it does not happen.

DR. A. KRAFT: It might be. But I am not so sure whether it will not be possible. If there is certainly no

possibility to take away the invention, then it is useless to insert such clauses in the patent law which, at any rate, has a psychological influence on them.

SHRI C. C. DESAI: On the question of relationship between patents and prices, many people have told us that, really speaking, there is no effect of patent law on prices. Two things are really unrelated. We find it difficult to accept that view because patents are connected with payments patents are connected with payments have an effect in the cost and, therefore, on the prices. How can prices and patents be seperated while the element of compensation and payment of royalty is there in patents?

DR. A. KRAFT: There might be some misunderstanding about it. At first I have to state that patent law in no country is the place where price policy is made. But, as was pointed out, if it involves using of something which only one person has—the use of such a thing has to be paid for—this payment to the person who gives you this knowledge goes into the price of the goods. I think, it is unreasonable to deny that. Among various expenses also this payment is included. If you want to use something which does not belong to you, you have to pay for it and this payment goes into the price. You have to pay for it just as you have to pay for your raw material. You cannot expect that somebody will make a donation to you of the raw material. Therefore, it is right to say that patent and prices are not unrelated. Naturally if you have to acquire something from any other person which you can get only for consideration, this consideration will find its way into the prices.

SHRI C. C. DESAI: You have said in vour statement that imitation and invention are somewhat incompatible. I do not see how and why they should be incompatible. When a man imitates, even then a certain amount of skill, a certaint amount of ingenuity, is involved. So, that is not incompatible with invention. While imitating you think of something else and you invent.

DR. A. KRAFT: If somebody is imitating something, then he has no time to do research. If he finds by chance, while imitating, something else, then that is his lucky moment.

SHRI C. C. DESAI: In the process of imitation, his inventiveness comes into play.

DR. A. KRAFT: You will not put the same effort into research if you are not forced. Only if you are forced to find some new solution, you will put the effort.

SHRI C. C. DESAI: By imitation, you reach the process of invention much quicker because you begin in the midway....

DR. A. KRAFT: How can you make an invention by merely imitating?

MR. CHAIRMAN: Mr. Vyas.

SHRI RAMESH CHANDRA VYAS: I want to know whether in your German system compulsory licensing has got some checks on the growth of monopoly.

DR. A. KRAFT: There is no monopoly in Germany....

SHRI RAMESH CHANDRA VYAS: What I mean is this. Have you got measures in German law to prevent abuses of patents?

DR. A. KRAFT: As I have already explained, compulsory licence gives the licensee the right to use the invention. If the right to use his invention is not longer exclusive right of the patent owners his monopoly is broken already.

SHRI RAMESH CHANDRA VYAS: What is the percentage of patent cases filed in your Federal Court?

DR. A. KRAFT: We had, in 1967, 67,000 and odd applications. In the same year 4,000 and odd appeals had been filed. That means, 6 or 7 per cent.

SHRI RAMESH CHANDRA VYAS: What was the nature of the cases and did these cases go towards preventing abuses?

DR. A. KRAFT: There was some misunderstanding. The figure I mentioned did not refer to cases of compulsory licence, but simple to appeals in the course of patent proceedings. On compulsory licence, as far as I can remember, we had only one in the last year, but no decision has been rendered by the Federal Court.

SHRI RAGHUNATH REDDI: You are quite familiar with administrative justice. In the context of administrative justice, writ of mandamus arises. Judicial review is still possible under the Constitutional law in respect of administrative actions though judicial appeal is not provided for under the procedural law.

SHRI RAGHUNATH REDDI: Therefore, taking into account the nature and circumstances in which the laws' delay occurs, do you suggest taking recourse to procedural law. If the administrative decisions are still subject to judicial review, will it serve the purpose.

MR. CHAIRMAN: There is law's delay always. In order to get rid of it, we have provided administrative assessment in respect of constitutional remedies, without going to the High Court under Art. 226. What comment have you got to make about it?

DR. A. KRAFT: Does it really meant that according to your constitution, any act done by the Government is subject to judicial review by courts?

MR. CHAIRMAN: There is some difference as to whether we should have a specific provision. There may be an appeal on facts.

DR. KRAFT: There is one clause in the German Constitution under which any act of the Government can be challenged.

SHRI R. C. VYAS: If the amending Bill is passed into an Act, what impact it will have on the investment foreigners?

DR. KRAFT: In my opinion—I have no money to invest here at all—it might have at least a bad influence. Most of the reasons are put before you. Investment and patent protection are closely connected.

SHRI B. D. DESHMUKH: You said that in your country the percentage of foreign patents was 45 per cent. But what is the present position?

MR. CHAIRMAN: What is the percentage of foreigners taking out patents in West Germany?

DR. KRAFT: In 1967 it was approximately 45 per cent. That is the last figure published in the official statistics for 1967. The exact figures for 1967 are: 54.97 per cent from Germans and 45.03 per cent from foreigners.

SHRI DESHMUKH: What is the amount of royalty you pay to the foreigners?

DR. KRAFT: Unfortunately I do not know. I only hear people talking about it. As far as I know we have still a positive balance of royalties. I have no exact figure. But it is on the positive side.

SHRI NAMBIAR: You were kind enough to tell us that without patent protection, the pharmaceutical industry could not thrive. But the industry developed very much fast in the Soviet Union where there was no such protection given to foreigners. That shows that if a country wants

to go forward, there is a possibility that even without any outside help or patent protection it may advance industrially. If that is possible for a country like the Soviet Union, for a country like India with large potentialities and with a big population, what is the difficulty if we do not give patent protection to others?

DR. KRAFT: You are of the opinion that in Russia there does not exist patent protection for foreigners?

SHRI NAMBIAR: During the last 20 years ever since the Soviet Government was set up, they did not give patent protection to foreigners....

DR. KRAFT: We have to admit that industrially Russia has made big progress in certain but rather restricted fields—especially in technical fields. As far as I am informed, in the pharmaceutical industry the progress of the Soviet Union can by no means be compared with the countries having patent protection.

SHRI NAMBIAR: Even in this question of patent protection, what is the guarantee that it will bring us the know-how. We have got cases in our country that even after giving patent protection, the technical know-how is not divulged here or trais-ferred to our Indian personnel. Much of the laboratory work is still done outside India and only the final product is made here and sold.

DR. KRAFT: Patent protection or granting a patent does not enable a country to produce the patented drugs. But the patent protection gives at least a chance or inducement for the foreigner to bring his konw-how. If you have no patent protection, you will not get even this chance. The situation will change only after the skill of your labour is improved and the facilities are provided.

SHRI NAMBIAR: All these years the patent protection is there and yet, the position has not improved. Then are we not to dilute it a little to see that our work goes on.

DR. KRAFT: Do you think that patent blocks your own people?

SHRI NAMBIAR: They take patents and they do not develop. We cannot develop our own. They are putting restraints on our own people. That is the point.

DR. KRAFT: I got your point. Do you mean the product made in India or made outside and imported?

SHRI NAMBIAR: They put the seal here. Only seal is put.

SHRI PARTHASARATHY: Foreign patentee puts the seal. He does not manufacture. The invention and know-how is not used.

DR. KRAFT: You say, anybody in India would be able to make this, but cannot because there is the patented protection.

SHRI NAMBIAR: He will not give the know-how. We cannot develop ourselves. It stifles our own development.

DR. KRAFT: It is not that way. It is not that he does not like India. If necessary conditions are there in India he will do it. If facilities are not available it cannot be done. Your argument is valid if one can assume that there is possibility here and only for really bad reasons the patent owner does not want to do it here. But I think even patent owners should not be treated like that, in the way you assume, from the beginning, that they are bad men. If there is facility here there is no reason why he should not do it. He will earn much more profit if he can do it here in the country.

SHRI PARTHASARATHY: There will be a drain of our foreign exchange. Now, I want to ask one question. We are an underdeveloped country. Will this patent system help

us or otherwise? We are under-developed country.

DR. KRAFT: You are a developing country.

SHRI PARTHASARATHY: What are the benefits of the patent system whether it is weak patent system or strong patent system in our country?

DR. KRAFT: A strong patent system is a system which guarantees the right of the owner which can be taken away only in the public interest and against compensation and based on court's procedure. That is what we call strong patent system. A weak patent system is one under which the Government is entitled to take a patent just away without any compensation. And I can say this. Only a strong patent system gives in the eyes of the foreigners enough security to be able to give you technological knowledge and money. Any weakness of the patent system to such an extent, as it is provided in the law, I personally feel, would be most detrimental to the Indian development. You can improve your economy but not by taking away the other man's right. A weak patent law means that anybody will be entitled to use the intellectual property of anybody else. I think, in the long range, for no country is this a good basis for developing its own industry.

SHRI PARTHASARATHY: We have public sector projects in the country. We are spending much on drugs, on pharmaceuticals. Is this present Bill giving a protectionist policy, or is it going to affect the workings of these projects? What is your view about it? They are Governmental projects. They are in the public sector. They are started by the Government. Now, this Bill is there. Will it protect these public sector projects or not?

DR. KRAFT: I think I mentioned it before. It may give for the public sector a piece of legal basis to do something illegal. There may be some advantage as you always have if you take something away and sell it cheaper. In the long run, for the real development of your country, as I said before, the proposed patent law will be not more advantageous for Govt. owned companies. They can have advantage only if you treat them under the patent law just like privately owned companies. There is no advantage in public sector at all out of the Bill.

SHRI PARTHASARATHY: By the time the invention is used for commercial production, what is the time lag?

DR. KRAFT: You mean between application and commercial use. As far as I know the gap in Germany is between 4 to 5 years, that is, between patent application and selling the product.

SHRI PARTHASARATHY: Between invention and commercial production what is the time taken?

DR. KRAFT: 4 to 6 years in Germany.

SHRI PARTHASARATHY: You have no objection to reduce the time in certain cases.

DR. KRAFT: 4 years is a very low average. I am not entitled to talk here for somebody who is making research. I don't know the exact details. The term of patents has to be in conformity with the constitution in Germany that means equal for all patents. I think you too have a certain article guaranteeing equal treatment of everybody under the law. I think there cannot be different treatment of different patents in Germany under the Constitutional law. The second is that as far as general tendency is concerned, the practice is to give a much longer term for patents in the patent laws. For instance, in the draft of patent laws of European Common Market countries the term is 20 years in the Belgian law it is also 20 years period. Therefore, ten years are at any rate too short.

MR. CHAIRMAN: Today in all countries, whether Communist or non-Communist, the tendency is to give patent protection. Even Italy is going in for patent. But there is another difficulty. There are certain countries with less resources at the development stage. Is it your thesis that if these developing countries get isolated from this world trend, there is likely to be some difficulty in the growth of their economy?

DR. KRAFT: As a consequence of inadequate patent protection?

MR. CHAIRMAN: On the one hand the tendency is for patent protection. On the other hand, if we get away from the patent law, will it deter our economic growth?

DR. KRAFT: My personal opinion is yes because the real growth of your economy depends on economic aid and invention. In your case, at least for the moment there is need of foreign aid. Now foreign companies will hesitate to go into your country when they will not be given adequate protection.

MR. CHAIRMAN: At any rate patent law by itself will not be a determining factor about the growth or otherwise of the economy of the developing countries?

DR. KRAFT: Granting of patent cannot have this effect if there is provision in your law providing for the prevention of abuse. That is the only thing you have to do. If you have this, the advantages of granting exclusive right will be much greater than if you abolish such right.

MR. CHAIRMAN: Thank you, Dr. Kraft. We are grateful to you. You have come all the way from Germany. On behalf of the entire Committee and on my own behalf, I thank you once again.

DR. KRAFT: I was very glad to come and appear before you. I hope that my statements have been of some use to you. Thank you.

(The witness then withdrew)

(The Committee then adjourned)

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967

Thursday, the 23rd January, 1969 at 10.00 hrs. and 15.00 hrs.

PRESENT

Shri Rajendranath Barua—*Chairman*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Kanwar Lal Gupta
5. Shri Hari Krishna
6. Shri G. S. Mishra
7. Shri K. Ananda Nambiar
8. Shri P. Parthasarathy
9. Shri Maddi Sudarsanam
10. Shri Ramesh Chandra Vyas.

Rajya Sabha

11. Shri Arjun Arora
12. Shri Om Mehta
13. Shri K. V. Raghunatha Reddy
14. Shri Pitamber Das
15. Shri Dahyabhai V. Patel
16. Shri C. Achutha Menon.

LEGISLATIVE COUNSEL

Shri S. Ramaiah, *Deputy Legislative Counsel, Ministry of Law*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS (DEPTT. OF INDUSTRIAL DEVELOPMENT)

1. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks.*
2. Dr. B. Shah, *Industrial Adviser (Drugs).*
3. Shri Hargundas, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Federation of the Pharmaceutical Industry of the Federal Republic of Germany*

Dr. Hans Harms

II. *Association of Pharmaceutical Manufacturers of Federal Republic of Germany, Frankfurt*

Mr. Curt Engelhorn

I. *Federation of the Pharmaceutical Industry of the Federal Republic of Germany,*

Spokesmen:

Dr. Hans Harms

Dr. Scholl—Adviser.

(*The witness was called in and he took his seat*).

MR. CHAIRMAN: We are grateful to you for having come all the way to give evidence. Before proceeding, I should like to tell you that evidence is likely to be published. No portion of it is to be kept secret. If you want any portion of it to be made secret, please indicate beforehand. But I cannot assure you that it will be kept as such. Now you can proceed. We have read your memorandum and it has been distributed to the members. Please give a brief summary, putting stress on the particular points you feel important.

MR. HARMS: Permit me first of all to thank you for giving me this opportunity to appear before you and to explain to you certain considerations concerning the contemplated changes in your country's patent law. I find it both remarkable and an expression of examplary fairness that you have decided to study the opinion of organizations and experts of other countries on the provisions under consideration. The very fact that the Indian Parliament, before changing the existing patent law, is thoroughly weighing the pros and cons, and for this reason has again called in a Joint Committee, has been respectfully asknowledged in the Federal Republic of Germany. I very much hope that I shall be able to offer some points of view which will prove to be of interest to you in your considerations.

Allow me first to introduce myself: I studied Chemistry at the universities of Darmstadt and Freiburg in Germany. After my doctorate at the Technical University in Darmstadt, I stayed there for a number of years as assistant at the chemical institute. Since 1959 I have been Chairman of the Board of Directors of E. Merck AG, a company of international reputation. The Merck Group with almost 10,000 employees, in 1968 had a turnover of about 600 million German marks corresponding to about 1.2 billion Rupees. In addition, I am President of the Associations of the Pharmaceutical Industry of the European Common market and President of the International Federation of Pharmaceutical Manufacturers' Associations, members of which are practically all pharmaceutical federations of Western Europe, the U.S.A. and Canada. For a long time I have also been acting as Chairman of the Foreign Trade Committee of the Federal Association of German Industry, which is the top association of the entire German industry. The board of this association has asked and authorized me to deliver my comments on behalf

of German industry as a whole. Furthermore, I had the privilege to be nominated a member of the Advisory Committee for Foreign Trade of the Federal Minister of Economics. Let me also mention that for many years I have been a member of the Economic Advisory Board of the German-Indian Association. Last not least I have lived in Asia for many years and for this reason have many close ties with your country. India, with her ancient culture and especially her philosophies and art, always fascinated and impressed me. Apart from that, as an industrialist, I naturally am very closely attached to the great problems of the subcontinent of India and her leading role in Asia.

May I present you, gentlemen, my adviser, Dr. Scholl, specialist in the German Patent law and Miss Shamin who was kind enough to put herself at my disposal as an interpreter.

I thank you very much, Mr. Chairman, for permitting me to present some preliminary remarks before being questioned by the honourable Members of this Committee. I shall refrain from giving you any theoretical explanations on the gist and purpose of patents as such, since I am certain that the honourable Members of the Committee will not need that kind of information.

Mr. Chairman, honourable Members of the Committee: The Patents Bill you are faced with is being sharply criticized both in India and abroad for it contains provisions not to be found in the laws of any other country where patent rights are recognized at all. The particular provisions concerned are specified in the memoranda which have been sent to you from Germany by the Federal Association of German Industry, the Federal Association of the Pharmaceutical Industry and by Professor Kraft on behalf of the Association of the Chemical Industry.

I do not wish to repeat the contents of those memoranda, but to summarize these, I have to say that the Patents Bill in its present form would mean, for the chemical industry, such a curtailment of the protection of its inventions that in reality one could not speak any longer of any effective patent protection whatsoever.

Let me substantiate my views by the following considerations:

(1) It is a fundamental legal principle that a constitutional state has to guarantee the inviolability of intellectual property in the same way as it guarantees the protection of any other property.

This principle is observed in practically all countries of the world, and not only in countries with a so-called capitalistic system. There is no room for any differentiation. Every form of property—whether material or intellectual should be treated equally. Any even partial—limitation in protection of intellectual property represents in reality an expropriation. This is a clear violation of the fundamental legal principle I just mentioned. The same attitude has been pointed out repeatedly by Indian experts such as by the report of Justice Ayyangar, with which your Committee is familiar.

It is the official opinion of the entire German industry that it cannot be the intention of the Indian legislation to give through this Patents Bill third parties a legal possibility to copy inventions of others practically free of charge. This would not at all correspond to the traditional fairness your country is known for.

2. Economically acording to our belief, the passing of the Patents Bill would certainly be fatal to India herself. I have not the slightest doubt that if and when this Patents Bill would be accepted the readiness of foreign companies to invest in your

country would decline considerably. No private company would decide to build new plants or to invest money in already existing facilities in India for the exploitation of its inventions if there were the danger that third parties easily could copy those inventions or could import imitations with the official approval of Indian authorities as provided for in the Patents Bill. Such investments would have to be written off in advance as losses, because it is impossible to compete with imitators or importers of copied goods. It is obvious that it will always be possible for imitators to sell more cheaply, because in their calculations they need consider neither research and development costs, nor the costs of unsuccessful or future research projects.

Besides others, the chemical industry and the pharmaceutical industry in particular, have been extremely active in India, have invested very extensively, and there achievements have been remarkable in every respect. With the passing of the Patents Bill this impressive development would certainly suffer a serious out-back.

3. I do know that the debates in the Indian Parliament on this Patents Bill will be followed very carefully by the Industry over the world. All companies investing in developing countries have to take particular care of the protection of their inventions in these countries. Since the Patents Bill is seriously jeopardizing foreign investment, its passing would certainly result in a most deplorable and far-reaching loss of confidence by foreign industry. This would particularly effect the very industry seriously devoted to co-operate with India, on whose readiness to invest, India could always count in the past.

4. After the Second World War in Germany the absolute protection of foreign property was an essential supposition for the speedy recovery of our economy and for the steadily increasing influx of foreign investments. We never doubted that we made the right decision despite of the fact that we have still today a negative license balance. As a matter of fact up to date we have paid many billions of marks as patent royalties to foreign companies—and we shall continue to do so. It is certainly a consequence of these experiences that at no time any attempts were made in Germany to diminish protection for intellectual property. In this connection I should like to mention that Japan, who has a strong patent law, has a negative patent licences balance, too, which is not an unimportant reason why Japan's industry reached a level which today is admired at by the whole world.

5. The system of patent protection likewise has been unreservedly approved by the socialist states, which is expressed by the fact that the Soviet Union has recently joined the Paris Union, on the protection of intellectual property. African states too, advocate patent protection. Some time ago 12 African countries established a common patent office for the purpose in Yaounde' (the Cameroons) (Afro-Mulagasy Organisation of Economic Co-operation).

Furthermore it should not be forgotton that once the United States of America also were at the beginning of industrial development. Through the creation of an excellent patent law, industry in the U.S. was given such a boost that to-day billions of dollars for licenses and other returns flow into the U.S. India stand on the threshold of a certainly phenomenal development. Due to her high intelligence potential it can be taken for sure that great discoveries and inventions are to be expected from this country. If these inventions remain unprotected in India nobody will be prepared to spend money on them in India. Therefore, these unprotected inventions will never

contribute to the Indian economy in such a way as would be indispensable to enable India to keep up with the worldwide booming technological development. In particular, I should like to draw your attention to Iran, with whose very impressive industrial expansion I have become familiar in the past few years. The government of Iran has promised to respect unreservedly the intellectual property of foreign companies as well as financial investments, and has kept this promise in exemplary fashion. It has thus achieved an influx of capital and know-how surpassing all expectations. In the mean time the industrialisation of Iran has achieved proportions considered impossible only a few years ago. The natural possibilities in your country for an equally favourable development are obviously even bigger. The continued expansion of the Indian economy and with it the social development of your country essentially depend on the economic concepts you will have to create to-day. From this point of view I dare to conclude that the limitations contemplated in the Patents Bill will not only not benefit your country, but will have a definitely detrimental effect.

6. Finally I should like to refer to three arguments repeatedly heard in discussions on the Patents Bill:

(a) It is often maintained that the special situation of India makes it necessary to abolish or to strongly curtail patent protection for an interim period. This concept is certainly wrong since without strong patent protection you will not be able to persuade foreign investors to exploit commercially their latest inventions in India.

In addition, you have to consider the likelihood of Indian inventors not publishing and utilising their important inventions in India but rather taking them abroad.

(b) It is frequently pointed out that in India the majority of patents are in the possession of foreigners. This however is not unusual and is the case in many countries. According to the latest report of the Geneva Office for Protection of intellectual property, in Belgium, for example, which is certainly a highly industrialised country, about 15,000 patents were granted to foreigners in 1967 and only about 1500 to Belgian nationals. Corresponding figures for some other countries are:

Switzerland 16,400 to foreigners; 5400 to Swiss nationals; Canada 24,600 to foreigners 1300 to Swiss nationals. In the European Common Market countries, on an average more than twice as many patents are granted to foreigners as to nationals. Therefore, the fact that more patents in a country are in the possession of foreigners than nationals is a perfectly normal fact and merely proves that foreigners have realised the economic importance of the State in question.

(c) Finally, the argument is often voiced that in India many patents in foreign hands are not being utilised at all. Quite correct. But it is certainly nothing special since at least 80 per cent of all patents are not exploited at all as they have become obselete as a result of technical progress. To sum up in the opinion of German industry as a whole, the passing of this legislation would lead to a state of affairs in which as once expressed by a farmer US Secretary of Commerce those companies that do research subsidise those that do not, so that the imitators can sell below cost of the creators. If this Bill were to become law, industry would be deprived of the results of its research and essentially industrial initiative would thereby be blocked and economic progress inhibited. At the same time, the basis for social progress in a long-term projection would be curtailed.

Thank you for the patient hearing.

MR. CHAIRMAN: From your statement, it appears that foreign investment in India would, if this Bill becomes law, dry up. Would that happen in respect of research and other aspects also?

DR. HARMS: It goes without saying that not only investments of capital will dry up but it will also dry up in the field of research and in all important economic fields.

MR. CHAIRMAN: You propounded the theory of the inviolability of intellectual property. But do you not agree that in the present context of things, it must be related to social needs.

DR. HARMS: It goes without saying that there are sufficient possibilities to bring the social need into harmony with a patent legislation.

MR. CHAIRMAN: What are the objectionable features here?

DR. HARMS: First, intellectual property will be utilised without adequate compensation; even when such compensation will be paid, it will not correspond to the value gained by utilising the patent. This is the main objection that the Government or third parties could make use of a patent without having to pay necessary compensation to the patent-holder.

MR. CHAIRMAN: What about the royalty contemplated?

DR. HARMS: In the form envisaged it is practically insignificant.

SHRI ACHUTHA MENON: The objectives of a patent system should be,

(1) encouragement of scientific research in one's own country; (2) development of industry in that country; (3) protection of the consuming public so that they may be able to get products of industry at reasonable prices. Any policy which does not take all these into and reconciles them is defective. You seem to be emphasising too much the overall importance of the development of industry and the possibilities of obtaining high prices to the exclusion of the other relevant considerations. As I see it, patents have a tendency to develop monopoly in India which results in high prices for the consumer. We wish to avoid these things here. How do you reconcile these factors?

DR. HANS HARMS: May I express my comments on the points just set forth by the hon. Member as far as I have been able to understand him, and if necessary, I shall request the hon. Member to repeat one of the other points after I have made my statement.

The main point is the opinion under consideration that a patent law ceates a monopoly. This is indisputably correct. But experience has shown that this monopoly restricts itself to a very limited period of time, the reason being that especially in the highly complicated field of manufacture, the competit or does not wait long before introducing similar products. Even in the field of chemical research and pharmaceutical research, the period of monopoly cannot be maintained for long. Ultimately, therefore, it is not the monopoly but competition that determines the market conditions and, consequently, the price. May I request the hon. Member to repeat the other points of his presentation?

SHRI ACHUTHA MENON: I am glad that you are of the opinion that it does not take a very long time for the inventions to be worked and the results obtained through the entire production. This runs counter to some of the observations made by some other witnesses here. I want to have your opinion with regard to this. Some witnesses would say that it takes a

very long time to develop a certain invention and place the product in the market. That is one of the reasons for the very long period of protection of patents. On the other hand, you would say, if I have understood you correctly, that it does not take a long time.

MR. CHAIRMAN: He says monopoly is limited to a particular period. Beyond that, the market conditions rule; not about the time limit.

SHRI ACHUTHA MENON: That is what I wanted to know from him. If that is what he said, I have nothing to say on it.

MR. CHAIRMAN: That is what he says.

SHRI ACHUTHA MENON: You agree that monopoly, if it is developed in a certain line of production, certainly results in rise in price to the consumer. This is one of the most important points with which we are very much concerned. That is why we want to restrict the period of patents, so far as drugs and pharmaceuticals are concerned, to 10 years. Would you agree that it is necessary to promote competition rather than monopoly especially in fields which are very much concerned with the common people, for instance, the drugs?

DR. HANS HARMS: In principle, I must emphasise that all patents granted have the same period of validity, and that also in the case of pharmaceutical products the period of validity of the patent should be the same. The hon. Member has already stated that the period of development of a product is long. I, therfore, believe that a restriction of the duration of patents to ten years not be justified.

MR. CHAIRMAN: He did not say so; some other witnesses said so.

DR. HANS HARMS: Then, it is a fact which I can only confirm on the basis of my own experience to synthesise new chemical compounds does usually not take a very long time. But what is important is the examination and screening in pharmacological, toxicological and clinical fields. These examinations and screenings today require a period of five years. Consequently, the period of validity envisaged in the Patents Bill, namely, ten years, proves itself utterly inadequate. The requirements demanded by the supervising health authorities are expanding. The period required for examination, therefore, shows a tendency to become longer. The building of examination and screening installations and institutes for all branches of the industry has a tendency to further lengthen the period required for examination and screening. Competition represents the best regulator in that it keeps prices reasonable and moderae competition cannot be promoted through licensing or compulsory licensing. Particularly in the case of drugs the basic information of the medical profession about the applicability and possible side-effects is of outstanding importance. This information is only available to the inventor himself as a result of his own experience and is not known to licensees.

MR. CHAIRMAN: In America, opinion is gaining currency that the period of patent should be cut down to 7 years.

DR. HANS HARMS: As far as I am informed, there is no such curtailment of the period of validity envisaged in America. On the contrary, it is intended to prolong the period. As a result of sharp protests and objections, the proposal made in the Kefauver hearings will not be put into effect. As far as we know, the new Bill for patents law in USA does not envisage a reduction in the period.

SHRI C. C. DESAI: The Indian Bill does not seek to abolish patents. It merely seeks to reduce the duration, and to reduce royalty in the event of licensing and it has one or two other features which may be

called weakening but not abolishing patents. It is the general tendency all over the world in view of the concept of social justice to go a little slow on property rights, particularly of the industrial community. In this Bill, property rights have not been removed; they have been only slightly modified. Why should the pharmaceutical industry in the rest of the world feel this amounts to denial of industrial property or it would create an atmosphere which would frighten foreign capital coming into India?

DR. HANS HARMS: The main objection is that in the case of compulsory licensing where no adequate compensation is paid, as foreseen under the law, it would result in strong curtailment of interests.

MR. CHAIRMAN: What about the period?

DR. HANS HARMS: The period should under no circumstances be reduced, because a new patent takes some time before it can become a product on the market. Compulsory licensing with a compensation fixed by law is completely unusual and tends to frighten foreign investors.

SHRI C. C. DESAI: If compensation is payable and it is made justiciable you would not see any serious flaw in the Bill?

DR. HANS HARMS: 4 per cent on the bulk price provided by law cannot be regarded as adequate, when it is further considered that half of this 4 per cent goes away in taxes and a negligible amount remains. Recently I have had the opportunity to see the reaction of an Indian patentholder from whom my firm here in India wished to receive a licence. When we came to speak about compensation for the licence we brought to his notice the 4 per cent provided by the Bill. The result was profound disappointment, because he had worked for 8 years in developing his product.

SHRI C. C. DESAI: I do not know that particular case. People are at present accustomed to higher royalty. But when a lower royalty becomes the order of the day, he would not have raised any objection.

DR. HANS HARMS: I am quite positive that when the royalty is higher there is no reason for him to complain. I am convinced that according to these percentages envisaged in the Bill an Indian inventor will rather give his licence abroad for there can be no doubt that profit represents the engine of progress and adequate and sufficient payment of royalty is, without a doubt, the main incentive for promotion of Indian research.

SHRI C. C. DESAI: Dr. Hans Harms is the Chairman of a company which has a subsidiary in India. To the best of my knowledge that subsidiary is wanting to expand its business in this country notwithstanding the fact that ever since 1962 he has been aware of the provisions of our Patents Bill. Therefore, when he feels that this Bill might frighten foreign partners from investing in India, to me it looks more like a psychological or unimaginary fear than a practical one because in his own case he is wanting to expand business in India.

DR. HANS HARMS: It is true and indisputable that we are aware of the conditions in India and have interest in them. This is all the more so in view of the fact that India with a population exceeding 500 million people represents one of the largest economic fields in the whole world. It is to be hoped that the economic conditions in India in future will remain so that we can also come to India with our newest programmes. However, it must be very clearly pointed out that if the protection of our intellectual property is reduced our interest will also be correspondingly reduced.

We have continued to invest in India because we are of the opinion that these restrictive proposals envisaged in the Patents Bill will not become law as we do not believe that India will work against her own interests.

SHRI C. C. DESAI: This is precisely what I have been striving at, that the strength or weakness of the Patent Law is only an insignificant factor in the decision to invest in India and the main factor in deciding whether to invest in India or not is the totality of the market and the possible financial return on the investment.

DR. HANS HARMS: We are convinced that we shall like many other countries continue to invest in India and to operate business in India but, at the same time, whenever we feel, especially with regard to important inventions, that the protection provided by the Patent Law is inadequate we shall withhold them.

SHRI PITAMBER DAS: Would you agree that patent protection is necessary for promoting research and industrialisation?

DR. HANS HARMS: That is unequivocally clear.

SHRI PITAMBER DAS: What is the end in view for research and industrialisation?

DR. HANS HARMS: In my opinion, the great economic improvement of India and the expanding industrialisation which has been started can only be continued into the future when research is also carried out in the country.

Of course, it goes without saying that the purpose is to make available the commodities at reasonable prices in the Indian market, which can only be achieved if research is done in India itself in co-operation with foreign countries and patent-holders of foreign countries.

SHRI PITAMBER DAS: Do you agree that monopoly tends to raise prices whereas free competition tends to bring them down?

DR. HANS HARMS: It goes without saying that the existence of monopoly does not tend to lower the prices. But I should like to repeat, however, that a monopoly can exist only for a very short period of time. Especially in the field of pharmaceuticals, even the most complicated inventions cannot be kept as a monopoly for longer than two years. This is proved by facts, In relation to the consumer goods, the prices of pharmaceuticals have hardly risen. This is the case in my country and, as far as I know, in India also.

SHRI PITAMBER DAS: You have stated the period of the patent should be short in order to bring down the prices to a reasonable level.

MR. CHAIRMAN: He did not say that.

SHRI PITAMBER DAS: Monopoly of patent protection is necessary for research on the one hand and free competition is necessary to bring down the prices on the other. We have to strike a balance between the two. Is it not necessary to consider these things while determining what a reasonable period should be for a patent? Keeping in mind safeguarding the interests of the inventor and consumer both what should be the period of a patent?

DR. HANS HARMS: As far as the period of validity of a patent is concerned, it is my opinion that sufficient time must be granted to the inventor to utilize the product developed by him and get some reward. Of course, I understand that where special circumstances prevail the social needs have to be respected and the pharmaceutical products may have to be made available to vast masses. This supply, however, cannot be regulated through patent legislation. We have the experience of other countries of the world who were faced with similar problems. Progress has been achieved in the various countries through agreements made between the governments and producers in order to make the drugs available to the poorer classes of society at low prices. As far as the supply of medical products is concerned, it must also be kept in mind that the cost of hospitalisation plays a prominent role. If

tion with the cost of medicines, one will see that the cost of hospitalisation far exceeds that of the medicine. This shows that effective drugs must be made available to the public in order to save them the high costs of hospitalisation.

SHRI PITAMBER DAS: In that case, the duration for various patents would be more or less a matter of opinion. Can you suggest any scientific or rational basis for determining the period? What would be considered an adequate or reasonable period for a patent?

DR. HARMS: According to the examples and models set up by other countries the period of validity of a patent exceeds the period of ten years envisaged by the Patents Bill under discussion. I can only repeat that the scientific prerequisites for the developing and processing of a product in the world today are extremely high. Medical preparations are becoming more and more effective and more and more differentiated. The control and supervision on the part of authorities is becoming more and more stringent. Consequently, five years represent an average standard today for the processing of a patented substance before it can be offered to the medical profession. Furthermore huge expenses are involved today when compared to past figures and these figures rise. It must be understood from the economic point of view that these costs have to be recovered somehow. Consequently a patent must have a sufficiently long period of validity; otherwise, interest in research and therewith progress itself is extinguished. It is very difficult to determine the difference between an important product and a less important product. In every enterprice economically important products are not necessarily the same as scientifically important products; on the other hand, in a reversed of circumstances scientifically important products are not always of economic interest. In spite of this we operate the drugs because we bear a responsibility to the sick. We are not moved solely by economic considerations but are also deeply aware of the responsibility we bear towards the doctor and his patients.

SHRI PITAMBER DAS: The witness has used the words "sufficient period". I want to know what is the "sufficient period" and how to determine whether a particular period is a sufficient period in respect of a particular commodity?

DR. HARMS: According to my opinion, 20 years after the application for a patent is filed represents an aqeduate figure today and for the future as well.

SHRI PITAMBER DAS: So, it is more a matter of opinion than of a scientific or rational basis. Is that not what it comes to?

DR. HARMS: The experience and knowledge that has led to 20 years being fixed as the period of validity in your existing patents law is, in my opinion, sufficient evidence of the fact that this is correct.

SHRI HARI KRISHNA: In your statement you have stressed that by giving patent protection we will be encouraging research and will improve the industrial side of drugs and pharmaceuticals. We understand that in Italy there is no patent protection on drugs and medicines yet the drugs and medicines industry has developed and the prices are also low there. India is a vast country with 500 million people living in this country and it cannot afford expensive medicines. Will it not be correct for us then that we also do not give patent protection as in Italy?

DR. HARMS: I would not recommend you to follow the example of Italy for the following reasons. First of all, there exists a patent law in Italy and it is only through an accident that there is no patent legislation for the pharmaceutical industry. The fact that the Patents Bill has been envisaged in Italy and will come into force shows that in Italy they do consider protecting intellectual property. Secondly, the prices in Italy are not low. They are high. If I may

say, in all frankness, the prices in Italy are the highest in all Europe.

SHRI DAHYABHAI V. PATEL: You must be aware that in this country we spend a large amount on research in different fields under Government sponsorship. It is our experience that Indian industrial units either do not have adequate resources to spend sufficient amount to cary on research themselves or they are not interested in spending money on research. Do you think a good research effort can be made under Government sponsorship or in cooperation with several industrial units because that is what we lack very much in our country.

DR. HANS HARMS: I would like to express the following opinion on the subject. India stands on a threshold of its own research. It must be considered that America too once stood on the threshold of research and today America has reached a point where billions of dollars are received as licence fees. I have no doubt whatsoever that India also one day will be in a similar position. For this reason, research in India must be promoted with all possible means. This is also the case in very many other countries, unfortunately, not in my own country. The division of labour is to be considered here. I mean it in the sense that the sponsorship of the Government ought to restrict itself to basic research. Further, research ought to be left to the industries because it is only the industries that possess the necessary facilities and prerequisites for an applied research. The importance of such a division of labour is evidenced by the example of penicilin. A scientist employed by the Government discovered penicillin. For years, nothing could be made of the product. It was only through further and detailed research by industry that penicillin could be converted into an administered form. The sucess found its outward manifestation in the Noble Prize granted to Prof. Chain. The patent legislation in a country ought to promote inventors and, furthermore, an adequate patent legislation ought to also promote research.

SHRI DAHYABHAI V. PATEL: You will realise that we are in a dilemma. We have, being a poor country, not the means to spend a lot of money on research. How can we raise money for research unless we raise prices? If we raise prices, the people in India find it difficult to buy costly drugs. Is there any remedy for this dilemma that we find ourselves in India?

DR. HANS HARMS: It is not easy to answer this question. I should like to point out that India enjoys such a great esteem abroad that her research will be supported. I am confident that an Indian scientist will tackle this problem and the necessary help will certainly come from abroad if the confidence that intellectual property is sufficiently protected is established.

SHRI G. S. MISHRA: Do you think the interest of western manufacturers will be lost in the vast market of India having 600 million population if this Bill is accepted?

DR. HANS HARMS: No; I do not believe so. But I believe that it would be detrimental to the economy and to the people of the country if progress were to be curtailed through patent legislation. Today we must be aware of the fact that the world is becoming smaller and smaller. Despite its sovereignty, India counts in the family of peoples and nations. Therefore, it cannot be a matter of indifference to India what direction progress pursues in the world. As the greatest power in the mid-Asian sphere, India represents the most significant force. Therefore, in my modest opinion, India cannot be indifferent to the principles followed in other Asian countries also, especially in Japan. Therefore, I feel that India ought to consider the principles of patent legislation adopted in other countries and avow itself to those

principles which have led to progress in other countries.

SHRI G. S. MISHRA: If a patent holder does not formulate any drug in adequate quantities and starves the market or earns profit sometimes to the extent of 3,000 per cent exploiting the human miseries, what should the Government do?

DR. HANS HARMS: It is often stated that pharmaceutical manufacturers earn a profit of 1,000 per cent. This, first and foremost, was the subject of discussion at the former hearings in the United States. It was not difficult to prove that such a high percentage or such a high margin of profit was not documented by fact. It is a fact that the costs of research amount to 15 per cent of the turnover of many important pharmaceutical concerns. The second allegation with respect to the pharmaceutical industry is expensive advertising and propaganda. A figure of 25 per cent or more is stated in this connection. This is misleading. These propaganda costs include the costs entailed in affording the necessary information to the medical profession. This information can only be given through highly qualified, university-trained, experts. For the reasons that I have already stated, namely, that drugs are becoming more and more complicated, this service, namely, information to the medical profession by trained experts cannot be dispensed with. Once these costs are deducted, the percentage that remains for actual advertising and propaganda is a very reasonable one. I have earlier pointed out that five years, as a period of development for a patentable product, is the standard. I would like to estimate the costs that arise in connection with this development at about five million German Marks. If now the costs are added for the research that led to the development of this active drug....

SHRI G. S. MISHRA: If a patentholder does not formulate the drug in adequate quantity, what should the Government do?

DR. HANS HARMS: Of course this is a criterion and the interests of the public welfare demands an amendment.

For this reason the German patent law also lays down conditions that regulate the granting of compulsory licence the compensation for which is determined.

SHRI G. S. MISHRA: If a patented medicine is imported by the Government and without earning any profit, they are used for the benefit of the people, for defence purposes or for research work, have you got any objection?

DR. HANS HARMS: In such cases the Government is entitled to adopt a special measure, but, in our opinion, this does not exempt the Government from paying adequate compensation.

SHRI G. S. MISHRA: What is the harm if compensation is paid in the form of royalties. You mean to say that royalty should be paid according to the purpose for which it is put to.

DR. HANS HARMS: That is my opinion.

SHRI G. S. MISHRA: If we adopt this Bill with minor modifications, have you got any objection?

DR. HANS HARMS: I think that would be all right.

SHRI R. C. VYAS: Why should a person who has invented a new product deny its use to the community at large? Why should he not be prepared to give it to public undertakings so that they can exploit it for the benefit of the masses?

DR. HANS HARMS: The patentholder himself interested in his product being utilised as far as possible. If special circumstances prevail and it is in the interests of public welfare or the needs of public welfare demand an exploitation of the product which

is not within the power of the patent-holder to fulfil, this is the case where I think that a modification is possible and ought to be implemented. It is always a Government undertaking that is involved here. But what is important is a clear definition of the term 'Government undertaking'. Otherwise, it runs the danger of compulsory licensing being subject to abuses.

SHRI R. C. VYAS: It is agreed that as a developing country we shall need to import technology and know-how for some years to come. So we want to be able to do this and adopt the technology to our own requirements like Japan. How will this position be affected if we introduce a patent law as embodied in the present Bill?

DR. HANS HARMS: In my opinion patent and technical know-how go hand in hand and are inseparable. This is specially the case in the field of pharmaceuticals. If a patent is violated, the patent-holder can bring his case before the Court if his intellectual property has been violated. Technical know-how, however, represents the subject of an agreement where the question of intellectual property does not arise.

Secondly, technical know-how can only be utilised with an industrial product without patent protection. The hon. Member has cited the example of Japan. I should like to point out that as early as 1885 Japan can trace the beginnings of a patent legislation back to 1885 and that in 1899 Japan became a member of the Paris convention.

SHRI NAMBIAR: I do not want to repeat the questions, because you are good enough to give us very good explanations. India gives at present a strong patent protection, both prior to and after Independence. That is fairly a long period. But it has not brought as the necessary industrial growth, particularly, in the pharmaceutical branch and the inflow of the know-how is not as much as we want it to be. It has to enable us to secure cheaper medicines and so, is it not proper on our part to think about the alternative? I mean, a rather little slacking of the rigours of the patent system, so that we can get better benefits?

DR. HANS HARMS: May I point out to the hon. Member that in my opinion the pharmaceutical manufacturing industry has made admirable and impressive progress. The fact that prices are not favourable has very different reasons. One of the main reasons is that the basic substances in the drugs produced in India are still very expensive. This is certainly not the result of a patent legislation. The reason rather lies in the following: The pharmaceutical industry can only produce cheaper products if it can count upon the support of a basic chemical industry. But this basic chemical industry requires a long time before it can be built up and, as far as I am informed, great progress is being made in this direction. Also in other countries it has been shown that once a chemical basic industry has been established, the price of pharmaceutical products also drops. A clear indication of this is provided in the fact that in many basic production materials the world prices are very low, lower than in India. There can be no doubt that time will bring about a change. To sum up, the pharmaceutical industry requires widely branched and efficient chemical industry. Furthermore I repeat what I said earlier, and this is a point that should not be ignored or overlooked. The prices of pharmaceuticals in relation to the prices of normal consumer goods are still low. They do not rise corresponding to the prices of normal consumer goods.

SHRI NAMBIAR: Prices of pharmaceuticals fall very much when the patent protection expires. This is our experience. If we reduce the period of patent protection from 18 years to

10 years, then what we feel is, during the later portion of 6 years the benefit will go to the masses. By the time the patentee also gets his reward for the cost he has invested etc. We are thinking of a *via-media*. The middle path or so. The benefit goes to the inventor and the industry as well as to the people of this country and also to the consumer. The masses are very much in need of such drugs.

DR. HANS HARMS: In my opinion and in view of the statement that I have made earlier the research costs of developing a new product are so high that a period of validity of 10 years, for a patent does not suffice to recover these expenses. Besides, I should like to point out again, as I have done several times this morning, that it is not a monopoly that brings down the prices, but competition. I can only repeat on the strength of my experience in other countries that when the question arises of supplying drugs to the community at large and to the public at reasonable prices, the industry for its part is always ready and willing to negotiate with the Government on this question because it is the concern of the Government to see that the supply is available at reasonable prices.

SHRI PARTHASARATHY: I would like to be enlightened on one point. From your knowledge of the patent law in your own country, could you tell us whether there is any provision in your law under which Government can take over the patent for public interest, similar to the one contained in Cl. 48 of our Bill?

DR. HANS HARMS: Yes, such a measure is provided in our patent law on the condition that adequate compensation is paid and this compensation is fixed by the court of law.

SHRI PARTHASARATHY: Are there clauses which can compel the patentee to impart his know-how?

DR. HANS HARMS: No. I must stress this very clearly that there is no distinction made between patent and know-how. No. I must reply to your question in a firm negative.

SHRI PARTHASARATHY: What is your advice to an undeveloped country like India—whether we should patent the process and products simultaneously or separate them?

DR. HANS HARMS: This question cannot be easily answered. Of course, an efficient and effective patent legislator ought to aim at the granting of patents for protection of products. This is clearly evidenced by the development of other countries and also my own country where since the last year product is protected. Nevertheless, the natural course of a patent law generally begins with process patent. This above all can be explained through experience from the past which shows us that the production of complicated materials was difficult. Today with the perfection of the chemical processing industry, it is no more difficult to produce highly complicated products. The applied for patent for process therefore embraces a wide field because otherwise adequate patent protection would not be possible. Many difficulties are connected with this which in the case of a product patent cease to exist. Therefore, it also ought to be the aim of the Patent Office to take product patent into consideration because administrative work involved in much less.

SHRI PARTHASARATHY: My last question is this: We are a developing nation. What is the period you envisage for us to go on continuously import technology and investment?

DR. HANS HARMS: This question is of such an enormous nature that we could talk days on it. It is my opinion that economic progress in the world at large can only be achieved with cooperation with other countries. The world today is becoming smaller and smaller and interdependence between people and the nations of the world is more prominent today than ever.

The successful operation of an industrial concern to-day depends on team work. The successful running of an economy in the world to-day is also dependent on team work. Thus, I believe that India one day will have just as much to give the world as it receives to-day from the outside world.

SHRI PARTHASARATHY: Are there many amending clauses entitled to achieve the objective in our present Bill?

Are we putting in any inhibition in our Bill?

MR. CHAIRMAN: The hon. Member wants to know what are the clauses which offend the basic objective in the Bill.

DR. HANS HARMS: There are two points here—one is licence of right and the other is compulsory acquisition without compensation. If a compensation is granted, certainly, the Government must have the power to enforce application for a patent if public interest demands. But, there should be no discrimination towards either fields permitted by Patent Laws for which adequate compensation is given. This should always be subject to the court's decision if there is no other possibility to negotiate.

MR. CHAIRMAN: So, your objection is to Sec. 93(3), 95(3) and also to Section 84.

DR. HANS HARMS: My objection is to Section 84.

MR. CHAIRMAN: What I mean to say is that 95(3) and 93(3) are consequential provisions if the asic sections are altered.

DR. HANS HARMS: Yes, this is a consequential provision.

SHRI RAGHUNATHA REDDY: What is your view about selling the drugs in generic namely the inventor until the patent period expires?

DR. HANS HARMS: Generic names will never replace practically the original product on the pharmaceutical field until this original product guarantees you the same specification and the same reliability with no change in quality. This is of the utmost importance for medical profession. For the patients the generic names will open the door for danger with substances which are not clear enough or adequate enough to save the therapheutic purpose. Any original product with special name is clearly defined to the manufacturer. But if a product is sold under a generic name, no such qualities could at any rate be guaranteed.

SHRI RAGHUNATHA REDDY: I may invite your attention without further discussion on the subject. When a Task Force was appointed by the Government of United States, it had gone into the question and they seemed to have reviewed that the sale of drugs or marketing of drugs by a generic name by the inventor until the patent period expires seems to be more desirable.

DR. HANS HARMS: We have a special experience in that line. In Columbia—the State of Columbia—an American company by name Mckenzie and Robbin tried that by revising the presentation of pharmaceutical products to a very poor minimum in order to save money and to arrive at a cheap price of a widely used product. They were convinced to participate in the market to about 40 per cent. Naturally, information to the doctors could not be given. The ultimate result was that this could make them to participate upto 7 per cent. in the market and all our endeavours to enlarge this experiment of handling a product under a generic name and under poor presentation have, I dare say, completely failed. The intentions to do so are widely proved and experience shows that the fact in the ordinary market such products would not find adequate place. It is not a proper measure for furnishing reliable drugs at a low price for the health of the masses. I repeat that this can only be done, according to my view, in collaboration with industries which are adequately developed and in adopting special measures which have nothing to do with the ordinary market.

SHRI RAGHUNATHA REDDY: On page 12 of your memorandum you have observed . . .

DR. HANS HARMS: That is not my memorandum. I am speaking on behalf of the Federation of the German Industry as a whole; I am not the speaker from Pharmaceutical industry.

SHRI RAGHUNATHA REDDY: If there exists a situation in any country where a number of patents are taken but only very few patents are actually produced and others are left out though the production of such products are necessary in the interest of public, what would be the remedy you would like to suggest?

DR. HANS HARMS: As a matter of fact, about 80 per cent of the patents applied for are not coming in use. In my preliminary remarks I have pointed out these facts. The reason is that we are living at a time when terrific developments are taking place. A patent is asked for in a very early stage when an invention is in progress, because the patent-holder tries to secure the field of his scientific activity as broad as possible. When he is finished with his product, it happens that he meets with a deplorable experience. We met that experience in our own company in regard to the very famous stuff, D.D.T. It was also discovered and patently protected by Geigy in Switzerland. Unfortunately, the application was filed a fortnight later by us. Now the Swiss Company enjoys the patent protection. At the rate in which pharmaceutical inventions are taking place, the degree of obsolescence is great. Quite often the patentee finds out that there have been parallel or better inventions and he comes to know of them when the patent application is published. This is a fact of our days and in our country also we face the same problem.

SHRI RAGHUNATHA REDDY: What course would you suggest for a country which finds that a particular product to which patent has been taken is not exploited?

DR. HANS HARMS: After four years the patentees can be forced to get the compulsory licence under the condition that he is compensated by adequate royalty—this is also provided for in the Paris Convention. The quantus of compensation can also be decided between the partners after negotiations.

MR. CHAIRMAN: We thank you very much for having come all the way to appear before our Committee and to give your valuable evidence. We are grateful to you.

DR. HANS HARMS: I hope you will take into consideration while considering your legislation the comments we have made. I thank you.

(The witness then withdrew)

(The Committee then adjourned)

II. *Association of Pharmaceutical Manufacturers of Federal Republic of Germany, Frankfurt.*

Spokesmen:

Mr. Curt Engelhorn.

Dr. Scoll—Adviser.

(The witness was called in and he took his seat).

MR. CHAIRMAN: Last time also you appeared before the then Joint Committee and you know that the evidence you will be tendering is liable to be made public.

You can now give a resume of what you want to say and then questions will be put to you.

MR. CURT ENGELHORN: Mr. Chairman, and hon. Members of the Joint Committee, first of all, let me thank you for the opportunity given to me to present our views on the Indian legislation to this Committee. Secondly, I would like to introduce myself to the Committee. My name is Court Engelhorn. I am President of the Bundesverband Der Pharmazeutischen Industries, that is, the German Pharmaceutical Manufacturers' Association. This is an honorary position; and I am also President and General Manager of the Board of Boehringer Mannheim GmbH, an important company in the drug and

chemical field, active in India through the Boehringer organisation in Bombay. I have brought with me Dr. Scholl, the Secretary and General Manager of the Bundesverband Derpharmazeutischen Industries, whom you already met this morning. As he is a specialist in German patent law, he would be in a better position to answer detailed legal questions than I would.

Our association comprises about 660 members and account for 95 per cent of the Pharmaceutical product in the Federal Republic of Germany. Our Associaion is highly respected and accepted organ to the German Government as well as the Common Market Governments for our industry.

The changing of the patent law according to the Bill before you is an important, difficult and intricate matter. This has been recognised by your Parliament by setting up Joint Select Committees to hear all aspects The road to responsible decision is paved.

I had the opportunity to testify before the last Joint Select Committee. Why are we so interested to come all the way over here? India with its amazing cultural achievements has been an attraction to us from the time of Alexander the Great. The meaning of the bonds and close relationship between our cultures has been studied and revealed by a German, Max Muller and the importance of Sanskrit as an Indo-European or as we say Indo-Germanic language and cultural bond is appreciated by all educated Germans.

Even until the present time, there are parallels in our history that should promote mutual understanding. To be personal, at the university, one of your countrymen became one of my closest friends. For all these reasons, I was very happy to see that as a company, we were able to start successful operation of a basic manufacturing plant in Bombay. This operation has considerably expanded.

My company in Germany is engaged in an ambitious research in the drug field and first efforts are being made in this direction in India. I will give one small example. Out of one of our drugs, our Bombay team made a very effective preparation which is now sold in Germany and elsewhere. This is not a patentable invention but it is a step on that long, tortuous road and just reason for pride on the part of our Bombay team.

All our researchers are members of the world-wide community of men working for improvement and the expansion of knowledge, just like many Indian scientists. Why was such fabulous progress possible in the last hundred years? Because of free flow of information. As in the case of money where the principle of interest payments is universally accepted or the case of copyrights where copying other people's mental work is considered outright theft and protected by laws, the patent serves the same purpose in science, but particularly in technology as a means to keep the free flow of information, which is so indispensable in to-day's world, protecting the intelllectual and industrial property of the inventor. Research and science are beyond nationalism and do not even know of iron or bamboo curtain. Protection of the fruits of research and development is, therefore, an international problem of the very first order. It is, therefore, not surprising that we had in 1885 the Paris Convention which was signed, laying down the important principles of protection of intellectual property. Many countries, including many socialist ones, like Russia, are partners in this. The United Nations concerned itself with it and worked out the BIRPI model law for undeveloped nations. Last but not the least, the Epropean Patent Convention was signed by large number of nations, including Italy

in order to coordinate the European patent law.

In view of this, it is most perturbing that your Bill, in its present form, is in absolute conflict with the accepted policy of all these international bodies. May I for a minute refer to the German experience in regard to patents and inventions? Germany, after the war, lost all its patents to the Allies as part of the reparations it had to pay. This is an interesting event worth being examined. The Allies did not get out of it what they expected. Relatively little use could be made of these patents because the contact with and the goodwill and aid of the inventor was lacking. He felt cheated and was completely uninterested.

Due to the war and its terrible destruction, Germany fell back in research about 10 years, which is a very long time today. The possibility to expropriate or compulsorily license in the public interest Allied patents after Germany had become a sovereign State once more, so to say as a retaliatory measure and to make German industry more competitive again, was abandoned quickly. Our tremendous recovery and reconstruction is due to a large part to our ability to raise interest in collaboration by paying royalties, forming joint ventures and inviting foreign firms to work in Germany. These foreign firms found it profitable to work with us and we found it profitable to work with them.

From my testimony before the previous Joint Select Committee in 1966, it can be taken that Germany extends only process patents to the pharmaceutical industry. I must point out that in agreement with the European patent convention, this has been changed and as of January 1, 1968, Germany is giving outright product protection for pharmaceutical inventions.

Mr. Chairman and hon. Members, this being the general background, let me turn to the situation in India as I see it. Without wanting to be presumptuous, I would like to put myself in your position and try not to argue from the German point of view. Patents pertain to inventions, i.e. new develoments beyond the stage of the present art.

For the benefit of the people and of national industry I would try to get hold of such new inventions as quickly and as fully as possible. Not being able to force the inventor—foreign or national—to part with his knowledge—at least not with the knowledge he did not publish in the patent and that is only the basic information, not being able to force him to part with his important experience and know-how, I would try to induce him to do so. This, to my mind, means first of all a sound legal basis for the protection of his interest as represented in a patent. Know-how cannot serve as such a basis because it cannot be clearly defined and if necesseary legally defended. Only the principle of an invention can serve as a basis.

Then I would induce him to work his invention here by offering him fair compensation for his research effort in the way of royalties. I would give him the choice of working it himself or of finding a partner to his liking. I would fully respect his rights to win his confidence and co-operation. In the case of his unwillingness or inability to work his invention—and I would give him four years, as provided for in the Paris Union Agreement, to establish that—I would exert pressure by the mechanism of compulsory licensing. As a matter of absolute principle and also because of the hope that this will still lead to the desired co-operation between inventor and licensee I would provide for adequate compensation. If negotiations about the amount fail, both parties should have resort to the courts of law.

To avoid impractical or even ridiculous situations counter-productive to my goal, I would require any prospective licensee to prove his technical and financial competence.

In case of national emergency, epidemics etc. I would give the Government power to make use of a patented invention in return for adequate compensation.

In all cases I would give the parties concerned in a possible conflict of interest the recourse to the ordinary courts of law.

I would not differentiate between different classes of inventions since no differentiation is possible in regard to research effort, inventive right etc., lest I create the impression that what seems practically opportune in regard to medicines or food today might tomorrow be considered equally opportune in regard to public utilities, transport or coal mining.

I would not put an arbitrary ceiling on royalties because the contribution and value of an invention cannot be foreseen and can only be judged from case to case. Any ceiling, unless extraordinarily high, would seem arbitrary and opposed to the concept of fairness and equal treatment.

I would not be afraid of high prices in a Patent Law since patents are only one of many factors affecting price, and a minor one in my opinion.

I would not be afraid of monopoly since it is limited in scope and time and may serve a very important or even essential purpose. I would highly value the direct contact with the inventor which would be completely lost if I do not safeguard his interests. I would highly value the chance for my scientists to cooperate closely in new developments with the best teams in the world. I would also highly value the chance for them to have their contributions on an equal footing with those of the rest of the world and the fact that they and my national industry can expect the same rewards worldwide as those of foreign countries.

May I thank you, Mr. Chairman, and hon. Members for listening to me. You have asked me about my opinion based upon my experience. I have tried and will try to give it to you in a straight and honest way though I realise that it is in some aspects differing widely from the provisions in the Bill under consideration.

MR. CHAIRMAN: Germany has invested in our chemical industry here in India. There are two parts. One is relating to patents and the other is non-patented drugs. Can you give us an idea as to what is the proportion of the profitability in patented drugs compared to non-patented drugs?

MR. CURT ENGELHORN: I am afraid I cannot answer you that question meaningfully because I would have to give you evidence and give you facts. I can give you, however, an opinion. That opinion is that it depends very much on the product, be it patented or non-patented.

MR. CHAIRMAN: What is the volume of business in regard to non-patented drugs and what is the volume of business in patented drugs?

MR. CURT ENGELHORN: I have no figures on that. As far as my company is concerned I would estimate that a good volume is on patented drugs. I think there are figures available from Indian sources whereby it is known that about 12 per cent of the drugs in wide use here in India are patented and about 88 percent are not patented.

MR. CHAIRMAN: What is the inducement for investment, is it the volume of business in non-patented drugs or is it the volume of business in patented drugs?

MR. CURT ENGELHORN: Both.

SHRI OM MEHTA: I must thank you because you are putting yourself in our position. What do you think about the ten-year period for patents and, if it is not sufficient what are your reasons?

MR. CURT ENGELHORN: 18 years is what we have provided. The general trend in the world is towards lengthening the period. The new patent laws in the north European countries and also in Africa provide for twenty years. The problem with shortening the life of patents is that the inventor is forced to try to get back his investment on research in a shorter period of time. He puts a premium on his invention and he can expect a premium on his invention only as long as the patent lasts. Therefore he must charge a higher price over a shorter period of time.

SHRI OM MEHTA: In your opinion, after filing the application for a patent, how much time it requires for a medicine to develop?

MR. CURT ENGELHORN: On this question very clear experience is available. Today it takes on an average five years to develop a patented product to a finished medicine.

SHRI OM MEHTA: Don't you think that the rest of the five years are more than sufficient to get a return for his efforts?

MR. CURT ENGELHORN: No, Sir. Once a drug is put on the market then the inventor, the company has to put in a lot of additional effort. What does this effort consist of? First of all, we have to realise that the drug will have to be put in the market five years after the original invention in the country where it was developed, so to put it on the market in other countries will take an additional period of time. Only after this stage of clinical trial has been completed can a drug manufacturer fulfil all the requirements for registration and so on. Such formalities frequently take quite a time. A year passes quickly. Therefore, at least one year you have to allow between the time he is able to introduce it in his own country and in a foreign country. Then, what is going to be his first step? He is interested in spreading his new product, making it as well known as possible, as quickly as possible. So, he has to make considerable investments in information and advertising. Therefore, the break-even point may be reached much later, say after ten years. Only after the break-even point can he make any real profit.

SHRI OM MEHTA: You should make a distinction between pharmaceuticals and other products. Pharmaceuticals are used to cure diseases and alleviate suffering of the people. Monopoly in such drugs tends to create higher prices for them.

MR. CURT ENGELHORN: I do not think so. I think that the problem of high prices can be taken care of or can be brought under control, by other means. The patent law is meant to protect the invention of a person who has made a valuable contribution.

SHRI OM MEHTA: We concede that he must get something.

MR. CURT ENGELHORN: Patent law is one thing and the question of higher prices is another problem.

SHRI OM MEHTA: Since this vicious circle has been created, how to break it?

MR. CURT ENGELHORN: I am informed that you are already using the instrument of the Tariff Commission to examine and control prices.

SHRI OM MEHTA: But when the manufacturer comes before the Tariff Commission and says this is my cost, it becomes very difficult for the Tariff Commission to lower down the prices,

because there is no competition and they cannot verify the cost of production.

MR. CURT ENGELHORN: The Tariff Commission is certainly in a position to distinguish the cost of production from the figures supplied by the manufacturer and then fix the price.

SHRI OM MEHTA: What do you think about the licence of rights which we have suggested in our Bill?

MR. CURT ENGELHORN: The licence of right concept is not common in the patent laws of other countries. It has some severe weaknesses. As I understand it, anybody applying for a licence of right for a drug can get it as soon as the invention is patented. First of all, this man should be able to prove his competency, financial and otherwise. This is not provided for in the Bill. Secondly, an inventor should have the opportunity to work the invention himself and only if he shows that he cannot do so in a satisfactory manner that would supply the market adequately, only then I think the government should step in and allow somebody else to work the same invention and compete with him on the very same product.

SHRI PARTHASARATHY: In India the number of foreign patents are more than the number of Indian patents. Since most of the patents are owned by foreigners, the profits earned out of these products go out of India instead of being utilized on research and expansion of the industry here. Why do you not help a country like India?

MR. CURT ENGELHORN: I will try to justify my point of view. First of all, you have to realise that you have a whole world and, therefore, whether it is India, or for that matter Germany, in order to have an equal number of patents, Indian and foreign, your contribution to the world of knowledge in science and technology would have to be 50 per cent. This is something no country can expect with the possible exception of the United States. No wonder therefore that in India and also in Germany the majority of patents are held by foreigners. I think Dr. Scholl knows the exact figure in Germany, what percentage is held by foreigners. I am told that in the pharmaceutical sector 60 per cent of the patents are held by foreigners. So, it should not be surprising if for a developing nation the relationship looks much different.

SHRI PARTHASARATHY: Since you are trying to identify yourself with our development works, why not you be good enough to plough back your profits in research and development in our country itself so that it will also progress and contribute a share towards the advancement of knowledge in the field of science and technology?

MR. ENGELHORN: I think, this is being done. As far as the foreign exchange side is concerned, again I would like to point out that in my opinion the patent law, being a principle, has nothing to do with the problem of foreign exchange. If for some reason or the other your Government finds that foreign exchange is not available, there are other ways of curbing that. I have read very interesting figures about the amount of royalties in relation to your total foreign trade volume. Royalties that were paid out to foreign countries in the medical and pharmaceutical field amounted to Rs. 12 lakhs, technical fees to Rs. 15 lakhs amounting altogether to Rs. 27 lakhs or .017 per cent of the total foreign exchange volume. I think, we should keep it in mind that we are talking about .017 per cent. Here the question is between a law that would be internationally considered equitable and a law that would appear slanted.

SHRI PARTHASARATHY: There is an impression here that strong patent laws are contributing greatly

to the enhanced prices of drugs and pharmaceuticals in India. Is it a fact or is it not a fact?

MR. ENGELHORN: I know that is being alleged but I have no way of disproving or proving this. All I am saying is that it need not be that way. I will give you a very simple example. Worldwide a royalty of 10 per cent on the price of the final product leaving the factory in the form of tablets, ampoules etc., is considered an adequate royalty for an important invention. This 10 per cent would, therefore, increase the price of a product or drug by 10 per cent. When critics of high prices of pharmaceuticals talk about these prices, I do not think they talk about 10 per cent.

SHRI PARTHASARATHY: We have got a lot of public sector projects in the drugs and pharmaceuticals sector also. Do you think that the present Bill will help us in giving protection to these public sector projects of ours?

MR. ENGELHORN: I doubt it very much because our own experience has shown that a set of prerequisites has to be fulfilled in order to transfer know-how from one country to another. I talked to one of your Government officials yesterday and he said completely different things. I said, "Why do you not come to Germany and visit us?" He said that he would like to if it could be arranged. We fully agreed that it would be a great advantage, it is always a great advantage, if you know the person you are writing to. There I am writing to people in the German Government but I do not know them; I have not seen their faces; I do not know how they think. This is much more important in the case of transfer of technical know-how. In our case we were very lucky. India is one of our prime examples. We got hold of an Indian student of chemistry in Germany and trained him for two years in our company. He has done a remarkable job. If we send a German chemist or technician to India, he will be able to train and show to your people what to do. Conditions in India are not the conditions in Germany. That is very important. The machines and the material you have to work with are different. Problems arise which have to be solved jointly. How is anyone going to do that if all he has is a paper before him which he could only work in the laboratory?

SHRI PARTHASARATHY: All the witnesses that have appeared before the Joint Committee have taken particular exception or objection to clauses 48, 53, 66, 87 and 88. We are very ambitious to develop our own industry and economy but, at the same time, we want to have a friendly reciprocity with you. For achieving that, without hurting your interest and also fulfilling our aspiration, what are your suggestions as to how these clauses should be modified so that we do not have a weak patent system, as you call it, to provide protection to our industry?

MR. ENGELHORN: My suggestion would be to go over clause by clause.

SHRI PARTHASARATHY: Have you a clause similar to our clause 48 for taking over a patent for the express purpose of public interest?

MR. ENGELHORN: We have a provision in the German law for compulsory licence.

SHRI PARTHASARATHY: Does your patent law permit a patent to be taken over by the Government in the interest of the public?

MR. ENGELHORN: Yes, but the interest of the public is very narrowly defined.

Dr. Scholl has just now informed me very rightly that the most important differences are that our law

provides for compensation for the inventor and for decisions by the courts in cases of conflict of interest.

SHRI PARTHASARATHY: In what way?

MR. ENGELHORN: The Government will have to enter into negotiations with the inventor and if they cannot come to terms, they have to go to court. Here is the exact wording:—

> "The effect of the patent shall not operate in so far as the Federal Government may direct that the invention shall be used in the public interest.... The Federal Administrative Tribunal..... shall have jurisdiction in any action in which the validity of a direction issued under sub-section 1 by the Federal Government or by the competent supreme Federal Authority is being contested. In the cases referred to in subsection 1 the patentee shall be entitled to claim reasonable compensation from the Federal Republic."

SHRI OM MEHTA: Is there a patent law in G.D.R., I mean East Germany? What is the position there.

MR. CURT ENGELHORN: There is a patent law. The patent laws in both the parts of Germany are very much alike. In course of time, only small changes have been made which I am not aware of. But, fundamentally, the patent laws are the same.

SHRI B. D. DESHMUKH: As per your patent law, can you compel a patentee to part with his know-how?

MR. CURT ENGELHORN: Absolutely not. I do not think you can compel even a national inventor, what to say of a foreign inventor. You have got to get his cooperation. Voluntary cooperation is so important. A strong patent protection will put a foreign scientist in a position to cooperate in the development of new drugs, in new developments, the world over which will not happen if he has a feeling that whatever goes to India is lost, is not protected any more.

SHRI B. D. DESHMUKH: Is there a similar provision in your law as we have provided in clause 5 of our Bill?

MR. CURT ENGELHORN: You provide in this Bill for process protection which is not worse in many other laws. In Germany, we have adopted the product patent concept for pharmaceuticals. Why? You patent a product by patenting the process by which to make the product. That means you have to block several roads that lead to that same goal. By a simple, straight-forward, product patent, you recognise the fact that it is the product, not the process, which is important here and the complicated process protection falls down. We think that a product patent is more modern, more economical and also for the patent office much more easy to handle.

SHRI RAMESH CHANDRA VYAS: What in your opinion are the factors which have contributed to the great industrial development in West Germany since the last World War?

MR. CURT ENGELHORN: There are, of course, quite a number of factors that have contributed to that. I feel that it was really wise for Germany to maintain a strong patent protection. It forms the basis of trust and confidence for foreign companies to work together with German companies. They did not have the feeling that inventions and know-how that were imparted to German counter-parts would be taken away from there or may be even used against them. The patent protection played an important role.

SHRI RAMESH CHANDRA VYAS: How do you think the provisions of the Bill will affect foreign investment and the import of know-how?

MR. CURT ENGELHORN: I think, it will have a very adverse effect and,

I think, the foreign manufacturers will not be interested in marketing new drugs in India at an early stage. India will be, more or less, at the bottom of the list. The basic confidence in respect to property will be shaken and the contact between the Indian manufacturers and scientists and the foreign manufacturers and scientists will be very much loosened or weakened. I think, this will have a great adverse effect. I am sure it would be very much difficult to attain our goals without patent protection.

SHRI RAMESH CHANDRA VYAS: Is there a provisioin in the German patent law on the lines similar to clause 48 of the Bill?

MR. CURT ENGELHORN: Yes.

SHRI RAMESH CHANDRA VYAS: Under what circumstances can a patent be used for public purpose under the German law?

MR. CURT ENGELHORN: If the applicant for the patent refuses to work the invention or let it be used by another person—he has to pay reasonable remuneration and give security—that other person can be authorised to use the invention. The concept of compulsory licence provided the authorisation is in the public interest. The grant of compulsory licence shall be permissible only after the patent has been granted. The compulsory licence may be granted subject to restrictions and conditions. This clause is very restrictively interpreted by the Court. Public interest has to be proved very clearly.

In our field of drugs and medicines, this case has not occured after the Second World War.

SHRI R. C. VYAS: Does the German patent law make a distinction between different classes of inventions?

MR. CURT ENGELHORN: Absolutely no.

SHRI R. C. VYAS: What are the circumstances under which compulsory licence is granted in Germany?

MR. CURT ENGELHORN: The condition is that it should be in the public interest. If you are referring to financial conditions, then that is left open to negotiation between the patentee and the licensee. They can come to terms or they go to the court and the court fixes the royalty.

SHRI R. C. VYAS: Is there the concept of licence of right under the German patent law, similar to clause 38 and 37 of the Bill.

MR. CURT ENGELHORN: No.

SHRI R. C. VYAS: What is the reason for this situation that a number of patents are applied for and granted, but only a few work.

MR. CURT ENGELHORN: First of all we have to recognise that there are many inventions and ideas which are important at the time they are conceived but they turn out to be not important from the commercial point of view. Nobody is really interested in them.

Secondly, the processes are protected in order to protect the product. By this process patent, the patentee has the possibility of protecting many different processes in order to protect his product. He will work only one of course, and the rest will not be worked. These processes can be used however by any one for any other purpose.

SHRI R. C. VYAS: Foreigners take out a number of patents for products and they use only one and block the others. That is why we have not been able to develop our drug industry properly. What have you got to say on this?

MR. CURT ENGELHORN: A similar answer as I have given already. In this process concept the patentholder will always use the most economical process, the one which is most advantageous for him and the rest will not be used but the other processes do not block any-one. They block other competitors only from making this one product. Since the idea is to protect this product, this is only fair.

SHRI R. C. VYAS: Patents cause high prices. The prices of non-patented medicines are lower than the patented medicines. Is this not a fact?

MR. CART ENGELHORN: No, I do not think it is a fact.

SHRI R. C. VYAS: If we weaken the patent law and allow wide use of compulsory licences and licence of right, production will increase and prices will fall. What is your view?

MR. CART ENGELHORN: I do not think so.

SHRI NAMBIAR: I would like to put one basic question. I want to know that in the development that we find in the world to-day, a stage is reached that rather than resting on the laurels of the past, it is better that we enter into a public competition which will bring down the prices. For instance, in the field of technology, space technology, computer technology, etc., we are opening a new field and give a new life to the whole concept of resources available in the world. When all these can be done by way of competition, nobody can say that the period has not yet come for us to think in terms of such a free competition even in the field of pharmaceutical industry which is so vital to the people rather than thinking in the old conception of living on the past that you created.

MR. CART ENGELHORN: I do not think it works that way. Direct research as has been pointed out frequently, is very expensive and very difficult. The past has shown that the greatest results have been achieved by the type of private industry research that has been carried on in very many countries. Prof. Chain winner of the Nobel Prize pointed out in connection with penicillin the tremendous contribution of industry to this development. It is a matter of fact that he openly and privately expressed his point of view that not much could be expected through a centralised Government-directed research. We think that conditions for creating new products are better in the competitive atmosphere of private industry than in the Government.

SHRI NAMBIAR: With all the know-how and technical development that we have in this country, we could not yet develop a medicine or a drug which will stop the spreading of cancer or cure it. Do you mean to say that it is because certain individual entrepreneurs come forward for spending a lot of money or Government is not coming forth.

MR. CART ENGELHORN: Cancer happens to be the most difficult problem.

SHRI NAMBIAR: Why do you think that the private entrepreneurs can do better than the State which commands so much resources?

MR. CART ENGELHORN: The mentality of Government research personnel differs frequently very much from that of a research worker in industry. The work and effort of the scientist in private industry is directed at applied research. His goal is to achieve and work out a new product in the shortest possible time. He works under that concept. This you cannot transfer generally to the Government employed scientist.

SHRI NAMBIAR: That is for the commercial utilisation. Once it has been found out by research, then commercial utilisation or marketing can be done by private or public.

MR. CART ENGELHORN: We have in our company chemists which synthesise approximately 500 to 600 new compounds every year and they also learn about additional other ones. Those are not from our own laboratories. It is the screening, it is taking the right one, finding out the right one of these compounds, and then taking it through this long process of pharmacology, clinical pharmacology, clinical trial and all that is important finally to arrive at a marketable product.

SHRI NAMBIAR: There was an inquiry in Ford Mootor Company and one of the Directors said that patent protection is not necessary for bringing in new inventions. Mr. Edsel Ford, of the world famous Ford Motor Company was asked in 1939 in hearing before the US Temporary National Economic Committee whether inventions would continue if there were no patents. Mr. Ford replied without a moment's hesitation 'I feel quite definitely, it will be carried on'. Eugene Schinder, managing partner of Crenzot Huge French Arms Industry once rot? "I am quite sure of the opinion that there would be very litt'e difference in respect of rapid progress if patents were abolished. With an unrestricted system the progress might commence a little later but the progress would proceed all the faster. The inventing spirit follows his ideas not for gain but driven by an inner compulsion which will not let him rest." It does not mean that this omnibus and God-sent patent casket is necessary for invention to grow. I think it is enough we have worked on it so long even before independence and after. We feel, a little changeover is necessary. We find out a via media of restricting it upto 10 years. I want it to reduce still further.

MR. CART ENGELHORN: The reduction is too large. You must keep within the limits that are practised worldwide. It would be 15; it is generally more, in the direction of 20 years .

SHRI MADDI SUDARSANAM: What are the pa ticular clauses of the Bill that hampers the foreign capital in India and also know-how to come to India?

MR. CART ENGELHORN: We have said in the memorandum. It is particularly there—80, 87, 53, 93 and 95.

SHRI MADDI SUDARSANAM: Federal Republic of Germany has had phenomenal growth in pharmaceutical industry—was the patent law responsible for this phenomenal growth, for this wonderful growth?

MR. CART ENGELHORN: There is absolutely no doubt. Without that the German industry could not have built up research capacity so much.

SHRI G. S. MISHRA: May I know what percentage of the trade in respect of patented preparations you got from India? You have lot of trade all over the world. What percentage of trade you got from India?

MR. CART ENGELHORN: I don't know.

SHRI G. S. MISHRA: What is the percentage of investment for research which you have invested in India out of your income? Have you got any laboratory for Research here? What is the amount spent over that?

MR. CART ENGELHORN: In view of the size of our operations here in India we have not built up any research in that sense. We are doing development. The amount of money that we spend on development, I can tell you right now.

SHRI G. S. MISHRA: Development, advertising, and all these things.

MR. CART ENGELHORN: Development including finding new application. This development means testing different form of drugs in the tropical conditions and other conditions etc.

SHRI G. S. MISHRA: Do you do it in other countries?

MR. CART ENGELHORN: Yes.

MR. CHAIRMAN: Do you have research arrangement in other countries? Do you have research arrangement in India?

MR. CART ENGELHORN: Yes. We have got the Development laboratory. I do not call it research laboratory. We call it deve'opmental laboratory.

SHRI G. S. MISHRA: How do you say that any development of techno-

logy depends upon assured and-monopolistic returns? Patent means assured return on monopolistic return. Great eminent scientists like Prof. Eienstein, Curie, Edison, etc., have not patented their achievements? They have never done it.

SHRI ENGELHORN: Edison has certainly done it. We have got to make a difference between basic research and applied research. It would be senseless to patent results of basic research such as nuclear physics and so on. There is no market for it.

SHRI G. S. MISHRA: Don't you think that the more we become technical-minded, the more we go nearer to technical achievements? Don't you see this in the case of developed nations? They achieve more in technology. Do you think that Italy which has no patent law in the field of pharmaceuticals is backward today? Peru has a very strict patent law. Do you think it is very much advanced?

SHRI ENGELHORN: I do not think you can compare Italy with Peru because nobody maintains that patent law by itself will enable a country to develop. However, in the case of Italy you have a highly developed industry in that country with a relatively low standard in pharmaceuticals, in the research and invention fields.

SHRI G. S. MISHRA: Do you think it is proper for the Government to take over any patent or import any patented article for defence purposes or in an emergency or for research purposes?

SHRI ENGELHORN: According to our patent laws, you are perfectly able to use patented materials or patented processes for research purposes. Nobody can interfere with that. In the case of national laboratories, I think all patented laws have the possibility for the Government to take over. I think it is proper and it is correct also if adequate compensation is provided.

SHRI G. S. MISHRA: Is it not proper to pay compensation in deferred payments or in the form of royalty?

SHRI ENGELHORN: Compensation in the form of royalty is fine.

SHRI G. S. MISHRA: What do you think about the ceiling of 4 per cent?

SHRI ENGELHORN: I disagree with any ceiling on royalty. I tried to point out in my introductory remarks that 4 per cent stipulated in the Bill is nothing and I have mentioned that to your Minister for Industrial Development when he visited us.

SHRI G. S. MISHRA: As the time of war, allied nations must have had some patented drugs. Did you pay compensation?

SHRI ENGELHORN: During the war, when Germany was isolated, in the case of German companies working according to American patents, royalties were set aside and had to be paid after the war was over. In the reverse, some allied companies were working to German patents. But they did not pay as they took away the patent right as war reparation.

SHRI G. S. MISHRA: By copying down allied patents in Germany, did you gain in your post-war development of technology?

MR. CHAIRMAN: Were your industries benefited by this expropriation?

SHRI ENGELHORN: The allies expropriated. They did not benefit quickly by this expropriation. German industry was interested in cooperation then with English, American, French and Japanese companies and we greatly benefited by that.

MR. CHAIRMAN: Is it that you copied during the war and subsequently paid royalty?

SHRI ENGELHORN: No.

SHRI G. S. MISHRA: Did you gain much by this takeover?

SHRI NAMBIAR: The allies copied from them. They had nothing to copy from the allies.

SHRI C. C. DESAI: The main objective of a good or strong patent law is to reward or compensate the inventor and thus to encourage technological development in the country. That is done to some extent or to a large extent at the cost of consumer because the cost of maintenance of patent must be borne by somebody and in this case it is borne by the consumer. But there is a feeling that the main benefit of patent law does not go to the inventor, but to the industry which uses the invention. There is a research laboratory where scientists are working. They evolve something and get the new process that is patented. But the exploitation of the patent is done by the industry which may be termed as a middleman. The inventor does not get the benefit. The industry which is the middleman or the employer of the inventor gets the benefit.

MR. CURT ENGELHORN: I think the days are over when the inventor could work in his own laboratory. What the industry does is to put at the disposal of the inventor the very expensive equipment enabling him to do his work. There is German law to protect the interests of the inventor. I also agree that when a patent is used by a German company or royalties are collected on this patent, then the inventor has to get his share on this income.

SHRI C. C. DESAI: Will it be in addition to the salary that he receives?

MR. CURT ENGELHORN: Naturally.

SHRI C. C. DESAI: Is it done by a law or by way of an arrangement?

MR. CURT ENGELHORN: By way of an arrangement based on law he must get it.

SHRI C. C. DESAI: What exactly does he get? Is the inventor compensated in addition to his salary for the benefit which the industry receives by way of working of the patents?

MR. CURT ENGELHORN: Of the total royalties collected, he may get a certain portion. On that part of his income he pays less income-tax than he does in his normal salary.

SHRI C. C. DESAI: There is a feeling in this country that for some of the drugs which we import and which are patented drugs, we have to pay a high price because of the patent protection there. Whatever we do here, we are not reducing the prices because the prices are based on the cost in this country. So, either you buy these medicines at this price or you don't. It depends upon you. So, the price in this country for an imported patent has nothing to do with the Patent Law of India. Am I right in this?

MR. CURT ENGELHORN: You are right.

SHRI C. C. DESAI: It depends upon you. The price of those drugs is determined by the operation of the patents in this country, over which we have no control. So, if you were to import, you buy them. There is no other way. We cannot control Patent Law in other countries.

SHRI NAMBIAR: Suppose an inventor or a manufacturer is treating my disease. That is because he knows that in India there are so many invalid patients.

SHRI C. C. DESAI: I think we must induce the diseases in this country.

SHRI NAMBIAR: You pay less price. That is what he says to treat the patients.

SHRI C. C. DESAI: We have been hearing the views of the industries. Whether in the U.K., Germany, Switzerland or anywhere is there any as-

sociation or any means of ascertaining the views of consumers in those countries on the working of patents or on the structure of the Patent Law? What does the consumer in Germany feel about it and what does the industry too feel about that? Can you tell us what the consumer feels or what the pharmaceutical industry feels about the structure of the patent law in your country?

MR. CURT ENGELHORN: As you pointed out, Prof. Kraft has appeared before this Committee. He is not employed by any industry but he is an independent University Professor.

SHRI C. C. DESAI: But he is a patent lawyer too. I am talking of Consumers' Association.

MR. CURT ENGELHORN: There is a Consumers' Association in Germany too but they never attack patent protection.

SHRI C. C. DESAI: You please answer my question.

MR. CHAIRMAN: He has already answered your question.

MR. CURT ENGELHORN: As I said, the German Consumers' Association has never attacked the patent. As a matter of fact they even agreed to the improvements made in the new Patent Act.

SHRI C. C. DESAI: When was the the Patent law amended?

MR. CURT ENGELHORN: The latest amendments became effective from 1st January last year.

SHRI C. C. DESAI: What was the improvement or amendment made?

MR. CURT ENGELHORN: The amendment was made in the changeover from a product by a process to a product itself.

SHRI DAHYABHAI V. PATEL: I think you have the knowledge about the working and the progress made by legislation for a few years. Do you realise that the cost of drugs in India are high particularly in view of the fact that the country is poor and the average income is poor? Have you made any analysis of cost of drugs in India? If so, how much portion is really what may be called royalty and how much of it is because of other factors? For instance there is a common factor of tax in this country which many of us feel is relatively so high. Have you tried to make an analysis of this particularly in these drugs that are needed for life saving—whether they are patented or not.

MR. CURT ENGELHORN: I think such an analysis has been made by the Indian sources. I am not aware of it. I can only talk about our industry in Bombay where the patents are absolutely a minor consideration. The problem that we face in Bombay is either non-availability or the high price of raw materials and equipment. That is responsible for the high prices of the drugs that we produce here.

SHRI DAHYABHAI V. PATEL: In what sense? Are you not allowed to import the ingredients?

MR. CURT ENGELHORN: There are certain basic chemicals which are necessary, for instance, the synthesis of which is not being performed in India. Even if they are manufactured it will be at a very high price. That is the great problem that your country faces. On the one hand there is the necessity of developing national industry. By doing so you have to bear a certain increase in cost but on the other hand if you say that we need cheap drugs or specialities, it is possible to just import them or do. Developing your industry means costing money to the consumers unfortunately.

SHRI ACHUTHA MENON: You have said that the change in the law in your country was brought about last year, that is, in 1968 and the main change that was brought about was by granting product protection in place of process protection.

Now, from the evidence on record here, it is clear that your country has developed the pharmaceutical industry very well during the last 20 years or so. I want to know why was your law changed recently, what was the

necessity for it, what exactly is the benefit that your country is going to derive from that.

MR. CURT ENGELHORN: One important reason is that this product by process protection concept involves the patenting of many different processes, which in turn leads to a lot of work for the patent office in examining and registering these different patents. On the side of the individual or company in order to attain satisfactory protection a lot of additional and unproductive work has to be done in order to protect the product. We have to realise that in pharmaceutical industry it is not the process but the product that is valuable. It is not the enthesis of the product, which may be comparatively easy, but it is the tremendous amount of work that is to be done with a chemical until it becomes a medicine.

SHRI ACHUTHA MENON: You take out a patent for a particular product and it has a certain chemical formula. From the social stand-point, from the stand-point of the community, what harm is there is allowing other people to develop other processes for patenting the same product? The community will stand to benefit if other people invent new processes for producing the same product. Why should you prevent it?

MR. CURT ENGELHORN: That is the attitude taken by a number of countries and a number of experts all the world over. That is a matter of conviction. It is to be pointed out that the product by process protection has worked very well in Germany in so far as that it gives real product protection to the companies in most cases. If a third party could devise a new and unpatented process to arrive at the same drug, then with in the rules of the game the patentee is confronted with the competitor. However, the concept of reversal of the burden of proof is important in that context because the alleged infringer has proved that he is not using the patented processes and not other way round, the owner of the patent has to prove that the infringer is infringing on his processes.

SHRI ACHUTHA MENON: I am concerned with the basic question, whether it is at all harmful from the community stand-point. Anyway, I will not pursue it further.

MR. CURT ENGELHORN: The achievement is the product, not the processes.

SHRI ACHUTHA MENON: If other people achieve some new processes and that results in low price for the community, that should be encouraged, rather than being prevented.

MR. CURT ENGELHORN: I can only repeat that your attitude is shared by other people. However in Germany it was felt that it is a question of weighing of positive and negative arguments. It was felt in Germany that the negative effects of the product by process concept are outweighing the positive aspects.

SHRI ACHUTHA MENON: You said that there was some sort of consumer organisation in your country, but they have never complained about the drug prices. Am I to take it that there is no question of high prices for drugs in Germany?

MR. CURT ENGELHORN: They did not complain about patents, but they complained about prices of drugs like they complain about the price of everything else.

SHRI ACHUTHA MENON: What are the devices or methods which you would like to suggest, by which the price control, if at all there is anything like that, of pharmaceuticals and drugs?

MR. CHAIRMAN: How do you effect the price control of drugs?

MR. CURT ENGELHORN: In Germany there is no price control. The German Government is very much opposed to price controls and they believe in free competition.

SHRI ACHUTHA MENON: You don't have this kind of enquiry as we have various Commissions and so on for fixing the prices of products.

MR. CURT ENGELHORN: Our Government is for free competition. If a company makes too much profit, we get the half of it in taxes etc. That helps us to finance a lot of other activities, among which come public health products. Our Government also gives away drugs at low prices for very special cases but paid for by tax money.

SHRI ACHUTHA MENON: You said that in Germany the inventor is also getting some remuneration out of the royalty paid to the patentee and by law it has been provided like that. Are you aware of any other country that this system is working, where the scientists also get some monetary benefits?

MR. CURT ENGELHORN: I am told that such laws are under consideration in certain other countries.

SHRI RAGHUNATHA REDDY: A memorandum has been submitted by Dr. Scholl. I would request your permission to put a question to him. When I put this question this morning I was told that I was addressing a wrong person about it. I feel that Dr. Scholl has imposed on himself an embargo not to answer questions this morning. On page 12 of your memorandum you have mentioned in the last para: There are a number of clauses relating to procedural matters which will, if enacted, not only create difficulties as to interpretation but will increase considerably the administrative burden both on the patent office and on the patentee. These are the elauses: 2(j), 2(1)(iv), 2(y), 3(d), 8, 10(6), 11(2), 12, 18, 64(1) (h), 68, 69 and 90(a)(ii). We would be grateful if you could give a note on this aspect as to how these clauses are likely to act as disincentives both in relation to the patentee and the patent office concerned.

MR. CHAIRMAN: Please give us a note.

SHRI RAGHUNATH REDDI: That may be helpful to consider, if necessary, improving the draft of the legislation.

DR. SCHOLL: I will forward it to you.

MR. CHAIRMAN: I will only ask one question. So far as the licence of right is concerned, we have provided that anybody can apply for it. Do you think that some measure of competence, or some yardstick, should be provided for this? What will be the yardstick of competence to hold the licence in a particular area by the applicant?

MR. ENGELHORN: The inventor would probably be able to tell you who would be competent for that.

MR. CHAIRMAN : Can you give a general idea?

MR. ENGELHORN: He should be technically in a position to manufacture the product. He should be financially in a position to make all the necessary arrangements to do so. It is a question of quality.

MR. CHAIRMAN: Should it be provided in the law?

MR. ENGELHORN: I wonder whether one should make it too definite in the law. In case of doubt it could be referred to court.

MR. CHAIRMAN: We are grateful to you for having come here and giving this evidence. We are also grateful to Dr. Scholl.

MR. ENGELHORN: Thank you very much for your patience. I would like to make a suggestion. If a group of your people would like to come over to our country, we should certainly be glad to have you and would certainly be glad to look after you while you are with us.

MR. CHAIRMAN : I shall convey this to the other members who are not present today and will let you know the reaction. We thank you for the sentiments you have expressed.

MR. ENGELHORN: Thank you.

(*The witness then withdrew.*)

(*The Committee then adjourned.*)

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967

Friday, the 24th January, 1969 at 15.00 hrs.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Hari Krishna
5. Shri G. S. Mishra
6. Shri Srinibas Mishra
7. Shri K. Ananda Nambiar
8. Shri P. Parthasarathy
9. Shri Maddi Sudarsanam
10. Shri Fakhruddin Ali Ahmed.

Rajya Sabha

11. Shri R. P. Khaitan
12. Shri Arjun Arora
13. Shri Om Mehta
14. Shri Pitamber Das
15. Shri Dahyabhai V. Patel
16. Shri C. Achutha Menon.

LEGISLATIVE COUNSEL

1. Shri V. N. Bhatia, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. Ramaiah, *Deputy Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS (DEPTT. OF INDUSTRIAL DEVELOPMENT)

1. Shri K. I. Vidyasagar, *Joint Secretary.*
2. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks.*
3. Dr. B. Shah, *Industrial Adviser (Drugs).*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS EXAMINED

Japan Patent Association and Federation of Economic Organisation, Japan
Mr. Shoji Matsui.

Japan Patent Association and Federation of Economic Organisation, Japan

Spokesman:—

Mr. Shoji Matsui.

(*The witness was called in and he took his seat*).

MR. CHAIRMAN: I am glad you have come here to give evidence. The documents you passed on have been distributed to the Members. I hope you will be very brief in giving a summary of what you think important, and then the Members will put questions for you to answer. Please remember that your evidence is liable to be made public and no part of it will be made secret unless you want it to be so

MR. SHOJI MATSUI : I have brought with me some additional material in connection with my statement. May I distribute it now?

MR. CHAIRMAN: Yes. Please give a brief introduction of yourself also.

MR. SHOJI MATSUI: Mr. Chairman, and hon. Members of the Joint Committee, I should like to thank you very much for having given me an opportunity to appear once again as a witness at this meeting of the esteemed Joint Committee.

My name is Shoji Matsui. I am a Patent Attorney, and I am the Manager of the Patent and Licence Department of the Takeda Chemical Industries, Ltd., also. I am holding the post of the Chairman of the Committee for Revision of the Patent Law of Japan in the Patent Association, and I am now studying the problem of revising the current patent law of Japan from the industrial point of view. In 1960, I participated in the establishment of the present patent law of Japan as a member of the same Committee. I would like to make a statement according to the material I have now distributed to you.

In Japan a Bill for modifying the Patent law was introduced in Parliament in 1966. The Bill eventually lapsed due to the opposition raised by interested parties including Keidanren and the Japan Patent Association. The reason why Keidanren and the Japan Patent Association opposed the Bill is that the Bill as introduced would be disadvantageous to the inventor or patentee.

Japan has long been developing her own industry by introducing advanced technologies from abroad since she opened her door about one hundred years ago so far closed to the Western countries. On the basis of these imported technologies, Japan has created her own technologies as well.

Probably you know that Japan established its first patent law about 84 years ago and joined the Paris Convention about 70 years ago, 14 years after establishing the first patent law. Being supported by the continuous technological introduction from abroad as well as indigenous inventions created by herself, Japan has become one of the highly industrialized countries in the world. What I should like to mention here is the fact that without her patent system Japan could hardly have attained her present position.

I have already submitted a list of tables. In Table 1, I have shown the position of Japanese industry in the free world. According to statistics,

here the Gross National Production shows that while USA ranks first, Japan is second. In ship-building Japan ranks first; in automobile, electric power and pig iron Japan ranks second.

Japan has introduced not a few technologies from foreign countries. Still Japan would go on introducing new patented technology and know-how from abroad in view of its ever-advancing nature of technology because of lack of resources technology is a very important resource for Japan. We will continue to introduce foreign technology as much as we need.

The remarkable recovery of Japan from the devastation in the war-time which is often referred to as "miraculous," owes much to the active introduction of foreign technologies having been made under the sound patent system. It goes without saying that the sound patent protection has, at the same time, acted as a great stimulus in developing new technologies by Japanese themselves which have much contributed to the growth of domestic industries of Japan. The reason why the introduction has so successfully been carried out can be ascribable to the fact that there has never been such patent system as injuring the right of patentees and inventors in Japan. The fact has also served for relieving foreign patentees from such fear that their patent rights might be weakened. Putting it in another way, foreign patentees have placed their full trust in our patent system and the operation of the patent law of Japan.

In the last 23 years after the war, nearly 8,900 cases of technical introduction from abroad have been effectuated in our country and approximately 1,200 million US dollars have been paid as royalties for patent and know-how licences. On the other hand the sum received as the income by export of technology during the corresponding period amounts to only 56 million US dollars. This balance of incoming and outgoing of royalties apparently indicates the dependency of Japan on technology originated from other advanced countries. But the Japanese think that the expenses paid for technological introduction are not to be regarded as consumption but as investment. We import many raw materials; technology is also a kind of raw material for Japan. Needless to say without investment no fruits come out and what should further be taken into mind is that the investment has to be operated properly. In this sense, Japan has cleverly selected technologies in her introduction from among those of wide varieties by means of control through the Law concerning Foreign Investment; not by the patent law, but by the Law concerning Foreign Investments we selected the technology. The foreign exchange paid by Japan for the introduction of technology has produced much greater value and effects than that paid for mere importation of raw material or finished products. One of the key factors having enabled Japan to expand export of goods "made in Japan" is the patented technologies and technical know-how introduced in the past ten decades.

In my view, the proposed Patents Bill of India apparently includes those undesirable provisions which, if enacted, would eventually not only disturb the smooth inflow of foreign technology into India but also discourage Indian researches from creating new inventions. I frankly admit that the Indian Government could save the outflow of foreign exchange, at least temporarily, by taking full advantage of the rights to work any patented invention, almost ignoring patentee's will under the provisions of this Bill. However, it has to be admitted, on the other hand, that technical know-how would not come into India smoothly under the situation because no one would risk his technical investment in a country where his investment might scarcely be protected.

From the point of technical level in the advanced countries all over the world, India of today may be considered as one of the developing countries. However, I would like to re-

mind you that the technological position of Japan at the time when Japan first established her patent system 83 years ago, was far more backward than those of the then advanced countries in the world.

Nevertheless, Japan has never adopted a policy of diluting patent protection throughout the history of her patent legislation. Japan, while relying on foreign technologies, has created quite a few technologies of her own as well.

There is no denying of the fact that the Japanese patent system encouraged creation of excellent inventions indigenous to Japan. The successful induction of investment to the field of research and development activities owes much to the feeling that the investment on research and development would reasonably be rewarded under the strong patent protection.

It is true that Japan is now planning to revise her existing Patent system, but there is no such way of thinking at all to weaken the patent protection. It is further to be noted that there are opinions desiring much stronger patent protection than it is now among the pharmaceutical manufacturers in Japan.

In Japan, as you know, there is no protection for products. The pharmaceutical industries want to introduce product patent system. This will be considered by a committee after the present Patent Bill will be passed.

In contrast to these opinions in Japan, the patent protection for inventions relating to pharmaceuticals is, according to the Bill now in question, likely to be unfavourably discriminated, to which fact due attention should be paid.

Lastly, I wish to point out, in comparison with the corresponding provisions of the Patent Law of Japan, several provisions of the Bill which may give rise to unreasonable oppressions against inventors and patentees in India. As you may notice from the details of the provisions, the present Patent Law of Japan has three provisions whereby the patented inventions are made available to any person interested. In other words, three types of compulsory licences are stipulated in the Japanese Patent Law. Firstly, Article 83 of the Patent Law of Japan relates to arbitration on creation of ordinary licence in the case of non-working. In the case of non-working a compulsory licence can be sought upon in Japan. Secondly, Article 92 of the Patent Law of Japan relates to arbitration on creation of ordinary licence for working of one's own patented invention. This is a compulsory licensing system which can be applied for by the owner of a junior invention. In Japan the patentee cannot work his own patented invention without obtaining a licence from the senior patent owner if the junior patent infringes upon the senior patent. At that time the owner of the junior paten can ask for a compulsory licence to the owner of the senior patent. Thirdly, Article 93 of the Patent Law of Japan relates to arbitration on creation of ordinary licence for public interest. Article 93 reads like this:

> "When the working of a patented invention is specially necessary for public interest,...."

The word "specially" is included in our patent law. This was included in our Patent Law on the occasion of the introduction of the new Patent Law because we would like to avoid the abuse of this compulsory licence clause. These are the three compulsory licensing systems in Japan.

What I should like to point out is, therefore, that there are no such provisions in the Patent Law of Japan as corresponding to the following provisions in your Bill. Firstly I take section 48 of your Bill. In Japan there is no such provision because this type of provisions violate the Constitution of Japan. According to the Japanese Constitution the Government cannot confiscate, requisition or use property

owned by individuals without paying reasonable compensation.

Section 53 of your Patent Bill gives discrminatory treatment as to the term of patents covering the inventions of food and medicine. In Japan the life term of a patent is 15 years from the date of publication for all kinds of patents. That time does not exceed 20 years after the date of application. It means that if the examination took more than six to seven years then the life term is 14 years to 13 years. It is in very rare cases that examination will take more than five years. So, generally speaking, 15 years is the lifetime guaranteed in Japan for all kinds of patents.

Then, discriminatory treatment regarding the life of the patent for food and medicine is not reasonable and I think this is another attempt to oppress the sound development of technology in the field of food and medicine.

Thirdly, clause 87 of your Patent Bill provides for licence of right and clause 88 stipulates the ceiling on royalty in regard to the licence of right. To the best of my knowledge, there is no such provision as ceiling of royalty or this type of licence of right in any patent law of the free world. I understand that this licence of right takes place automatically. In that way, it is compulsory. I remember that in the model law prepared by BIRPI a system of voluntary licence of right was suggested. Automatic licence of right was not suggested even by BIRPI in the model law. Then, the ceiling on royalty rate is not reasonable.

According to the Japanese Constitution a reasonable amount of compensation must be paid when the property rights of a person are taken over by the State. In some cases, 4 per cent will be reasonable; in other cases it will not be reasonable. So, I think the royalty rate should be decided case by case, according to the value of the invention. In Japan it is impossible to think of a ceiling on royalty because it will violate the Constitution of Japan.

Then I come to clause 66, which concerns revocation of a patent in public interest. The present Patent Law of Japan has no provision for revocation, acquisition or governmental use of a patent. But our former patent law had a provision for revocation. On page 4 of the material I have distributed I have described certain provisions regarding expropriation and cancellation. Our patent law, which was effective from 1922 to 1960, had a revocation clause. However, if the patent rights had been revoked under the clause from time to time the introduction of technology from abroad might have greatly been disturbed. Fortunately, this was not the case in our country and the system of revocation was eventually abolished at the time when the present patent law came into force because we felt that this clause was detrimental to the development of technology in Japanese industry. In our present patent law there is no provision for cancellation, revocation or acquisition.

Now I will come to clauses 99 to 103, concerning the use of inventions for purposes of government and acquisition by the Central Government. In Japan there is no concept of governmental use, because the government have no undertaking of its own. So, there is no question of taking over an invention for purposes of government itself. In any case, under our Constitution, without paying compensation no one can use the patent owned by other people. In Japan patent right is treated in the same way as other property rights, real estate or factory. Further, there is no discrimination between tangible and intangible assets in Japan.

Clause 95 of the Indian Patent Bill stipulates the power of the Controller to authorize any licensee to import the patented article from abroad. In Japan, even in the case of a com-

pulsory licence system, if the application for a compulsory licence indicates only the import of a product, compulsory licence will not be given. Manufacture is essential for asking for a compulsory licence. If import is necessary, it must be carried out from the owner of the Japanese patent and not from any other sources.

Then I come to clauses 84, 88 and 93 which deal with the compulsory licence system. In the presence of these provisions enabling a holder of a contractual licence for a voluntary licence, according to the provisions of the Bill to seek for a compulsory licence, parties will hesitate to supply know-how. I think, it is quite natural for a patentee to hesitate to furnish any licencees in India with important know-how even in the case of granting a licence on contractual basis, because it is apparent that the patentees' interests guaranteed under the mutual licence agreement would be destroyed at the occasion when the contractual licence would be transformed into a compulsory licence. In other words, under a voluntary licence agreement the patentee will give know-how together with patent rights and a reasonable amount of royalty will be decided by mutual negotiation, but after that if the licencee can transfer its voluntary licence to compulsory licence, there is a possibility that the royalty rate will be reduced to a lower rate. If there is such a fear that the royalty rate will be forcibly lowered later on, the patentees would not like to give technical know-how even in the case of voluntary licence agreements. That is our thinking.

Under the circumstances, I think the inflow of technological know-how into India which will be of great importance for her self-development would eventually become very hard.

Regarding clause 116, under the Constitution of Japan all decisions given by Government can be appealed to the courts. There is no exception. I have this objection against clause 116 in your Bill.

Finally, clause 162 stipulates some retroactive operation of the law. In Japan retroactive operation of the law, which is disadvantageous to the individuals who already own certain rights, would not be allowed according to the Constitution of Japan.

Of course, I believe that the policy of the Indian Government is to operate these provisions of the new Bill, which appear to injure the rights of a patentee, with utmost prodence, inventors and patentees, however, usually give their mind to the worst possible situation. Consequently, the presence of the provisions as I referred to are quite likely to make the patent law of India less reliable.

I think, there is no need to talk too much further on the outcome that follows.

My comments so far stated on the provisions of the Bill have been made in the light of our experience in Japan and based on the provisions of the current patent law of Japan. It would be my great pleasure if my comments delivered here and the Memoranda submitted by Keidanren and Japan Patent Association would prove to be of some help in your further deliberation of the Bill.

In concluding my statement, I sincerely appreciate the fact that the Committee has agreed to invite oral evidence from Japan as a token of its democratic generosity for freedom of speech and I thank you again for your having given me the honour of presenting myself as a witness.

MR. CHAIRMAN: It seems in 1957 your overseas payments for royalties amounted to $39 millions and in 1967 those went up to $231 millions. There had been a gradual increase of payments of royalty to foreign countries. This indicates that there is a drainage of your foreign exchange. You have received only 10 per cent of what you pay by selling your own patents. How do you account for your improvement, in spite of this drainage, by getting technical know-how through your patent protection? How

are you supporting the patent law; what are you getting out of it?

MR. MATSUI: Of course, we are paying much. The amount of payment has increased sharply, but that means that our introduction of new technology is increasing. We are acquiring more technology.

MR. CHAIRMAN: Supposing, you were not to pay royalty but were to import the goods, what would have been the position? Would you have paid more foreign exchange or less?

MR. MATSUI: If we had imported the products, we would have saved on payment of royalty, but our going-out of foreign exchange would have been very much higher.

MR. CHAIRMAN: In one of your memoranda you say that the Japanese patent system has encouraged creation of excellent inventions indigenous to Japan. On the one hand we find that your foreign patents are increasing in number and, on the other, you say that your patent system has helped indigenous inventions. How?

MR. SHOJI MATSUI: In Japan, a patentee could do research. The Japanese industry spend a lot of money on research and development.

MR. CHAIRMAN: Do you purchase technical know-how from foreign countries at governmental level?

MR. SHOJI MATSUI: We purchase it. It is done by the private industry.

MR. CHAIRMAN: I presume you have patent protection for pharmaceuticals, that is, medicines.

MR. SHOJI MATSUI: No.

MR. CHAIRMAN: What about food products?

MR. SHOJI MATSUI: No.

MR. CHAIRMAN: Any patent for process?

MR. SHOJI MATSUI: Yes; we patent a process for manufacturing chemical substances which can be used for pharmaceuticals or drugs.

MR. CHAIRMAN: What is the difference between a pharmaceutical patent and the other patent? In Japan, what is the patent protection for the entire process of producing medicines?

MR. SHOJI MATSUI: Not for producing medicines but for producing chemical substances....

MR. CHAIRMAN: ... which can be used in medicines.

MR. SHOJI MUTSUI: If the process for manufacturing chemical substances is protected by the patent, its use later on is also protected by process patent.

MR. CHAIRMAN: Now, we have got the English translation of article 32 of your law regarding pharmaceutical patents. But it does not give a clear idea to us. You may give the correct translation of it as to what your law actually stands for us. You can send it later on.

MR. SHOJI MATSUI: All right.

SHRI PARTHASARATHY: For a long time, Japan was without any patent law. How was it that you were able to industrialise yourself to the extent you have done it without the patent law? You got the patent system only recently.

MR. SHOJI MATSUI: Japan opened her door to western civilisation about 100 years ago. Before that, Japan had closed her doors to all western countries. Only Portugal and Holland had trade with Japan. Then, after opening her door to western countries, Japan introduced the patent system. At that time, Japan had no substantial technology. Mr. Takahashi was asked to trip around western countries. He thought that the development of Japanese industry was important and he established the patent

system to protect new inventions. Of course, at that time, most of the inventions came from foreign countries. About 15 years later, Japan joined the Paris Convention to give facilities to foreign patent applicants because we wanted foreign patent applicants.

SHRI PARTHASARATHY: Is it your opinion that a strong patent protection would help to develop industry?

MR. SHOJI MATSUI: Yes. In the pharmaceuticals, we have no product patent system. Then, our leading pharmaceutical industry is of the opinion that without introducing the product patent system, there will be nofaster development. We will study the product patent system in the pharmaceuticals industry.

SHRI PARTHASARATHY: What is the life of the patent in your country?

MR. SHOJI MATSUI: 15 years from the date of publication but not more than 20 years from the date of application.

SHRI PARTHASARATHY: You are not thinking of reducing the period from 15 years to 10 or 7 years.

MR. SHOJI MATSUI: No.

SHRI PARTHASARATHY: We would like to have a copy of the Patent Bill which was introduced in your Parliament in 1966 but was not enacted into law as it lapsed. Would you send us an English translation of that?

MR. SHOJI MATSUI: I think, this is open to everyone. I will be able to send you a copy.

SHRI PARTHASARATHY: What are the main differences between the provisions of your 1966 Bill and those of ours?

MR. SHOJI MATSUI: The Bill of 1966 was aimed at reducing the load on the patent office. The patent office has a very big load, many patent applications lying on the desks of the examiner. Then the industry attacked the Patent Office saying 'Why don't you examine'. The Patent Office tried to change certain procedure in the examination of the applications. Patent Office would like to simplify the procedure, but simplifying the procedure would reflect unfavourably on the applicants. The Patent Attorney also disagreed with the 1966 Bill. That was the end of it.

SHRI PARTHASARATHY: Have you got the system of compulsory licence or licence of rights to compel a foreign patent holder either to exploit or give the licence to the Japanese to exploit it for commercial purposes?

MR. SHOJI MATSUI: There is no difference in Japan between the foreign patent holder and the Japanese patent holder.

SHRI PARTHASARATHY: What is the royalty that is paid?

MR. CHAIRMAN: How is the royalty determined? Is there any ceiling?

MR. SHOJI MATSUI: In Japan, in the field of pharmaceuticals, according to my experience, the lowest royalty rate will be about 2 per cent and the highest will be 12 per cent, calculated on the finished product. Such a difference comes from the difference in the value of the invention. In Japan, whether a patent holder is a foregner or a local person, the royalty rate is the same.

SHRI OM MEHTA: 80 years back when you had passed the law, what was the life of the patent at that time?

MR. SHOJI MATSUI: I do not remember.

SHRI OM MEHTA: What was the term in the former law?

MR. SHOJI MATSUI: The life-time of the patent has been the same, in both the former and the present laws, *i.e.*, 15 years from the date of publication. In the former patent

law, there was a system for extension of the life-time, but that extension system has been abolished in the present patent law because of many abuses.

SHRI OM MEHTA: In this the only difference between the former law and the present law?

MR. SHOJI MATSUI: The main difference is that we abolished revocation, cancellation. Previously it was there. We found that that was harmful for Japan. It is not necessary because the compulsory licensing system is sufficient. Patent right is unlike the other tangible assets; patented invention can be used concurrently by 3 or 4 or 5 or 7 persons.

SHRI OM MEHTA: There is a vicious circle about the prices of medicines. There is the monopolistic trend because of this. The people of this country, which is a developing country, have to pay more for medicines. What do you think about this?

MR. SHOJI MATSUI: Speaking about the prices of pharmaceuticals, Japanesse Government is also very eager to reduce the prices. I think, five factors must be considered while speaking about pharmaceutical prices. One is the cost of manufacture. The second is the profit to be gained by the manufacturer. The third is the expenses incurred on research and development. Where there is no research, we pay royalty; therefore, payment of royalty is one of the factors. Another factor is the expenses incurred on sales promotion and advertisement. The last factor is the profit gained lay the wholesaler and the retailer.

SHRI OM MEHTA: I am concerned with the price of the manufacturer and not of the retailer.

MR. SHOJI MATSUI: I think, the most important factor to reduce the price is how the reduce the cost of manufacture. To reduce the cost of manufacture, mass production is the most important; using advanced technology is also important. In fact, the prices of pharmaceuticals have been gradually going down because of mass production and adoption of advanced technology. Regarding the profit to be gained by the manufacturer, I think, it is out of the patent question.

SHRI OM MEHTA: Don't you think that licence of right can be one way of reducing the price, that is, bringing some competition?

MR. SHOJI MATSUI: Competition will be one of the factors to reduce the price. But in the pharmaceutical field, if there are too many competitors manufacturing the same drug, then the quantity to be manufactured by one company becomes very small. This results in high cost of manufacture.

Mass production will be disturbed by too much competition. That is the problem. Royalty rate is a factor of the price. But in Japan 6/7 per cent is average rate of royalty in phamaceutical industry. If the royalty rate becomes nothing, only 6/7 per cent of the price will be reduced. Without reducing royalty rate in Japan price of drugs gradually has been going down 5 per cent or more every year in average.

SHRI NAMBIAR: Your Japanese pharmaceutical industry is sufficiently big, is it not?

MR. SHOJI MATSUI: Some of them are big. The Japanese total number of pharmaceuticals manufacturers will be 2,000 or more. 20 or 30 is sufficiently big.

SHRI NAMBIAR: More than fifty per cent of the drug needs of Japan are being catered by your own protection. What per centage, can you say, of your needs? Import, as well as your own. You may say approximately.

MR. SHOJI MATSUI: Importation of pharmaceuticals exceeds exporta-

tion. In total manufacture the import is not so big.

SHRI NAMBIAR: That means our pharmaceuticals grew out of your own without a patent protection so far. You are now thinking of patent protection hereafter in the new legislation. Therefore, if we copy the Japanese parallel, India can also develop our own pharmaceutical industry without patent protection as you did.

MR. SHOJI MATSUI: I don't understand the question.

MR. CHAIRMAN: Did you develop pharmaceuticals on your own or did you depend upon the foreign know-how?

SHRI NAMBIAR: They did not have a patent protection so far.

MR. CHAIRMAN: But in spite of that you developed your own pharmaceuticals.

MR. SHOJI MATSUI: Do you mean that in Japan there is no patent protection so far as pharmaceuticals are concerned?

MR. CHAIRMAN: That is what we assume. Is it correct? You have to explain.

SHRI NAMBIAR: I shall clarify. You said that you have given patent protection for only chemical elements, and not compounds and not for other processing.

MR. SHOJI MATSUI: If there is no patent protection for pharmaceuticals Japanese pharmaceutical industry must have give up research and development work in their own companies. Japanese pharmaceutical industry will not have made such progress as we have now.

MR. CHAIRMAN: You want protection or no protection for pharmaceuticals?

MR. SHOJI MATSUI: No protection for discovery of new use. But the process to manufacture the compound for use in pharmaceuticals is protected.

SHRI NAMBIAR: You give patent protection for invention so far as new elements are concerned, not product. So further processing beyond that compound was not protected. Am I right?

MR. SHOJI MATSUI: You want, what kind of protection is given to invention?

SHRI NAMBIAR: At what stage you give patent protection for pharmaceuticals? At what stage?

MR. SHOJI MATSUI: Protection is given to process for manufacturing a product. Intermediate and final product, both. At every stage.

SHRI NAMBIAR: When Chairman put the question you said something. May be, I have some misunderstanding. I want clarification. We want to know whether we can do the same thing if it is profitable to us. That is the only point, because you have developed very much. We are giving a protection upto 10 years as per this Bill. You are a Chairman of a committee which is discussing changes in the patent law of your country. What is it that you are proposing for manufacturing of pharmaceutical goods?

MR. SHOJI MATSUI: We propose patent protection and pharmaceutical protection, both.

SHRI NAMBIAR: How many years? What is the period?

MR. SHOJI MATSUI: It is the same, 15 years.

SHRI NAMBIAR: There is no such thing at present in your country. That is the present law as it is today. Not the one you are going to bring tomorrow. What is it today: Is 15 years protection given for pharmaceuticals?

MR. SHOJI MATSUI: Not for pharmaceuticals.

SHRI NAMBIAR: I am interested in pharmaceuticals. I am interested in drug manufacture. Please forget other things for the moment.

MR. SHOJI MATSUI: The wording pharmaceutical patent is sometimes very misleading. That is very difficult to be understood correctly. In Japan if we say pharmaceutical patent is means the protection for discoevry of new use—not product, not process—only new use. We are going to introduce product patent system. If it is introduced, if the product is protected there is no necessity to protect pharmaceutical invention for new compounds because all the use is protected by the product patent itself. That is discovery of new use on the known old product. In that case older product cannot be protected by product patent. Then pharmaceutical patent system is necessary.

MR. CHAIRMAN: We are more interested in what you are doing now than in what you are going to do in future.

MR. SHOJI MATSUI: Today protection is given to process.

SHRI NAMBIAR: We are very much interested in the growth you have achieved. We have been trying to find a parallel. Now in your country we have found that parallel. But the question is how to understand. We have got a patent protection system and there the period prescribed is 14 years. But our Bill is going to reduce that period to ten years. If in Japan you do not have any patent protection, then we can also do away with the whole patent protection in pharmaceutical and still can hope to achieve the same growth which you have achieved. In Germany and many other places we did not have that parallel because they had patent protection from the very beginning. But you are on a different footing. There is another country, namely, Italy. But the difficulty there is that there is no development at all. But in your case we find that even without protection, you have achieved development. That is the reason why I am asking this question. We will be grateful if you could enlighten us a little more on your system by sending another note purely on pharmaceuticals. Now you have followed our questions and desire. On that basis you might kindly send us a note on your system in the field of pharmaceuticals. Thank you.

SHRI ACHUTHA MENON: Please refer to page 4 of the Memorandum presented by the Federation of Economic Organisations of Japan in November 1968. There you have given certain figures on the number of patent applications that have been made. You have said:

> The total number of applications amounts to 200 thousand....

You also give the break-up of the applications into applications made by foreign personnel and those made by nationals. There you have pointed out that only 28 per cent of the applications field in 1967 are by foreigners. So, the condition in Japan in something like this: The majority of the pplications for patent are from nationals of Japan itself. My point is that so far as Japan is concerned, there is no fear of the indigenous pharmaceutical or other industry being pressurised or harmed by the competition from foreign patent-holders. But so far as India is concerned, the condition is quite different because here the number of patents taken out by Indian nationals is only about 10 per cent. The majority of patents are owned by foreigners with the result that it is the foreign interests and not national interests that reap the benefits of our patent law. We want to protect the national interets and develop national industry. That is why we propose to bring about some changes in the law. Whatever be the protection that you give to foreign patentees, there is no difficulty so far as you are concerned because in spite of that plenty of new inventions are coming up in Japan. There is no fear at all of your industry being throttled by foreign interets. Would it not be desirable for us to resort to some means by which indi-

genous inventions and efforts are encouraged as against foreigners? What can you advise us from your experience in your own country with regard to this?

SHRI MATSUI: I think we Japan welcome more applications from foreign countries. As shown in the memorandum prepared by the Keidanren, the ratio of applications by foreigners to those by nationals is about 28 per cent. In the Table prepared by Takeda Chemical Industries the number of applications received in Japan from foreigners in 1965 is more than 21,000. In India according to statistics available in Japan, the applications made by foreigners are only 5,000. In other words, foreign applications in Japan were four times bigger than in your country. We want more applications to come to Japan from foreign countries. The total number of applications is very big in Japan and that is because we Japan give protection to rather very minor inventions....

SHRI ACHUTHA MENON: May I interrupt? You see page 5 of your memorandum where this question has been further dealt with. The last sentence in the first paragraph says:

> The fact is that for ultra-modern technology, applications from foreign nationals comprise over 50 per cent of the total. Furthermore, 40 per cent of all patents registered in Japan as of the end of 1967 were owned by foreign nationals.

I am not dealing with minor inventions. The maximum is 50 per cent only. My main point is that Japanese industry and research and invention are so strong that you are not afraid of competition. That is the point. In India the condition is quite different. Here indigenous industry is being strangled by the foreign industry. We want to develop the indigenous industry.

MR. SHOJI MATSUI: I think it is quite true that in terms of the number, the number of domestic applications is very big and in terms of royalty income the amount is very small. If much big number of applications were made by Japanese for very high level inventions our royalty payment to foreign countries must have been very low.

The number of application is not so important here but the quality of application is important.

MR. CHAIRMAN: You mean to say that the payment of royalty is important.

MR. SHOJI MATSUI: Yes.

SHRI ACHUTHA MENON: Another question is this. Can you give us an idea of the percentage of patent applications coming from important countries out of 89,000 and odd of applications, how much percentage of it comes from countries like the U.S.A., Federal Germany and countries like that.

MR. SHOJI MATSUI: According to statistics, in 1965 among the total foreigners' applications received, a little more than 10,470 came from the U.S., 3,400 came from West Germany, 2,200 came from the U.K., 370 came from Sweden and 980 came from France.

SHRI ACHUTHA MENON: On the other hand are you in a position to tell us how many Japanese patents have been registered abroad in these countries?

MR. CHAIRMAN: What they pay by way of royalty is 10 per cent.

SHRI ACHUTHA MENON: I am not asking about royalty payment. I am talking of number of patents registred. If you have got the information you may tell us.

MR. CHAIRMAN: Have you got the figures about the number of patents registered outside your country and have you got royalties from them?

SHRI ACHUTHA MENON: Leave it. If you do not have it now; you may send it later.

MR. SHOJI MATSUI: Do you want the countrywise royalty figure?

MR. CHAIRMAN: Royalty figure we have got. We want the number of patents registered outside your country.

SHRI ACHUTHA MENON: We want information for the countries like Germany, Switzerland and the U.S.A.

MR. SHOJI MATSUI: In 1965 the number of applications filed to foreign countries by Japanese is 8,400.

SHRI ACHUTHA MENON: Can you give us the break-up?

MR. CHAIRMAN: Can you give us the countrywise figure?

MR. SHOJI MATSUI: I am sorry I do not have that.

MR. CHAIRMAN: Leave it.

SHRI ACHUTHA MENON: Another question is this. Do you get the technical know-how from the socialist countries like the U.S.S.R. which is very near you? I do not know how far you are utilising the inventions and scientific research from the U.S.S.R. Have you got it? To what extent are you using it and in what manner do you get it?

MR. SHOJI MATSUI: For instance, Japan has been introducing technology including patents know-how from socialist countries.

MR. CHAIRMAN: Do you mean to say that socialist countries register their patents in your country?

MR. SHOJI MATSUI: Yes.

SHRI ACHUTHA MENON: Have you any relations with China? Are they taking out patents in Japan?

MR. SHOJI MATSUI: I understand that no patents applications have come from the Communist China.

SHRI SRINIBAS MISRA: You have stated in your memorandum that you have perfected some new antibiotics process. You look to page 3 of your first memorandum. In Japan many novel antibiotics such as mitomycin, fradiomycin, trichomycin, leucomycin, sarkomycin and brasticidin have been discovered. If only the process is patented in Japan, how do you come to the conclusion that they get effective patent protection?

MR. SHOJI MATSUI: This is a very nice question indeed. In Japan we give protection to the process for manufacturing compound usable as Pharmaceuticals. But, in the field of antibiotics invention field, the process protection is almost equal to the protection of a product. If one makes the invention very novel, patent protection is very given based on that invention. Then, other companies do not try to find another process. In anti-biotic field, our protection in process is almost the same as the protection. That is the reason why in Japan many anti-biotics you find there. And that is the reason why we think it is necessary for product protection system in other pharmaceutical field.

SHRI SRINIBAS MISRA: In your memorandum you hae also stated that patent protection to foreign inventions has impelled Japanese manufacturers to exert more strenuously. Do you consider this to be a benefit to the Japanese people?

MR. CHAIRMAN: In your memorandum you have said that the patents granted to foreigners have encouraged to Japanese to work hard in the field.

MR. MATSUI: Yes.

SHRI SRINIBAS MISRA: Do you consider that there is fore-closure of some avenues of invention and you are now impelled to put in more strenuous efforts? Dou you consider that as in the intersts of Japanese public? Let me give you an example. By taking away food from Indian people we compel them to exert more and more. Will it be in the interest of Indian people?

MR. MATSUI: Japan has very little natural resources. We import almost everything.

MR. CHAIRMAN: The question is that the patent-holders fore-close the field and therefore very little is left for the Japanese people to conduct any research. Is it not an impediment for your own growth? When the foreign patent holders have covered almost the entire field with their patents, Japanese people have to find out new areas, new processes. Does it not put your people in difficulty?

MR. MATSUI: It helps us to make progress because we have to work hard to find out some new avenues, new technology etc.

SHRI SRINIBAS MISRA: Are you sure that in every pharmaceutical product there is an alternative process or an alternative process can be found out?

MR. MATSUI: Sometimes we do find out more advanced processes. It depends on individual case.

SHRI SRINIBAS MISRA: You have been kind enough to supply us some tables. Let us see how your patent protection has advanced your own country. Look at page 3. Your pharmaceutical production is only 1.1 per cent or 1.2 per cent of the total production in industry. Is that correct?

SHRI MATSUI: That is true.

SHRI SRINIBAS MISRA: The total production value of Japan in 1965 was 1271 million dollars. But in spite of that, please look at table 4. In 1965-66 you were importing more of pharmaceuticals from other countries; your exports are 33 per cent of your imports in pharmaceutical field. Let us take up Vitamin B.1 and Antibiotics. Table 14, item 2: Antibiotics—you have imported in 1967 antibiotics to the value of 26,714 million dollars, whereas you exported 5572 million dollars worth of antibiotics. How do you explain that in spite of your patent protection you are importing more and more antibiotics over the years?

MR. MATSUI: After the recent liberalisation of foreign trade it has become every easy for the import of pharmaceuticals. In Japan more than 2,000 pharmaceutical industries do this. Many of them do not manufacture the components. They only process from the raw material. If they want to import raw material from the foreign countries, the Government allows liberally in general.

SHRI SRINIBAS MISRA: Table 6 shows that the total sales of all the 8 top-ranking Japanese pharmaceutical industrial organisations are almost equal to American home products.

SHRI SRINIBAS MISRA: They are almost equal to one firm of America.

MR. SHOJI MATSUI: That is right.

SHRI SRINIBAS MISRA: Turn to Table No. 7—Japan's balance of trade in pharmaceuticals. The minus figure is rising. From 1961 onwards it is gradually increasing.

MR. SHOJI MATSUI: Yes, Correct.

SHRI SRINIBAS MISRA: And that, too, inspite of strong patent protection. Is it correct?

MR. SHOJI MATSUI: Yes.

MR. CHAIRMAN: You should look at the overall picture of their trade.

SHRI SRINIBAS MISRA: Please look at Table No. 10. These figures are correct, in the second column. Vitamin preparation is 15.26 per cent of your pharmaceutical production. Are these figures correct?

MR. SHOJI MATSUI: Yes.

SHRI SRINIBAS MISRA: This percentage of production has not improved inspite of your patent protection?

MR. SHOJI MATSUI: It now include Vit. B1, B2, B12 and so on. Vitamins B-1 and Vitamin C is the major product in Japan.

SHRI SRINIBAS MISRA: Next Table. Will you explain why you import the largest amount of pharmaceuticals from West Germany, United States and U.K? The import from West Germany equals to more than your total export?

MR. SHOJI MATSUI: Yes, West German is one of the most important countries in pharmaceuticals. We import a lot from Germany.

SHRI SRINIBAS MISRA: In inspite of patent protection your production has not been satisfactory to meet your home consumption, it has not been satisfactory to counter-balance your imports, of what use has been your Patent law?

MR. SHOJI MATSUI: I think this amount of importation has no serious relation with the Patent system. This is for our commercial programme.

SHRI SRNIBAS MISRA: Had you been able to find out alternative or more decent process of some articles, you should not have imported them.

MR. SHOJI MATSUI: We in the Japanese industry are trying to find new advanced compounds. The processes used in Japan are so many that our Japanese pharmaceutical industry cannot cover all our fields. We concentrate on certain fileds which are suitable to the Japanese industry.

SHRI SRINIBAS MISRA: Then, vitamins and antibiotics also you are importing in large quantities?

MR. SHOJI MATSUI: We import Vit. A and D. We export Vit, C. B-12 we also import; B-6 we export:

SHRI SRINIBAS MISRA: Then, your research expenditure in terms of percentage does not exceed 11 per cent in any case?

MR. CHAIRMAN: He says it does not exceed 11 per cent.

SHRI SRINIBAS MISRA: Overall is 3 or 4 per cent.

MR. SHOJI MATSUI: Yes.

SHRI SRINIBAS MISRA: Now, will you kindly turn to Table No. 19. In terms of percentage the royalty is only 4.6.

MR. SHOJI MATSUI: Yes.

SHRI SRINIBAS MISRA: Next Table. 20. Regarding balance of receipts and payment of royalty your country is always on the debit side?

SHRI MATSUI: Yes. That is true. USA is the only exception.

SHRI G. S. MISHRA: Even now you are depending on for foreign technological aid in 13 industries so far as pharmaceuticals are concerned. This is on page 16, Table 25.

SHRI MATSUI: 13 per cent.

SHRI G. S. MISHRA: Table 27.

B|A per cent—foreign application in Japan is only 28.5 per cent. Is it correct?

SHRI MATSUI: Yes.

SHRI G S. MISHRA: In USSR it is .9 per cent.

No. of applications filed in Home Country and number of applications filed in foreign countries, the percentage of India is 14.3, whereas that of Japan is 13.8. How do you explain? We are technologically very backward.

SHRI MATSUI: As I told you already though filing in Japan for minor invention we do not file them to other countries.

SHRI G. S. MISHRA: India's percentage is higher than Japan's percentage.

MR. CHAIRMAN: They are registered in minor patents for which they do not go to other countries.

SHRI G. S. MISHRA: We also protect minor inventions.

MR. CHAIRMAN: They do not go out for foreign patents to foreign countries because they are not worth registering elsewhere.

SHRI G. S. MISHRA: At page 4 of your Memorandum you have stated that certain derivatives yere emphased by Dr. Fujiwara and Matsukawa. Are they patented in Japan or whether they are patentable?

MR. CHAIRMAN: As a Member of the Paris Union they are patentable everywhere.

MR. SHOJI MATSUI: We import Vit. A and D. We export Vit. B., C. B-12 we also import. B-6 we export.

SHRI SRINIBAS MISRA: Then, your research expenditure in terms of percentage does not exceed 11 per cent in any case?

MR. CHAIRMAN: He says it does not exceed 11 per cent.

SHRI SRNIBAS MISRA: Overall is 3 or 4 per cent?

MR. SHOJI MATSUI: Yes.

SHRI SRINIBAS MISRA: Now, will you kindly turn to Table No. 19. In terms of percentage the royalty is only 4.6.

MR. SHOJI MATSUI: Yes.

SHRI SRINIBAS MISRA: Next Table. 20.

Regarding balance of receipts and payment of royalty your country is always on the debit side?

SHRI MATSUI: This is true that it is not only patented in Japan but also patented in foreign countries.

SHRI F. A. AHMED: I am sorry I was not present when you gave the evidence. I would like to put a few questions.

I am not interested to hear about the number of applications you received from foreign countries for patent but I would like to know the latest figures with regard to the existing patents in your country.

SHRI MATSUI: By the end of 1966—154,000.

SHRI F. A. AHMED: I would like to know how many of these patents were actually worded in your country.

SHRI MATSUI: Probably 10 to 20 per cent.

SHRI F. A. AHMED: You have not the exact figure.

SHRI MATSUI: I am sorry I cannot answer because there is no statistics for such numbers.

SHRI F. A. AHMED: In your opinion 10 to 20 per cent are being worked.

SHRI MATSUI: In Japan only the process patent is there and for manufacturing one and same product there are many patent applications, covering many different processes but when the new product is exploited in Japan only one Patent is worked. Other is sleeping. How to evaluate such things. Any way 10 to 20 per cent will be working there.

SHRI F. A. AHMED: What is the procedure in your country to see that these Patent Rights are not utilised for the purpose of export promotion of those countries?

SHRI MATSUI: In introducing technology from foreign countries we try to get export territories.

SHRI F. A. AHMED: You have not followed by question. You say 10 to 12 per cent of the Patent granted to foreigners is actually worked. But that leaves a great percentage of

patents which are not worked in your country. There may be some cause of similarity of the items of manufacture which you have explained but there may be others where a foreign country after taking the patent may not have taken any step for the purpose of manufacturing in Japan but may have done so only for the purpose of promoting their export of that particular thing into your country and what are the steps you have taken to check such a tendency.

MR. MATSUI : I think there are such cases where foreign patent-owners do not exploit their patents in Japan but only export their products to Japan. The solution under the Japanese patent system for that is for Japanese industry to invent other processes by which we can manufacture the product ourselves independent of the foreign patents, without infringing on the foreign patents. If we cannot do that, we have to wait till we can do so.

SHRI F. A. AHMED: You are one of the advanced and developed countries where you can afford to do it. But what is the protection under your law against the refusal to exploit foreign patents, and influx of exports of such products to your country?

MR. MATSUI: In Japan there still remains control over import, not of all products, but of certain specified products, under other law.

SHRI RAGHUNATH REDDI: Please refer to the law governing the Japanese patent system, article 32 under the heading 'Unpatentable inventions' clauses 1, 2, 3, 4 and 5. Do I take it that as far as the patent that is given in Japan is concerned, it is applicable to the basic chemical and not so much to the actual product that may be brought out by the use of the basic chemical. For instance, chloremphenicol: you may give patent to the basic chemical which is used for the manufacture of vrious products, but not to the various products thereof.

Am I right?

MR. MATSUI: Yes.

MR. RAGHUNATH REDDI: Is Japan likely to join the Patent Co-operation Treaty?

MR. MATSUI: Japan will join it.

SHRI RAGHUNATH REDDI : Have you got any compulsory licensing system in Japan if a patent-owner does not exploit it? If so, in what manner will be Patent Commissioner decide on an application for exploitation of a patent which is not exploited by the patent-holder?

MR. MATSUI: Please refer to articles 84, 85, 87, 88, 89, 90.

MR. CHAIRMAN: No. If agreement cannot be reached during the discusion, application may be made to the Government in which case an impartial board examines the matter before final decision.

MR. MATSUI: Articles 113-120. It is about the provision regarding the deliberation council concerning the working of patented inventions.

MR. CHAIRMAN: The law is there, but in a diluted sense.

SHRI RAGHUNATH REDDI: Please see. page 4 of your memorandum supplied this afternoon. The authority that would decide compensation under the Japanese law is the Cabinet.

MR. SHOJI MATSUI : This is a former patent law.

SHRI RAGHUNATH REDDI : Regarding appropriation, working and payment of compensation, it shall be provided by a Cabinet order. That means only at the Cabinet level this can be decided.

MR. SHOJI MATSUI: But every decision can be brought to a law court.

SHRI F. A. AHMED: The law court is the final authority.

SHRI RAGHUNATH REDDI: When the words "Cabinet order" are used, it can be decided only at the Cabinet level and not by any officer of the State.

MR. SHOJI MATSUI: First, it will be decided by the Government, but later on, if the patentee is not satisfied with the order, they can raise the question in appeal.

MR. CHAIRMAN: So, there is provision for an appeal. But the authority is with the Government.

We are very glad that you have come all the way from Japan and we hope the Committee will be benefited from the points of view you have expressed from your understanding of the concept of patents and of the working of the patent law in Japan. Thank you.

MR. SHOJI MATSUI : Thank you very much.

(The witness then withdrew)

(The Committee then adjourned)

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967

Saturday, the 25th January, 1969 at 10.00 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Kanwar Lal Gupta
5. Shri Hari Krishna
6. Shri Srinibas Mishra
7. Shri K. Ananda Nambiar
8. Shri Maddi Sudarsanam.

Rajya Sabha

9. Shri R. P. Khaitan
10. Shri Om Mehta
11. Shri K. V. Raghunatha Reddy
12. Shri Pitamber Das
13. Shri C. Achutha Menon
14. Shri Dahyabhai V. Patel.

LEGISLATIVE COUNSEL

Shri S. Ramaiah, *Deputy Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS (DEPTT. OF INDUSTRIAL DEVELOPMENT)

1. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks.*
2. Dr. B. Shah, *Industrial Adviser (Drugs).*
3. Shri Hargundas, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS EXAMINED

"FARMITALIA", Milano, Italy.

Spokesman:—

Prof. Franco Niccolai.

(*The witness was called in and he took his seat*).

1906 (E) LS—13

(Direction No. 58 was read out to the witness)

MR. CHAIRMAN: Prof. Niccolai, we are glad that you have come to give evidence before us. Will you please give a small summary emphasising the points which you feel important?

PROF. NICCOLAI: Mr. Chairman and hon. Members, I thank you very much for giving me this opportunity. I must apologise for my horrible English. Let us hope that we will understand each other.

I deeply appreciate the democratic way in which you are dealing with the difficult problem of patents, hearing representatives of all countries who are interested in this. Dr. Giulio Bertini and Prof. Camerino have sent you two memoranda. I will not repeat what is contained in them, but I will emphasise the principal points, beginning to give some historical reasons why Italy has not a patent law.

In the last century, the Italian Parliament passed a law on patents (1859), but it did not apply to the pharmaceutical field because the legislator considered that field too strictly connected with the health of the people. In the present century, in 1934, the Italian Parliament passed a general law on patents recognising process and product patents also for the pharmaceutical field. But for technical reasons, the law was never practically executed. Thereafter, in 1939 the law was substituted by the general actual law of Italian patents, the art. 14 of which does not cover the pharmaceutical field. The reason was political: the war was just beginning and the legislator had not the courage to introduce something new. After the war, the problem arose again and there was a proposal for introducing patents in the pharmaceutical field. A Bill was presented to Parliament but not discussed. The project was for only process paten and not product patent. It is strange enough, because Italy has joined the Common Market and has established along with other countries. An European patent, including pharmaceutical field. It is called European because to the 6 countries of the common Market joined Switzerland and England. This law is for process and product patents. So if Italy approves a law only for process, we have the contrast that an Italian producer can have only a process patent for his country, but he can have a process and product patent in a great part of Europe. Therefore, when the European patent law is operating the Italian national law must be amended to provide for product patents also. The Italian legislature started its session lately and I hope the new project for patents in the pharmaceutical field will be presented to Parliament in this same year I am sure in five years, the legislature will pass the new law. The new law has the same characteristic of the earlier law presented to Parliament but not discussed, that is to say, only for process patents. 10 years is the period of the patent with the possibility to give compulsory licence in very established cases; when the producer produces drugs of not good quality, or when the quantity is not sufficient for the needs of the population, or when the price is too high. Of course, there is also the possibility to have dependent patent, that is to say, when there is a patent in a particular field and through working on the same field, one improves the technology or makes it more economical. It will be a new licence. It is also probable that there is cross-licence and the two inventors change their licences. There is, as you see, no absolute ceiling of royalties nor has the Italian Government ever thought it possible to fix a measure of royalty because of the different conditions of products and the variety of new possible discoveries.

If I have the time still I will say just a few words about the condition of Italy not having had patent protection. One can say that Italian industry has developed. It is true. But pharmaceutical industry in every part of the world has developed. There has been an increase in population all over the world. There has been an in-

crease in the level of health. We are now in a position to prevent and not only to cure an illness. Evidently there has been progress in the pharmaceutical industry in Italy also. But I should say this is an unhealthy increase because due to absence of patents: we have too many copies, too many similar products. We have ten thousand formulations and more than twenty-thousand different forms of administrations (ex: injections and tablets etc.). There are also different sizes of presentation like 'ten tablets', 'twenty tablets' and so on. We have of course an excessive number of phramaceutical societies (1000); which is much more than in Germany, much more than in France and, it is ridiculous but true, more than in the United States of America which has only 900. You have to compare the size of the countries and its populations. If in France strong competition of the common market will render necessary the close of at least one hundred societies, and if in Germany it will be 100 or 200 societies, in Italy there are certainly something like 600 societies which are to be closed being unable to support future competition of the common market, and have their destiny absolutely sealed.

But if conditions of the market is fragmentation of production, it is certainly very bad for the country because one of the consequences is that advertising is very large and competition upon the physicians is enormous. The physicians are given samples in enormous quantities. Therefore, the costs could be less if production was not in such a fragmented condition. In this respect, the worst conditions is the one of Italy. Italy which has the second or third place in the world as far as chemicals, petro-chemicals, automobiles, scooters and so on, are concerned, has only one of the last places in the research of pharmaceuticals. Of course, the money spent in Italy, where the copy is legally framed, for research is very modest. It is something like 15 billion liras. In 1964 in USA it was 212 billion liras, in Russia 180 billion liras, in Germany 60 billion liras, in Switzerland 50 billion liras and so on. So Italy has absolutely the last position because the right of copy and fragmentation discourage every research in this field.

I would like to underline the particular fact that, in spite of the absence of a patent law, the largest and most responsible companies producing pharmaceutics are taking, since a long time, agreements with foreign patent owners in order to be allowed to produce in Italy a patented product, as if a patent law was existing. They can, in such a way, manufacture the same product with the same know-how in Italy, and even export it in conformity with the agreements.

The largest Italian Companies therefore pay royalties to foreign patent owners with whom they established licence relationships.

Therefore, the position of my country is an unhappy one and I hope this Patent Law will be approved very soon by the Italian Parliament. Having this harmful experience, you can understand, Mr. Chairman, our interest in the future amendments of your Patent Law that, I am told, the Indian Parliament is studying, designing its considerable weakness.

If I can say that, I hope this will really not happen. The world is becoming more and more small and we certainly need the co-operation of the world, at least in the field which deals with prevention and cure of human ills.

MR. CHAIRMAN: From your statement it appears that in Italy that there is a great number of pharmaceutical concerns and you want us to believe that because of the absence of a patent law this has taken place. But is it not a fact that it depends upon the peculiar conditions of a particular country or society? It is true that drugs and medicines are not patented in Italy and still the industry has grown. But it may be possible for a country like Italy to grow pharma-

eeutical industries in a large number even if there were patents. What have you to say on that?

PROF. NICCOLAI: The restriction on the participation of the industry in the continual progress of pharmaceutical science and the growth of therapy is not a healthy condition.

MR. CHAIRMAN: It may not be so. But is it not irrespective of there being or not being a patent law?

PROF. NICCOLAI: In the absence of a patent law there is scope and freedom of getting the most important, most interesting discoveries made in other parts of the world.

MR. CHAIRMAN: Is it because Italy today feels that it cannot live in isolation from the European Common Market that it is thinking in terms of a patent law and not because of any other reason?

PROF. NICCOLAI: Not only for that. Of course, that is one among the many reasons. Having joined the Common Market which was a new institution under the Treaty of Rome, which recognises patent, we are the only country in the Common Market without a pharmaceutical patent. But it is not only for that reason. Perhaps, that is the last reason in the order of time and importance. We feel that being a member of the Common Market, in the modern world we must join other people in research, because it is important to get the advantage of the research conducted by other countries. We cannot afford to lose the possibility of getting very valuable new drugs and pharmaceuticals and thus weaken the interior market. Italian export is absolutely irrelevant here. Our export is not more than 60 billion liras when our total production or sales is of the order of 560 billion lira. We export only 60 billion liras out of the total of 560 billion liras because we have no patent, because our production is not protected and it is similar to foreign production. So, we cannot export Se, these are many reasons that make a country weak without patents.

MR. CHAIRMAN: I assume that it is the overall economic interest of Italy that is impelling you to think in terms of having a patent law.

PROF. NICCOLAI: Certainly.

SHRI SRINIBAS MISRA: Do you consider scientific inventions to be property in Italy?

PROF. NICCOLAI: Certainly, as throughout the world. Any intellectual invention is as good as a material one. There is no difference, legally speaking. You can own an invention, a book, a music or a house and the right to own them has to be protected in every country, except a Communist country like Russia where the property is that of the community and not of the individual. But inventions are considered as intellectual work and rewarded in every country, even in Communist countries.

SHRI SRINIBAS MISRA: You say that there is no protection for pharmaceutical industry in Italy?

PROF. NICCOLAI: No. It is impossible to go in this way. patent is the incentive and the protection of intellectual work. It may be a pharmaceutical formula, a new engine, a new book or a new tune in music. It is intellectual property which you can put on the market. Suppose I am so intelligent as to discover something interesting and I have not the money to put it into the market. It may be more profitable for me to sell it to you, who can afford to purchase it and make use of it. That will be in my interest, your interest and also in the interest of the market.

SHRI SRINIBAS MISRA: Have there been any cases of infringement of pharmaceuticals and drugs in the absence of patent protection?

PROF. NICCOLAI: No, not in the pharmaceutical field. The real question in the court has been about the existence or the non-existence of a patent, because we have a general

office of patents who has the responsibility to find out if a new discovery is of a pharmaceutical character and cannot be patented or it is not of a pharmaceutical character and can be patented. We have had a court case in the Italian courts and it was filed by a Swiss Company which contended that article 14 of the Italian general patent law of 1939 was not in accordance with the Italian Constitution. Article 14 of the Italian patent law, as you know, says that patents are not granted in the pharmaceutical field. It was thought that article 14 was in perfect harmony with the Italian Constitution; that is to say, the Legislator had the power to deny a patent in the pharmaceutical field, but the Court finished the judgement saying, "Of course, if article 14 is a constitutional article and if the Italian Legislator can deny the patent in the pharmaceutical field, we hope that the Italian Government will very soon again examine the full problem for a new and different system in this field." That is to say, the Italian Supreme Court itself suggested to the Government to review article 14.

SHRI SRINIBAS MISRA: Supposing that we grant a patent to some invention of Farmitalia in India, what will be the position of that drug in the Italian market and in the Indian market? Because in the Italian market it is not patented, if we grant a patent for one drug to one firm, will it also give protection to other drugs manufactured by other manufacturers in Italy?

PROF. NICCOLAI: It will be without protection in Italy because there is no patent protection in Italy. The Indian protection cannot be extended to Italy. That is the usual case today; that is to say, a discovery of Farmitalia is patented abroad in France, Germany etc. An Italian discovery cannot be patented in Italy but is normally patented abroad. In fact, we have no great Italian research; so, we have no great discoveries to patent abroad, but in the last 10 years we had asked for 3,000 patents abroad, not in Italy, and the greatest part of them has been granted. So, Farmitalia has, for instance, a patent in Germany, France or India, but not in Italy. The consequences are always the same; that is, I can copy Farmitalia in my country but not in India, Germany or France.

SHRI SRINIBAS MISRA: Your main complaint is that in the absence of a patent law there are a large number of drugs of the same speciality in Italy. What is your grievance if a large number of facilities are available? There will be competition, reduction in prices and doctors will have choice between one brand and another.

PROF. NICCOLAI: I cannot absolutely agree with you that absence of patents has some definitive effect on prices because in Italy we have a compulsory price system. We have a system of fixed prices. When we ask for registration for producing and putting a new product in the market, we must ask the Ministry of Health for approval of both the formulation and the price, and the system of examination of the cost of production and fixing the price is a very rigid one, very severe. So, one cannot say that we in Italy have free competition: it is only a partial one. The price is fixed and we cannot change it. If we ask the interministerial committee for prices to modify the price and if our request is for an upward revision the reply is always "No" and if the request is for a lower price the reply is always "Yes". Then, there is another aspect. When you ask the National Health Service to approve of a speciality, it will say "well, the formulation is interesting it will be put in the list and prescribed not at the fixed price of £1000 but only at 800 lira". So, when a physician prescribes this medicine to a patient, the patient will have to pay the difference of 200 lira. What will happen? He will ask the physician: can you not prescribe something on which I have not to pay anything? So, it is absolutely neces-

sary to have a lower price. Our National Health Service is assisting 45 million people. So, you can imagine the importance of this medicine being allowed to be prescribed by the National Health Service. These are the two reasons which keep the prices at a low level; not the patents. Then, we must really assume that the medium price level is not different from the European level, that is to say, from France, Germany and the United Kingdom. So, I cut out the Common Market. We have now reached the medium level, the European level. So, it is not true that in Italy we have prices much lower than in France or in Germany. I say the medium level because it may be a little high in one case and a little less in another. But the medium level is absolutely equal. Germany having patents and complete freedom to fix the prices and Italy having no patents and a compulsory system of fixed prices, in both countries the medium level of prices is practically the same. So, the presence or absence of patents does not affect the prices.

SHRI SRINIBAS MISRA: You have stated in your memorandum that a large number of medium-sized pharmaceutical concerns have grown up and they are imitating drugs invented by the big firms. Without knowledge of the know-how, how are they able to imitate or duplicate the inventions of big firms?

PROF. NICCOLAI: Human intelligence is very much developed. You can imitate a formula or a product. Of course, the imitation can be not as effective as the first invention.

SHRI SRINIBAS MISRA: Imitation may sometimes be better also.

PROF. NICCOLAI: No, I should not say that. Of course, imitation is not always possible because one has to understand the know-how and then produce it. But there are occasions when it is possible.

SHRI M. SUDARSANAM: What is the amount of money spent on research in the field of pharmaceuticals in Italy? How does it compare with the money spent on research by other countries?

PROF. NICCOLAI: The money spent on pharmaceutical research in Italy is of modest amount because it is a very difficult and expensive field. Further, you are not sure that once you discover something and register it, the same is not copied by somebody else. So, it is only big industries who are very often connected with foreign industries, who deal with research. For instance, Farmitalia is having capital, 51 per cent Italian and 49 per cent French; it has agreements with American factories, The House of my President. (Bracco) has been granted licences of the firm of Dr. Hans Harms (Merk). As you know, Lepetit is now practically controlled by Dow Chemicals of U.S.A. So, only the big industries are connected with research in this difficult field. In Italy no more than 40 out of 1,000 societies have agreements with foreign industries for having licences of their patents in order to have the possibility to produce and also export in a perfectly legal manner. The money that these 40 societies put every year on research is no more than 15 billions Italian Liras; this is a very modest sum compared to what is done by the United States or Russia or Germany or Switzerland or France or Great Britain.

SHRI NAMBIAR: We find that you have felt that the lack of patent production in Italy has retarded the development of pharmaceutical industry in Italy. If this is so, how is it that you did not change the law earlier?

PROF. NICCOLAI: For the last 20 years, we have been putting pressure on the Government for this. I assure you that we did everything that we could. You know how difficult it is for political decisions to be reached. Of course, I would not say anything

more on this point. But I assure you that a great part of the Italian pharmaceutical industry has been asking the Government every year to have this law. In fact, we have had three projects of law. The first one was never presented. The second was presented but it lapsed with the dissolution of the Parliament. We hope that now it will be again presented to the actual Parliament in a very short time.

We, in the Common Market, have been the most diligent and active for having a European patent law. When there will be a European patent for both process and product, the Italian Government will be obliged to introduce patent law for product also. But in the Common Market there have been great difficulties on this project for a European patent particularly because of the problem of accessibility. The U.S.A. says that it wants a European patent. Germany and Italy are favourable, but France says 'No'.

SHRI NAMBIAR: If there is no pressure from the European Common Market, you may not change your patent law so far as pharmaceuticals are concerned. It is because of the pressure from the European Common Market that you are doing it. Am I right in saying this?

PROF. NICCOLAI: As I said, the Common Market certainly helps in this regard. The project for an European patent law is, as I said, both for process and product. The project that will very soon be presented to Italian Parliament is only for process and not for product. But with the coming in of the European Patent law, the national legislation can survive only for a limited period. After a few years the European Patent law will be the only law that will be applicable to all the countries of the Common Market. So, with the disappearance of the national laws, the Italian Government will be obliged to have patent for product also. Italy, as a member of the Common Market, will introduce patent for both process and product.

SHRI NAMBIAR: We have got much administration for Italy. We feel that we do not have anything similar to that of European Common Market or an Asian Common Market here. We can follow the footsteps of Italy with regard to the patent law so far as pharmaceuticals are concerned, without a protection, which you were doing all these years.

PROF. NICCOLAI: Patent protection encourages research and there will be no research without patent because nobody will come forward to spend a lot of money and time without the possibility of recouping the money.

SHRI NAMBIAR: I think the view you have expressed that the lack of patent protection in pharmaceutical industry in your country had retarded the development of that industry is a view shared by you and your firms, but not by the Italian Government.

PROF. NICCOLAI: Italian Government has now get the persuasion. It is now really a necessity. Of course, the Italian Government did not have this persuasion 20 years ago. That is the reason why in pharmaceutical research and in the fileds of chemical and petro-chemical industries, we are second in the world, but we don't have such a position in pharmaceutical field.

SHRI NAMBIAR: For your automobile industry we have not great admiration and we like your Fiat cars. Is there any patent protection for your automobile and petro-chemical industry?

PROF. NICCOLAI: Yes: the Italian general patent law is for both product and process and the patent lasts 20 years. The project of our pharmaceutical law proposes only 10 years. It is in the new Bill. We are pretty sure that will be 10 years from the grant of the patent.

SHRI NAMBIAR: You have got a Bill which is coming up before your

Parliament. For the pharmaceutical industry it gives only 10 years. Am I right?

PROF. NICCOLAI: You are right.

SHRI NAMBIAR: We want to make 14 years to 10 years. So you and I are in one company.

PROF. NICCOLAI: We are both wrong.

SHRI NAMBIAR: Will you kindly give a copy of your Bill to us?

PROF. NICCOLAI: Very willingly. Now we are sure that the period will be changed to 10 years from the date of granting the patent. In the pharmaceutical field it should be more than 10 years. When you discover a new substance with therepeutical effects, you have taken a great step. Then you will apply it to animals and man to be sure of their effectiveness. Then you will certainly take 2 or 3 years on trials for getting the better form of administration and perhaps you will discover that will be useful put the pharmaceutical speciality on the market in different forms of administration: ex. injections, tablets and something else. All this takes 1/2 to 2 years only for registration. 3 years for trials and 2 years for registration —5 years are gone.

SHRI NAMBIAR: That 5 years is the peak years. You will get the maximum out of it during those 5 years.

PROF. NICCOLAI: Please excuse me. I think the right period for protection should be 15 years at least for pharmaceuticals. When you have too high price and when you don't produce in the right quantity and in the right quality, then it is a wrong use of the patent. There is then the compulsory licence. Modern research is no more carried out by single persons, but almost always by a staff of researchers, *i.e.*, by many persons.

Anyway it often happens that the product is improved by those who work on somebody's else patent. These can be technical and economical improvements: even in that field, a compulsory licence or a new patent with cross-licences will be granted.

We are expecting, as a main result of the new regime introducing patents in Italy, a considerable exchange of licences between Italian and foreign firms.

SHRI HARI KRISHNA: You are a member of the Paris Union.

PROF. NICCOLAI: Yes.

SHRI HARI KRISHNA: How is it that you have been a Member of the Paris Union when you don't provide patent protection to the pharmaceutical and drugs industries?

PROF. NICCOLAI: It is a very important field. But it is only one field in the immense field of modern industry and of modern discoveries. The convention of Paris made absolutely no difficulty in our presence there. We are not the only country, which has no patent law in force in certain fields. Even the Swiss law foresees some resctrictions in respect of textiles that are produced in France and Italy. A general law of patents may include exceptions, which is perfectly right.

SHRI HARI KRISHNA: We grant patent protection to the foreigner or foreign concern in India but still we find that the foreigner or foreign concern is not doing the work in India. He works on it in his own country. He does not work it here. In this situation will it be in our country's national interest?

MR. CHAIRMAN: If we grant patents to foreigners our experience is that the foreigner does not exploit it here in India. He does it elsewhere. Is it in the interest of the country?

SHRI HARI KRISHNA: The engineers work on patents in their own country and dump it on us. I don't know whether you will be able to answer this question. But I would like to have your views on that.

PROF. NICCOLAI: I am afraid I have not understood it.

MR. CHAIRMAN: He works it out in his own country, not in India.

SHRI HARI KRISHNA: They produce it in their own country with their own men and bring the goods here.

PROF NICCOLAI: It is not an intelligent thing of course. But can they do it like that, because they have not here some one to support their production? But, normally speaking, on the pharmaceutical field, for example, in my country, this is not possible because if you produce the speciality in Italy, you must choose a supporter in Italy—an Italian supporter. He must support the production in the Italian society whether it is commercial or industrial. For example, Parke Davies of America must have a supporter in Italy for the distribution of his products for Italy. You must have registration in Italy which will include also the fixing of the price. I hope your legislation obliges the foreign producer to have a supporter here naturally in India. It is no more an interesting thing, you say. He can produce in India or import from abroad. But the point is that an Indian factory or commercial society has to support that.

SHRI HARI KRISHNA: Do you suggest that we should provide this?

PROF. NICCOLAI: Yes.

SHRI DESHMUKH: You have stated that there is a Bill before the Parliament of your country.

PROF. NICCOLAI: Not yet, but very soon....

SHRI DESHMUKH: Have you provision for use of patents by Govt. in that law?

PROF. NICCOLAI: No. Italian Government has never thought it possible to fix royalty in licence. Nor is it possible to fix a ceiling of royalty because of a variety of reasons. There is a Commission for this purpose. If the patent proprietor and owner of licence cannot find an agreement the Commission will judge what is the right royalty in his case, but no official fixation in the law.

SHRI DESHMUKH: Cannot Government acquire any research in an emergency in the public interest?

MR. CHAIRMAN: Can they purchase?

PROF. NICCOLAI: Certainly they can purchase, but not steal. Of course, Government in Italy is the owner of many factories, industrial and commercial establishments. They could certainly allow a private owner to buy them. But certainly in Italy our Constitution provides that expropriation will be made only for reasons of public utility and with adequate reward. Otherwise, it is not permissible.

SHRI DESHMUKH: In an emergency also?

PROF. NICCOLAI: Public utility is the criterion.

SHRI DESHMUKH: Have they not got emergency powers to use it without compensation?

PROF. NICCOLAI: No.

SHRI DESHMUKH: Is there any ceiling on the royalty or compensation?

PROF. NICCOLAI: This is done on the basis of mutual agreement. If there is no mutual agreement, a Commission is provided for and in the end one can apply to the court of law.

SHRI DESHMUKH: What is the life of patent in your present law.

PROF. NICCOLAI: 20 years. We have a general patent law and that fixes it at 20 years. The new project of law for pharmaceutical field is an amending law.

SHRI KANWAR LAL GUPTA: Has the new Bill been introduced in your Parliament?

PROF. NICCOLAI: It is coming there. It is not yet introduced.

SHRI KANWAR LAL GUPTA: Was it circulated to the public?

PROF. NICCOLAI: Certainly it will be. It will be ready very soon. It is not necessary to have a particular provision in the patent law because international conventions and the general law cover many aspects. There is a compulsory license system for reasons of bad quality, insufficient quantity and high prices. These are the reasons for which this compulsory license system can come into operation because it is in the public interest. Government can perfectly do it.

SHRI KANWAR LAL GUPTA: There is a general impression here that in a poor country patent law is not very beneficial. It is not only here, but even outside and the reason is that a poor country like ours cannot afford to spend much on making researches. Moreover we do not have laboratories here. In the near future also we do not hope to spend much on researches because there is competition between one country and another. More advanced nations can afford to spend much more on researches. Naturally the result is that hardly 10 per cent of Indian patents are registered in this country and the number of Indian patents registered outside is just nominal. The result is that we are not benefited, but it is the outsiders who are benefited. The other result is that we get medicines at a very high price—sometimes 200 or 300 per cent of their cost. Under these circumstances, suppose we scrap the patent law for 10 years, what will be the repercussion? We can reintroduce the law after our economy shows signs of improvement. At that stage probably we may be in a better position to compete with other countries in the field of researches. From this point of view, if we decide to scrap our patent law, what will be the repercussions?

PROF. NICCOLAI: Really the position in my country compared to your own country was that there was no pharmaceutical industry formerly while France and Germany had a very strong pharmaceutical industry in their countries. I still remember that when I was a child, I was cured for my illness by the treatment of French and German medicines and at that time there was practically no Italian specialities.

A real modern pharmaceutical industry has been developed in our country between the two world wars, i.e. between 1920 and 1940.

The present industrial development has become much more rapid than in the past and the absence of an original research, which could have been accepted in the first decades of this century, would be to-day very serious for its consequence: a country would run the risk of irrevocably staying at the last stage of progress or even of completely ignoring such progress. I say like Italy, India too much progress in all sorts of fields including the pharmaceutical field.

SHRI KANWARLAL GUPTA: But there is a difference between India and your country. In your country there was no Patent Law in the very beginning whereas in India we had that. Just now we have the Patent Law and we know something about medicines and we have made some researches and so we know something about drugs and so on. We can make some researches but what I feel is

that there is a great handicap. So far as I know certain processes are also protected with the result that our scientists suffer from good laboratories. They cannot go further because they are handicapped at every stage. So, if we scrap the Patent Law now, we can do something. In your case there was no Patent Law in the beginning and so you had the German and other medicines. If we scrap the Patent Law just now and after ten years if we have that, what would be our position?

PROF. NICCOLAI: I am not sure about your position in regard to your researches. But I see there is bright future for you. If you come to some agreement with foreign industries, that will put India in ten years in a very comfortable position in this field. This is my sentiment because I know much about your country because I have seen your country before also. Really we must look far ahead in regard to pharmaceutical industry. This is a basic need for the whole humanity. You can certainly have the possibilities of going with all the people making researches and you can progress yourself in this field in ten years' time. In Italy too there was absolutely no research and we were many years behind the modern world. So, in my opinion, if you do not have the patents or if you suspend having patents' law for ten years, you will be doing harm for the future. By gaining time you will get lost. This is my personal opinion.

SHRI KANWARLAL GUPTA: My second question is this. Is it a fact that in most of the European countries, in the initial stage, there was no Patent Law and when they made the developments, then only they had their own Patent Law? Even in your own country this Patent Law is not beneficial. When the country is developed, then only it will be useful.

PROF. NICCOLAI: When there were an increasing industrial and commercial processes in most advanced countries of the world, people had a sort of patents of course. During this time you of course really had made many progresses in patents. You can only say that when they introduced Patent Law, the conditions at that time were somewhat difficult. Now our conditions are better than what it was hundred years ago. For a country, a year of to-day is like ten years of past century. So I may tell you honestly and truly that I am constrained to think of such a vast country like yours for being isolated and not growing yourself and not working with others. Progress becomes impossible if you do not work with others. The industrial growth was not much before the introduction of the Patent Law.

SHRI C. C. DESAI: What is the position of pharmaceutical industry in Italy now as compared to what it was in 1900?

PROF. NICCOLAI: There was practically no pharmaceutical industry at all in 1900.

SHRI C. C. DESAI: What is the position now?

PROF. NICCOLAI: Pharmaceutical industry has a powerful reason to grow between this period.

SHRI C. C. DESAI: What is the present condition of the pharmaceutical industry in Italy? Is it well developed or not yet developed?

PROF. NICCOLAI: It is a developed one. But it has not developed as we would like it to be after the Patent Law.

SHRI C. C. DESAI: I am not referring to Patent Law.

PROF. NICCOLAI: Then I should say it has developed in a big way. As I quoted, we have so many specialities. We have, in the market 20,000 specialities and we have a lot of small industries which have been struggling to survive in their competition in the market. If a good patent law was in

force, there would not be such an excessive number of similar products and such a myriad of small manufacturing factories. Even the expenses to be faced in order to visit and inform physicians and to give them samples of the various specialities would be lower.

The situation must therefore be revised and the competition of the Common Market will make this revision absolutely indispenses a revolution process which would not be necessary if the development of the Italian pharmaceutical industry had been better ruled by the existence of a patent law.

SHRI C. C. DESAI: I now put it to you whether the rate of growth in Italy is higher during the 30 years than even in Germany or France?

PROF. NICCOLAI: I am not here speaking of pharmaceutical industry alone but I am speaking generally. Italy was, at the beginning of this century, only an agricultural country. In 60 years we have become a highly industrialised country. In the first 10 years we walked and in the next 50 years we ran. This was very important for us because we were at the lowest position in Europe. Now, of course, in important fields like chemicals, petro-chemicals and mechanical, we are second-placed in the world perhaps.

SHRI C. C. DESAI: How old is your Patent Law?

PROF. NICCOLAI: In 1939, at the beginning of Second World War, our law became effective.

SHRI C. C. DESAI : When the Patent Law was made, it was enacted for every product.

PROF. NICCOLAI : Every product but not for pharmaceutical products.

SHRI C. C. DESAI: In the rest of the world, at that time, the Patent Law was applicable also to pharmaceutical products, like France, Germany etc.

PROF. NICCOLAI: Not always for process and product.

SHRI C. C. DESAI: Mainly for process. The decision to exempt pharmaceutical industry from the operation of Patent Law must have been with a particular design. What was the reason for excluding the pharmaceutical industry?

PROF. NICCOLAI: In 1959 we were afraid to put patents in a field so closely connected with human lives. This was based on the experience we had in the past century. But time passes, centuries passes. I come to the present law, which is the second one—this was enacted in 1939 when the Second World War was at the window. We did not want to have pharmaceutical patents just when the Second World War was beginning. Don't forget that Italy was a Fascist country then, and economically we were for antarchy.

SHRI C. C. DESAI: Are there people in Italy even now who would prefer the continuance of *sattus quo* rather, than the extension of this law to pharmaceutical industry?

PROF. NICCOLAI : All the small pharmaceutical industries are of the opinion that it is more easy to copy.

SHRI C. C. DESAI: What is the view of big industries?

PROF. NICCOLAI: Of course, they are against the present system.

SHRI C. C. DESAI: Are there consumers, the rural people who hold such a view? What is their reaction to this exemption of Patent Law to pharmaceutical industry?

PROF. NICCOLAI: In Italy, under the National Health Service Scheme, everyone of the poorer section gets pharmaceuticals free. They have no opinion on this. But I have an opinion. Why? Because I must pay for them.

SHRI C. C. DESAI: It has been suggested before us that if there is no

Patent Law or a weak Patent Law is in force, it does not safeguard the invention adequately. It acts also as a disincentive to research and people, especially technical people living in such a country go away to other countries. Has there been any such exodus or emigration of technical people from Italy to foreign countries?

PROF. NICCOLAI: Yes, there was. But there was another phenomenon, i.e. people coming to Italy with foreign capitals. The American industries have granted licences to Italian industries for development of their products. There of course Italy would have the possibility to export herself. So there is this possibility of exchange for licences from one country to another. America has collaborations with Italian industries; people also have come to Italy to set up industries so that they could market their products in Italy.

SHRI C. C. DESAI: What will be the percentage of foreign capital which has been invested in Italy?

PROF. NICCOLAI : 50 per cent as compared to national capital in pharmaceutical industry.

SHRI C. C. DESAI: During the last ten days only foreign witnesses have appeared before this Committee. All of them, without any exception, have told us this that a weak or absence of a Patent Law would be frightening away foreign capital. You say that in spite of the fact that there is no Patent Law in Italy, as much as 50 per cent foreign capital has come into the country. These two statements, if not irreconcilable, are at least difficult to understand.

PROF. NICCOLAI: In the absence of Patent Law in Italy, they don't want to lose the Italian market for their products. They liked better to come and set up their units on the Italian ground for a better defence of their own propriety. Then there is the question of exchange of licence, which helps foreign capital to come into Italy and on my opinion this is the right way to introduce foreign capitals in a country. They also come to Italy to protect their own intellectual property and of course material incentive is there.

SHRI C. C. DESAI: You say that vention adequately. It does not safethe presence of a patent law does not act as a disincentive to foreign investment?

PROF. NICCOLAI: Certainly not...

SHRI C. C. DESAI: Does the Italian pharmaceutical industry welcome foreign capital or it does not welcome foreign capital?

PROF. NICCOLAI: It will be more useful for Italian industry.

SHRI C. C. DESAI: There is a feeling in this country that in the absence of a strong patent law, the prices in the country may be lower. But we have been told by a number of European witnesses that the prices in Italy where there is no Patent law they hav been somewhat higher. Is that position correct? What is the justification for the high prices inspite of the fact that you do not have to pay for patents?

PROF. NICCOLAI: In Italy we have a straight control of prices. We have fixed the prices....

SHRI C. C. DESAI: Prices are supposed to be higher all round.

PROF. NICCOLAI: They are not. Absolutely not. The position is absolutely wrong. It is not se.

SHRI C. C. DESAI: Please give us comparative prices in Italy and adjoining countries like France, Germany and Switzerland.

PROF. NICCOLAI: I will give.

SHRI C. C. DESAI: Of 12 important products.

PROF. NICCOLAI: Yes.

Patent or no patent, there is no influence on price level.

SHRI PITAMBER DAS: Mr. Chairman, I would like to raise three points. The witness, in the memorandum that has been supplied to us, says on page 2: "The removal of patent protection inevitably badly affects the flow of foreign know-how, technical information and capital into a country". Is that correct?

PROF. NICCOLAI: It is correct.

SHRI PITAMBER DAS: Do you agree?

PROF. NICCOLAI: I agree. Only when a patent.....

SHRI PITAMBER DAS: I do not want the reasons. I only wanted to know whether you agree with this.

PROF. NICCOLAI: I agree.

SHRI PITAMBER DAS: For the foreign flow of capital into country, is it not necessary that the invention or the product be manufactured or produced in the country itself?

PROF. NICCOLAI: Of course, it is so. The licence is normally supported by....

SHRI PITAMBER DAS: I do not want the reasons for it. I only wanted to know whether you agree with the view that it should be produced or worked out in the country itself.

PROF. NICCOLAI: Yes.

SHRI PITAMBER DAS: I am not concerned with the reasons.

MR. CHAIRMAN: He only wants to know whether it should only be produced in the country.

PROF. NICCOLAI: Yes.

SHRI PITAMBER DAS: For these three considerations—that is the flow of foreign know-how, technical information and capital into the country, is it not necessary that the invention or the product be manufactured in the country concerned.

MR. CHAIRMAN: Whether you agree that the foreign party getting the drive should produce within the country which gets the patent, which gets the inflow of kow-how and capital.

PROF. NICCOLAI: There are two positions. The foreign owner of patent can give a licence and know-how to Indian industry in order to produce here or the owner of a foreign patent; he can of course ask for a patent also here in India in order to introduce in India what he has produced abroad having agreements with a simply commercial society in India in order to put this foreign production on the market.

SHRI PITAMBER DAS: I want to know whether it is necessary.

MR. CHAIRMAN: What he wanted to know is whether the party having the patent right should produce the thing in the country.

PROF. NICCOLAI: I feel it is in the interest of the country. Local production is better.

SHRI PITAMBER DAS: The weakness or strength of the Patent Law should it therefore depend on its capacity to encourage the flow of foreign know-how, technical information and capital into the country. Do you agree with this?

MR. CHAIRMAN: He means to say, Patent Law is viewed in your country as to whether it encourages indow of foreign know-how, capital and other investments.

PROF. NICCOLAI: Of course.

SHRI PITAMBER DAS: Strong patent law or weak Patent Law which.

ever we accept its success ultimately depends on attainment of these objects.

PROF. NICCOLAI: Certainly.

SHRI PITAMBER DAS: On page 2 para 2 of the Memorandum it is stated:

> "However, it must be emphasised that there are two facets to the basic concept of patents, the public benefits from the disclosure of inventions and in return rewards to the inventor for its disclosure."

So far as the public benefits are concerned, do you agree that no patent law or very small patent period would be useful? I am considering only the public benefit for the present. I will come to reward later on. Keeping in consideration only the public benefit, do you agree that an abolition of patent or a very small patent period would be useful?

PROF. NICCOLAI: I do not think so. After all the owner of the Patent has the duty of course to produce what is necessary for the country in the perfect conditions at a reasonable price. I do not see why patent must be short-ended like 'term, etc.' because in this term and in this strong protection certainly the new research and new production can be much better developed and has the possibility of opening the way in the market.

SHRI PITAMBER DAS: For rewarding the inventor do you think that a lower patent period is desirable?

SHRI NICCOLAI: It is so.

SHRI PITAMBER DAS: Can you suggest any scientific or rational method of determining what particular period would be adequate for a particular invention or product from the point of view of both public benefit and rewarding the inventor?

PROF. NICCOLAI: Different countries have different periods for the patents and so it is rather difficult thing to say what is the best.

Belgium—20 years.

France—20 years.

Italy—15 years.

Germany—18 years.

Luxemburg—20 years.

Holand—20 years.

Projected European patent—20 years.

The period proposed in Italy for pharmaceutical patent is 10 years. For production in the particular field of pharmaceuticals is absolutely insufficient. 20 years perhaps can be a large period. In my opinion 15 years can be all right. In pharmaceutical field this periodical effect, real production and possibility to put on the market. Speciality needs many many years. 15 years are adequate in my opinion, as I said before.

SHRI PITAMBER DAS: Does it not indicate, as the period is different in different countries, that the period is mostly a matter of opinion?

PROF. NICCOLAI: Certainly, Sir.

General opinion is 20 years. 15 is all right in my opinion. The projected shortening of the period that now you are discussing in your country is far below the minimum period of 15 years and the one adopted in the greatest part of the European countries.

SHRI PITAMBER DAS: So that the period is determined not by any scientific or rational method but by the opinion expressed in a number of European countries. I have no objection in accepting it, but I do so knowing that it is an opinion and not a method.

PROF. NICCOLAI: It is a very large body of opinion based on experience.

SHRI PITAMBER DAS: An opinion nevertheless large or small.

The third point: In the same memorandum on page 3, last but one para-

graph, you say that "5—8 years will normally lapse between filing a patent application and marketing the new patented drug." From this it appears that the view is based on the assmuption that the period of 14 or 10 years provided in the Bill will start from the date of the patent application. I want to point out that under cl. 53 the period will run from the date of granting the patent and not from the date of application.

PROF. NICCOLAI: That will of course be better.

SHRI ACHUTHA MENON: You stated that one of the beneful effects of absence of a patent law in Italy so far as the drugs are concerned is the fact that a number of imitation products come into the market. I am not able to understand this. When so many drugs are there in the market, the one which is the best will drive out all the others. Naturally in course of the inferior drugs will go out of the market and the best will remain. Why does this not happen in Italy according to the law of economics?

PROF. NICCOLAI: Because you have the facility to copy the product without having to undergo the expense involved in research. Then lots of free samples are given to physicians and so on and one can support one's product in this way. They resort to unorthodox methods of selling. So the theory of bad money driving out the good does not apply to pharmaceuticals. The idea here not to make such restrictive list of a specialities being put in the market, that is putting into the market only the best and original ones.

SHRI PITAMBER DAS: Does not the law of survival of the fittest apply in Italy?

SHRI ACHUTHA MENON: As regards importation of foreign drugs into Italy, if there is no patent for drugs there, naturally drugs can be sold without any difficulty. There is no import restriction or anything of the kind. Is that so?

PROF. NICCOLAI: Certainly, no restriction except that the foreign product must be registered with the same formality as the national product. That is to say, they have to ask the Ministry and furnish details of the formulation, the technical and economic data of the speciality. They have to produce considerable documentation.

SHRI ACHUTHA MENON: What about the price?

PROF. NICCOLAI: The foreigner is absolutely in the same position as the Italian producer. Everyone can ask for registration. The Ministry can refuse for the same reasons of the national product.

SHRI ACHUTHA MENON: You said that in Italy there was price control and that the Government or the Commissioner fixes the price. Does it apply to the imported drugs also?

PROF. NICCOLAI: Of course; because there is a certain method of examination, if it is once in the market. If a similar speciality of national production sells at lower price, the subject of import is taken up at the same economic level.

SHRI ACHUTHA MENON: You said that Italians take out patents in other countries like France, Germany and England, and produce the products in these countries.

PROF. NICCOLAI: Yes; it is possible.

SHRI ACHUTHA MENON: They can be sold in Italy?

PROF. NICCOLAI: Yes, of course. There is no restriction on import. Registration is done.

SHRI ACHUTHA MENON: In Italy you are thinking of amending the patent law. Can you with any amount of certainly say that the law is going to be passed in Parliament with such and such amendment, knowing as we do the conditions in Italy? The Government is unstable and the par-

liamentary majority is also unstable there.

MR. CHAIRMAN: Taking into consideration the political conditions prevailing in your country, how can you feel that your Bill is likely to be passed as it is?

PROF. NICCOLAI: It will receive some amendments; of course it will be passed in the actual legislation.

SHRI R. P. KHAITAN: You are going to introduce a Bill in Italy on this subject. May I ask you whether the scientists want this Bill or only the industrialists want this Bill?

PROF. NICCOLAI: Both. It is most important for the Italian industry. The industrialists want an amendment of the law for pharmaceuticals under the general law. The scientists also want it, because there is no possibility of making research without being sure about the protection of its result.

SHRI R. P. KHAITAN: Our scientists told us that they do not want this patent. What is your opinion on this?

MR. CHAIRMAN: The scientists here do not want it.

PROF. NICCOLAI: I am very surprised. I can assure you that every Italian researcher is very interested in having a patent, because it is better for him to have a large disposition in industrial compounds for research, and research is not made without a lot of money. They know that this is the way to have protection for their inventions, and then there is a greater possibility for technical and economic progress through development of research. I do not know how the scientists here can be indifferent or be against the patent law. It is the best protection for intellectual propriety and discovery. Otherwise, it is absurd. I beg your pardon; I am saying this with great respect for Indian researchers.

SHRI R. P. KHAITAN: They can get some award like Padma Vibhushan or Padma Bhushan; it is not only for any money; they want honour.

PROF. NICCOLAI: I would not emphasise on the material part of it. It is not only of material interest. It is a question of the inventions not being stolen. One is proud and happy in saying, "I have found a real thing that can be useful for humanity, which can be very good for my society and so on." Afterwards, many persons may ask the Ministry in regard to registration.

The question of material reward apart, there is also the moral question which is important. It is not only important in the material field but also in the moral field, such as, for example, the music field.

SHRI NAMBIAR: Can you make a financial payment to Einstein for his invention, for his great theories? There are great, outstanding leaders who do not care for money; they invent for humanity's sake. Is it not more creditable than the money value of it?

PROF. NICCOLAI: Certainly. Fleming had never any patent for penicillin. It is a very good example. Let us all try to be like that.

SHRI RAGHUNATH REDDI: During the course of your evidence, you were pleased to observe that due to the absence of a patent law in Italy, there was scope for econmic domination by foreign economic interests entering Italy. Would you be pleased to illustrate your point with special reference to the pharmaceutical industry?

MR CHAIRMAN: Did you not say that in the absence of patents, there was domination of foreign capital in Italy?

PROF. NICCOLAI: It is certainly one of the reasons why we have 50 per cent capital in the pharmaceutical industry. National research might have balanced the situation, if a patent law in the pharmaceutical field existed, and Italy would now have a more

valuable and more competitive industry in front of the powerful industries of the Common Market member countries, particularly France and Germany.

On the contrary, the weakness of our home market favoured the inflow of foreign capitals, not for licence exchanges but for the purchase of manufacturing factories. I can also say that the capital instead in pharmaceutical industry is increasing every year at the rate of 20 billion lires every year. Beyond that, it will be difficult to give the break-up of the figures.

SHRI RAGHUNATH REDDY: In the absence of patent protection in Italy, the foreign pharmaceutical industry started the manufacturing processes themselves by investment of capital in order to safeguard their inventions. Is that correct?

PROF. NICCOLAI: Yes.

SHRI RAGHUNATH REDDY: In the absence of patent law, what are the terms and conditions on which transfer of technology takes place? How does the Italian pharmaceutical industry obtain the technical know-how? Mere formulation is not enough.

PROF. NICCOLAI: We have got very intelligent researchers I quoted that most important pharmaceutical societies in Italy have agreement with foreign factories for producing their products in Italy.

MR. CHAIRMAN: Is it true that when you export your medicines you get less price in the export market and you realise more prices within the country?

PROF. NICCOLAI: Generally speaking, it is true. But you cannot export without a strong interior market.

MR. CHAIRMAN: We would like to know more about yourself what you are, etc.

PROF. NICCOLAI: It is very nice of you. I am the legal consultant of ASAFARMA, which is the greatest association of industrial manufacturers. Its membership is only 70 but they are the greatest ones. They cover 60 per cent of the whole national market of pharmaceutical specialities. They have a production of 90 per cent of the raw materials and are responsible for 90 per cent of the exports. You can see the weakness of the Italian position when you realise that only 70 factories have an absolute majority of the market.

I am a lecturer in the juridical discipline in the University of Milan. I am 61. I am an old man.

SHRI NAMBIAR: You do not look like 61.

MR. NICCOLAI: Very kind of you. I do not know what more to say about me.

MR. CHAIRMAN: We are very glad you have given a very interesting evidence. In spite of the difficult subject you kept us in good humour. We thank you again and you are welcome to India.

SHRI NICCOLAI: I am very very glad to be in India. The Committee can recall me whenever necessary. I admire your splendid country. I take back with me, first of all, the extreme kindness of the Indian community. I thank you very much.

The witness then withdrew.

SHRI C. C. DESAI: I would like to know whether there is any distinction in fees for the registration of national and foreign patents and, if not, why not. Is there any precedent for this in other countries?

DR. VEDARAMAN: No. Sir.

SHRI C. C. DESAI: I want to know whether it is possible to evolve a shorter duration of period in the case of unutilised patents.

DR. VEDARAMAN: We have a number of provisions in the new Bill for revocation of patents for their non-working. The patents are revoked in case they are not worked in the country.

(The witness then withdrew).

The Committee then adjourned.

JOINT COMMITTEE ON THE PATENTS BILL, 1967

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967

Friday, the 14th February, 1969 from 10.05 to 13.00 hours and again from 15.00 hours to 17.15 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri Kanwar Lal Gupta
4. Shri Hari Krishna
5. Shri G. S. Mishra
6. Shri Srinibas Mishra
7. Shri K. Ananda Nambiar
8. Dr. Sushila Nayar
9. Shri P. Parthasarathy
10. Shri T. Ram
11. Shri Ramesh Chandra Vyas
12. Shri Fakhruddin Ali Ahmed.

Rajya Sabha

13. Shri Krishan Kant
14. Shri R. P. Khaitan
15. Shri Om Mehta
16. Shri K. V. Raghunatha Reddy
17. Shri C. Achutha Menon.

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*
2. Shri S. Ramaiah, *Deputy Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS (DEPARTMENT OF INDUSTRIAL DEVELOPMENT)

1. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks, Trade Marks Registry, Central Building, Queens Road, Bombay-1.*

2. Dr. B. Shah, *Industrial Adviser (Drugs).*

3. Shri Hargundas, *Under Secretary.*

4. Shri R. Vasudeva Pai, *Joint Controller of Patents and Designs.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

I. M/s. L. S. Davar & Co., *Patent Attorneys, Calcutta.*

Spokesmen:

(i) Shri L. S. Davar, and

(ii) Shri G. S. Davar.

II. *Bestobell India Private Ltd., Calcutta.*

Spokesmen:

Shri S. B. Mehra, *Director.*

III. Dr. K. A. Hamied, *Chairman and Technical Adviser of the Chemical Industrial and Pharmaceutical Laboratories Ltd., (CIPLA), Bombay-8.*

(The Witnesses were called in and they took their seats).

MR. CHAIMAN: Mr. Davar, thank you very much for coming before the Committee to give your evidence. We have got your Memorandum and it has been circulated to the Members of the Committee. You may, in brief, emphasize the important points relating to the Patents Bill. Please note that your evidence will be published and made public. If you want any part of your evidence to be treated as secret, you may indicate that. But still that will be circulated to the Members of Parliament.

SHRI L. S. DAVAR: Sir, in my address to the hon. Members of the Committee, I will be referring to some tables which, with your permission, I would like to distribute to the Committee.

The theme of my address will be as follows. I would first deal with the question as to how the patent system has so far helped in the industrialisation of the country. My second point will be with regard to the procedure that has been laid down for the grant of patents according to the present Bill. The third point will be with regard to policy matters, namely, compulsory licensing, endorsement of patents, etc.

Now, before I deal with the subject of how the patent system has helped the industry in the country, I would just like to give a brief introduction about myself. It is a pleasure for us—here is junior Mr. G. S. Davar who has been in the line for the last 9 years—to appear before this Committee. We pay our respects to the Committee for the public service you are rendering in your far-reaching and thorough examination of the Patents Bill which is a very controversial subject.

As the hon. Members will appreciate, the patent law is an adjunct to industry. It has developed in the world with industrial revolution in various countries. The principle objective of the patent law is to stimulate inventions. It gives a legal shape to the right which an inventor already possesses. He possesses as invention for which he has an inherent right. But by virtue of the grant of a

patent, a legal recognition is given to him.

Being an Indian, it has always been my attempt, during 39 years of my association with the patent system in India, to see in what manner and how the patent system could help in the industrialisation of our country.

By way of giving some background, I may say that, in the year 1937, I had submitted to a Committee known as the Chetty Committee to recommend to the Government to prepare abridgements of patent classifications industry-wise, so that the industry could know what new developments are taking place in the field all over the world. In 1946, after the War, I recommended to the late Shri Ardeshir Dalal, who was at that time a Member of the Viceroy's Executive Council in charge of industries, that a technical committee should be appointed to look into the old patents as well as new patents and to prepare a memorandum of the technical information which is available, so that the industries which were hitherto engaged in the manufacture of war material could switch over to production of indigenous goods.

Then it was in the year 1948 that I recommended to the Government to set up a Patent Utilisation Board so that the Indian inventors could go to the Board and ask them to make a prototype of their inventions and see whether those inventions could be utilised for industry . . .

SHRI KRISHAN KANT: Prototype of NRDC?

SHRI L. S. DAVAR: Yes. In fact, in 1948, I attended the Bar Conference in the Hague and at that time I was asked by the Government to visit the various patent offices, and in the U.K. to the Commissioner of Patents I put up the proposal, which I have put up to the Government of India, of Patent Utilisation Board, and he said that we have already got NRDC on the same lines.

It was about four years ago that I recommended to the CSIR to collaborate with the patent office in studying the patent specification for proper indexing and for retrieval of technical information for industry and the CSIR laboratories.

In 1965 I acted as the Co-Chairman of Industrial Preparatory Committee of World Peace Through Law, and since 1967 I have been acting as the Chairman for Asia on this Committee.

In 1965 I was appointed by an international organisation as a member of a five-man committee to deal with the problem of the role of industrial property in the economic and technical development of developing countries.

Having been associated with the patent system in India for the last 39 years, we can claim to have represented the largest number of Indian inventors in this country. Before the 1948 Committee I recall having made a representation to the Government that, now that we had achieved Independence, we should see how the patent system could help the industry in the country and how the working of the patent office could be improved.

After having given a short introduction of the humble way in which I have been trying to serve the country, I would make a submission that, in presenting the present Bill, the Government have represented that the existing Patent Act has not achieved the objective of stimulating inventions and helping the growth of national industries. My submission to the hon. members will be that this criticism is vague and unwarranted; it cannot be supported by facts and figures and is derived only from arbitrary considerations, namely, because foreigners take out a large number of patents in this country, the monopolies granted to these foreigners come in the way of national industries. I am fully aware of this, but, as I will shortly explain, this factor has not retarded the growth of indigenous industries in India.

There are about 30,000 patents in force at present, of which, let us say, about 50 per cent are of recent issue. We have no statistics before us, and this I challenged once in the year 1956 before the Chemical Manufacturers' Association when Mr. Manubhai Shah was the Honourable Minister. I asked the chemical industry, 'Which are the patents which are coming in your way?', and nobody could answer to that question. In the absence of such statistics, my humble submission will be that the question whether foreign patents have come in our way should be treated as purely hypothetical and of academic interest.

Now let us look at it from another angle. Let us admit an allegation that these patents come in the way of Indian industries. In addition to these 30,000 patents which may be in force in India, there are at present over five lakhs of foreign patents lying in the Indian Patent Office library which are free for public use. Has any industry taken advantage of these? No.

MR. CHAIRMAN: Why?

SHRI DAVAR: I will come to that.

SHRI KRISHAN KANT: Out of 30,000 patents, how many are Indian and how many foreign?

SHRI DAVAR: I will come to that also.

The patent office is a storehouse of wonderful knowledge of modern technical knowhow. In America, for example, till today there are over 3 million patents granted. The number in England is about a million. As against those, we have only a meagre five to six thousand patents granted in this country, which were granted, a hundred years ago in USA. That was the stage of development in USA at that time. The point which I want to make out is that all these patents are freely available to the industry. Why have not the industries utilised these? Why do they come forward and say that these 30,000 would come in their way, of which again no statistics are available. All these patents can be purchased for a small amount of Rs. 4 to 5. They are available in the patent office library. My learned friends, Dr. Vedaraman and Mr. Pai, will bear me out. They are just lying packed like a heap of old newspapers, thrown somewhere in the patent office library. If people are interested in utilising the technology, if people are interested in utilising the information given there, they could surely take the help of those. Why should they just make a cry that these 30,000 would come in their way? The importance of these patents will be appreciated from the fact that immediately after the cessation of hostilities in the Second World War the Allies asked for the German patent specifications which were granted during the war period to see what developments had taken place. The developed countries, as you will see from this submission, appreciate the importance which the patents play in development of industry. The patents granted to Germans were freely available to them and they wanted to make use of them. In our country nobody is making use of those patents which are freely available.

The answer to all this is, not that the patents are in the way, because in the instances that I have cited no Indian patents are involved. There are obviously other factors which are responsible for the low standard of development in our country and those factors, as the hon. Members are fully aware of, are the low level of technology and paucity of funds in the hands of those who are capable of developing inventions. The lack of sufficient industrial development in the country has not been due to any fault of the patent system but stems from a century of neglect of research and developmental activities. The post-independence era has been essentially an era of borrow and invest. However, with the basic level of technical know-how already obtained under the foreign licences, a demand for indi-

genous products will begin and in effect the cycle of further discovery and innovation of replacing imported materials by indigenous materials has begun. It will be interesting to note that whereas USA and USSR spend 3 per cent of their national income on research—each of them—in India we spend a meagre 0.26 per cent of our national income. According to the unrevised Fourth Plan it is 0.35 per cent of our national income. It works out to be at the rate of Rs. 1.6 *per capita* as against Rs. 410—I am giving the pre-devaluation rate in USA as well as in USSR. From the above facts hon. Members will notice that it is not the fault of the patent system that Indian industry has not developed to a reasonably high degree. Notwithstanding the fact that the number of patents granted in India is five times the number in the pre-war period yet the industry has done better now than in the pre-war days. This will be clear from the tables A, B and C which I have submitted to you; you will see from the index of industrial production in Table A, 1960 being taken as 100, that during the last eight years, it has gone up to 16 per cent. In Table B you will notice the annual rate of growth of industrial production from 1961 to 1967. In the last two years due to recession, the growth was relatively small but from 1961 to 1964 and 1965 the growth of capital goods industry, basic industry, intermediate goods industry and consumer goods industry has increased. If we come to Table C, it relates to medicinal and pharmaceutical goods. You will see that imports of medicinal and pharmaceutical products into India was worth Rs. (9.9) crores in the year 1950-51. As against that, in 1962-63 it came to Rs. (9.3) crores, Rs. (8.6) crores, Rs. (8.2) crores etc. The next table under 'C' will also show how much in the line of medicinal and pharmaceutical products we have been exporting from this country. You will see that although in 1950 we exported goods worth Rs. (118) lakhs in the year 1967-68 we have exported goods worth Rs. (333) lakhs.

These figures were published by the Indian Chamber of Commerce at the conference held on 24th January this year, on economic outlook, inaugurated by Shri L. K. Jha, Governor of Reserve Bank, recently, in Calcutta. Therefore, I submit these are authentic figures.

As I have submitted, notwithstanding the allegation that patent system stands in the way of industrial development, these Tables will show that the industrial growth of the country has been on the increase. And there has been an increase in the production and export of medicines. Therefore, it is a bogey to say that the patent system is bad. My submission would be, if the patent system was responsible for retardation, then in Europe, where the majority of patent-holders are foreigners, the industries should have gradually come down, but the reverse is the case. On the other hand, if the absence of the patent system is responsible for an improvement of industries, then, countries like Cambodia, the African countries, or Singapore, Thailand, which have no patent system, should have reached a very high level of industrialisation, as compared to such unfortunate countries who have the patent system. Of course, the hon. Members know what is the stage of industrialisation of the countries which I have just now mentioned.

The concept, as the hon. Members know, of the patent system started in the United Kingdom when they wanted to industrialise themselves. They not only requested foreign technicians to come and work in the country but also set up a system of granting privileges for whatever new innovations they brought into the country, and that is how they changed to industrial economy, from an agricultural economy, in the United Kingdom. That is a factor which is responsible for the start of the patent system in the United Kingdom. A system which I submit has proved itself worthy during the last century cannot the declared by

India as a system which works contrary to the development of indigenous industries.

I am fully aware of the fact that the patent system creates a certain "monopoly" which is a very undesirable term but the legislature not only in India but practically in every country except the United States, has provided a remedy in the form of compulsory licence which is in the shape of an anti-trust legislation. In my opinion, it has worked well, and here I will give to the hon. Members some of our own experiences.

It was in the year 1952, when a foreign company, whose name I would not like to disclose, had a monopoly for the manufacture of certain railway equipment. We find that an Indian applied for a compulsory licence and it was approved to the satisfaction of the controller by producing an article according to the patent, that they were capable of manufacturing this article and supplying it to the railways. The result was that a compulsory licence was granted to our clients and they came in competition, and started supplying indigenously-made articles to the railways instead of the imported articles.

There is another instance where the abuse of monopoly could be stopped. There was a machine covered by a patent. This was an Indian party, which wanted a licence fee for the use of the machine. The total cost of the machine was not more than Rs. 400. He was charging a licence fee of Rs. 250 a month from anybody who used that machine. There again, we filed a compulsory licence application stating that it was an abuse of monopoly. The patent-holder was forced to give up such a practice and allow the manufacture of the machine by the other parties only on a royalty basis.

In another instance, a device which was being imported from England was being extensively used by the railways. It was a device which could be easily manufactured in this country. All that we did was, we wrote to the patent-holder saying, "If you do not give us a licence for the manufacture on reasonable terms, we will file an application for a compulsory licence." The licence was given straightaway. These are only a few instances which I am mention to hon. Members to illustrate that a compulsory licence system as is available in the present Act has worked well in the country.

Let me turn to the positive side of the question, namely, how the patent system has helped to develop new industries in our country. I am giving these few instances from our personal experience, for the information of hon. Members. Let us first talk of the Indian Hume Pipe Co., which was started by Walchand group. It was based on four patents granted in 1924, and they have now a network of factories all over the country, giving employment to people and manufacturing pipes. At the same time, they have, after receiving the technological aid from abroad and obtaining a licence for these patents, developed their own technology which was better than the foreign technology for the manufacture of pipes by more expeditious and cheaper methods.

Take next the India Fan case. It was started on one patent, and the hon. Members know how popular India Fan became. They obtained a patent for the angle of the blade which was developed by the Indian inventor whereby the consumption of electricity as compared to foreign fans could be reduced to about half. The whole industry was set up on one patent alone.

Then, an improved device of a stone-crusher is now being developed and manufactured in Baroda, and it is a new industry, with the result that crushers instead of being imported are now being exported by this organisation in Baroda. Next is the mining machinery which is now being developed by a company near Calcutta. They are not only replacing the mining machinery which was being im-

ported but are also going to export the mining machinery manufactured by them. It is entirely a new industry set up with about 14 Indian patents.

Many years ago, an Indian inventor developed a new type of diesel engine, with the result that a new company was set up which started the manufacture of about 100 diesel engines a month, resulting in the stoppage of the import of a large number of diesel engines of low horse-power, into the country.

Let us come to the tea machinery. We have taken out patents in India as well as in some of the East African countries and also Ceylon and they are exporting tea machinery to those countries as against foreign competition from England.

Take Suri Transmission which has had wide publicity. It is another instance where the Indian invention has found recognition abroad.

A company entirely dependent on one patent in Tubewell Strainers made a mark in the development of tubewell industry.

A new tiffin carrier resulted in a very large scale industry in Poona. A large number of patents in vacuum flasks have enabled Indian manufacturers to compete in the foreign market.

A flexible tube-making machine made by an Indian party is now being is sought in America. The inventor has been asked to bring a machine and set up a new industry in America for the manufacture of flexible pipes.

In the textile field, Indian engineers have manufactured machinery which in many instances has replaced foreign machinery.

Now, Sir, I turn to the latest inventions which are being sought after by foreigners. Since Mr. G. S. Davar has been handling this matter, I would ask him to explain.

MR. CHAIRMAN: You can carry on yourself.

SHRI L. S. DAVAR: All right. I would like to give as much information as possible from personal experience.

The latest Indian invention is in the manufacture of steel. It has now been licensed to a very large company in Germany. The development cost of that will run into millions of pounds to develop that Indian invention. They are now going to undertake a feasibility study and if after that the Indian invention is found useful, the inventor should except to receive 180 million rupees as royalty in that.

Then there is a process of aluminising developed by the Jadhavpur University. This will replace use of tin in the canning industry. Enquiries have been received even from the US Navy about that process.

Then a computor was developed by the Jadhavpur Professors and they received letters from foreign countries, saying that they will copy the computor unless it is covered by patents. This is how Indian inventions are being recognised abroad.

Then a shock control device developed by an Indian is finding buyers in USA. In fact the US Government, I understand, it is reported in the papers, want to instal 500 of these shock control devices as a trial. These shock control devices have been sought for by East European countries as well as by such countries which have no patent system.

This shows how some Indian inventions are being sought for in foreign countries.

The Indian Telephone Industries of the Government of India have developed a telephone receiver which has been found to be new throughout the world and it is not unlikely that ex-

ports of those instruments will start. Similar patents in the field of textile machinery and pigments have been sought by foreign countries. Even in the pharmaceutical field, about four years ago, a process in the manufacture of some antibiotic was purchased by a foreign company at a tremendous cost.

Now, coming back again to the Indian industry, the national laboratories have played a vital role in this field. From the report published by the NRDC, it will be noticed that whereas in 1954 it obtained only Rs. 524 by way of royalty on patents, in 1966-67, it obtained Rs. 6,83,590 by way of royalty. This is in Table D which I have produced before you. From Table E you will see that the value of products from industries set up under licences from the National Research Development Corporation increased from 19 lakhs to 400 lakhs of rupees resulting in an estimated foreign exchange saving as shown in the second column in that Table. Out of 746 patents, it has licenced out 104 patents on behalf of national laboratories.

Now let us take the NRDC in UK, as against Indian NRDC. According to a recent Act, the NRDC in UK, which is the parallel body to NRDC in India, has raised the limit of advances to the Corporation from 10 million pounds to 25 million pounds. That is how funds being given to the various institutions are helping in the development of new inventions in industry.

Without repeating, I would like to say again that we have been spending Rs. 1.6 *per capita* as against Rs. 410 *per capita* in other countries. That being so, we cannot expect phenomenal change in the industrial development of our country. Further, it will be noticed that from 1957 to 1966, our Government allowed 2,468 collaborations. Out of these, 53 were in respect of medicines, 136 in respect of chemical products and 1156 for machinery, electrical apparatus and equipment. The utilisation of foreign patents and technology is bound to help the industry in India and can help the industry in India as it did in Japan which obtained it at a great cost.

I would now refer you to table F. There the first column shows how much did Japan receive in the frm of patent royalties from other countries. The second column shows how much they paid. You will see that as against 416,232 in 1958, they paid about 40 million in the form of royalties. This table has been reproduced from the report of the Japanese Patents office.

According to Mudaliar report of which the hon. Members must be aware, import of know-how has accelerated the industrial development of India. We should see that our laws are so framed that whereas these should encourage local research, at the same time these should not discourage flow of foreign technical know-how and capital investment as the latter will ensure not only the utilisation of the latest technology but assure the flow of further know-how which the collaborators may adopt in their home countries. I can give instances of the various collaborations which are working in this country and which are using the foreign patents held in India and thereby helping India in the development of industry. For example, from Germany, Siemens are working in this country. Then there are AEG, Buckauwolf Didier in refractories for the steel plants along with Tatas, Mahle in the manufacture of piston rings, Merck, Boheringer in the manufacture of medicines and Utkal machinery in the manufacture of machinery for paper making and furnaces, etc. Instances can be quoted from USA, *e.g.* Johnson and Johnson, Merck Sharp and Dohme, General Electric, Johns Mansville and Lubrizol—the latter is collaborating with the Government of India for the mau-

facture of lubricants. Several examples can be given of the various industries from foreign countries which are collaborating in this country and utilising the patents.

I would submit that fundamentally in framing any law we have not only to look to the past experience based on facts but we have to project our thought into the future to visualize how the law will conform with the conditions we are likely to meet. This really applies to laws which are essentially of domestic application but where the law is international in character such as law of shipping as also law of patents, we cannot ignore what reprecussions it will have on other countries.

I would just read out with your permission what Dr Karl E Lachmann, Assistant Director of Department of Economics and Social Affairs of the United Nations said at the 175th anniversary of the patent system in the USA. He is saying that the problem arising in connection with the transfer of technology to developing countries went much beyond the operation of national patent systems or the conduct of international patent relations because under the existing conditions patents cover only a part of the total technology needed for the industrialisation of developing countries. Even if such countries were to deny the local recognition to foreign patents, most local enterprises would lack the know-how to select, adopt and utilise the foreign invention. Only the transfer of the complete package of patented and unpatented technology would serve the purpose of industrial development.

In summing up my address to the hon. Members I would say that it is not fair to say that the patent system has not resulted in stimulation of new inventions or fostering of new industries. Evidence produced shows that contrary is the case. The wheel of new inventions in the country has started turning. Indian inventions are being recognised abroad and if our inventions have to be recognized abroad, there is no reason why we should not recognise inventions of foreigners in this country. For many years to come in view of the complex technology which is developed in other countries we have to depend on foreign technology. The Indian number of applications is on the increase and for that I will refer the hon. members to Table G which I have produced. From the Table G you will kindly see that whereas in 1964 the number of Indian applications was 16 per cent, in 1968 it has gone upto 23 per cent. This table we have obtained from the Patent office.

Before I close, I would like to make one remark. The Controller General and the Joint Controller General are here and I want to respectfully submit, that having been associated with the Patent Office for the last 39 years, I say that instead of going for these complicated laws which are not going to help our country, the best thing is to improve the present patent office which is in a deplorable state. I would strongly recommend to the hon. Members that at least those who can manage to have some time, they should visit the patent offices in USSR, USA and UK and West Germany—these countries I have myself visited—and see how these offices are working for helping the public and the industry and then visit our patent office and see in what deplorable state it is. We have a meagre staff of 30 examiners poorly paid and they are expected to look into wonderful inventions of foreigners in our country.

They are so poorly paid that they are always looking for jobs elsewhere. You got to the Patent Office library. A daphtari in the scale of pay of Rs. 100 is manning it, whereas in any western country, the moment you want to have some material on antibiotics or in anything you are interested, within 15 minutes you will get all the material before you from the technical person in charge of the library. When this

is the position, what is the use of having complicated laws. How are these going to help us and I don't know how the Patent Office will implement it.

SHRI OM MEHTA: Computerise it.

SHRI DAVAR: There will be riots in Calcutta if there are computers.

SHRI KRISHNA KANT: Even then these 30 persons will be there.

SHRI DAVAR: In respect of this particular aspect some countries are working on that line but we have not been able to compute it even after years of efforts.

SHRI OM MEHTA: What is your remedy?

SHRI DAVAR: You have to improve the system of working of this wonderful Patent Office. At my request Mr. Venkatachalam, the then Joint Secretary visited the Patent Office. The Controller-General was there. Mr. Pai was there. I requested Mr. Venkatachalam to ask a question on a particular subject—how far has the indexing work been completed? The indexing of patents of 1961 was not done. Indexing is the most important thing. The Patent Office was told that after the revision of the Patent Bill more staff would be given. The examination system is the poorest in the world.

SHRI OM MEHTA: Such like proverbs should be avoided.

SHRI DAVAR: My submission is we should try to improve the present system and see how the industry can be helped. The Patent Office should be provided with more staff; more salary should be given and see that the conditions in library are such that the industry can be helped. Abridgement system must be improved.

SHRI OM MEHTA: Mr. Chairman, we would like to put some questions also to the witness. At 11.30 we have another witness also.

SHRI DAVAR: If the hon. Members are not interested in my evidence, there is no use of my saying anything. I am in the field for 39 years and I can talk from my personal experience.

MR. CHAIRMAN: I think when the Members put questions many points on the Bill will be covered. If you like, you may deal with some salient points.

SHRI DAVAR: I will deal with two important points with regard to the procedure. One is with regard to the novelty. The present Bill proposes that the novelty of an invention should be determined with regard to publications available anywhere in the world. Unless, of course, the staff in the Patent Office is increased ten-fold it will be practically impossible for the Patent office to do this work. Specifications from all over the world are to be obtained. Apart from the physical impossibility of doing this job, it is not in the interest of our country also at present when we are still in the developing stage. Take, for example, the United Kingdom. They don't look into the patent anywhere in the world. It is only countries like the U.S.A. and Germany which have this system and that also in majority of cases they cite what is available in their own country. To say at the present moment that the novelty of an invention should be determined from what is available anywhere in the world will be shutting out all Indian inventions practically.

SHRI KRISHNA KANT: Do you mean to say that most of them are imitated?

SHRI DAVAR: There are three million patents granted in the U.S.A., about a million in the U.K. Are we going to look into those in order to find out the novelty of an invention? Then, it will take years before a patent is granted. If we want to develop industry in our country, anything which is not new in the country should be given protection, because that is the only way the industry can be helped. That is exactly what is practised in many countries of the world. If this question of elsewhere is to be introduced, then I would say you close down the Patent Office and have a system of confirmation Patents. In other countries, for example, in Latin American countries, these patents are granted for the remaining period of the term of the patent. Adopt that system. This word "elsewhere", in my humble submission must be removed because it is not going to help the industrialization in our country.

Then, Sir, the next point is regarding Article 8. As I have already submitted, in India the examination is the poorest as compared with other countries. And if the Indian examiner is flooded with reports from 100 countries—varying from the Japanese language, Swedish language, Spanish language and German language—what will be the fate of the patent office. I think this monstrisity of requirement is something which will make the functioning of the patent office also physically impossible. Further, Sir, how is it going to help?

The third point, which is very important is that the present Act provides that a patent must be granted within a period of 28 months or 32 months. The present Bill suggests that the examiner will give the report within 18 months. This is Article 12. There is no time-limit provided in the present Bill, for the grant of a patent. The patent office can conveniently sit over it for seven years before granting a patent. Therefore, Sir, I submit that a time limit must be given. It should be an obligation on the patent office to accept a case within a prescribed period as it is in the present Act. And, if on the one hand you are going to reduce the term of the patent, on the other hand you are giving a long rope to the patent office to sit over it for seven years, what will be the fate of the patentee, I cannot imagine.

The next point is about the procedure—clause 39—of filing of foreign application where permission from the Government has to be obtained. We file a large number of foreign applications. And our experience says that according to the laws of other countries it is sometimes very necessary that the application should be filed within the short space of period of the filling of the application in India. Therefore, I submit that a time limit must be placed on the grant of permission for filing of an application in a foreign country. That is very important.

SHRI KRISHNA KANT: What is the present position?

SHRI DAVAR: The present position is that permission is sought from the Controller. We then obtain permission from the Reserve Bank because foreign exchange has in any case to be obtained and foreign exchange permission takes about three months time and Government may take another one year to grant permission with the result that the Indian inventor cannot file an application abroad.

MR. CHAIRMAN: But once we become a member of the Paris Convention, then this can be got rid of?

SHRI DAVAR: Yes, this of course will be got rid of, provided everything is done within a period of, let us say, 8 months.

Now, Sir, finally I will deal with compulsory licences. Clause 48, as I have already submitted, provides discrimination. Any discrimination provided in the Act is bad in the eyes of law. This is not based on principles of equity. Why should Government be allowed free use of the patent. This, again, is a discriminatory clause. What will be the effect of section 48 as far as the Indian inventor is concerned. The result will be that the technical know-how which can be developed as a result of patent protection will not be easily available to the public.

Again, Sir, in this clause, importation is provided. How is importation going to help the industry in the country? On the one hand, Article 83 says that the object of compulsory licence is to develop indigenous industry, Article 48 says 'No, you can import'. If importation is to be resorted to, how is it going to help the Indian industry? If it is the intention of the Government to control prices of drugs, it has wide powers under the Essential Commodities Act. It can surely utilize the powers under the Essential Commodities Act rather than say "Because I cannot get it at cheap price, I want to import". I would submit, Sir, that the clause of importation should be scrapped. Price control can always be affected and compulsory licence system should be adopted in place of Article 48. I would submit that Article 48 is highly unjustified and should not be there.

Article 53 makes another discrimination with regard to drug Patents in reducing the term of the Patent to 10 years. My submission would be if you want to maintain the term of 10 years there should be a provision for extension of the time of Patent in certain circumstances.

With regard to Articles 87 and 88—Licences of Right—I would submit it means taking away all the rights conferred by the present Act. Under the present Act certain rights have been given and under Article 87 all those rights which have already been conferred are taken away. Such a provision, I would submit, is bad in law. Your existing Act has provided statutory rights and if the patents have been granted under the existing Act under what law can those rights be now disturbed by the present Bill? Is it democratic? Is it constitutional that you have given rights to a certain person and then you make another Act and say now I want to take away these rights from you. I would submit, Sir, that this also should not only apply retrospectively. Then read with Articles 87 and 88 what will it mean? Section 88 provides for percentage. There is an existing contract of higher percentage and Section 88 says not more than four per cent. Would that not be regarded as a breach of contract? Supposing there is a contract already existing between a patentee and an Indian company by which Indian company is paying a certain amount of royalty. Now, if you introduce Sections 87 and 88 it would be a breach of contract. The Government cannot put an arbitrary royalty clause. I would submit, Sir, otherwise the existing collaborators will say we will pack up and go. We are not interested in carrying on any more with the result that the existing industries will suffer and the further know-how which we will get as a result of development in other countries by those collaborators will not be available to us.

Now, Sir about drug exports. The export of drugs will tend to stop as no more technology will come. Further, Sir Sections 87 and 88 are not appealable to the High Court which, I think, is very unfair. I submit that Sections 87 and 88 should also be made appealable to the High Court.

I cannot critically analyse all the provisions because of shortage of time. What I find from my know-

ledge of the law of this country and of other countries is that the present Bill, in my humble submission, is framed out of the penalty clauses available anywhere in the world, all heterogenously jumbled together without looking into the interests of the country. The whole thing has a negative outlook as far as I can see and I would submit that according to the instances which I have already given compulsory licence system according to the present Act has worked well in the country and there is no reason why those sections should be disturbed and a large volume of sections relating to compulsory licensing, licensing of rights should be introduced. What is wrong with the present compulsory licensing system. That has worked very well and for some time that should be allowed to be retained in that form. These are my submissions.

MR. CHAIRMAN: The technology gap between European countries and Eastern countries is widening inspite of good patent law there. In India how can you know that that technology gap will not be there if you have more liberal patent law.

SHRI DAVAR: If we have to improve industrial develoment we have to be liberal in our patents policy.

MR. CHAIRMAN: How is it in England inspite of having a comparatively liberal patent law the gap in-between the technology of England and U.S.A is widening everyday.

SHRI DAVAR: That is the economic factor. I would say why is always in danger and not dollar. England has lost its colonies.

MR. CHAIRMAN: Even in West European countries the gap of technology is widening inspite of having a very liberal patent law.

SHRI DAVAR: This liberal patent system is one factor in helping the development. But there are other factors. For example, as I have already submitted, the amount of money spent on research.

The amount of money which American has spent on space research runs into billions and billions of dollars. For two years they carried on experiment. I have seen a film. They put a man in 450c and all his physical parts of the body are tested from outside.

The Patent System acts as a vehicle for development.

MR. CHAIRMAN: For the information of the Committee you give us a note indicating the manner of the improvement you want *i.e.* Patent Bill *vis-a-vis* the suggestions.

SHRI DAVAR: I shall but I have put down a suggestion to please visit us.

SHRI C. C. DESAI: I have gone through your Memoranda on the subject. What really is required is to pick up a few more important clauses for amendment. If amendment is of the wrong type, that will be dangerous to the economy of the country. The tendency is that case will be to mistake wood for the trees and no useful purpose will be served.

SHRI DAVAR: That is why I have submitted that clauses 8, 13, 12, 21 and 22 *viz.*, test for novelty, information on examination of foreign for patent and the time for the grant of patent—these are the three more important points. The other points you can omit.

SHRI DESAI: You have mentioned that there has been development of drugs and pharmaceuticals with the existing Patent Law. You see no reason why the Patent Law should be amended or as the people would call it weakened. That might have adverse effect on the development of the industry and especially the drug

and pharmaceutical industry in the country. Now actually all these developments have taken place not because of the Patent Law in one way or the other but because of the economic factors like vast market in the country, good technological skill available in the country and people finding a suitable market for investment in the country. That is responsible for the development of pharmaceuticals but not this feature or that feature.

SHRI DAVAR: I would submit, Sir, as a result of the Patent system or Patent Law, acquisition of know-how for the manufacture of those drugs has been there. But I would say that all foreign companies or all Indian companies are not making patented drugs. They are making a very small percentage of patented drugs as compared to large number of unpatented drugs. Why did we not have that technology before Independence. It is not a question more that of economics. I would say as a result of foreign pharmaceuticals industry in the country we have learnt a lot and we are still likely to learn because of the know-how which they have developed.

SHRI DESAI: Suppose I am a foreigner and I have certain patented drugs. I want to introduce it in India where the Patent is weak. But I know if I go to this country and invest in making that particular drug, using my technology, I will be able to make money and get good return. How is it that I will be prevented from coming in India?

SHRI DAVAR: This is controlled by the Government.

SHRI DESAI: By Industrial Licencing Contract. But that has nothing to do with the Patent Law.

SHRI DAVAR: Patent Law is a part of the factor. How many Patents are being utilised by these people. I have given some of the examples.

Let us take Johnson & Johnson. They are manufacturing a variety of products in the country, but the number of patent is relatively insignificant.

SHRI DESAI: Does it not matter that the Patent Law may be strong or weak. Is the Patent Law is very insignificant factor in the economy of the country.

SHRI DAVAR: It is not so insignificant that you can completely ignore it.

You are a business man or an industrialist. I come to you and say, Mr. Desai, I have got a very good Article. Would you kindly invest your money in it. You will say, all right, I am going to invest but how much return I am going to get out of it? Are others likely to copy?

SHRI DESAI: Can you copy from the patent when the technical know-how is not associated with the patent?

SHRI DAVAR: Technical know-how is to be given by the inventor. Therefore, I say patent is as important as know-how and know-how is as important as Patent for the development of industry. Patent gives the leads to the know-how and if I know that you are not going to protect my interest and pay me certain royalty; then you can tell me that you give me idea and know-how but I am not going to pay anything.

SHRI DESAI: What is the attitude of the Central Development Corporation as regards duration of contract, royalty, fees, etc.?

SHRI DAVAR: My information is that they asked for substantial royalty than many of the foreign countries. They asked for a longer period and on much more unreasonable terms. That is my experience of the National Research Development Corporation.

SHRI L. S. DAVAR: You are perfectly correct.

SHRI KRISHAN KANT: Really the patent system as a matter of fact does not help it is the technical know-how that is important. The patent system as such is an insignificant thing. You told us that a number of companies are there which do not give foreign collaboration when the patent is lost required. It is the foreign know-how that is important. Supposing the patent system is scrapped. Now, in how many cases of foreign collaboration, the foreign patent was involved?

SHRI L. S. DAVAR: In all cases the patent was involved.

SHRI KRISHNA KANT: Mr. Menderson was a great scientist of the United Kingdom. After visiting China, he gave a report that the foreign collaboration has really retarded the Indian progress, because we have become too much dependent upon foreign know-how for our development. He said we may have gained a little but ultimately we have lost the goal. In China, where patent does not matter, they have progressed further; they are spending more on research, rather than having a patent system. If there was no patent system and if we spend more on research, whatever patent we want to buy we can buy it outright by paying a lump sum and then develop what we want to develop. Don't you think that it would be a better system than all this patent system and cumbersome things?

SHRI G. S. DAVAR: I think Mr. Menderson has taken an extremist view of this, in the sense that if we abolish the patent system, the result of that will be retardation of our development and technical know-how.

SHRI KRISHNA KANT: China has progressed.

SHRI G. S. DAVAR: I do not think one can compare one country with another country. The conditions in China, the Constitution of the Government of China, are all entirely different from what they are in India. But since we have come to a certain stage of technical know-how, it might be beneficial for the interests of the country to see that a particular know-how is developed, and no know-how can be developed without giving a legal protection, and that legal protection is provided by the patent.

SHRI KRISHNA KANT: Do you know that Dr. Kothari once said that for underdeveloped countries it is better that they do not have a patent system till they reach a certain stage of development? I do not think India is a country which has developed to that stage where a patent system could be of help. For underdeveloped countries in India and Africa, it would be better if you do not have a patent system. We must utilise whatever we can and buy up the know-how and they can sell it on payment only. For the next 20 years, if we do not have a patent law and buy up the know-how from the developed countries and face the challenge, I think that we may be able to do better than what we have done up to now.

SHRI G. S. DAVAR: As regards the question about abolishing the patent system because we are still an underdeveloped country, I think that might have been the state of affairs in 1950 or 1953, but our technical know-how has developed to a certain extent now, where we have come to a stage where we are exporting the know-how. So, we cannot classify ourselves as an under-developed country with regard to know-how at present. We have come to a stage where we are a developing country as far as know-how is concerned, and if we still want to acquire more further developed know-how, I do not think that any owner would be ready to part with his know-how without giving a certain guarantee that his know-how will be protected.

SHRI KRISHAN KANT: When we pay a lump sum and get the patent here in India, it is a case of priorities, and whatever technical knowledge is available in the rest of the world we pay for them. They will not give us free. And then we may utilise that, rather than having collaboration. Some companies have two or three collaborators for the same process. This is one way by which foreign exchange is drained away. We can, therefore, buy up the patent outright and then develop. Japan was doing so earlier.

SHRI L. S. DAVAR: Know-how is not taxed.

SHRI KRISHAN KANT: I agree that we may put in more money for research and put our scientists on the job, but instead of having foreign collaboration by which they can control our economy and industry, we can buy outright whatever we can get. There should be a central agency in the Government of India to decide and we buy a particular know-how, and then further modifications can be done in our country, suited to our genius and requirements. It would be better than anybody else continuing to control our economy.

SHRI L. S. DAVAR: If you are a businessman and you buy the know-how for a particular price from a package know-how, both patented and unpatented, would you like others to copy after having invested money in it?

SHRI KRISHAN KANT: It is a question to be decided by our national policy when we decide the development of our industries for which we want the technical know-how. Government is not going to have industries all over. Private industries can take that know-how.

SHRI L.S. DAVAR: Other private industries may also come in.

SHRI KRISHNA KANT: The market in India is so big that you can have two companies.

SHRI G. S. DAVAR: Is the hon. Member suggesting that the Government should become a central agency for buying the know-how and distribute it thereafter?

SHRI KRISHAN KANT: Yes.

SHRI G. S. DAVAR: Repetition, as far as industry is concerned, is good and it creates a healthy competition.

SHRI KRISHNA KANT: That is true if we develop our Indian know-how. But as far as foreign patents are concerned, we can develop and later on bring them to our country. There, competition may not be there. When more research is made, there may be local competition rather than foreign competition when two or three foreign companies control our economy and join a cartel.

SHRI G. S. DAVAR: That can be checked by having a licensing authority.

MR. CHAIRMAN: So, you do not agree to the proposition propounded by Shri Krishan Kant.

SHRI L. S. DAVAR: Not directly.

SHRI KRISHAN KANT: I refer to clause 53 of the Bill. Suppose a particular patent is given in this country. That company or person is able to import that product produced by that patent. It is indirectly a process patent as well as a product patent. It is not merely a process patent but a product patent; the former is more harmful to the country. This product patent will not be harmful to the country.

SHRI G. S. DAVAR: The answer is, the product is dependent on a particular process. Anyone can manufacture the same product through another process,—

SHRI KRISHAN KANT: Supposing a United Kingdom patent or the USA patent is being utilised in Italy, and they have filed a patent in India

also, we cannot get that product from anywhere else. We may get it cheaper from Italy rather than getting a patent that way. This clause is a retrograde step for our economy and for our industry.

SHRI G. S. DAVAR: That is allowed only with regard to the patented process as such. But if there is no patented process for the same product, you can import it.

SHRI KRISHAN KANT: When a patent is held by a foreign company, we will be bound down by them. We will not be free to import that product from another country where it is produced cheaper. So, this is a retrogade step.

SHRI L. S. DAVAR: Importation is not the only thing we are interested in. Importation does not help the development of our country. If we are going to resort to importation, we might import even foodstuffs.

SHRI KRISHAN KANT: In the case I mentioned the foreign company may file a patent in our country but would not manufacture the product here for ten years. We are at their mercy.

SHRI L. S. DAVAR: You can ask for a compulsory licence.

SHRI KRISHNA KANT: Compulsory licence does not help us to get the know-how which is more important. The simple act of filing a patent by a foreign company is retarding our production. So, why not import that product from another country where it is cheaper?

SHRI L. S. DAVAR: Importation is not the remedy for that. I would rather pay and buy the know-how and patent to set up another factory in this country rather than import it merely because that article is not being manufactured in this country.

SHRI KRISHAN KANT: Suppose a foreign company has filed a patent in India. Till that company, or its collaborators in India, manufactures that in this country we cannot import that. In order to strangulate us, that company may not like to manufacture it in our country for ten years. We will be bound down by that. Even if we want to manufacture or import, we cannot do it because of the filing of this patent by that company.

MR. CHAIRMAN: I think the hon. Member and the witness are entering into a hypothetical argument. Let us take a concrete case.

SHRI L. S. DAVAR: According to the existing practice in India claims for product patent *per se* are not allowed; claims are allowed for the product manufactured according to the process. Anybody else can take another process for manufacturing the same product without the danger of infringing the process claim.

SHRI KRISHAN KANT: I agree. The point is very clear. This clause can be used by advanced and developed countries like America and Russia but not by an under-developed country like India.

SHRI L. S. DAVAR: Let us not call ourselves under-developed.

SHRI KRISHAN KANT: We must pass a law which can be used for the development of our country now and in future. This clause (5) can be used only by countries like America or Russia in order to starve our progress. Suppose a company in such an advanced country files a patent in India for its product but does not produce it here. Then, being in a position not to manufacture it or import it, our progress will be retarded. In order to avoid this, will it not be better that the whole clause should be removed and have only process patent and not product patent?

MR. CHAIRMAN: In other words, would you be satisfied with process patent only or you want patent for products also?

SHRI L. S. DAVAR: I would say that a product should be patented or covered according to the process disclosed in the specification. Otherwise, what will be the meaning of having a process patent. It is like a party in England. A man sitting across the channel will manufacture and send it to England. This has been the law in England. What is the use of a process patent without the product covered by that process? There is no sense in such a patent.

SHRI KRISHAN KANT: You are talking of England which is a developed country.

SHRI L. S. DAVAR: I am talking of the law.

SHRI KRISHAN KANT: Suppose we make a provision that the life of the patent will be only five years after that anybody could utilize it? What would be your reaction? The modern scientific knowledge is increasing so fast that in five years new products will come in.

SHRI L. S. DAVAR: In some countries—Italy for instance—if the patent is not exploited for three years anybody can go and ask for a licence. But, then, I would say that let us not take the examples of countries which are technologically developed. As we are still technologically not developed, we need assistance of the patentees who can provide us technology. Therefore, compulsory licensing system is useful. By compulsory licensing we can negotiate not only for the patent, which will help us in setting up an industry and looking after our capital, but we can also get technology which has been developed by them by the same patentee. Therefore, what you have suggested is not the solution to the problem. I would say that the existing provision of compulsory licensing has proved successful.

SHRI KRISHAN KANT: How much has been utilized?

SHRI L. S. DAVAR: That is because of lack of know-how.

SHRI KRISHAN KANT: Suppose the patent lapses after five years?

SHRI L. S. DAVAR: I will give you a concrete case. In 1961 I was asked to negotiate a licence for a cetrain patent in India. I asked the client "why not a compulsory licence?". He said "I am not interested in a compulsory licence; I want the know-how; I want products of proper quality; I do not want my company to make bricks where my whole furnace will fail." Then I asked "how much shall I negotiate? 5 per cent?" He said "No; they want 15 per cent; give them 15 per cent" and the Government of India allowed it. So, you cannot make general rules in this matter, so long as we have to depend on foreign technology. Therefore, let us take the concrete examples of the various companies, what they are doing. We are interested in developing our industries and making our country strong. Why are Germany, America or Japan so strong? Because of the industry based on technology they have developed.

SHRI KRISHAN KANT: You are mixing the issue. We know that in those countries the patents are held for a period of 15 to 20 years. Then I come to another point. Do you know that some of the patents filed by the national laboratories are mere copy and imitation of the foreign patents which are not filed in this country? If research is done in this way, we will not be adding to our knowledge; it will be mere repetition which is useless.

SHRI L. S. DAVAR: I will answer this question by saying that it is better to develop a known technology of another country.

MR. CHAIRMAN: Here the question is limited to research.

SHRI L. S. DAVAR: I would say that you should grant a patent for it, because if it is new to this country

and somebody is prepared to take it up. It is good because it starts a new industry.

SHRI KRISHAN KANT: You will find that many of the patents filed by the national laboratories are just imitations of foreign patents yet to be filed in our country. They have done very little work. They have only increased the number of patents. In order to avoid this, the provision which has been made in this Bill is very salutary. But, before we apply it, proper machinery may be created and the patent office should be put on a proper footing.

MR. CHAIRMAN: I think, you have already answered that question.

SHRI L. S. DAVAR: Yes, I have already answered it.

SHRI SRINIBAS MISRA: You have already stated that you do not approve of world-wide search. Is it your opinion that world-wide search or anticipation elsewhere in the world will also not constitute a defence or ground for revocation?

SHRI L. S. DAVAR: I would say that world-wide search should not be a ground for revocation.

SHRI SRINIBAS MISRA: Nor for opposition.

SHRI L. S. DAVAR: No, Sir.

SHRI SRINIBAS MISRA: Nor as defence in a suit for infringement.

SHRI L. S. DAVAR: No, Sir. I am against the word "elsewhere" wherever it occurs in the Bill.

SHRI SRINIBAS MISRA: In your memorandum you have stated about clause 25:—

> "We feel that although the present provisions are satisfactory, it is necessary to add another ground viz. 'does the alleged invention involve an inventive step'."

So, in your memorandum you have approved of publication in India and elsewhere in any document as a valid ground for opposition. How do you change your view now?

SHRI L. S. DAVAR: I have supplemented my views.

SHRI SRINIBAS MISRA: You have not changed your views.

SHRI L. S. DAVAR: No, I have not changed it.

SHRI SRINIBAS MISRA: Some inventors are worried that if the period of the patent is reduced it would harm them. Somehow we cannot understand this because technical know-how is not a part of the patent and whether we grant them a patent or not their technical know-how is kept to themselves. Will you please explain how the patentees are so much worried about it because you may be knowing the psychology of the patentees being in that field?

SHRI L. S. DAVAR: The psychology is that the patentees want to recover, naturally, as much as they possibly can for a new innovation which they make, which has helped not only the industry but also in the setting up of a new industry in the country. What generally happens is that the patentee joins as a director or as a partner bringing in his patent and his know-how and gets say 25 or 30 per cent shares in the company in lieu of the rights which he has given to the company. Therefore, he is interested in seeing that the life of the patent is sufficiently prolonged.

SHRI SRINIBAS MISRA: My question was different. As you know, technical know-how is not transferred with the patent specifications. When it is not transferred, why are inventors worried because nobody can work out the patent without the know-how?

SHRI L. S. DAVAR: I will answer it by giving an example because that will be most illustrative. There was a company in Calcutta which was manufacturing insulating boards and there was a patent involved in it. One businessman put in about Rs. 20 lakhs and set up an industry. After it had gone on for five years, some workman or forman got out of it and tried to set up something similar because he know the know-how now. But he could not do it because it was covered by a patent. If that protec-

tion by a patent had not been there, that industry would have suffered because the know-how had become open, the foreman went out and asked a higher salary from another man to set up a competitive industry. It is for this reason that , although the know-how is different from the patent, the know-how becomes known once a patent is exploited. There is no protection for the know-how.

SHRI SRINIBAS MISRA: You have also given it as a reason for the continuation of the patent law that even after the expiry of some patents the Indian technical know-how is not so much developed as to work those processes here. If that is so, why are they afraid that if the period of the patent is shortened it will be worked out?

SHRI L. S. DAVAR: It is not that all patents cannot be worked. There are some which can be worked while there are others which cannot be worked; so, we cannot make a general statement in these matters. After all. what are inventions? They are improvements of a known art or new innovations or improvements or modifications in an existing article. Therefore we cannot say that the same general rule will apply to all cases. For example, if I have a telephone industry already working in this country, I can work out a patent because I am already manufacturing those articles.

SHRI SRINIBAS MISRA: According to you, imported inventions should also be patented in India.

SHRI L. S. DAVAR: Yes, Sir, because it helps our industry. Again, I will illustrate by giving a concrete example. In 1933 lustre bangles which ladies wear were being imported from Czechoslovakia at Rs. 5 a gross. Then, one gentleman, by the name of Shri Mehta, went to Japan, got hold of the process, came to India and made an application for the new process which he had imported. He invested about Rs. 5 lakhs in setting up a new plant. Now, if there was no patent protection, would this man have set up a new industry in the country? Therefore, importation of patents for a developing country is very important. I can give you several other instances where new industries have been set up only because one goes abroad—an Indian by and large is a very vigilant person—looks up various industries and finds something very good. He adopts it and sets up a new company by investing Rs. 20 lakhs or Rs. 25 lakhs. Until and unless he is protected for what he has imported, how is he going to set up a new industry in the country? I will give him credit for finding out a process or a machine which is going to be useful for the development of our industry in the country.

SHRI SRINIBAS MISRA: Are you aware that the system of importation patent has been discontinued in England since long ago and that the Ayyangar Commission has also given its opinion against it?

SHRI L. S. DAVAR: I think, it is still allowed.

SHRI SHINIBAS MISRA: England is now allowing importation patent. Of course, that is a matter of information.

SHRI L. S. DAVAR: What I am talking about importation is that I go abroad and bring back an invention, a new process or a new machine. That should be allowed to be covered by a patent.

SHRI SRINIBAS MISRA: If I go abroad and bring a new process for the first time in India, shall I be entitled to have a patent?

SHRI L. S. DAVAR: Yes, because it helps the industry in our country.

SHRI SRINIBAS MISRA: In England, somebody sent some letter or communication and got the process and he applied for a patent to the Patent Office in England and that patent was challenged. They have stopped that sort of importation patent. Here, simply by sending letters and importing process by mail orders, can we get a patent that way?

SHRI L. S. DAVAR: I am talking of a general principle as to whether an invention not known in this country but known elsewhere should be protected or not. Supposing there is no industry in this country based on a particular process, if Mr. 'A' goes abroad or otherwise acquires the know-how and is able to set up an industry in the country, he should be protected. He is not going to invest money until and unless he is protected. Secondly, by virtue of his investment, he is setting up a new industry and providing employment in this country. That will also generate further know-how and, at the sametime, will stop import of some materials.

SHRI SRINIBAS MISRA: But, in principle, it does not involve any invention. Simple importation is no invention.

MR. CHAIRMAN: He is putting the case from the point of view of economic growth.

SHRI L. S. DAVAR: I agree. I would say, for sometime to come, we should allow it.

SHRI SRINIBAS MISRA: You have taken exception to clause 48. Will your objection be met if the machinery is provided for assessing the compensation payable to the patentee?

SHRI L. S. DAVAR: Yes. But indiscriminate licensing or importation should not be allowed.

SHRI SRINIBAS MISRA: That is an executive affair of the Government. Then, clause 53(2), according to you, is unconstitutional. What are your reasons? Is it not a reasonable classification?

SHRI L. S. DAVAR: You may keep the period to 10 years and provide for extensions in cretain circumstances.

MR. CHAIRMAN: Your objection on the constitutionality goes.

SHRI L. S. DAVAR: So much heat has been generated on this subject that I do not think my submissions are going to be of much help. You may call it a compromise. Let the period be 10 years. You can make a provision for extension in the event of certain circumstances justifying the extension. You can leave that to the Health Ministry or to the Controller or any other authority.

SHRI SRINIBAS MISRA: You have taken a constitutional objection. Is it not a reasonable classification?

SHRI L. S. DAVAR: It is not. On equity, that is not correct. The whole thing is bad as far as discriminatory clauses are concerned.

SHRI SRINIBAS MISRA: I cannot understand when you say that the existing industries will suffer if these two clauses are adopted, that is, clauses 87 and 88. The existing industries are already in the field. Clauses 87 and 88 only make a classification regarding food, medicines and other things and 4 per cent royalty.

SHRI L. S. DAVAR: If you read clause 87 with clause 88, it puts a limit of 4 per cent maximum royalty. Supposing I have entered into an agreement with a company that I am going to charge 10 per cent and the Government has approved of the agreements, particularly, in regard to payment of royalties which are approved by the Reserve Bank—and then if you say that the royalty should be less than 4 per cent, would that not be a breach of contract?

SHRI SRINIBAS MISRA: Will it meet your objection if some machinery is provided for assessing the compensation?

SHRI L. S. DAVAR: No, Sir, I would say, don't touch the existing patents. There should be no retrospective effect. It should be in relation to patents to be granted after the Bill is passed.

SHRI SRINIBAS MISRA: I am putting a hypothetical case. Supposing Parliament wants to adopt the clause as it is, can the constitutional objection be satisfied if a machinery is provided to assess the compensation to be payable to the patentee?

SHRI L. S. DAVAR: It is a question of equity; it may be provided.

MR. CHAIRMAN: We have the laws notwithstanding any contract to the

contrary. What you say is not just a legal objection. But it is a question of equity.

SHRI L. S. DAVAR: It is a question of equity and, of course, that comes under law, whether it is equitable or not.

SHRI SRINIBAS MISRA: Why do you say that the date of patent should be the date of the grant of the patent? Why not 'the date of publication'?

SHRI L. S. DAVAR: As I have already said, no time-limit is given in the proposed Bill for the time of the grant of patent; it depends upon the sweet choice of the patent office; they may take even four or five years; so, that period will be lost . . .

SHRI SRINIBAS MISRA: What does the present Bill provide for? Is it 'date of publication'?

SHRI L. S. DAVAR: It is 'from the date of filing of complete specifications'.

SHRI SRINIBAS MISRA: Don't you think that it has a reference to the date of priority sought to be fixed by this Bill?

SHRI L. S. DAVAR: Again it is inconsistent. The provisional specification is first filed or can be filed which bears an earlier date. I would say; don't disturb the existing system. There is no harm if we stick to our existing practice of starting the term of the patent from the date of filing the provisional or complete specifications as the case may be.

SHRI SRINIBAS MISRA: Suppose, the clause is changed to a ten-year period from the date of sealing. What will be your comments?

SHRI L. S. DAVAR: I would agree, because that will give 15 to 16 years.

SHRI SRINIBAS MISRA: You have made certain observations regarding the government's right to make use of patents. They are in line with the British Act or the American Act.

SHRI L. S. DAVAR: It should be specified under what circumstances the Government can exercise absolute rights. If it cannot specify the circumstances, at any rate, as I have said, there should be a provision that royalty or compensation should be payable by the Government if it utilises an invention. If the national laboratories run by government are licensing out their patents and the public has to pay, why should there be a discrimination here? Further, I would say that the goverment, in various industries and fields, for example in the field of Railways, is one of the largest buyers. People will not make inventions if they come to know that government is free to make use of their inventions without any compensation to them. Let the Government have the right, but under compulsory licencing, they should pay royalty which is reasonable and make use of the invention. The whole idea is that we should stimulate inventions. Is this going to stimulate inventions? No.

SHRI SRINIBAS MISRA: There is provision for compulsory licensing even in our present law. Even with that provision, the number of applications for compulsory licence is very few.

SHRI L. S. DAVAR: This is the case not only in India but the world over.

SHRI SRINIBAS MISRA: Even if you have the compulsory licensing provision and also the provision for licence of right, do you think that we will be right in expecting that these provisions will be very sparingly used?

SHRI L. S. DAVAR: As I said, let government utilise it, but there should

be a provision for compensation by way of royalty.

MR. CHAIRMAN: In the existing law there is provision for compensation.

SHRI L. S. DAVAR: Yes. Section 21 provides that the government can use any invention or ask its contractors or agents to use the invention provided the terms of royalty and compensation are settled mutually between the parties; if not mutually settled then the Controller will settle.

SHRI SRINIBAS MISRA: In War Contracts Act in England, for instance, atomic Energy, and in Tennessee Valley law in America, there can provisions that the government can utilise patented inventions without payment of compensation.

SHRI L. S. DAVAR: Those are exceptional fields and under special circumstances. In the field of atomic energy, no patents are granted. Even in England, only in the event of war such powers can be used, only for defence purposes and not in the normal circumstances.

SHRI SRINIBAS MISRA: Will you be satisfied if the Bill makes some provision for emergent circumstances in which government can make use of it without payment of compensation?

SHRI L. S. DAVAR: Subject of course, to appeal in the High Court. We do not want to give arbitrary powers to the government.

SHRI SRINIBAS MISRA: Please refer to Clause 116 . . .

SHRI L. S. DAVAR: Sections 87 and 88 are missing.

SHRI SRINIBAS MISRA: They can be added. Please see sub-clause (2) of Clause 116, line 34. There, you can say 'Sections 86 to 89'. That will include sections 87 and 88. If this is done, then, I think, your objection will be satisfied.

SHRI L. S. DAVAR: Yes, I would also include section 48.

MR. CHAIRMAN: Are you in favour of having Branch offices for our patent office?

SHRI L. S. DAVAR: No, Sir; I am not in favour. I would leave the reasons for not recommending that, and also the memorandum about international convention.

MR. CHAIRMAN: I was going to ask about that. About India becoming a member of the Paris Convention, what do you feel?

SHRI L. S. DAVAR: I have been advocating for that since 1956. Government had appointed a Deputy Secretary to look into this question, but once he was shifted from that job, the matter was forgotten. I would say that, at the present moment, it is very necessary because we are finding a lot of difficulty. For example, we are now engaged in exports abroad and we have been asked to file trade mark applications; when we go to the USA or Belgium to file the trade mark applications, they say, 'Sorry; you cannot do because yeu are not a member of the Convention'. I am taking a hypothetical case. Suppose we export 2,000 cases of whisky to USA and at that end some owner of a trade mark finds that I am selling under the same trade mark as of a US party. He will then stop my goods at the customs and send them back. The same thing applies to Belgium. I cannot register my trade mark there.

MR. CHAIRMAN: Have you prepared some paper on this?

SHRI L. S. DAVAR: Yes, I am submitting these to you.

MR. CHAIRMAN: We are glad that you were with us and we are grateful to you for giving your experience.

SHRI L. S. DAVAR: The privilege has been mine. You wanted me to

give you a note on the working of the patent office. I hope you will give me some time.

MR. CHAIRMAN: Certainly. When it is ready, you can send us 60 copies thereof.

(The Witness then withdrew)

Besto bell India Private Ltd., Calcutta

Spokesman:

SHRI S. B. Mehra, Director.

(The witness was called in and he took his seat)

MR. CHAIRMAN: We have got your memorandum and it has been distributed to the members. What are the specific points on which you want to lay special emphasis?

SHRI MEHRA: Whatever I would like to say would be not at all as a professional man. Mine is purely a viewpoint on how this measure affects the industry.

As stated in the Memorandum, the relevant sub-clauses with which I am concerned are sub-clauses (e) and (f) of Clause 64 (1).

Now I would take our own particular case and try to elaborate on that. We are putting up a plant for the manufacture of mineral wool and before we decided to take up this venture, we took legal opinion and tried to find out the patent position with regard to the plan and the processes that would be involved in the operation of this plant. The patent attorneys advised us that the plant and method that was to be used is likely to infringe certain patents. But they said that the patents in question would be invalidated on the ground of prior knowledge of the process and the apparatus as was available in foreign literature prior to the taking of those patents. On that basis, we went ahead and put the plant up. The Act of 1911 provided that any new invention would be deemed as such if it was not publicly known or used in India. This was subsequently amended in 1939 and it brought under its purview any literature that was available even outside India. Since then this has been the position and if there was any information in foreign literature on the process or plant on which a patent had been taken, then on that basis also it was likely to be invalidated. This was, of course, further borne out by High Court rulings that have been given on this particular issue.

What I have suggested is that these two particular clauses should really be deleted because these would amount to giving the particular patentees protection which they do not enjoy at present and which was deliberately taken away from them in 1939. This protection will not be extended to patentees in respect of patents granted after the proposed Act comes into force. This would endanger the position of people who have taken the risk of putting up a plant on the understanding that such patents as they exist today would be automatically invalidated if there was information available on the subject in foreign literature. It will also prejudice the rights of people who have already cases pending in courts on the subject on this basis. It is for these reasons that we would plead that these particular sub-clauses (e) and (f) should be deleted.

SHRI SRINIBAS MISRA: Please look at Clause 64. That is only with regard to revocation process. Is that correct?

SHRI MEHRA: That is correct.

SHRI SRINIBAS MISRA: This could only be a counter-claim in a suit for infringement.

SHRI MEHRA: Yes.

SHRI SRINIBAS MISRA: How do you say that the patentee had no such right under the old Act?

SHRI MEHRA: There was a case on this subject and it was ruled that the words "in India" did not appear in clause (e), sub-section (1) of section 26 of the Act. So, for the purposes of that Act even knowledge outside India is relevant. That was

borne out by an Allahabad High Court ruling.

SHRI SRINIBAS MISRA: Your objection will be met if it is said that the old law will prevail in respect of licences or patents granted before the commencement of the present Bill when it becomes an Act.

SHRI MEHRA: That means, the future ones you will allow on the new basis. That is also unfair.

SHRI SRINIBAS MISRA: That Will be the general law afterwards but regarding patents granted under the 1911 Act, the proceedings and revocation etc. will be treated as if this law was not passed. Will it meet your objection?

SHRI MEHRA: I do not think so. As I said to begin with, I am not a patent attorney nor am I a legal adviser. I can only tell you how it would affect any industry or industrialist or a man who takes up a patent. If information is available in foreign literature on a particular subject, you should not be able to draw a patent of that here either with retrospective effect or in future.

SHRI SRINIBAS MISRA: According to the advice of your attorney or lawyer, the present law is that whatever is published outside India is not patentable; publication in India or elsewhere is sufficient defence in an infringement action. If you save this in respect of patents granted before the date of commencement of the present Bill when it becomes an Act, they will be treated as if this law was not passed.

SHRI MEHRA: I am saying that for the future also it should be so.

SHRI SRINIBAS MISRA: One can understand it in a special case but you are now trying to say that "elsewhere" should be omitted for future patents also. That is what the Ayyangar Commission has advised and that is what England has done and most of the countries have followed. There must be publication outside and must be anticipation in India. We can only have a saving clause for the purpose of such cases.

MR. CHAIRMAN: That we shall examine. Thank you, Shri Mehra.

The Committee then adjourned at fifteen of the clock.

WITNESS

Dr. K. A. Hamied, CIPLA, Bombay

(The Witness was called in and he look his seat)

MR. CHAIRMAN: Welcome Dr. Hamied.

DR. HAMIED: I have here a record from a book written by Pandit Nehru where he says:

> "Russia thus interests us because it may help us to find some solution for the great problems which face the world today. It interests us specially because conditions there have not been and are not even now very dissimilar to conditions in India. Both are vast agricultural countries with only the beginnings of industrialisation and both have to face poverty and illiteracy. If Russia finds a satisfactory solution for this our work in India is made easier."

I am basically against any restrictions imposed on an under-developed country, which interfere with free and rapid development of industries and scientific research. The Patents Bill, in any form or shape does put such restrictions and for this reason, Japan in its early stages as an under-developed country and also Russia, did not allow any patents to be taken in their countries at the time.

The need for Patents Law arose when inventions and discoveries in one developed country were used

without any restriction by another developed country. Ultimately, the representatives of developed countries met together and agreed between themselves that there should be some law for protecting the inventions and discoveries of one advanced country against the other. This agreement led to the International Patent Law. The Patent Law is, therefore, essentially a reciprocal law, helping and protecting one developed country against another. For example, the patents held by the United States in Germany in a particular year were 2,679 and patents held by Germany in U.S.A. were 4,175. Patents held by U.S.A. in Canada were 14,000 while patents held by Canadians in U.S.A. were 600. I do not know the figures of patents held by U.K. in the United States and by U.S.A. in U.K. India being far behind in scientific achievements than all these highly developed countries, has today hardly any patent working in U.S.A. or other advanced countries. The Patents Law in India, therefore, in any form or shape, is a one-way traffic, which gives protection to foreign interests in an under-developed country like ours. Our scientists start research for producing any particular chemical or drug and find that the process is patented. They take up another process and find that also patented. In this frustration, our scientists are hampered at every step.

Japan and Russia are shining examples of technical, scientific and industrial development without letting any foreigners to come and settle and start gigantic concerns in Russia. There is no foreigner today in Russia nor foreign patents working in Russia and Russia is today, in scientific and technical development, equal to if not more, than U.S.A. Unfortunately we have not followed the same method as was followed by the Russian Government. We have allowed foreign interests to come and settle down permanently in our country, which is gradually bringing our country under foreign domination.

This, however, is my personal point of view, which is unfortunately not shared by the Government of India. Much as I would, I cannot help it. The Patents Amendment Bill is now before the Parliament and my personal view against the entire Bill, therefore, does not count. This being the case, I would like to express my opinion on some of the clauses of the Bill.

Section 47(1): This section gives exclusive right to the patentee, his agents or licensees to make use, exercise, sell or distribute such articles or substances in India.

Section 47(1) (b) is a repetition of the same, but for a process of manufacturing an article or substance. The last line of the clause says: "of using or selling in India, articles or substances made by such process". This clause gives exclusive right to the Patentee to import the article or substance for which he has patented the process, but not actually is using the process to manufacture the article or substance in India. The number of patents in the Drug and Pharmaceutical Industry, held by foreign companies till 1957 were 1,344. Today, after 12 years, the number would be not less than 2,500. So far as my information goes, not more than 1-2 per cent of the patents are being utilised and the rest are being kept in cold storage. If my information is wrong, I would request the hon'ble Chairman to ask the patent-holders to submit a list of patented processes held by them and how many of these are being utilised. I have with me here a number of catalogues of products manufactured by well-known foreign pharmaceutical concerns. A study of these price-lists will show that almost 95 per cent of the products are simple formulations of one substance with another requiring no patented processes. They are sold under proprietary names of the manufacturers. The raw materials for these formulations are being freely imported by the patent holders.

The patentee, by virtue of the patent held by him, gets a monopoly in every respect, of importing and selling the substance. I therefore suggest that in Section 47(1)(b), line 20, the words "in India" be added after the word "process". The clause should then read "selling in India, articles or substances made by such process in India".

This point is very mildly referred to in Section (a), (b) of the Bill.

Giving a party a patent is all right, but it should not give that party a monopoly to import. You may argue that clause 84 provides for compulsory licence. But that can be done only after three years. Also, the period of three years can be extended. During these three years they take time to put up a plant or they do not even try; at the same time, they go on importing it for three years. This three-year period gives them time to import the substance, saying that they are putting up the plant, and they sell it under a trade name which in three years becomes so well-know that after three years even if I get a compulsory licence I cannot sell my product.

SHRI KRISHAN KANT: In that case, do you suggest that the generic name should be used?

DR. HAMIED: Sometimes it is so big that it cannot be used. It is also difficult to sell medicines to the public with such big names.

SHRI OM MEHTA: What remedy do you suggest?

DR. HAMIED: After a patent has been sealed the patentee should manufacture the product. They take three years to put up the plant. During that period no import should be allowed to them. If they are allowed imports during that period, then others sould also be allowed. That is the best solution. When they put up the factory, nobody else will import it because they are manufacturing. Now, what happens is that during the three years which they take to put up the factory they enjoy a monopoly in importing.

SHRI OM MEHTA: Will it not result in the denial of some good medicines to the general public for three years?

DR. HAMIED: In that case, you allow import to everyone; you should not restrict it to one party.

Then I come to the licence of right. Clauses 87 and 88 make it compulsory for certain articles such as food, drugs and medicines to be endorsed with the words "lincence of Right". Under clause 88(1), the licence of right entitles a person to require the patentee to grant him a licence for the purpose on such terms as has been mutually agreed upon. This, I believe, gives the person applying for the licence right to import the article under clause 95 under the patented process, till such time he is able to start the manufacture, etc. Now if a person wants to import under the licence of right, it requires permission of the Central Government before the Controller can give him the licence to import. They can import freely after getting the patent. Now the party has to go to the Controller and the Controller sends the application to the Government of India and when the Government sanctions this, then only the party can import, which is a tedious process.

MR. CHAIRMAN: Why are you interested in importing things from outside.

DR. HAMIED: We are not interested in importing the substance if we are getting it here.

MR. CHAIRMAN: Why don't you suggest that instead of importing you should be compelled to produce it?

DR. HAMIED: That is what I say: let them build the factory here;

till then no party should be allowed to import the substance or everyone should be allowed to import it. Take ampecelin, a very important penicillin. Nobody is manufacturing it here. The grant of a patent and the establishment of a factory will take six years. But import licence has been given to my firm and other firms to import till such time as somebody starts manufacturing it. My point is that the patentee alone should not be given the monopoly of imports.

Then, the licence of right should not allow each and every person to apply for a licence of right. Now even a panwallah can apply for a licence. So, the Controller of Patents should have some discretion when applications have been received for licence of right to choose from them. The Controller should be empowered to examine the *bona fides* of the applicant and only if he is satisfied the licence of right should be granted.

MR. CHAIRMAN: Should it be incorporated in the Bill itself?

DR. HAMIED: I should think so.

SHRI OM MEHTA: Will it not give more powers to the Controller?

DR. HAMIED: Either, do not appoint a Controller, or appoint him and trust him. After all, he is a national of India and he will not do anything which is not in the interest of the country.

Regarding section 48 of the Bill, which empowers the Government to use a patent or a patented article or substance and the same shall not be deemed to constitute an infringement of the rights conferred on the patentee, no mention is made in the section about the compensation to be given to the patentee by the government for acquiring such rights. Patents are the property of the patentee. As no property can be acquired by the Government without compensation, I think it is in all fairness necessary that a suitable compensation be paid to the patentee by the government.

Clause 88(5) limits the royalty payable to the patentee not to exceed 4 per cent of the net ex-factory sale price in bulk of the patented article, exclusive of taxes. This will reduce the net royalty to 2 per cent and that also on the net ex-factory price in bulk. There are certain articles, especially food, drugs and medicines, which are not sold in bulk as in the case of chemicals and other raw materials. The clause, therefore, should be suitably altered.

Another point in connection with royalty is that the fixation of royalty at 4 per cent does not make any distinction between a patented process of one article or substance or another article or substance. For example, there are patents for cosmetics such as lipsticks and face creams or some similar articles and substances, where the royalty may be 4 per cent. But there are patents which are for very important articles or substances, the processes for which have taken a number of years for research and at enormous costs. It will not be fair to limit the royalty for both the patented processes at the same level. The Controller of Patents should be given power to determine the royalty, between certain limits, depending on the nature, the importance, time and money spent on evolving the patent.

SHRI KRISHAN KANT: What limit would you suggest?

DR. HAMIED: I cannot suggest anything.

As regards Sections 99 and 100, the acquiring of patents by Government should be limited to such cases only, where the Government wishes to utilise the patents in the interest of State organisations such as hospitals, dispensaries, Defence Medical Stores, or in urgent Public interest, provided that such patents are worked exclusively under Government control.

As regards Section 116, in my opinion, an appeal against the order of the Controller should lie in the first instance with the executive authority of the Central Government, but the party concerned should have the right to appeal before the High Court or the Supreme Court as the case may be. [Also see Appendix at page 245 containing the reversed views of the witness on this point].

MR. CHAIRMAN: I have gone through your memorandum submitted to the last Committee and I should say there is a vast improvement on what you submitted previously. We have agreed to many of the objections raised by persons who are in favour of having a liberal patent law. Now, I would like to ask is on one point regarding 'royalty'. You said that some flexibility should be left to the Controller of Patents to fix up the royalty. Can you spell out your idea about the margin which should be allowed. What are the factors that should be taken into consideration in determining the royalty or whether you would like some sort of machinery to be set-up to help the Patents Officer.

DR. HAMIED: You cannot give arbitrary power to the machinery. The machinery should also be guided by some limits of royalty. It should depend on the time and money spent on the patent and the importance of the patent. People are taking patents for tooth paste these days.

SHRI KRISHAN KANT: What limit you would suggest?

DR. HAMIED: It should be 4 to 8 per cent.

MR. CHAIRMAN: With regard to pharmaceuticals originally your case was that because of the Patents Law our industry in India so far as pharmaceuticals are concerned did not improve.

DR. HAMIED: Did not improve indigenously.

MR. CHAIRMAN: All the same the broad factor remains that from 1929—1960 till today we have improved our position very much because in 1950-51 our import was Rs. 99 crores and in 1965-66 it came down to 8.7 crores. As against that our export also increased to a large extent. I feel that now you would reconcile that because of the patent the industry as such did not suffer.

DR. HAMIED: Why on account of patents?

MR. CHAIRMAN: I want to know whether it is because of patent or foreign collaboration that our position improved.

DR. HAMIED: A number of basic chemicals are being made in India which were not being made in 1952-53 but those are not governed by any patent.

MR. CHAIRMAN: So far as pharmaceuticals and medicines are concerned.

DR. HAMIED: The raw-materials which are being made are not covered by any patent. The list of chemicals which are being made in India is tremendous but they are not governed by any patent. I would like to know what substances are being made by patents in India which formerly were being imported and today on account of Patents Law have been stopped and made in India.

MR. CHAIRMAN: In your previous memorandum you stated that because of patents and monopolistic groups some of the firms succeeded in extracting a very high price but do you agree because we do not have the proper base for the chemicals, therefore, we have to pay very heavily for importing these raw-materials.

DR. HAMIED: No. The price of chemicals, which is the raw-material, should be differentiated from the price of medicine. The price

of medicine in India is the lowest in the world. The idea of the previous Health Minister, Dr. Sushila Nayyar, was entirely wrong on this and I pointed out to her.

SHRI OM MEHTA: We have the life of the patent as 10 years. What is your opinion about it?

DR. HAMIED: That period will not interfere much if the import monopoly is not given to the patentees. I am not bothered about the period. It may be 10 years or 15 years but the import permission should not be given.

MR. CHAIRMAN: So, your point is that it is not the period but the import facilities that matter.

DR. HAMIED: Yes, Sir. Another point which I mentioned in my previous memorandum and which I forgot to mention is that the chemical science has advanced in Europe and other places for the manufacture of certain items like Talbutumite. I can manufacture it by a certain process; it can be manufactured by another process. Now, in these foreign countries—highly developed countries—they take a patent of all the conceivable processes so that when I give the problem to my scientist in National Chemical Laboratory, Poona or National Drugs Research Institute, Lucknow he says it is patented. He discovers another process and finds that is also patented; he takes to another process and he is surprised to find that is also patented. So, if a manufacturer or patentee wants to manufacture a substance by a certain process, let him patent only that one process by which he is manufacturing. Now what is happening is that because of his vast scientific knowledge he covers all conceivable processes with the result that others cannot do anything, and their scientific research work is hampered.

SHRI R. P. KHAITAN: You said that there is no necessity for time limit and you also said that the royalty should be raised to 8 per cent. Why do you want both? When it is 4 per cent, you get more time and so you can make more money.

DR. HAMIED: If they transfer the licence to me and allow me to manufacture under the compulsory licence or licence of right, then it should depend on the kind of licence they are giving to me. If it is a difficult one, the royalty should be more. The time-limit should also be increased. Otherwise, it will not be paying because it takes a long time to put up a factory. Now the foreign factories are using the protection period for imports. You can give them five years to put up a factory but, then, in the meanwhile, they should not be allowed to import that substance.

MR. CHAIRMAN: Once the price of raw materials goes down, the price of medicines manufactured in India will also be less.

SHRI OM MEHTA: But the monopoly will be there. So, it means more profits to them.

DR. HAMIED: Then you have got compulsory licence and licence of right.

SHRI OM MEHTA: Only if they do not manufacture it for three years.

DR. HAMIED: You should say that if they import, then others could also import. Then they will produce it locally much quicker.

SHRI KRISHAN KANT: Clause 5 reads:

"In the case of inventions—

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

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

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

Here there is patent not merely for the process but also for the product by that process. You said that some companies file patents for all the processes, which means both product and process patent. When we have on principle decided on patents only for the process and not the product, don't you think that the wording of this clause is defective and should be amended?

DR. HAMIED: In the suit filed against me the lawyers from the other side said that if the Italian firm is manufacturing Talbutamide by some other process, they shall withdraw the suit; but if my suppliers in Italy are using their process—because, in Italy no patents are allowed—then they would object on the ground that the product is being made by their patented process, because they are holding the patent for the process. So, they contended that I cannot import that product.

SHRI KRISHAN KANT: This will hinder or hamper the development of industry in our country. So, this clause needs to be amended suitably so that there will be only process patent and no product patent.

DR. HAMIED: Suppose a product is made by a patented process in Russia, which process is patented in India, I cannot import it.

SHRI KRISHAN KANT: My plea is that no product should be allowed to be patented.

SHRI VEDARAMAN: In the 1965 Bill the patent was only for the method of manufacture. Then the Joint Committee included product patent also. Now Shri Krishan Kant wants to remove product patent, retaining only process patent.

SHRI KRISHAN KANT: Now I come to another aspect. Suppose we abolish altogether patents in drugs, what is the harm?

MR. CHAIRMAN: His point is that if we did not lose anything during the last seven years in the absence of patents in drugs, what is the harm if we get rid of it altogether?

DR. HAMIED: I do not think it is possible.

SHRI KRISHAN KANT: Suppose there is no patent law for drugs and pharmaceuticals. What is your reaction to such a proposal?

DR. HAMIED: That will raise a very big hue and cry but we can overcome that. The 3,000 patents which the Patent Office in Calcutta has granted to foreigners are not being used. They do not manufacture anything; they are using them just to import.

SHRI KRISHAN KANT: To strangulate our economy.

DR. HAMIED: Yes. So, why not give them the patent and ask them not to import but to manufacture it in our country. Why raise a big cry by abolishing patents? Let the patent law continue and let them patent a process and manufacture the thing in our country. Let them not import.

SHRI KRISHAN KANT: Supposing, we abolish patents for drugs and pharmaceuticals, is there any harm to Indian economy and industry because the foreigners are threatening that if we do not give them the patent they may not give us the know-how?

DR. HAMIED: What know-how are they giving us today?

SHRI KRISHAN KANT: What substance has that threat got?

DR. HAMIED: They have not given us any process and technology. Whatever patents they are holding of process are used by CIBA and other firms. The country has not got anything. The patents and process that

may be there are being used by firms which are there; they are not in my hands.

SHRI KRISHAN KANT: You mean to say that the subsidiaries of the foreign firms are using them. But, suppose, you abolish the patent law for drugs and pharmaceuticals, even their subsidiaries would not be able to use it. Do you think that that is possible?

DR. HAMIED: Dr. B. Shah can give a better opinion than me because he is dealing with these cases. I do not think there is any threat.

SHRI KRISHAN KANT: So, why not abolish it? Let there be a holiday for 25 years till we develop ourselves fully.

MR. CHAIRMAN: In your statement you have said:—

> "Scientific workers in India do not possess the facility of equipment, plant and machinery and, above all, of enormous finances required for such type of research which can enable them to work the patents already held by others."

If we abolish the patent law, how will you get over this difficulty?

DR. HAMIED: I need not remind your honour that necessity is the mother of invention.

SHRI KRISHAN KANT: Yes, China has done it.

MR. CHAIRMAN: But India is not China.

DR. HAMIED: What about Russia? Today they have the sputniks, submarines, tanks, nuclear equipment and all that. From where and how did they learn it? In 1918 when Russia won independence from the Czar and became a Communist country, I think, Russia was far less developed than India in 1947 when we got our independence. There were hardly any chemical and pharmaceutical factories in Russia. There were no tanks, no submarines, nothing of the kind. Today they have everything. Do you know what they did? They employed a German at a very high salary to set up a machine tool factory. He came, set up the factory and trained some 20-30 people. Then he was made to sit at home and not allowed to go out of Russia. He was paid the salary but no work. The boys trained by him worked and when they found any difficulty, he was asked to help them. When the whole thing was pucca, he was allowed to go.

SHRI KRISHAN KANT: You have said that in Japan in the early stages they did not allow patents to be taken out. But I think that the patent law in Japan is quite old.

DR. HAMIED: After the last World War.

SHRI KRISHAN KANT: How were they getting foreign know-how?

DR. HAMIED: By buying a thing and copying it. We are also doing that today. 90 per cent of the patent specifications filed are unworkable. They never disclose the technical know-how in the patent. There are just words and sentences and if it comes under that sentence, they catch us. Really speaking, patents do not give all details of manufacture. We have to work that out ourselves. So, we get patents from England and America, pay high prices for them and find difficulty in working them out. When we cannot work it, we change it. That gives us a lever to start the thing. We have succeeded quite a lot by copying the patents.

SHRI SRINIBAS MISRA: Are you in a position to manufacture polio vaccine? So far we have not been able to do it.

DR. HAMIED: If our health, food and everything depends upon it, we shall do it.

SHRI KRISHAN KANT: Can you give us any paper which gives the state of affairs regarding the patent law in Japan before the Second World War?

DR. HAMIED: I shall try, but it is definitely known that before the Second World War there was no patent law. Japanese students were going to Europe and learning everything. In my time in Berlin City alone there were 6,000 Japanese students who after learning the techniques were going back to their country and starting factories.

MR. CHAIRMAN: But our boys go there and do not come back.

DR. HAMIED: Because they are not given recognition for their ability as the National Government of Japan does. I returned to India and nobody bothered about me. It is non-recognition of us by ourselves. When Romain Rolland wrote a book about Mahatma Gandhi, the whole world woke up and we in India also. We did not know who C.V. Raman, the great physicist, was. Then one day when he was going in a tram car in Calcutta—He was Professor of Physics, Calcutta University at that time—somebody told him, "Dr. Raman, you have won the Nobel Prize". He was a big man immediately. If only we recognise our people and give them prestige, not salary so much, I think they will work.

SHRI KRISHAN KANT: In this Bill, no time limit is provided for sealing of patents. Don't you think that time limit should be provided?

DR. K. A. HAMIED: I think so. The time limit should be provided. In the Government Departments, the papers go on piling up for years. If no time limit is provided, God only knows when the papers will be taken up.

SHRI KRISHAN KANT: Have you any idea of streamlining the Patents Office as required under the Bill? One view is that the patents must be screened before they are accepted.

DR. K. A. HAMIED: Certainly. The Controller of Patents has no screening apparatus with him. If I apply for a chemical patent which is most complicated, how will he examine it? The qualifications of the examiners are not put down. Who will be the examiners? The Controller of Patents can be an official without any technical knowledge. But the examiners of patents must be experts, having technical knowledge, engineers or chemists or physicists. They must be attached to the Patents Office.

SHRI KRISHAN KANT: Don't you think that this provision should come into effect only when the Patents Office has been fully streamlined and made up-to-date?

DR. K. A. HAMIED: It will take too much time.

MR. CHAIRMAN: What are the comments you have to offer about the Patents Office itself in order to deal with it?

DR. K. A. HAMIED: Our Patents Office in India is very poorly equipped or hardly equipped at all compared to other countries where every type of facility is there to examine a patent. Here, I can get my process patented without much difficulty.

SHRI KRISHAN KANT: There is the CIBA. There are some foreign subsidiaries here who are having research organisations along with CIBA. Whatever research is done—that may be immediately needed for our country or not—the process or the product developed in our laboratories are not used in India but sent abroad. The Indian technical talent is utilised by the foreign companies. Don't you think that something should be provided here so that they do not send it abroad without the permission of the Government of India.

DR. K. A. HAMIED: It will be too much. You cannot stop knowledge going away from one country to another.

SHRI KRISHAN KANT: They are utilising the Indian talent and the facilities here, the low cost and everything. They have that knowledge not for this country but for their own country. Should not this country have priority over what they are doing for their own country?

DR. K. A. HAMIED: That can be done by a certain agreement or an understanding between the research organisation of a foreign concern in India, like, the CIBA and the research laboraories of the C.S.I.R. and the D.G.T.D. For example, a famous laboratory in USA has got an agreement with the Central Drug Research Institute, Lucknow, to the effect, "Whatever your discovery in drugs and medicines, whether it is synthetic or plant, we shall develop the process in America and, if it is found successful and good, we shall patent in America and we shall patent in India but to be utilised only by you, not by us." In other words, they will get the process patented in America, for sale in America, and for India, they will leave it free for Indians. That arrangement is quite good.

SHRI KRISHAN KANT: Something has to be done so that the Indian talent is utilised for this country, not for their country.

DR. K. A. HAMIED: That can be done by an agreement; it cannot be imposed by Government.

SHRI KRISHAN KANT: We should not allow them. Japan does not welcome this very much.

DR. K. A. HAMIED: But it cannot be imposed as a law. It can be done by an agreement.

SHRI KRISHAN KANT: Otherwise we should not allow them to function here.

DR. K. A. HAMIED: Ours is a free country.

SHRI KRISHAN KANT: They have to take the permission of the Government of India. I think some applications are lying with the Government of India. Some foreign companies want to establish such establishments here. Till the Government of India allows them, they cannot do it.

SHRI KRISHAN KANT: Anyhow, this point is for the Government to consider.

DR. K. A. HAMIED: Not for this Committee.

SHRI KRISHAN KANT: Now, so far as the patent is concerned, it is a useless thing because without the know-how, merely a patent is of no use. Don't you think it will be better if the law provides that after the filing or the acceptance of the patent, after 5 years, the patent protection lapses automatically so that it can be utilised by anybody?

DR. K. A. HAMIED: That you have provided by licensing of right. The patent, as filed in the Patents Office, gives a broad outline of the process, not the intricacies of the process. I can give you the method of manufacturing or preparing a certain dish in writing but you cannot manufacture or prepare it unless I give you the experience of manufacturing.

SHRI C. ACHUTHA MENON: The evidence given before the Committee by some persons is to the effect that it is not the patent as such that is holding up the industrial development of the country but it is something else. For instance, you have got some figure that there are about 5 lakhs or so patented processes which are lying idle and are not being utilised. That shows it is not the patent but it is the lack of technology or some other thing. So, merely by abolishing patent, how can you say that we will be placed in a better position so far as the development of the country is concerned?

DR. K. A. HAMIED: I think, you are referring to dyes and chemicals. The process is described in the patents. Nobody is interested in that

process; nobody is using that process. Even the patentees are not using that process so long as they can import the dye. Suppose I start manufacturing a dye and, I find, a patent has been allowed. All my efforts to work on that process are wasted. After one year, I will get notice saying that this is already patented and I cannot do it. Therefore, nobody bothers about it.

SHRI KRISHAN KANT: The patent is not sufficient. The technical know-how is more important. That is why a compulsory licensing is introduced.

SHRI C. ACHUTHA MENON: You are not going to get very far unless the patent, the process, is accompanied by know-how also. For that, some payment will have to be made. How will you otherwise get it?

DR. K. A. HAMIED: There is a possibility that we ourselves can develop the know-how if the outlines of the process are known.

SHRI ACHUTHA MENON: How do you get the outlines?

DR. HAMIED: From the patent. Patents are filed in the patent office. I go through the literature and then write to the patent office.

SHRI ACHUTHA MENON: That presuppose that some patent law is there and patents are filed.

DR. HAMIED: I get copies of patents from America or England or any part of the world.

SHRI ACHUTHA MENON: Is it so easy:?

DR. HAMIED: There is no difficulty at all.

SHRI ACHUTHA MENON: Then what is the use of going through all these processes?

DR. HAMIED: Suppose I get a patent from England. If that patent is also held in India, then I cannot work it. I can get it from England, but since it is already patented here, I cannot go further. I can only work and try to change the process.

SHRI ACHUTHA MENON: Is the payment for the patents that you get from other countries not very heavy?

DR. HAMIED: We pay Rs. 5 or Rs. 10.

SHRI ACHUTHA MENON: Do you mean to say that the patent is not important but rather if you get some outline you can work on it independently and evolve some process and that is the more difficult part of it?

DR. HAMIED: Yes. We evolve a process, but then we do not know whether that process is covered by patent. You know the case of Unichem Laboratory. Dr. Ganapathy thought that it was quite a different process, but they filed a suit saying that it was almost the same as theirs. He lost the case after having spent so much money on that.

SHRI ACHUTHA MENON: According to you, our country is not going to suffer in industrial development if there is no patent law?

DR. HAMIED: I do not think that we will suffer.

SHRI KRISHAN KANT: Will it gain?

DR. HAMIED: Gaining will depend on our own initiative, our own acumen and our desire to work. We are, by nature, lazy. If we can get a thing ready-made, we will never make it. This is happening in all industries.

SHRI ACHUTHA MENON: How do you account for such countries as Soviet Union?

DR. HAMIED: They are also finding it difficult in certain fields. For example, motor car. They are not making good quality motor cars.

They are trying to make arrangement with FAIT....

MR. CHAIRMAN: Why is it that the present trend today in the world is to go for patent laws and also join the international convention? Why do you want that India should keep away from this?

DR. HAMIED: India does not come anywhere near those countries in scientific development and technology.

MR. CHAIRMAN: Do you mean to say that, in spite of the present trend towards international co-operation with regard to patent law, India can well afford to be away from this trend? We are also getting into the export market to meet our balance of payments, we shall have to export in a big way and export to the countries which have certain co-operation among themselves.

DR. HAMIED: Unless a country boycotts India, the problem of export depends mainly on two things—quality and price. If we have quality and price, we can beat even America. What has Japan done? You find Japanese goods selling in every shop in America. Therefore, export depends on two things—price and quality.

MR. CHAIRMAN: What about foreign investment? Are you in favour of foreign investment. In the larger interest of the country's economy, we need foreign investment.

DR. HAMIED: We need only for the purchase of plant and machinery. Suppose, I want to put up a plant for the manufacture of certain medicines and synthetic drugs. The plant and equipment for that come to say Rs. 5 or 6 lakhs. I go for an import licence. They ask: 'Why don't you collaborate with any German firm? They will bring the plant and machinery'. Therefore, our shortage of foreign exchange is also responsible, to a great extent, for the basis for collaboration. If I had the foreign exchange, I would not go to Germany to have the plant from them.

SHRI ACHUTHA MENON: You have said just now that the prices in India of drugs are comparatively low. This is in contradiction to some statements made here. General Sokhey, quoting from Keefauver Committee, says that the prices in India are the highest.

DR. HAMIED: No, it is not so. There is a difference between a chemical and a drug. I shall explain this in a layman's language, so that this can be understood. The coat that you are putting on is not 'cloth' it is 'coat'. Technically it is cloth but you cannot call it cloth; it is coat: it is made from cloth. The chemical industry is like the textile industry. The tailoring or outfitting industry is the pharmceutical industry. The same thing is cloth so long as it is in a roll, but the moment it is made into a shirt you cannot call it cloth; it is a shirt. Similarly, when a barrel of vitamin 'C' is lying, it is a chemical. The Similarly, when a barrel of vitamin or tablet it is a medicine; it is no more vitamin but is a drug. That barrel of Vitamin C that raw material, is the original chemical. It is the raw material which is high-priced in India. I do not know why it is so. The cost of Vitamin C is Rs. 80 here whereas it is Rs. 27 outside. Vitamin B-12 costs Rs. 30 outside, but it is about Rs. 90 in India. But Vitamin C, a 50-tablet bottle, in America is about 3 dollars; it is Rs. 1.50 in India. So, this difference between chemical and drug must be understood. What Mr. Sokhey is talking about is about raw materials the price of which is very high. Take for instance, Chloro-phenocal; the price in India is about Rs. 150 per thousand capsules; in England it is 560 Shillings. I have got the catalogues of all the countries with me. It is very interesting to know what are the prices? In India the prices of

medicines are the lowest, but the chemical prices are very high.

SHRI KRISHAN KANT: Our raw-materials are mostly imported?

DR. HAMIED: They are made here also.

SHRI SRINIBAS MISRA: I want to put some questions. All my questions will be on the assumption that we are having a law of patents in this country. Please look at your suggestion regarding clause 47. In line 20 you have suggested insertion of the words "in India" after the words "articles or substances made by such process". Now look at sub-clause (a) of 47(1). It says:

> Where the patent is for an article or substance....

Here again would you not like to add the words "made in India"?

DR. HAMIED: I think you are right.

SHRI SRINIBAS MISRA: Even though you have not said so, I thought this should be the intention.

DR. HAMIED: It should be added.

SHRI SRINIBAS MISRA: My conclusion is that patentees are importing almost all penultimate products. They are bottling them here and giving the final touch. We want to stop that. What will be your advice so that the importation of penultimate products can be prohibited or checked at least? Upto what stage will you consider a product to be produced or manufactured in India and when will you consider it not to be made in India? You must draw some line somewhere saying that so far it should be considered to have been manufactured in India. If the penultimate intermediate comes, then it should not be considered to be made in India some such line should be there.

DR. HAMIED: Dr. Shah is here as the Industrial Adviser on Drugs, I have no suggestion to make.

SHRI SRINIBAS MISRA: Now I will take you to clause 84. You have made certain suggestions for that also.

DR. HAMIED: That can be remedied. Supposing we are making a certain medical preparation for which we require five tonnes of raw materials which, in the first instance, the DGTD allows us to import, but with a note on that saying that next year it will be cut down to so much, the second year it will be further cut to so much and within three years you must make it yourself. Now I know that within three years....

SHRI SRINIBAS MISRA: In clause 84 your objection to the three year allowance granted to the patentee. Have you read it along with clause 97 of the Bill? Clause 97 gives power to the Government by notification to waive this three year period and after the first gazette notification any day after the granting of the patent it could be compulsorily licensed.

DR. HAMIED: Government can do it. But Government do not do it except in exceptional situations such as national emegency or for defence purposes. Normally, Government will not do it.

SHRI KRISHAN KANT: Who will tell the Government? Government will not act on its own.

SHRI SRINIBAS MISRA: Government can do it *suo motu*.

DR. HAMIED: Government will intervene only in an emergency.

SHRI SRINIBAS MISRA: In clause 84 your objection has been that during these three years, an article or substance sold under the patentee's registerd trade mark supported by heavy advertisement will become very popular. For that you have to abolish the Trade Marks Act. Trade mark is something different from the patent.

DR HAMIED: Certainly.

SHRI SRINIBAS MISRA: So, you cannot take out the trade mark right. Even if there is no patent, trade mark should be there.

DR. HAMIED: The value today is only for the trade mark and not patent. Take, for instance, the Colgate Tooth Paste or Palm Olive Cream. It is a private limited company of America with 150,000 capital. Their sales today in India amount to Rs. 15 crores. They are remitting every year Rs. 80 lakhs in dollars. Now if I sell these things without the Colgate and Palmolive trade mark, nobody will buy from me. The same is the case with ENO's Fruit Salt. What is there in it? Only Sodium Bicarbonite and a little sugar. But if I sell it, nobody buys.

SHRI SRINIBAS MISRA: Even after the patent period expires, the trade mark will continue.

DR. HAMIED: You are right. Under the trade mark Act you cannot change the trade mark. It is not only applicable to foreign companies but also Indian companies.

SHRI SRINIBAS MISRA: You have made some suggestion regarding royalty. Would you like that the Controller or any other authority who will fix the royalty will be empowered to fix the royalty according to the circumstances or some sort of a sliding scale?

DR. HAMIED: That may not be fair. One patent process may be worked out after a long number of years of trial and experience and spending a lot of money while another patent may be very small like Binaca tooth paste where it can be 2 per cent or 4 per cent.

SHRI SRINIBAS MISRA: There are some troubles in the minds of some Members. Supposing Rowalfia Serpentina which is being used as a medicine and it is now being made into tablets or essence, is sought to be patented in India.

DR. HAMIED: There is no patent in India.

SHRI SRINIBAS MISRA: There is some attempt to take patents.

DR. HAMIED: Only there is the trade mark 'Serpasil'. It is Ciba's trade mark. I cannot use it.

SHRI SRINIBAS MISRA: What will happen if we make a provision to refuse patent to such products?

DR. HAMIED: It is the trade mark which is selling. There is no patent. There is a chemical process for extracting serpine which I can do and anybody can do, but nobody will buy that. They want serpasil tablets. The trade mark is a very great hindrance to-day. Patent law is not interfering. Take the tooth paste industry. Binaca is selling for Rs. 30 lakhs only on account of trade name.

SHRI SRINIBAS MISRA: You have said that you can purchase a formula or a patent for Rs. 5 or 10 outside.

DR. HAMIED: Its specification.

SHRI SRINIBAS MISRA: It is possible to make it work here. In chemicals only the formula is available.

DR. HAMIED: The precise formula is a different thing. It is mentioned here that according to Drugs Act the formula of every medicine should be printed. Cartisone is one substance, for that process is known and patented and we have to buy that patent specification. Whether we can make it by that patent specification, 90 per cent. we cannot.

SHRI SRINIBAS MISRA: Do you consider that the person who makes an invention or develp a process on

a commercial scale is entitled in equity to some remuneration?

DR. HAMIED: I think so. He is entitled.

SHRI SRINIBAS MISRA: You would not like international piracy of such an intellectual property.

DR. HAMIED: Under-developed countries should be allowed—I think.

SHRI C. C. DESAI: By the same logic, a poor man may be allowed to commit theft.

SHRI SRINIBAS MISRA: Sir Walter Raleigh resorted to piracy and enriched England and we cannot accept that process now. Would you advise us to adopt such a process if you consider this to be intellectual property. After the First World War and during the War America used this sort of piracy of patents.

DR. HAMIED: Knowledge is a thing which increases by distribution while wealth decreases by piracy. Dr. Barting in Canada discovered that a substance segregated from Pancreas which he called 'Insulin' is a treatment for diabetes which he did patent. He gave it free to the world. Sir Alexander Fleming discovered penicillin. He gave the whole thing free to the world. Like that if some body discovers some remedy for cancer, I am sure it will be free to the world. Nobody will ask price for it. I can take their patent and make some changes. I can tell you examples.

Take the case of a famous firm in Bombay. They are engineers also. One brother is an engineer. They imported a tablet making machine from abroad. The IDPL also have bought some 20 machines which cost about Rs. 100,000 each. Then he opened the whole machine and reassembled it screw to screw. Now most of the pharmaceutical machines are being made in India to-day. We have discarded the patent completely. But in chemical processes it is still going on because that knowledge is very difficult and there are so many things where I can get one thing made by 20 processes. If I cover all the 20 processes, then I cannot reach that product at all.

SHRI SRINIBAS MISRA: There are certain admitted facts that India is backward in technical know-how. We want technical know-how and foreign capital who can come and train our workers here. Do you consider that it will be necessary to lure foreign know-how and foreign capital for the development of the country? Somehow we are to pay the prices in lieu of foreign capital and know-how.

DR. HAMIED: Take foreign capital and buy it off. If we take foreign capital in the form of equity shares. I cannot get rid of them by any law. One of my friends, owns a factory. He wanted collaboration with an English firm making batteries. The foreign collaborators wanted Rs. 10 lakhs worth of shares in the factory in lieu of machinery and know-how. He consulted me. I was against it and said "you try to pay Rs. 10 lakhs in cash instead of shares; your shares are paying today 15 per cent dividend and on shares worth Rs. 10 lakhs they will be getting 1,50,000 lakhs for eternity. They are sure of that. They can sell the shares if they want to repatriate and after 10 years or so they will be able to sell the shares for Rs. 20 lakhs and together with all the dividend they have got till then, they will take away all the money." With great difficulty, somehow the then Finance Secretary allowed Rs. 10 lakhs to be paid in cash in foreign exchange and today there is no foreign shareholder in that company. It is working fully, producing 80,000 batteries, 50,000 bulbs etc. and there is no foreign participant in that. This process should have been followed in

India from the very beginning. We did not do that and we have allowed them to come into India and establish factories. Today, in India the sale of pharmaceuticals annually is in the range of Rs. 175 crores and the share of Indian owned companies is not more than 15 per cent; the rest is foreign.

MR. CHAIRMAN: Is it equity capital?

DR. HAMIED: In some cases it is their own capital. Glaxo has recently made equity capital; Parke Davis also recently made it equity capital.

SHRI SRINIBAS MISRA: If these defects are remedied, you have no objection to inviting foreign know how at some price.

DR. HAMIED: Here is the pharmaceutical lists—Cough syrup, Losenges, Waterbury's Compound—what is the knowhow here? Patent is not involved; only name is selling.

SHRI SRINIBAS MISRA: But we have not been able to manufacture them.

SHRI R. C. VYAS: We believe that, in the public interest Government should have the right to use patents, without paying any compensation to the patent holder, for Government will make no profit out of the use of patent for charitable purposes. Is not this correct?

DR. HAMIED: The latter part, I don't believe, that the Government will not make profit. Today the Government is running a number of pharmaceutical concerns—Penicillin factory, IDPL, Ghazipur Opium factory, Quinine Factory at Madras I will give you an instance. The Government have banned the import of Amideopyrin. I cannot import it and I have to pay Rs. 134 per kilo, while its imported price is Rs. 27 per kilo. I visited the IDPL, which is a Russian collaboration plant. I talked to the Russian experts also. If you look at the 1966-67 Balance-sheet and the Annual Report, you will find that the salary of Russian experts working there is Rs. 28 lakhs per year and at the end there is a note stating that the details of travelling allowances are not known. If I do that in my balance-sheet, my Co. will be prosecuted. The Government of India is not so charity-minded, as you think that they will sell everything so cheap. All of you know what profit the STC is making.

SHRI SRINIBAS MISRA: At the same time we have no other alternative.

DR. HAMIED: But, if the Government acquires by law a property belonging to somebody else they should pay compensation.

SHRI R. C. VYAS: The compulsory licensing procedures of the existing law have been used by papatent-holders to prevent and delay the grant of compulsory licences That is why we have introduced the concept of Licences of Right under Clauses 87 and 88. Do you think that this will solve the problem?

DR. HAMEID: Provided the addendum to that is removed. You see clause 89.

Mr. CHAIRMAN: The Licence of Right should not be allowed in each and every person. The fitness has to be proved.

DR. HAMIED: I have to prove. You will scrutinise my application with reference to public necessity.

SHRI R. C. VYAS: Most of the memoranda which we have received feel that the provisions of Clause 48 are not correct. What do you think and why?

DR. HAMIED: I have made it clear in my memorandum that adequate compensation should be paid if the Government takes over the patent for working by the Government.

SHRI R. C. VYAS: Similarly, most of the memoranda object to Clause 87 and 88. Do you agree with these views and why?

DR. HAMIED: We agree that Licence of Right should be there. This is a small facility, for drugs, food items and medicine.

SHRI R. C. VYAS: Japan abolished patents and only recently has introduced a patent law for drugs. That is why she has been able to progress rapidly. Is this a correct view of the position?

DR. HAMIED: The facts need not be proved. That is there. For the last 100 years Japan had no patents. That is how they were able to challenge well-developed and more advanced Western countries in every field. They could copy everything. They do not care for any patent. On account of this fact, they developed into the biggest company

SHRI R. C. VYAS: It has been suggested that, for a period of say ten years, India should abolish patents. Thereafter, when the country has developed, the patent system could be re-introduced. What do you think?

DR. HAMIED: It is not the abolition of patent law that will develop the country scientifically. It is our effort that will develop the country. If we are sleeping all the time, the patent abolition does not help us. It is only our effort. That spirit should be there. More abolition of the patent law will not help.

SHRI R. C. VYAS: India is not yet a member of the Paris union while countries including a number of East European countries are its Members. Can you throw some light on the obligations involved for each country to be a member of the Union and the advantage that would accrue to be a member. It is learnt that Russia and other East European countries took up membership. Can you tell us what motivated East European countries to take up membership?

DR. HAMIED: We consider the East European countries as under-developed countries: it is not a fact. The East European countries are not so under-developed as we think they are. They are a part of Russia. Poland is a highly developed country. We are not producing any thing yet. What is the use of our being a member of that organisation. Sitting with those highly developed countries, we shall not be playing any role. If I am not able or fit to become a member of a big club say the Willingdon Club, I should not become a member.

SHRI R. C. VYAS: In a number of memoranda we have received opposition to the concept of "Licences of right". This concept is there in the Model Law and also in the U.K. Law. Would it be a satisfactory arrangement if, in conjunction with the Licences of Right, a provision is made for certain minimum qualifications for the licence?

DR. HAMIED: I have already said that. It should be left to the Controller.

MR. CHAIRMAN: Have you taken up any patents?

DR. HAMIED: I have taken a few patents in India.

MR. CHAIRMAN: Have you taken up any patents from other countries also?

DR. HAMIED: That is a very costly process.

SHRI C. C. DESAI: Do you think that in the field of pharmaceutical and drug industry our country is developed? Or is it under-developed?

DR. HAMIED: I would put you a counter question: what do you mean by the word 'developed'? Today there is an import of raw materials of the order of 12 crores of rupees. If that is stopped, every factory here will close

down. So far as basic raw materials are not available here, I personally don't call it as developed. We are depending on foreign countries.

SHRI C. C. DESAI: Do you think that some of the East European countries, like Hungary, Poland, Bulgaria, are developed countries so far as pharmaceutical and drugs industry is concerned?

DR. HAMIED: They are highly developed countries.

SHRI C. C. DESAI: Poland?

DR. HAMIED: They are making things which we are not. I have visited some of the countries. They are highly developed.

SHRI C. C. DESAI: Your argument is that ths country is underdeveloped so far as the basic raw-materials are concerned. Is it so?

DR. HAMIED: Yes. The twenty basic products which I have mentioned have no patent at all. We are burning coal tar; we are not distilling it. Not that we do not know the process. There is no secrecy involved. But the capital involved is too big and, as such, small companies are not interested.

SHRI DESAI: How to develop those industries?

DR. HAMIED: Give me the money I will develop tomorrow.

SHRI DESAI: You have not developed so far.

DR. HAMIED: Because I have not got the requisite money.

SHRI DESAI: But the Government of India has got plenty of money.

DR. HAMIED: Not foreign exchange. They will not give Rs. 2 crores of foreign exchange. They will say why don't you collaborate? I am getting this reply from the DGTD. They say why don't you take Germany or other country with you.

SHRI DESAI: They are quite right. My next question is what will be the percentage of production with the foreign know-how in the pharmaceutical industry?

DR. HAMIED: 95 per cent.

SHRI DESAI: Then do you say the people went wrong or the Government went wrong?

DR. HAMIED: The Government.

SHRI DESAI: But these are essential for the health of the people.

DR. HAMIED: Do you think all the things mentioned in these brochures are essential. Now, here is the substance Vitamin B Complex—Rs. 6.00. We are producing the same at Rs. 3.00 and hundred of simple.*

SHRI DESAI: Then how these people are selling?

DR. HAMIED: Because doctors Prescribe. I give you an example. There is a top class doctor who is also a big share-holder in my concern. He never prescribes my things. I went to him and asked him the reason therefor and he said, "Look, I am a very high class doctor and my charges are Rs. 70 to Rs. 75 and if I prescribe an Indian made thing then my patients will go away."

SHRI DESAI: Even their products are Indian made whether they are of Parke Davis or other companies.

DR. HAMID: Mr. Desai this is known only to you that they are Indian made and not to the general public.

MR. CHAIRMAN: Dr. Hamied, we thank you very much for the interesting evidence.

DR. HAMIED: I hope my evidence has been of some use to the Hon'ble Members.

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*Formulations not involving any patent right, but sold on the strength of the registered trade marks.

In Bhor Committee's Report it has been written that 75 per cent of the requirements of Military and Civil were met by indigenous sources.

Likewise Pharmaceutical Enquiry Committee's Report mentioned that for country's requirement for all during the war, the processes were available in the country.

MR. CHAIRMAN: We meet tomorrow morning at 10.00 O'Clock.

(*Committee then adjourned*)

Appendix

See page 231.

Relevant extracts from Dr. K. A. Hamied's letter dated the 7th March, 1969.

"I would like to make a correction in my written statement which I submitted to the Members on the day of my evidence and repeated the same by mistake during my evidence. This refers to paragraph 14, para 6 of my written statement and appears on page 617, paragraph 2 of the draft minutes. I suggested a change in Section 116 that the appeal against the decision of the Controller should lie not only with the executive authority of the Central Government, but also the party should have the right to appeal before the High Court or the Supreme Court. On a second consideration of this matter, I now think that the decision of the Controller should be binding on the patentee and if at all an appeal should lie only with the executive authority of the Central Government, whose decision should be final.

In the draft minutes which I have sent to you I have not made the for country's requirement for all dur- against the actual statement I made, but on subsequent consideration I feel I made a mistake, which I would like the same to be corrected if possible.

I would also like to draw the attention of the Chairman, that the most important part of my evidence was that the patentee should not have the sole right to import the product and use the patent granted to him for the purpose of importation. Any other person who desires to import, should be permitted to do so, no matter by what process the product is manufactured, so long as the patentee himself is not manufacturing the same in India. Today, out of nearly 3,000 patents held by foreign companies, hardly 10 or 12 patents are being exploited in this country and almost every product made by the patented process is being imported. I hope this will be kept in view while the Committee submits its report to the Government".

JOINT COMMITTEE ON THE PATENTS BILL, 1967

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967

Saturday, the 15th February, 1969 from 10.15 to 12.45 hours and again from 15.00 to 17.25 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri Hari Krishna
4. Shri M. R. Masani
5. Shri Srinibas Mishra
6. Dr. Sushila Nayar
7. Shri P. Parthasarathy
8. Shri T. Ram
9. Shri Ramesh Chandra Vyas

Rajya Sabha

10. Shri Krishan Kant
11. Shri R. P. Khaitan
12. Shri K. V. Raghunatha Reddy
13. Shri Dahyabhai V. Patel
14. Shri Godey Murahari
15. Shri C. Achutha Menon.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS (DEPARTMENT OF INDUSTRIAL DEVELOPMENT)

1. Dr. S. Vedaraman. *Controller General of Patents, Designs and Trade Marks, Trade Marks Registry, Central Building, Queens Road, Bombay-1.*
2. Shri Hargundas, *Under Secretary.*
3. Shri R. Vasudeva Pai, *Joint Controller of Patents and Designs.*

SECRETARIAT

SHRI M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

I. *M/s. DePenning and DePenning, Patent and Trade Marks Agents, Calcutta and M/s. Starlite Corporation Manufacturers of Imitation Stones, Bombay.*

Spokesmen:

1. Shri K. Rama Pai
2. Shri A. R. Sinha.

II. Shri K. Rama Pai, *Retired Controller of Patents and Designs, Government of India, 37, Manoharpukar Road, Calcutta-29.*

III. *Associated Chambers of Commerce and Industry of India, Calcutta:—*

Spokesmen:

1. Mr. I. Mackinnon, *Additional Vice-President, Bombay Chamber of Commerce and Industry and Managing Director, Glaxo Laboratories (India) Ltd., Bombay.*
2. Mr. H. W. J. Nash, *Managing Director, Burmah-Shell Refineries Ltd., and Alternate Director, Nocil, Bombay.*
3. Dr. S. Varadarajan, *Director, Research, Hindustan Lever Ltd., Bombay.*

I. *M/s. DePenning and DePenning, Patent and Trade Marks Agents, Calcutta and M/s. Starlite Corporation, Manufacturers of Imitation Stones, Bombay:—*

Spokesmen:

1. Shri K. Rama Pai.
2. Shri A. R. Sinha.

(The Witnesses were called in and they took their seats).

MR. CHAIRMAN: Mr. Rama Pai, your evidence is liable to be made public and no part of it will be kept confidential. If you want any portion of it to be treated as such, you kindly indicate such portions. Even then, I cannot assure you that your request may be acceded to. We have got your memorandum and it has been circulated to all the Members. You may just emphasise the salient points and thereafter the Members will put questions and you may answer whatever you feel like answering.

SHRI RAMA PAI: Although we are representing DePenning and DePenning primarily, we are also representing another concern of Bombay, Starlight Corporation, who have authorised us to give their views. Of course, their points have been covered by our own memorandum as well. We have given 7 or 8 points which we consider are very important and we have given them in the order of Clauses in the Bill.

If you will permit, I will go in the order in which we have given the suggestions. The first suggestion is with regard to clause 3(g) which gives an indication of inventions which are not patentable. In the list is given a suggestion that methods of testing should not be patentable. We are suggesting that methods of testing as applicable to manufacturing processes should be made patentable for various reasons. I will give an example. In feeding water to boilers, sometimes the iron content in it is to be ascertained because the iron content will spoil the boilers. There are methods already known, but if there are quicker methods they are of very great industrial applicability.

Another example is the sealing of containers hermetically. Some electric parts have to be packed in hermetical sealing and the sealing should be perfectly hermetical. Methods for knowing whether hermetical sealing is efficient or not are very important in the industry. The general scheme of the new Bill is that all inventions which are applicable for manufacture should be patentable. This is made clear in section 2 where invention is defined as including any method applicable in the course of manufacture. The general scheme being that, to exclude methods of testing will be a sort of restrictive provision. A restrictive provision should be made only if there is need or justification for that restriction. From that standpoint, so far as we are aware, in no country has a statutory restriction been imposed amongst patentable inventions as methods of testing not being patentable. This goes contrary to the general scheme of the Patent Bill. It is contrary to the practice else where in the world and in this connection I would mention that in the United Kingdom upto 1949 this patentability of methods of testing was governed only by case law and they felt that under that case law the methods of testing were not patentable. But the modern requirements were such that they have now re-defined "invention" by adding to the old provision a sub-clause saying that the methods of testing applicable for industrial improvement and regulation should also be patentable. The Patents Enquiry Committee which gave the report in 1950 have recommended that the methods of testing should be patentable and there is another important Committee which had gone into the model patent laws for developing countries. They have suggested that methods which are of industrial applicability in the course of regulating manufacture should be patentable. There is a great bulk of argument in support of patentability of methods of testing and against it the only argument is to be found in the obsolete case law prevailed in England upto 1949. Apart from the examples which showed the necessity for the patentability of methods of testing, there are any number of such examples which I can give. There, the legal provision said that only methods of manufacture which directly resulted in vendible product would be patentable. So we are now going to incorporate in the Bill a provision which has been considered to be obsolete in other countries.

Then another point which I would mention in this connection is that if these methods are not patentable, these inventors will work these methods secretly; they will again make money out of their inventions. Who is the loser? The loser will be the public. That is all I have to say in connection with this suggestion.

The next suggestion that I have to make is with regard to clause 8. Under this clause it is necessary that an applicant for patent should give an undertaking that he would furnish the patent office with a list of countries where he had applied for corresponding patents and also in course of time with a copy of the objections taken. I would humbly submit that this provision in the Bill does not take into account the numerous drawback that it has from the standpoint of the inventor, from the standpoint of the patent office and from the general standpoint of achieving the purpose which the Act has in view, as also from the standpoint of the scheme of the Act as a whole. Viewed theoretically, this provision is very laudable as an ideal, that the examiner of patents in India will have before him the examination reports of all over the world and so he can do a more detailed examination. It is a very desirable object. But what is overlooked here is the cumbersome work that is imposed on each applicant for patent. Generally speaking, many of those who apply for patents in India

apply at least in 20 to 30 countries for corresponding patents in outside countries. They are people who take world patents so that in connection with each application filed in India there will be 20 or 30 reports which would have to be submitted by the inventor. If you have about three thousand to four thousand applications coming from outside and even if half of them are taking the different world patents, just imagine how much cumbersome this will be.

Then we come to the Examiners. It is not obligatory at present on the Examiner that he should make a search even amongst Indian patents. We are going to introduce a provision that it should be obligatory for the Examiner to make a search. That is well and good. But even to implement that provision you will have to enhance the staff of the Patent Office to a very large extent, at least four times the existing staff. To give you an idea, I will give the figures in the U.K. In the U.K., the scientific staff available to make compulsory search only amongst British patents is 500. There are 500 members on the technical side to make compulsory search amongst British patents. We have here about 30 to 40 members of the technical staff and we have no compulsory search. Of course, the number of our applicants will be fewer. Even then you have to increase the staff.

In this connection the Bill has at the end of it a note on the financial implications. The figure given there does not show a very large increase of staff. With the increase of staff contemplated by that additional expenditure involved in the Bill, this work is impracticable—absolutely impracticable. Then, you get reports from all over the world—from Japan, from Germany and other countries. Of course, in France there is no examination. Then either the inventor will have to give translations or the Government will have to engage translators. It is an utopian proposal in the sense that it may not be practicable unless we increase the staff of this office to a fabulous and unbelievable extent.

SHRI KRISHAN KANT: Does it exist in any other patent law?

SHRI RAMA PAI: There is no statutory provision, except to the extent that it is left to the Controller to ask the applicant for reports of other patent offices. That is being done even now without any statutory provision. If you make a statutory provision like this, then it will mean that you will be imposing a lot of useless waste of energy of the staff of the patent office.

Then, does this scheme of the Bill contemplate that kind of thoroughness and examination? No. Because the validity of the patent can be questioned at two subsequent stages by an interested party in opposition proceedings before the Controller and in a court of law under revocation proceedings, so that it is not contemplated even in the Bill that the thing should be thoroughly examined.

Above all, there is one more point. This is not at all a thing for which there is any need in this country. If you take the court proceedings in the whole of India for the past 25 years or more even, you would not find a single patent held invalid which would not have been granted if this provision was there; so that this is an unwanted thing. Moreover, this provision will not ensure that the patent granted will not be revocable, because in court proceedings even now we rely very much on literature other than patent specifications. It is publicly known and publicly used. By doing this herculean task in the patent office, you do not gain anything. You do not ensure that the patent granted will be valid one, so that, I think, this provision betrays lack of familiarity with the Patent Office practice or with the utility of the provision recommended.

The next suggestion that we have to make is with regard to Clause 13

of the Bill. Our criticism of this clause 13 is that it is highly wasteful and thoroughly obsolete. It is highly wasteful because under the scheme of the Act the inventor, in order to ensure his priority of invention, has to come to the Patent Office as soon as possible even before he works out the commercial possibilities of the invention. Then having ensured priority he goes on developing the invention and ultimately he thinks it is not worthwhile to proceed. For him the loss is Patent Office fees but the staff of the Patent Office cannot ignore that application; and it is found from the figures of 1950 that 90 per cent of the applications are not proceeded with further by the payment of the renewal fees so that the colossal work done by the Patent Office is wasted; and again it is found that only 50 per cent of the people renew their Patents in the fifth year. At least in the case of 50 per cent of the applicatons the work is wasted. The technical experts in the Patent Office are few and we should not waste their work.

About two or three years ago the other Patents Offices have brought out the "Deferred Examination System." My submission is that provision of 13 should be brought into line with the Deferred Examination System. Under this system there are four stages for granting a Patent. In the first stage the applicant brings the application, pays the fees and gets a number. It is merely put in the cold storage unless he comes with the second stage making a request that his application may be published. He can do that at the most within 1½ years. If he does not do so within 1½ years the application is published automatically and then the second stage is over. In the mean time he would have found possibilities whether it is worthwhile to proceed. Then, at the third stage, he comes with a request to make a search for novelty, only if that is made then Patent Office goes ahead with the search and assuming it is clear from anticipation— the fourth stage comes and he says you have examined thoroughly from all stand-points necessary for sealing the patent. So, it is only when four stages are completed that the Patent will be sealed and if he does not complete these four stages within 7 years then the Patent application becomes abandoned so that the Patent Office does not waste even one second on that application. This is already working in Germany and we understand that Australia and Japan have determined to introduce it. They are going through the procedure of introducing and other countries like Canada also are thinking of adopting this. It will be a great advantage if this provision is modelled on the Deferred Examination System.

MR. CHAIRMAN: Does this provision find place in the Model Law?

SHRI PAI: Yes.

Our next suggestion is with regard to clause 25(i)(h). This clause gives the various grounds on which an application for patent may be opposed. One of the grounds given is that an opposition may be made on the ground that the applicant did not furnish the Controller with a complete list of the countries where he had filed the application or with the reports of those countries. We have two criticims for this. One criticism is: how is an opponent to know whether the applicant has given a complete list or not, because correspondence with the Patent Office is to be held confidentially. The third Party cannot know what list he has given and it is not provided that the list should be opened to public inspection. Further is it possible for the man to know which are the countries where corresponding applications have been filed. So, it is impracticable. Secondly, what is the Controller to do. Supposing some how or other this task is done is he to refuse the patent for this mistake which occurred due to carelessness. Carelessness is a human weakness for which there is no fool-proof remedy. The patent rights are valuable rights. So, this

clause serves no useful purpose at all and it is an impracticable one. So, we want that this clause should be deleted.

Next our suggestion is with regard to clause 53. We would give the highest priority to this suggestion of ours. This deals with the recommended term of a patent granted under the Bill. Under the Bill it is provided that the term normally will be 14 years instead of 16 years as at present but in the case of inventions dealing with food, medicines or drugs it should be 10 years. Our criticism to that is that this recommendation does not take into account... the experience of those who have given thought to it as to how much time is necessary for the invention to be developed sufficiently to be introduced for commercial purposes and find the market for the new thing, because people will be having conservatism and the introduction of the new thing will be a troublesome task as all this stage work will have to be done; it is experience of those who have given thought to it, that it takes at least six years on the average and in many cases it takes more; and in the existing Act it was contemplated that normal period of 16 years may not be sufficient. An invention may be in advance of the time. It is better to give him extra time. As against that it is said it should be 14 years. Now there are about 90 countries in the world where Patent is granted. There are about half a dozen countries where it is 14 years or less. In 6 to 8 countries—the period is 14 years or less. I may name:

South West Africa, Malta, Ceylon, Venzeu-la, Saint Vinscent.

Now we are moving towards these countries as our ideal patent system if we go in for 14 years or less, and away from like Germany, Japan and others which are developing countries like Pakistan and so on. We are going to those countries whose names have not been heard by many of us. That is psychological criticism.

Categorical criticism may be in the case of food and medicines. More time is taken because you can put the crude machines in the market and it will sell. Crude fountain pen will sell even if finer pen is being sold. But the medicine should not be put in the market like that. There are the Drugs Act and various other provisions by which we sell the things of standard purity and see that toxic effect is not there. So the amount of research necessary in the case of Drugs is very much more and it looks to be unfair that those who recommended this provision overlooked this fact. They may have other grounds. I am one for those who agree with them that there are certain drawbacks in our provision for food and medicine. I am not saying that Law is perfect but it is neither here nor there.

There are two methods of testing it. One is there are thousands and thousands of medicines for which patents have lapsed even in India. Has anybody come forward for this medicine—chloram Phenicol? Who is doing it, except those who have patent and started the industry. We have got the recent experience also in that line if it is said that the prices go high. You may remember under the Defence of India rule it was decided that all applications for patents for food and medicines should be held in abeyance. After the Defence of India Rule terminated by special amending Act this is causing complications. So from 1962—68 i.e. six years experience shows that no patent has been granted for inventions of medicines. Has the price of medicines come down? Patents have nothing to do with the price of medicines and by your taking this away, all that you do is to see that people who have inventions for medicines and drugs do not come forward to exploit them in India by introducing the industries based on those inventions. Of-course they may try to exploit them com-

mercially. That is another thing. Patent is not concerned with that. The encouragement which the manufacturers will get under patent protection is another thing. Capital will not be forthcoming. As a matter of fact in foreign countries if an inventor goes and says I have got this wonderful invention, the first question they ask is, have you patented it and if he says 'no', they say we have no time to waste on it. Go away. They attach so much importance to the patent protection; and that encouragement will not be available because no reasonable inventor will come here with 10 years protection for a medicine because it will take him 10 years to build up machinery for exploiting.

MR. CHAIRMAN: There is a school of thought which says 'do away with patent'.

SHRI RAMA PAI: My criticism will apply to that also because you overlook the fact for the benefit of the patentee. It is good for public interest.

About the patent progress in other countries, America has gone a lot in this matter. They swear by patent. England did it when it was an agricultural country and not an industrial country. It was more backward than India. But they have made up by this stimulus.

There are provisions in our existing law by which you can work any patented invention for a drug or medicine. If people are not using those provisions, are you going to cater to those? I will give an instance. Only a few months ago a case was decided in Bombay for the very drug Tol butamide. It is a wonderful medicine for diabetis. Very recently the judgement was given against one of the Bombay firm. I am asking them, did they make us eof the provisions in the Act which contains two provisions under which they could have come to the Controller for a licence and he would have given a licence. One provision requires that the applicant need not do anything more than that to say that he has the ability to manufacture. It is Section 23(cc) of the existing Act. Why did they not go to the Controller? Do you know what easy term the controller gives. The maximum royalty he will impose is 4 per cent of the net cost price in the factory. That is not going to break the back of the man who charges a lot.

SHRI KRISHAN KANT: What is that provision?

SHRI RAMA PAI: I do not exactly remember the words. It says that in the case of a patent for an invention in the field of medicine, surgery or food and other materials, any person can make an application to the Controller saying that he wants a licence for a patent which he wants to work. That is one provision. He need not even show that the patentee has defaulted. He has just to say: "I want to manufacture it and I have the capacity and the industrial licence from the Government of India". Then it is granted.

SHRI KRISHAN KANT: Do you agree with that?

DR. VEDARAMAN: He can walk into the Controller's room and have it.

SHRI RAMA PAI: I am not exaggerating. It is just like buying postage stamp. In spite of this provision being there, people go to High Courts and lose the case. Are you going to cater to them? Who is the loser? The public. The public won't get the patent-stimulus in building up the industry. Of course, industries were built up even during the Moghul period when there was no patent system. Therefore, I won't say that there will be no industries where there is no patent system. But where does a man get the enterprise from? People go in for new industries on the basis of patent stimulus. Patent system is intended to provide that patent stimulus. Now

you are depriving Indian industries of that stimulus which they could have obtained if you give them normal patent with all precautions, if necessary. In fact I can suggest other steps also to make a drug patent available to the public on reasonable terms; so that is not such a big bugbear to India. That is another matter. That is not in my suggestion. But there are remedies and remedies. It is true that a good deal is desirable as regards patents for medicines. I do not differ from those who want it. But what they are providing is not at all going to have the beneficial effect. Since 1952 we have not granted any patent for medicine.

SHRI KRISHAN KANT: Have we suffered because of that? Have our industry suffered?

SHRI RAMA PAI: I am not saying of industrial suffering. We have not gained any advantage in the price of medicine as a result of our not granting patent. That is all that I am saying.

SHRI KRISHAN KANT: Indian industries have not grown because of that?

SHRI RAMA PAI: I never say that industries have not grown. I have not gone into that aspect. Patents have got a positive utility and that positive utility will not be available to the Indian industry. Inventions will be worked in secrecy. Do not think that you can catch people easily. There is a constant struggle going on between the burglars and safe-makers or between secrecy and the patent law. We have to hold the balance in the public interest. If you want provision, do have it. But merely because somebody is going to create trouble, do not exterminate the useful thing. Make it more useful. I will go to the extent of saying that if you have this 14 years period or 10 year period, the Indian patent system cannot develop for many years to come. Nobody who has an invention will make a gift of it under such tremendous provisions as going to jail, etc. The whole outlook of the Bill—I may respectfully say—is that of the Tudor period when they were giving monopolies as favouritism. It is not the modern patent system and so those patentees have to be dealt with as during the Tudor period, that is, as enemies of the public. I will come to it later on.

Speaking of medicine, food or drug this ten year period is not enough. The fourteen year period for other articles is not in conformity with facts because there are so many extension petitions under the existing Act. Even 16 years period is not sufficient. When we have our own facts to support that 16 years may not be sufficient, what to speak of 14 years? Another funny thing is that there is no provision even for extending that period in exceptional cases. Take, for instance, the case of an invention for electrical traction of railways before electric trains were introduced. Now somebody invented it and three years later the electric railway system came. It was no fault of the inventor. Now his patent ends. Under the existing Act it can be extended for another 5 years or 10 years. In the new Bill there is no such provision. According to the Bill, it is the fate of the inventor that his invention was ahead of the times.

MR. CHAIRMAN: Is it your suggestion that there should be some provision for extension?

SHRI RAMA PAI: My most important suggestion is to make it 16 year period for all patents including medicines. If medicine patents give you trouble, find out remedies to deal with those troubles. But do not make the patent useless for industries.

SHRI KRISHAN KANT: What remedy would you suggest?

SHRI RAMA PAI: One point is that it has come to the notice that certain drugs are available at a very cheap rate in Italy. Take for instance chloramphenicol. It is available at a very cheap rate in Italy. But so long as

there is a patent here, I cannot get the drugs from Italy where it is sold at many times less price. Let us assume that this is a fact. If this is a fact, it is a child's play to deal with it. I do not know whether anybody has suggested the overhauling the whole Patent Act and replacing it by a horrid Bill. The sample provision is to enact that in the case of a patent for medicines and food, importation of an article purchased anywhere in the open market outside the world will not be an infringement. If you make this provision, who can stop me from bringing Italian things and selling them here? For the sake of that you are going to make the patent system paralised for the whole country although it was recognised that the patent system has not worked well. That was admitted by appointing the Patents Enquiry Committee. One of the terms of reference was to find out the means by which the patent system can be made more conducive to industrial progress in this country. That means it is not conducive now. If you are going to make patents more useless, is it not to sound the death knell of patent system in India? And this defect can be overcome by a childish amendment like that.

SHRI KRISHAN KANT: It is not a childish amendment—a small amendment.

SHRI RAMA RAI: I stand corrected—by a small amendment. We must go to the proper shop and proper person to get a proper thing or to get his advice and not to another man who has greatest hold on this. I shall come to the point later.

Now, I am putting it to you. Don't you think that this small provision, if it is made, may remove all our worries about the drugs etc.? Speaking about Bombay case, a patent can be obtained even without working a patent. There is a provision in Section 22 to which I have not referred where anybody who holds a patent can come forward for a compulsory licence on the ground that his patent cannot be worked on account of another patent. They have not made use of that provision; there are two remedies given in the existing Act.

MR. CHAIRMAN: Is it your case that Section 53 and 48 should be concise to some extent? With regard to your proposed amendment, I may say that the same thing is provided for under Section 48, though of course it is in a different form.

SHRI RAMA PAI: It is not at all satisfactory because it won't permit importation unless it be by Government. Government can do anything they like.

MR. CHAIRMAN: Do you mean to say that this is to be extended to everybody?

SHRI RAMA PAI: That is right. I should be able to get all the drugs and sell them in India at the rate at which they are available.

So, I am not bothered about Section 48—let it remain as it is—I am not criticising it. But, Sec., 48 deserves criticism only when it comes to 98 or 99 because there it is said that no royalty need be paid. That means in the case of railways, for any invention used by the railways, the patentee will not get a quarter anna.

In the case of Posts and Telegraphs, even if they use anything the patentee will not get a quarter anna. What is permitted under Section 48 will not be governed by Section 100. No compensation is paid for that man. That is an outrageous misappropriation of the invention. An inventor merely comes to you—he won't study the Act at all—that he will get a patent from Government. But he finds that he is helpless. Read Section 48 read with 98 or 99. That entitles the Government Railways and Post Offices to use all patented inventions without paying even a naya paisa to the patentee.

Is this a progressive patent system where rights of the inventor are to be respected by the patent system?

SHRI KRISHAN KANT: You are right. You must pay some compensation to him at least for the knowledge.

SHRI RAMA PAI: Of course you are protecting his copy right under the Copy Right Act. Now let us proceed to the next item—Sec. 64. Clause 64 gives grounds on which a patent can be revoked. Two of the clauses are: clauses (e) and (f) each of which consists of two parts—a substantive part and a proviso which is unexceptionable. The substantive part says that any patent, after the Act comes into force, can be revoked on the grounds that the invention was lacking in novelty or lacking in inventive merit having regard to what was known in India or elsewhere. 'Or elsewhere' are very important. The proviso makes an exception to this substantive provision. In the case of patents already in force at the time when the Act comes into force, the words 'or elsewhere' shall be regarded as non-existent. That is, novelty will be considered only with regard to what was known or used in India. So, the provision should be fully understood.

Now, this exception made in the proviso to clauses (e) and (f) brings in three kinds of discriminations. It is important to bear these discriminations in mind. What I have to say is with regard to legal aspect as well as practical aspect of it. I am now on the legal aspect of it. It is a discriminating legislation in three ways —one way is as between a patent which was in force when the Act came into force and the other way is that the patentee will get patents after the Act comes into force. That is not understandable. If the existing patentees had better rights that is all right. I shall go into the question later. Another discrimination is as between existing patentees, under the existing laws and as between existing patentees when the law comes into force. It is my humble submission that under the existing law the patent can be revoked on the ground that it was lacking in novelty or inventive merit having regard to what is known in India or elsewhere. That is the substantive provision of clauses (e) and (f). Those provisions are merely for clarifications and are not new matters having regard to the existing laws. So, this is the second discrimination. The third discrimination comes in in this way. There is clause 162(5) which says:

Notwithstanding anything provided in the Act, in the case of a patent on which litigation is pending, the patent will be governed by the existing law and ot by the old law. That meas to say that here a discrimination is brought between the existing manufacturers against whom infringement suits are already pending and those whom the cases have not been filed. Now you may not ask, 'Is it not open to the manufacturers just to come with a revocation petition and see that the litigation is pending'. No. Because a revocation petition can be filed only by persons who have certain status under Sec. 26(2). I am a manufacturer and he as patentee if he files a suit against me, I can revoke it, but if he does not file. I cannot do anything with the patent. So he will merely wait until this Bill is passed and then he will say, 'I will now go to the court'. If you retain these provisos—there is absolutely no justification—these provisos are, in my opinion, conferring new rights on existing patentees for which there is no demand. As far as I am aware, nobody has said that the existing patentees should be given additional rights over and above these that are enjoyed by them to-day.

Now I will come to the practical side. I said I am representing Starlite Corporation. They are only one of our clients who are in the same boat as they. If an enterprising manufacturer says 'We want to manufacture this. Are we up against any patent?' We make a search and tell them that you are up against this patent'. Then they say, 'Is there any means by which we can escape the patentee? We must took into the validity of the patent, and we find that

what this Indian manufacturer wants to do is only a thing which is already being manufactured abroad and for which patent had lapsed. So while luckily our Indian law provides that you can rely on foreign publications, so we tell them 'Go ahead' and many people have invested capital in India to build new industries. If you pass this Bill with this proviso, everyone will be ruined at least so far as this industry is concerned. This will be the treatment you give to enterprising Indian industrialists. Public records do not show that any individual or party had imitated this thing. These provisos were not there in the Patents Bill of 1965. These provisos have surreptiously crept in and it takes a long time to get a copy of the existing Bill. We are suddenly faced with this thing and we have to take legal opinion.

A REPRESENTATIVE FROM MINISTRY: The Joint Committee added these provisos deliberately.

SHRI RAMA PAI: Even then it should have been initiated by somebody. I do not blame the Committee. Why was it surreptiously introduced when the public have no knowledge. It is very difficult to get copies of the present Bill. Even to-day as the Controller himself knows, we have to get the Controller's copy and make our copy upto-date. These provisos will be penalising people who had been patriots in the sense that they have introduced new industries in India. Now let us proceed to the next item, *viz.* Clause 149 of the Bill.

I know I have a very weak case, but it is on a point which should not be left unnoticed by the Committee. At present the law provides rules under which any communication addressed to the Controller in the patent office, if it was delayed in the post, it entitles the Controller to condone the postal delay. That is a great help to us. We have found in actual practice delays occur not so much in our communications with the Controller because we send our communications by hand, but in our communications with our clients. This Bill gives controller discretion and in his discretion without detriment to any one and without loss to the Government revenue, if he can condone such postal delays as between clients, and their Patent Agents, it will be helpful.

MR. CHAIRMAN: That is very reasonable.

SHRI RAMA PAI: Thank you very much, Sir. That finishes what Depennings had to say in their memorandum and what the Starlite Batteries have to say.

MR. CHAIRMAN: We will be putting questions, now. Mr. Masani.

SHRI M. R. MASANI: The witness is very convincing.

SHRI C. ACHUTHA MENON: The most important point that you have made is about the immediate duration of the validity of patents. You are saying that there is no case for fixing a shorter period for the duration of patents so far as drugs and pharmaceuticals and foodstuffs are concerned.

SHRI RAMA PAI: Yes.

SHRI ACHUTHA MENON: You will see these products stand on a different footing from other products because these products are vitally necessary for the health of the community and so they should be available as easily and as cheaply as possible. I think with that intention this provision has been introduced in the Bill. So, if you object to this, can you suggest any other means by which the same objective can be attained? Why should you object to this at all? We want to know whether there is some parity in the Bill, whether the discrimination that is sought to be made out is rational or not.

SHRI RAMA PAI: I have already submitted that if at all you are going

to discriminate between patents, then medicine should get a longer term because the amount of research necessary in that field is much more than what is necessary to make a mechanical invention.

SHRI MENON: There are social and other considerations because these products are standing on a different footing. These are very essential for the health of the community. The Parliament has therefore to keep in view that objective of making these products available to the community at a cheap price.

SHRI RAMA PAI: I entirely agree that these things should be made available. I would further point out that if you read the Statement of Objects and Reasons of the Bill by which Clause 23 (CC) of the existing Bill, you will find this point given as a reason for introducing clause 23 (CC), I may point out another thing which will be in your favour. Under the existing law 23 (CC) has been found to be unworkable because applications for compulsory licence made about six years before the expiry of the patent could not be disposed of by the Controller until those patents had expired and the licences became merely a thing of the past. The machinery provided is like putting a square peg in a round hole. The remedy lies in providing a square hole for a square peg. If I may respectfully submit the Controller is an officer who is there to take into account the present day conditions—the manufacturers are not familiar with the patent law and he had to help them. The proceedings before him should go on the basis of justice and equity, not so much on procedural niceties. He has been doing that thing. The appellate authority over him is, however, one which insists on Scdupulous adherence to the prescribed procedure, *viz.*, the High Court. Either make the compulsory licence proceeding a court affair, and then the District Judge will take his own way of dealing with it and the High Court will look after his proceedings. When there is the Controller who is there to help the public and to do justice without bothering about whether a pleading should be attested by somebody and so on, if you have the High Court as the Appellate Authority over him, then the poor Controller deserve sympathy and consideration. But the suffere is the public. By making the High Court the appellate authority, 23(CC) has become absolutely useless. You have to provide a quicker disposal of appeals. If I may make a humble suggestion, the Controller himself is a responsible Officer. You can have a bench comprising of two or three people, selected from panels already with the Government of India—one representing the Court, a jurist or an Advocate General, another representing a great industrialist who really knows something, a man from the Chamber of Commerce and the third one a scientist in the particular line. Let these two or three people go into the Appeal. Their minds will work on the lines of the Controller. If it is a fit case, they would look into the question as to whether this should have been done. or should not have been done. The High Court is right and it discharges its functions. Minus quantity of High Court with the plus quantity of the Controller makes the provision zero. This is my humble suggestion. Have an appellate authority but with a different composition. Six years it will take even for the High Court in the original side, then the Appellate Court and then the Supreme Court. What will the applicant get?

SHRI MENON: For the objectives I had related, you would suggest that the compulsory licence provision should be sufficient but because of the dilatory and cumbrous procedure provided here, it has not been found workable.

SHRI RAMA PAI: The appellate authority being the High Court, the provision has been unworkable.

SHRI MENON: Under the new Act, if some workable provisions are made, then your view is that this provision for compulsory licence would meet the needs that I had related.

SHRI RAMA PAI: It is a very desirable provision. But it does not go far enough because, as it stands now, it does not entitle the Controller to give a licence for importing. It gives him power only to set up a factory. He should be given the power to import also. I am not diluting the provision for compulsory licence, but I want it to be made more workable.

SHRI MENON: There are some countries in which there are no patents for drugs and pharmaceuticals. Why should we not follow that? What is your view about that?

SHRI RAMA PAI: As regards medicines and food, countries adopt various systems. We have to adopt what is suitable for us. In adopting that, my suggestion will be to give primary importance to the patent system as a factor which stimulates industry. Let it be even drug industry. The second thing is, make it possible for anyone wanting to work a drug industry in India can get a licence on very reasonable procedures and reasonable terms instead of following extremes adopted by certain countries. For example, America gives patents for drugs and medicines, but Denmark does not give. Here, the choice is whether you should go to America or to Denmark or to neither and take only the best of the two. I suggest that you take the best of the two. If there is even the least difficulty, do whatever is necessary to overcome the difficulty. Don't think that the existence of a patent system is responsible for that.

SHRI KRISHAN KANT: Can you kindly tell me how many Indians have filed patents abroad?

SHRI RAMA PAI: I do not have the figures. That figure would be available with the Controller. So far as I am concerned, within the past three or four years, we have been able to have 100 patents abroad.

As regards clause 8 of the Bill I know that in Canada they have got a most practicable provision. Just now I cannot give the exact provision. I would suggest that you please incorporate it. I am not against it. As a matter of fact, without any provision, the Controller is very often citing British patents. We do not object to it. We are interested in getting valid patents. Give that power to the Controller that in a fit case where the Controller is personally satisfied, he may do that. Let that not be delegated to officers under the Controller. In Japan, the officer who has the Controller's powers can do that.

SHRI KRISHAN KANT: You have mentioned on page 6 that many of the applications filed are not proceeded with. Have you got any figures?

SHRI RAMA PAI: I have got these figures. The Controller will give you

MR. CHAIRMAN: We shall get those figures from the Controller.

DR. VEDAARAMAN: I shall give you those figures.

SHRI KRISHAN KANT: Japan did not have patent before the Second World War and they were having good industrial prosperity. How do you account for that?

SHRI RAMA PAI: If my information is correct, Japan had patents even before the Second World War. Patents seemed to have accelerated the speed. As I told you earlier, England took to modern patent system when it was an agricultural country. And the preamble says, "In order to introduce new manufacture in the country...."; they invited people who were actually doing the inventions to come and settle in England. In the interest of patents, not only new inventions but even old inventions were patented. Even Spain

was not a highly industrialized country. They were prepared to give new patents to anyone. But patent is like a fencing around the plant. After it grows, it does not need fencing.

SHRI KRISHAN KANT: Patent is only meant for the growth of industrialization.

SHRI RAMA PAI: I entirely agree. It is meant for the growth of industry. As I said earlier, patent is like fencing of a tender plant. If you have a plant you put something round it until it grows. After it grows it does not need fencing.

SHRI KRISHAN KANT: The whole purpose of patents is to stimulate growth. Now what we want to do is that we do not want to be fettered by patents in our growth. When patent does not help growth, it rather hinders it....

SHRI RAMA PAI: I entirely agree.

SHRI KRISHAN KANT: What is the reason for the high prices of medicines and drugs?

SHRI RAMA PAI: I am not an economist who claims to have made a research. All that I can say is that patent itself is not responsible. It is a question of demand and supply.

SHRI KRISHAN KANT: I think the main object of this provision was because of lack of information and expertise in our Controller's office we cannot accept a patent which does not give complete information because a foreign company can file a patent with incomplete information just to bar the progress so that others may not manufacture it here. What remedy do you suggest so that incomplete patent application may not be accepted here and other persons who want to utilise it should be able to utilise.

SHRI PAI: This Bill has got a statement about its financial implications. The technical staff salary in England is $ 3 million per year whereas the technical staff salary in India is Rs. 7 or 8 lakhs. Why is it like that. Because the Act itself contemplates that people should not be fooled by granting patents like giving stamps and at the patent office some responsible office should look into it on a *prima facie* case and give it. Adhere to the scheme of the Act when expanding horizontally with the examination. If you are doing that why have opposition proceedings and revocation proceedings and even with all these things you cannot prevent prior user by documents other than patent specifications. We are fighting litigation to day on that basis. It is not on paents specifications. We do not worry about patent specification.

SHRI KRISHAN KANT: Is it not a fact that patents plus technical-know how make up the whole thing and to the foreign companies which come to India it is patent plus the know-how which gives them the monopoly. If this is so will it not be better that the Government of India decides on the basis of priorities and a policy for the welfare of the people that these are the technical know-how and Patents, that these are the things which we want, we buy outright from the best technical know-how in the world. Of course, this decision should be taken in consultation with the private industry and others who want to come in this line and buy it outright and then give it to that party for manufacturing in this country rather than having the full-fledged patent system. A patent is a minor part of the technical know-how.

SHRI PAI: It will not be a better system so far as patents are concerned. Already in the existing Act there are provisions which the people are not using. You have got Section 23(a) which enables the Government to mark any patent as licences of right. Anybody can go to the Controller and ask for the right. Nobody is using it.

SHRI KRISHAN KANT: It is not merely compulsory licensing which is useful but it is the technical know-how which is useful.

SHRI PAI: You cannot get the technical know-how by any perfection of patent law. The patentee cannot be compelled to give his technical know-how unless he gets something in return for it.

SHRI KRISHAN KANT: That is what I say. Pay them some 10 per cent or 15 per cent part of the technical know-how instead of having patent law for all these things. Scrap this patent law for the time being till we reach a certain stage of development where we can give to the world and take back from the world. China is doing it. Even now America and Canada want to have trade with them.

SHRI PAI: This kind of thought is not new. In Holland they did away with the patent system. They found their position as a manufacturing country was going down and they had to re-introduce it because nobody would like to introduce any new industry. The patent system does not stand in the way of doing what you want to do by having the know-how. If new industries thrive on patent system let them thrive.

SHRI DESAI: Mr. Pai you criticised the provision in the Bill which restricts the term of the patent to 10 years in the case of drugs and pharmaceuticals and 14 years in the case of the remaining patents. What is the trend in the world on the question of duration of the patents?

SHRI PAI: In U.S.A. they give 17 years from the date of granting the patent and not from the date of application for patent.

SHRI DESAI: In our case also it is the date of the patent.

SHRI PAI: Date of the patent is the date of the application for the patent.

SHRI DESAI: The date of the patent is the date of the application. That is peculiar. To my mind a patent is not a patent unless it is sanctioned as a patent and the date of the patent must necessarily be the date of registration of the patent.

MR. CHAIRMAN: No, no.

SHRI C. C. DESAI: Supposing it is from the date of the sanction of the patent, what is the trend?

SHRI RAMA PAI: In the United States the period taken for granting the patent is ignored and 17 net years are granted as life of the patent.

SHRI C. C. DESAI: There is a thinking that the United States aims at reducing the term of the patent.

SHRI KRISHAN KANT: Here is the news from *Sunday Times* (London), September 8.

"US TO SLASH DRUG PATENTS"

The US Department of Health, Education and Welfare will soon release a report to Congress urging sweeping new legislative reforms of the American pharmaceutical industry. The object of the reforms will be to cut industry profits on new drugs, which often yield their developers as much as 3,000 per cent return on investment.

According to sources close to H E W, the reform scheme will contain to key recommendations: fiirst, that Congress should change current patent laws to deprive patent owners of exclusive use after seven instead of the current 17 years period; and, second, that developers of new drugs be required to licence the new drugs to any other drug manufacturer which applies for such licence.

The HEW report blames the 17 years patent protection for current high drug prices and points out that sharp prices reductions in drugs is virtually automatic after patent protection expires, thus permitting competitors to manufacture the same drug.

The Department states that current high drug prices could well force the Federal Government to begin manufacturing drugs in competition with private industry or face the possibility of ending its current Medicare and Medical health schemes. It recognises, however, that certain legal problems may stand in the way of the patent proposals.

Other reforms proposed include strict new procedures for Government control and inspection of industry research procedures and of drug quality.

What is the trend? They have come to the conclusion.

SHRI C. C. DESAI: The trend which can be proved.

SHRI R. RAMA PAI: From the number of Reports that the United States are having, I must respectfully say that no great value need be attached to it. They have Standing Committees throughout the year without any break on some problem or the other. Various suggestions are made but nothing becomes law. So, as things stand it is 17 years net. Second and more important argument is in the model laws for developing countries they have proposed 25 years i.e. making an allowance for two, three years procedure as is obtained in the Patent Office. That model law was made by people at the higher level on matters which are in conference. If they have set the trend; then this period that we are having is not sufficient.

SHRI C. C. DESAI: Is there any recent legislation where the period has been extended?

SHRI RAMA PAI: I am not aware of any recent legislation.

SHRI C. C. DESAI: The Committee Report is one thing and the final passing is a positive proof.

One objection against the longer term is that of patent monopoly. Monopoly means high price because the patent monopolist is entitled to or is inclined to charge higher price. So, if it is said that the patent term may be 10 years, but if the patent holder starts manufacture of that item within the country before the expiry of that, then in that case alone the period may be extended to 14 years or 16 years. Would it not mean encouragement or incentive to manufacturer of patent, within the country which is our object. The thing can be sold in the country otherwise the patent will lapse.

SHRI RAMA PAI: At present the provision is 3 years from the sealing of the patent. Of course it is not under law as it stood up to 1939 but it could be revoked.

SHRI C. C. DESAI: Many people argue about 15 years or 16 years. If we say that the life of the Patent, the term of the Patent, will be extended before the patent holder has taken effective steps for production within the country.

SHRI RAMA PAI: I agree:

SHRI C. C. DESAI: You have not mentioned in your Memorandum anything about Royalty, Does it mean that you are satisfied with this provision?

SHRI RAMA PAI: In this matter we are guided by Committees like the Pharmaceutical Committee of India and so on. They are some important bodies. They recommend that this should be the thing and Government accepted that recommendation. So people, who have given thought to this matter though 4 per cent was sufficient and Government also agreed to that.

Usual standard of Royalty that I consider reasonable is either 5 per cent of the net cost price in the factory where it is produced or 15 per cent of the profit. If I am a patentee and he is making it, either he can give me 5 per cent of his cost

price. Books will be available or if he makes profit of 100 rupees, let him pay me Rs. 15. That is not very high on profit. You can look at it from profit standard or cost standard depending upon the industry. There are numerous other factors to give you a rough idea.

SHRI C. C. DESAI: How would you differ from the present provision of 4 per cent of the net price of the bulk.

SHRI RAMA PAI: It would not differ materially. I will agree that this is a reasonable royalty.

MR. CHAIRMAN: It is bulk price and not the cost price . Bulk price includes the tax.

So you say 5 per cent of the net cost and not the price.

SHRI RAMA PAI: I did not understand.

SHRI C. C. DESAI: After you study the problem, you can give us a note on the subject and we will consider that.

SHRI RAMA PAI: Yes.

SHRI C. C. DESAI: Who should determine the royalty and what should be the criterion for that? Should it be decided by the Controller or by a court of law?

SHRI RAMA PAI: My scheme is that it should be determined by the Controller on the evidence placed before him. The respective parties should give the evidence. Further an appeal should lie not to the High Court, but to the Board of members selected from among industrialists, jurists and if necessary scientists.

SHRI C. C. DESAI: You suggest a special patent appellate tribunal and an appeal should go to them.

SHRI RAMA PAI: That should be the only practical appellate. tribunal for all purposes under the Act. If you put the poor Controller at the mercy of the High Court....

SHRI C. C. DESAI: Nor should he be at the mercy of the Minister.

SHRI RAMA PAI: In olden days an appeal used to be noted on by the Deputy Secretary of the Ministry and then it went to the Law Ministry and then it came back to the Minister. Today I do not think that it is taking place. Government of India is the appellate machinery.

MR. CHAIRMAN: Thank you Mr. Pai for your evidence which is very illuminating. Now we will hear the other witnesses.

SHRI RAMA PAI: I had made a representation in my personal capacity—not on points arising out of the Bill. Certain points which DePenning could not raise, I can raise in my personal capacity.

MR. CHAIRMAN: It is here. But is it very long? Other people are waiting to be heard.

SHRI RAMA PAI: I can warn you that it will be long. Or, you can call me any other day. I am here for 15 days.

MR. CHAIRMAN: That will be better. We will fix up a date and let you know.

DR. SUSHILA NAYAR: Could you give us a resume of what you want to say in a few minutes?

MR. CHAIRMAN: Then we will not call him again.

DR. SUSHILA NAYAR: If we feel like, we may call him again.

II. *Shri K. Rama Pai—Retired Controller of Patents and Design, Government of Indias.* 37, *Manohar Pukar Road, Calcutta*—29.

SHRI RAMA PAI: In the invitation memorandum, I saw that after

the points in the memorandum have been dealt with I will be asked whether I have anything more to add. I am adding in that capacity only. I shall try to be as brief as possible and to the point. I venture to say this because you should know the facts. What I am going to tell you will startle you.

The Patents Bill that you are now considering was also considered by an earlier Committee. You are the second Committee. A product coming out of two Committee should really be a good product. I feel that I know certain things and I want to make use of them for the benefit of the country.

The origin of this revision of Patent Law started in 1948 when under a Resolution of the Cabinet of the Government of India a Patent Inquiry Committee was appointed comprising of Justice Tek Chand and other top-ranking people representing industry, administration, etc. They made certain recommendations. I happened to be the Member-Secretary of that Inquiry Committee.

By way of introduction, I will tell you the experience that I had of the patent law. It is something unique. I had training in the British Patent Office. I worked like a member of the staff of that office. I was the Controller for nearly 25 years. Thereafter, for nearly 20 years I have been with a patent agents firm coming across inventors and industrialists. So, I had some experience and I want to share that experience with you. I have already told you that I was the Member-Secretary of the Tek Chand Committee. Justice Tek Chand told me after the report was submitted—it was an unofficial statement—that the Prime Minister had gone through the report and that he had promised him that he would accept the whole thing as such.

MR. CHAIRMAN: We are not interested in those things. You please give us the crux of the matter which will be very relevant for our discussion.

SHRI RAMA PAI: Is this irrelevant?

MR. CHAIRMAN: We are not interested in what the Prime Minister told Mr. Tek Chand and so on.

DR. SUSHILA NAYAR: Perhaps we should let him carry on. We are listening to you, Mr. Pai. Kindly continue.

SHRI RAMA PAI: In 1952-53 the Patent Bill was introduced on the basis of the Patent Inquiry Committee's report. That Bill was advertised. Not a single adverse criticism had come in. This is an important point that I am mentioning. In 1952-53 when it was advertised, no adverse criticism had come. The terms of reference of the Committee included how to make the patent system more conducive to research and industry in India. Those were the terms. But, due various to unforseen circumstances, the bill lapsed as the Assembly was disolved. Nothing happened after that. The existing law was good enough. But, suddenly, overnight we bear or I hear I am goving my experience—that a report known as Justice Ayyangar's Report has been published dealing with this Bill. I think it was a very good draft bill vetted by a high court judge. Then. I went through the Report and to my surprise I found that it was not at all anything different from what the patent Enquiry Report has written. We had written a chapter in the Patent Enquiry Report. A list of most important recommendations made was prepared. 25 of these recommendations were either not adopted or were reversed.

And then a new Bill was started. Why was this Tek Chand Committee Report which was not criticised by the public was circumvented by another report by someone whom the Cabinet did not make a reference in

the terms of reference that were given. And it is in that report that it is said that Justice Ayyangar issued a questionnaire. But he himself says that response to the questionnaire was poor as compared to the time taken by the Enquiry Committee for going over to the undertakings and collecting evids from various industrialists and research workers and so on and so forth. I have done all the recommendations of the Patent Enquiry Committee Report. To-day they attach value. But these were overlooked and a new Bill has come in. Now I put it to you whether in this Bill which contains 75 to 80 clauses is going to help? I challenge you to show me any one provision in these 162 clause of this Bill which is in the nature of a stimulus to invention to industrialist. I have already shown you how these inventions are made by these people who have not appreciated the economics of the patent system and who have not appreciated the working of the Patent Offices and who have not come in contact with anybody and so on and so forth. I now want you to be aware of this fact that the Patent's Enquiry Committee Report had met with the approval of everybody. There are other provisions which are having worldwide criticisms. Do you know under whose authority are they introduced? I challenge you if you can show me one provision which is not conducive to preserve or development of invention. You would not find anything wrong in the law except in the case of food and drugs for which I have given you a remedy already. No doubt the prices are high. But this is a simple thing which you can rectify by an amendment. Why are you making the patents law so cumbersome an affair to the public? If a technical man is granted a patent, which is worthless, he would not look at it. All these inventions in railways can be used by ourselves without giving me even a quarter anna. What is the need of taking out a patent? There is nothing in this Bill and it would be a more deplorable thing in this world that even after the two Committees have gone into this matter we are not satisfied with the existing law. This patent system is not going to be useful for the development of industrial progress in India. This is all the submissions that I wish to make. Now I am prepared to answer any questions that you may put.

DR. SUSHILA NAYAR: Do you mean to say that this research work or what you would call inventions can only be termed useless unless there is a very big financial incentive given? Is that your point?

SHRI RAMA PAI: No invention activity is appreciated. It may be nothing to you. I have got a very big pencil with me. An inventor with his great labour has made this. Like the painter he makes a painting. It is not difficult. He is born to invent. But the way in which the inventor's right to get something for the use of his invention is not fair. The people who have sponsored the Bill not seen the patent Office An inventor loves a certain invention being made use of. He would have invented by spending a lot on it and even by selling his wife's ornaments. What he wants is only a recognition for his invention and nothing else.

DR. SUSHILA NAYAR: You will find it in the Bill itself. He will get recognition for his work.

SHRI RAMA PAI: You have made such a cumbersome procedure. Why should you not leave the Act as it is? Why should you have such a progressive type of legislation?

DR. SUSHILA NAYAR: If it hampers development of invention what have you to say to this?

You know that so far as drugs are concerned, we have done something very unfair to the people of this country by granting a product pa-

tent. None of our scientists have any chances to use their brains to find out a different process by which a useful drug can be made and they can get credit for it. We have given this product patent to most of the foreigners and thereby we have blocked the rights for our own people. Our own people by modifying the original processes would have produced same things even better but they could not be allowed to do so because they had been tied hands and by this legislation feet. So, should we not make a provision with regard to this position and rectify it? The charge made against the ruling party has been that since 1948 we have been wanting to revise the law but the vested interests are so powerful that they have blocked us at every stage. Committee after Committee was set up. But nothing has come out of that. You too say why not leave the legislation as it is? If you look at it carefully you will say that this legislation is not good for the country If our scientists cannot be allowed to find a different process for manufacturing somthing useful is that good or bad? Will you answer that? How can you say that it is a good thing to leave the matter as it is?

SHRI RAMA PAI: Madam, this point was taken up by the Committee where you were not here and I have given that answer. If you want, I repeat it. As far as I know all the Members are satisfied. There are provisions in the existing Act which create all these unfortunate things that you complain of. These would not have happened if only these inventors or industrialists took part as you would expect them to take part. Here is a childish provision. The people could not have gone to the Controller here and asked for a licence. He could not have got a patent even with a 4 per cent maximum royalty.

DR. SUSHILA NAYAR: Why should he has to pay 4 per cent when it is own his process?

SHRI RAMA PAI: Are you aware that it is unfair to get a patent unless you are prepared to give something for the inventor who has claimed for his inventions.

DR. SUSHILA NAYAR: I agree with you here.

SHRI RAMA PAI: If he discloses that and thereby the public gets this type of knowledge, he can go to the patent office for obtaining a patent. We have a Patent Office here as well as in England as also a library here in India. I am merely placing the facts.

DR. SUSHILA NAYAR: The scientists in India are finding their own way of producing different products. If there is something which comes in the way it should be taken out of their way. Secondly, some product I can buy at a tenth of its cost from another country, but because I have given patent rights to certain people, the law does not allow me to import it from that country where I can get it at 1|10th or 1|20th of the cost Why should we suffer this kind of situation.

SHRI RAMA PAI: You have raised two points. I will deal with the first opint first. One is: I have found out an original process. Is not the original process built on the discovery which I have made?

DR. SUSHILA NAYAR: It may or may not be. But even in western countries they do not give product patent but they only gave process patent.

SHRI RAMA PAI: I will come to the second point that something is sold here at 50 times the price outside. To overcome that I said a simple provision will over come this difficulty. Importation of a product in an open market will not be an infringement of the patent. That one line will do away with this difficulty.

I have kept before you all that I wanted to say. I am not saying that nothing should be done. The BIRPI has brought out a model patent law. That will be useful for India. But if you are going to proceed with the present Bill I have nothing to say. Probably that also will be good for the country.

MR. CHAIRMAN: Thank you, Mr. Pai.

(The Committee then adjourned).

M/s. Renfry and Sons Calcutta

Spokesman:

MR. H. HOLLOWAY

MR. BALDEV CHATURBHUJ OJHA

MR. DESH PAL AHUJA

(*The witnesses were called in and they took their seats.*)

MR. CHAIRMAN: Mr. Holloway, yourself and the Associated Chambers of Commerce were invited to give evidence this afternoon. I don't think we shall be able to complete your evidence. If it does not inconvenience you, we hope to get you some other day.

MR. HAROLD HOLLOWAY: We entirely appreciate the difficulties of this august Committee and we are unreservedly at your disposal. The gentlemen from the Associated Chambers of Commerce having come here and being able to complete their evience, it would be fairer to them and easier for you to complete their evidence today. Owing to the nature of our involvement, I would like to have it finished in one go rather than part by part. I do appreciate the courtesy of yourself and the Committee in explaining the position to me. Thank you.*

followed by his colleagues

(*Mr. Harold Holloway withdrew*)

III. *Associated Chambers of Commerce and Industry of India Calcutta*

Spokesmen:

1. MR. I. MACKINNON,
2. MR. H. W. J. NASH.
3. DR. S. VARADARAJAN

(*The witnesses were called in and they took their seats*)

MR. CHAIRMAN: Mr. Mackinnon. we have received your memorandum and it has been distributed to our Memebrs. You may now emphasise the salient points and after that the Members will put questions to you.

MR. MACKINNON: We should be very happy to do that.

MR. CHAIRMAN: Please note that your evidence is likely to be made public and no part of your evidence will be kept as secret. If, however, you want some portion of your evidence to be kept confidential, please indicate that. That again I cannot assure that it will be made so.

MR. MACKINNON: Mr. Chairman, my colleagues and I are honoured to have been invited by this Committee to give evidence on behalf of the Associated Chambers of Commerce and Industry in India. This is an all-India organisation composed of 11 constituent Chambers of Commerce in various parts of the country. These 11 chambers have between them approximately 2500 member-companies and represent the entire range of commerce and industry in this country. These 2500 companies have something like 20,00,000 employees and some 15000 managerial staff. They include wholly Indian-owned companies, with majority and minority foreign participation and a few foreignowned companies. My own Chamber, the Bombay Chamber of Commerce has 600 members and it represents a wide cross-section of all the industrial and commercial inte-

*Later on, M/S Remfy and Sons Calcutta sought to be excused from appearing before the Joint Committee and were content with the written memorandum which they had submitted to the Joint Committee.

rests in Western India. Accordingly we believe that we can fairly claim to speak not for any particular type or group of industries but for a cross-section of the whole of Indian industry, and indeed we are not here to present the views of any particular industry but of industry as a whole.

At the same time we would not wish to claim that all our members are interested in the Patents Bill, 1967 to the same degree and to the same extent. They are not. Patents are a very specialised form of statutory instrument which relate solely to inventions and therefore they are primarily of interest to inventors. If we are interested in them as industrialists it can be for one of two reasons. Either we employ the inventors, that is to say, we are directly engaged in research and development ourselves. Or we apply the inventions on a relatively large scale in the production of goods and services, for the benefit of the community as a whole—That is to say, we are investors in new plants, new processes and new technologies based on the original inventions. The Members of our Chamber who are most concerned with this Bill are therefore the Members who are directly engaged in these, what may be called, "science-based activities," either in respect of research or in respect of investment. We are here mainly to speak on behalf of those members.

Our special concern is with the Patents Bill as a stimulus or a deterrent to industrial invention, that is, to the organised industrial research and development of India during the next two or three decades.

Sir, I am sure that the members of the Committee and the Members of our Chamber would be in complete agreement that there is no lack of scientific ability in India and no lack of inventiveness on the part of Indian scientists. One of the main problems is to harness and apply this inventiveness to the interests of national development. Another problem, a related one, is to halt the brain drain which is tending to denudue us of some of our ablest young talent in this field yet another is to try and raise the general level of India's investment in research and development to a figure which will maintain, and hopefully enhance, this country's standing in the desperate race towards technological progress which now characterises not only the developed but also the major developing countries of the world. In this respect, the nature and the strength of the patent "umbrella" under which all this activity must proceed is a highly relevant consideration.

Therefore, Sir, the Associated Chambers have approached the Patents Bill, 1967, by asking the following basic questions:

First, does it stimulate the Indian inventive spirit? Secondly, does it encourage Indian industry to invest large sums to harness and apply that spirit in developing useful new products both for the Indian market and for export?

Thirdly, does it assure the inventor overseas or the overseas holder of the relevant patent that, if he makes his invention and its associated know-how available to an Indian collaborator, his property rights will be fully respected and the return he receives will conform to international standards.

We believe that, while the Bill as a whole is directed towards these ends, there are one or two clauses which, as presently drafted, will operate in practice in precisely the reverse direction.

We wish to emphasize, Sir, that we have no quarrel at all with the basic intention of the Bill namely, to bring the existing patent law in India, which originated in 1911, into line with present day needs. Equally we appreciate that this Bill, like the patent laws of every democratic

country, must not only encourage invention by providing adequate statutory protection but must also prevent abuse of that protection by introducing adequate statutory safeguards. Finally, we accept, of course, that in this as in all other spheres of legislation, the national interest must be par amount and, where there is genuine conflict, must override private interests.

The clauses that concern us most, and to which we have referred to in our Memorandum of Evidence are first, that clause which seems further to reduce the effective life of an Indian patent from its present comparatively short duration (clause 53); secondly, those clauses that seek automatically to nullify the protection granted to the patentee if the States decides to acquire or to use his patent [clauses 2(h), 48, 99 (1) and 102]; and

Thirdly, those clauses that are discriminatory as between one class of patent and another, and which would operate detrimentally against inventions in respect of foods, chemicals, drugs and medicines (clauses 53, 87 and 88).

Our concern is the greater because the clauses in this third group are intended to operate retrospectively to the detriment of existing as well as future inventions and, finally, because in several of these Clauses (notably 48, 88 and 102) the action contemplated against the patents is not open to judicial appeal.

As regards the appropriate life of a patent, we recognize that an appropriate balance has to be struck between the need to secure an adequate return to the inventor and the need to limit the monopoly granted to him for this purpose. Moreover, it is impossible to claim that any particular period of time is exactly right for this purpose. It does seem to us, however, that when the average cost of developing an invention on an industrial scale is increasing rapidly and the average time needed to introduce a new product in any field is lengthening, there can be little practical justification for shortening the life of a patent. This is particularly so when the general trend in other countries is towards lengthening the life of a patent and where 20 years is apparently becoming the internationally accepted norm.

Our concern with the special powers propose to be granted to Government under the Bill arises not because we question the need for such powers in principle, but because we consider that, in practice, the powers contemplated are far wider and more extensive than is necessary and their application will lead to very grave injustice. Therefore, in our opinion, they involve or quite unnecessary weakening of general patent protection, with all the harmful consequences for research and for investment that we have already explained. We consider, for example, that the powers granted to Government under Clauses 99 and 100 are sufficiently wide to ensure the paramount interests of the State and that Clauses 48 and 102 are unnecessary and should be deleted. The power to use a patent by or on behalf of Government without paying any form of compensation to the patentee, as provided in clause 48, appears to us to run counter to the accepted principles of Indian law regarding the sanctity of private property. The powers proposed to be granted to Government, under Clause 102, to acquire any invention, merely by notification, if it is satisfied that this is necessary for a public purpose, is so wide and so entirely unqualified as to amount to complete expropriation.

We submit, Sir, that the Bill should make clear what precisely are the public purposes for which Government may be given special powers to make use of patented inventions. This is already done in certain other clauses of the present Bill

but even these, we believe, are unduly far-reaching. We suggest, for example, that "Government undertakings" in clause 2 (h) should not include industrial organisations in the public sector which operate in direct competition with similar organisations in the private sector. We feel strongly that the powers given to Government in Clause 99 (1) to notify any undertaking as a government undertaking for the purpose of making use of a patent is highly objectionable. Given the customary powers to use an invention for the purposes of research and education, such as are provided in Clause 48 (d) of this Bill, we see no reason why "government undertakings" should be defined, in clause 2 (h) to include Universities and bodies like the C.S.I.R. Finally, we would urge that in all case of Government use or acquisition of a patent—possibly barring a national emergency—the patentee should have a right to be heard and his legitimate claims should be made justiciable by the courts.

Finally, Sir, there are those clauses of the Bill—53, 87 & 88—which discriminate against inventions made in some of the most important science-based industries—foods, chemicals, drugs and medicines. Sir, all of us here are engaged in some branch or the other of these three fields of activity and we can speak from experience of the increasing cost of developing new inventions, of commissioning new processes and of testing and marketing new products in these areas. For that very reason we have urged reconsideration of the appropriate life of a patent in general. We feel the proposal in clause 53 to reduce the life of the patent in the fields of foods and drugs to 10 years is virtually tantamount to removing effective patent protection from inventions in these fields altogether. Much the same argument applies to the proposals in clauses 87 & 88 whereby all patents in these important fields are demed to be endorsed with the words 'Licences of Right' from the outset, whereby, as a result, any interested person can compel the inventor or the patentee to grant him a licence to work the invention and where the powers of the controller are restricted merely to setting the terms of such licences within a maximum royalty ceiling that in many cases is virtually confiscatory in practice.

Sir, we are very well aware of the need to provide for a working system of compulsory licensing and this is already provided in clauses 84 and 85 of the present Bill. We cannot find any reason for supplementing the compulsory licensing provisions with further provisions of this kind which in practice amount to an automatic abrogation of the exclusive rights which it is the whole purpose of a patent to provide. We are aware, Sir, that the present Act—the Act of 1911—provides for licences of right as well as compulsory licences but in the present Act and in other countries the basic concept of licencees of right is one of voluntary surrender of the exclusive rights attaching to the patent as distinct from the compulsory licensing powers granted by law. By voluntarily surrendering his monopoly rights the patentee enjoys certain benefits notably a reduction of the very high fees involved in acquiring and renewing a patent. We know of no other country that imposes licences of right as an automatic involuntary concept. We suggest, Sir, that if it is intended to retain the concept of a voluntary grant of licences of right clauses 86, 87 and 88 require radical amendment, otherwise we would submit that clauses 84 and 85 are adequate to portect the public against the non-working of patents through the normal compulsory licensing procedure.

I must apologise, Sir, to you and to the committee for speaking at such length. I have sought to explain why we in Assocham consider that certain clauses in the Bill will serve as major deterrents to invention and, therefore, to industrial research at the very stage in Indian economic development whre several major industries are initiating research and development programmes

on a significant scale. The same clauses and for the same reasons will tend to hamper investment in new technology and new processes especially in the "science-based" industries. New research and new investments of this kind seem to us essential if we in India are to stay abreast in the world technological race and are to go on expanding our exports of non-traditional products.

MR. CHAIRMAN: Don't you think the patent law carries the idea of monopoly and, therefore, very often the patent law is likely to be abused. As a protection against this we have thought of the concept of compulsory licences and licences of right. This concept is not new. It is prevalent in other countries also. Don't you, therefore, think that same provision like compulsory licences and licences of right ought to be provided in our law in order to check abuse of the patent law.

MR. MACKINNON: Yes, Sir, I agree that it is necessary in this patent Bill as in any Patent Law not only to protect the invention but also to protect against abuse of the monopoly granted to the invention. I agree for that purpose a system of compulsory licensing is essential and it must be so devised as to be workable. I am not sure about the concept of licences of right as to why it is necessary to have both licences of right and compulsory licensing in the same legal framework. I am aware that in the present Act and in other countries there is a system whereby the patentee himself can voluntarily surrender the exclusive rights of his patent to other people under a system of licences of right and by doing that the fees for maintaining his patent is reduce. If he does not wish to maintain exclusivity he is able to enjoy certain financial benefits. I would have thought that the real answer to the question is that although it is necessary to prevent abuse it is also necessary, Sir, not to devise such methods of preventing abuse as will destroy the whole basic purpose of the patent itself at the same time. Our objection to clauses 87 and 88 is not that it is necessary to prevent abuse but they in effect virtually abrogate the exclusivity of the patent altogether.

MR. CHAIRMAN: To strike a balance what improvements do you suggest?

MR. MACKINNON: My suggestion is, Sir, the compulsory licensing provisions in 84 and 85 are adequate to deal with the problem of abuse. So far as the licences of right are concerned if it is felt by the Committee that these should be retained in addition to compulsory licensing they be drafted to make it a voluntary form of surrender of the exclusivity of the patent rather than an automatic compulsory sharing of the patent with anyone who comes along and however unqualified he may be to use the patent.

DR. VERDHARAJAN: I would like to refer to what I consider the primary purpose of a patent. There is a contract between Society and the inventor. The society agrees to offer the inventor a limited exclusivity for a period so that he may fully reveal the nature of his invention. Thereby we encourage industrialists and other people to create conditions for inventions to be made. This is very important purpose.

MR. CHAIRMAN: My question was to check the abuse.

SHRI VERDHARAJAN: If in fact some such form of compensation is not provided, then I believe we would not be able to provide the necessary conditions for invention. Mr. Mackinnon has already referred to a clause which provides that in the case of patents which are not worked in the case of inventions which are not exploited, there is a provision for compulsory licence. We believe with compulsory licensing procedure invention automatically is available to the society for use.

SHRI C. ACHUTHA MENON: There is a situation in India in which a number of patents have been taken up. But we find that a large majority are not being worked but under the pro-

tection of the Patent these people get these products imported in India and sell in India. With the result that inventiveness in India is not promoted. In India industry is not promoted. That is the present situation in India so far as I can understand. But now does the Patent Law as you visualise help overcome these difficulties.

SHRI MACKINNON: The position, Sir, as I understand is that first of all in India and in almost any country a very large proportion of the patents are not worked. There are a number of reasons for that. Invention is patent at a very early stage—what may be called "laboratory stage" of the invention. The actual development of the invention upto a commercial scale is a long and highly costly operation and many many steps are necessary for full scale operation. At the outset it is impossible to say whether the invention described in the patent will or will not have ultimate commercial use. That is one of the reasons why many inventions cannot have commercial application and are, neither worked by the inventor nor can they have any interest to anyone else. They are superseded by others.

Another reason why a very small number of inventions are actually worked is because, at any rate in this country, a very high proportion of inventions at the present time are made in the chemical and relative fields. In these fields, as Hon'ble Members will know, it is not possible to patent the product. It is only possible to patent the process for making the product and it is quite common and indeed necessary to secure the exclusivity which goes along with the patent.

In the patent if the invention goes for more than one process for arriving at a product whatever it may be, he has in fact got the necessary protection. Out of these only one will be of use and that is the one which is worked on a commercial scale. So far both these reasons in general, the Hon'ble Member is quite right that a very small proportion of patents are actually worked.

To second part of the question, whether this was because a large number of these patents relate to product which are in fact imported and for which it was never the intention of the inventor that they should be worked in the sense of being manufactured in India. Sir, I have no statistics or data that could indicate whether that is, indeed, the correct position. I know of statistics which demonstrate that a great majority of inventions are in fact imported and not manufactured. I do know, however, sir, from practical experience that it is a very common procedure in many industries and perhaps particularly the industries which I represent—pharmaceuticals and drugs—to start with in the first instance invention has been made abroad or in some cases if it is related to an Indian invention, to begin by importing the product. This is in order to test the market so to speak and to satisfy not only the Company concerned but also the licensing authorities, *i.e.* Licensing Authorities under Development and Regulation Act or in our case the Drug Controller, that there is a genuine need of a product in this country which would justify the necessary investment of resources in its manufacture.

MR. CHAIRMAN: After having taken the patent, the import is done with the consent of the Government.

SHRI MACKINNON: Yes.

MR. CHAIRMAN: It is for the purpose of exploring the market.

SHRI MACKINNON: Exploring the market and satisfying the Controller or the Licensing Authority under the Industries Development and Regulatoins Act that there is a genuine need which can be met by manufacture. This is a gradual and complex process, Sir, from the basic raw material to the manufacturing operation. The complex chemical processes which we

programme may take a number of years to bring into full production. I submit, Sir, this is one possible explanation to the question which the hon. Member put forward.

SHRI ACHUTHA MENON: You have just described what precisely was in my mind. A certain person takes out a patent in India. He gets the process patented. Then, it takes some years for the plant to be set up and the manufacturing process to be started. Meanwhile, he gets permission to import the product and sells them and thus establishes a market. Now, even if another inventor invents another process, it is of no use because the first man has captured the market already. Even though he does not manufacture the product in India, he has got the complete monopoly of the market. The result is that Indian inventiveness is not promoted, nor Indian industry is promoted. It was in this context that the Chairman said about the abuse of patent law.

SHRI MACKINNON: Whether or not in this process the market is captured to the exclusion of other people is not an essential feature in the situation.

SHRI ACHUTHA MENON: But this is what happens.

SHRI MACKINNON: It is only in the early, tentative stages. It is very abnormal that the import authorities will sanction sufficient foreign exchange to import continuously. I would submit that this is not the normal situation. It must be an exceptional case.

Coming to the other part, we are specifically on the question how inventions made overseas and patented in India are being handled, whether they are exploited in India or not. I may submit that the original intention of the inventor would be to manufacture it in India, or he would not patent his invention at all. I do not believe that this is excluding Indian inventors. It may exclude Indian people from getting the original invention. That is not the same thing as excluding Indian inventiveness. If the patent is not worked here at all and over a long period of time the product is being imported, it is open to anyone to apply the compulsory licensing procedure. But if any Indian manufacturer claims that he should be allowed to get the original invention and secure market other than through the licensing procedure, I would not accept it as a valid procedure.

SHRI ACHUTHA MENON: That is not what I mean. If there is only process patent, then the Indian inventor can invent another process by which the same chemical product can be obtained. There is no bar at all. That will encourage Indian inventiveness and it can also develop Indian industry. That should be provided. But did you say that protection should also be extended to product?

SHRI MACKINNON: I did not suggest that.

SHRI ACHUTHA MENON: With regard to clause 48 of the Bill, your objection is that Government use it without payment of compensation. I want to point out that this clause contains provisions for importation on behalf of the Government. The purposes are mentioned here, namely, its own use, distribution in any dispensary, hospital or other medical institution, etc. So, for certain limited purposes which are primarily important for the community as a whole it may be necessary in certain circumstances to import this article. Do you object in principle to any such provision or is your objection limited to the point that the patentee should be compensated?

SHRI MACKINNON: We have two objections to this clause. The basic one is that it does not provide for compensation. That is our principal objection to this clause. Then we have a general objection to those various

clauses that deal with acquisition or use by the Government; and the circumstances in which the special powers should be used, are not sufficiently defined in the Bill. Suppose Government import a drug for distribution in dispensaries or hospitals in order to prevent the spread of a national epidemic for which it is not possible to manufacture the drug in the country in sufficient quantities, then it is not proper for me to suggest not to import. On the contrary, I would not dream of suggesting that we should object in such circumstances. My submission is that the special circumstances in which these special powers under the Act can properly be used should be defined. I have indicated earlier that we would welcome subclause (d) of clause 48 whereby the making or use of a patented process is not considered infringement if it is for purposes of research and education. We think it is entirely proper. I hope I have made my position with regard to Clause 48 quite clear.

SHRI ACHUTHA MENON: You, in principle, seem to approve that there should be a provision for compulsory licence. At the same time you are objecting to clauses 87 and 88 with regard to licences of right. Don't you see that licences of right apply only to certain products such as medicines, drugs and food. From the point of view of social benefit, does it not stand to reason that a distinction can be made with regard to these products? You will find that in certain countries there is absolutely no patent protection so far as these products are concerned. In the UAR and in Italy there is no patent protection. Even in Japan, so far as medicines and pharmaceuticals are concerned, there is no patent protection. These products can be on a different footing. That must be the reason why with regard to these products the system of licences of right is provided for. What is your comment?

SHRI MACKINNON: I do understand what is sought to be achieved here. I am afraid I cannot speak for the UAR as I am not an expert in these matters. I do know the position about Italy. I am aware that there is no patent for drugs in Italy and I am aware that medical and pharmaceutical authorities in Italy and the whole industry in Italy appear to be united that this position in Italy should be changed because it has not operated to the advantage of the community as a whole. I shall try to indicate the main difficulties with these two clauses of the Bill. These two clauses in fact abrogate the right of the inventor altogether. The position in Italy is that because there are no patents for inventions and it is free for anybody to go and make any substance he wishes provided he can obtain necessary know-how, there is widespread fragmentation of manufacture by a large number of small-scale manufacturers making use of most of these substances. With relatively high costs of production and extremely high cost of marketing, you will find nowhere in Europe comparatively higher prices for these products. Certainly, so far as my information goes, the prices in Italy are substantially higher than the prices of such drugs in India.

SHRI KRISHNA KANT: Then why were Britain importing them from Italy?

MR. MACKINNON: There is no relationship between the prices at which the products are sold in Italy to the ultimate consumers and the prices at which a manufacturer is occasionally willing to sell his products in bulk. Naturally he would like to sell his product in bulk to a large importer. British Government would like to take care of the National Health Service. There is no relationship between the prices at which these drugs are sold in bulk to the National Health Service and the prices at which the Italian consumers have to pay for the finished products. That is a basic situation. Now, may I just complete what I had to say? The problem arises in because clauses 87 and 88 destroy the

exclusiveness of the patents rights. This undermines the value of the patent and fails to reward the original inventor. If we do not provide the necessary incentive to the inventor, that will destroy the possibility of another or further invention being made in India or obtained in India in this important field. I belive Dr. Varadarajan would testify to this much more effectively than myself.

MR. NASH: It is not only a question of foods and drugs that are involved here but I think a very wide range of Patents is involved, including all chemical substance and probably touch the whole field.

DR. VARADARAJAN: I would like to refer to the particular clause relating to medicines. While I accept that it is an important social bearing I would like also to refer to the obtaining of a patent for an invention in this group in any country in the wold. Drugs and medicines are a class by themselves. These are the only substances which cannot be tested in actual conditions. They take a very very long time. For instance, if you manufacture machine, or a motor car or any other industrial design, they can be tested with the actual conditions. The period between the invention and the actual selling for getting rewards is fairly short. In the case of drugs and medicines and also food, there are a number of regulatory agencies which control the marketing these—there is a Drug Controller in this country and then there is a Central Committee for Food Standards in this country and similar organisations exist throughout the world. So, if one in fact proceeds to discover a new drug, it has to be better than all existing drugs. Drugs may be toxic in effect. They have to be tested under careful conditions. They nave to be tested in general generations animals. And so we know definitely that it takes considerable time to test for biological safety any one of these drugs or any food product. Sometimes it ranges from six years to seven or eight years for testing them before these can satisfy the Controller and the Food Standards Committee. There is a long procedure. Research has to be done thoroughly for safety into and quite rightly so. It is to me very much surprising that it is in this field where it is extremely difficult to find markets and obtain rewards except by very long research. In the interest of public safety, one should not consider shortening the period of research as well as the period of protection by patents for drugs and foods. To my mind I would say that India has made research in the last 15 years or so in drugs. We have a number of institutes operated such as the Council of Industrial and Scientific Research which is spending, to my mind, amounts of the order of Rs. 1-1|2 crores per year in the field of drugs. We have also a Food Research Institute which employs one thousand people and yet, the number of inventions which are patented is only two, three or four per year and the number of inventions that have actually been used is extremely small and the number of inventions from which money has been derived to the inventor is even smaller. As you know, the National Research Development Corporation had a revenue last year of the order of about Rs. 2 to 3 lakhs. The National Research Development Corporation is the custodian of all patents which are obtained by Government agencies. I think there will be a case for extending the patent cover to a much longer period than the normal period of 14 or 15 years as provided for here as lso for exclusive licence of right.

SHRI ACHUTAN: With regard to compensation do you object to the fixing of compensation for an upper limit?

MR. CHAIRMAN: What suggestions have you got with regard to fixation of compensation?

MR. MACKINNON: We have objected to 4 per cent. We object to specifying in the Bill a rate applicable to all inventions. We would prefer not to put any ceiling at all but to leave this to the parties themselves. If they cannot agree, let there be a process of appeal to the Controller. But the ceiling should not be specified in the Patent Law.

SHRI ACHUTHAN: Can you tell me as to what is the rate of royalty realised—I am asking for information about the percentage of royalty realised?

MR. CHAIRMAN: He wants to know the normal rate of royalty to be paid according to you?

MR. MACKINNON: I believe that the rate of royalty should be comparable with the rate applicable in other parts of the world. It is basically a matter of international standard. Many of us in India shall have to make use of these inventions and developed over years. A number of Indian inventions are bound to grow. I do not think that India or any country will ever reach a position where it will be self-sufficient in all inventions. It is for this reason that I say that the rates of royalty on these matters should be settled on international basis. Of course I cannot speak for industries in general, in a field like this, I do clearly recognise that the industry which makes use of a widely-used substance and is having a turnover of crores of rupees, would be satisfied with a very much smaller percentage or royalty rate when a specialised product of great importance but only a small turnover is involved. I do not think that a particular ceiling is necessary to be fixed.

MR. CHAIRMAN: It is more or less a commercial proposition according to you.

MR. MACKINNON: Yes, Sir.

SHRI ACHUTHAN: How do you fix it? There must be some norm. Is it left to the Controller or to the Court? He cannot just decide arbitrarily. Some norm should be provided for in the Act itself for guidance. Otherwise it would be only arbitrary.

MR. CHAIRMAN: What he means to say is this. Suppose there is a product which has a large market. The party concerned must be satisfied with the smaller royalty.

SHRI ACHUTHAN: I appreciate his argument. But something is to be provided for in the Act itself.

MR. CHAIRMAN: What is important is this. He cannot have a higher royalty.

MR. MACKINNON: It is a common feature in the Patent Law of the country to say that it shall be decided by the Controller in the event of a dispute between the parties.

SHRI ACHUTHAN: In certain cases the rate of royalty of 1|2 per cent or 1 per cent will even be very much higher. Why should you object to this 4 per cent royalty. That is exactly what I am asking.

MR. MACKINNON: Whereas in some cases 1|2 per cent may be considered very high, in other cases 4 per cent may be considered unreasonably low. I, at this moment, have the right to use a Japanese patent where the royalty is 17 per cent. The Japanese consider it as a reasonable rate of royalty. There are cases where it is still higher.

SHRI KRISHAN KANT: The first point I will take is that you have said in your memorandum as also now that the period should be longer. I would bring to your notice that this is a book called Role of Patents in the Developing countries. It says that in UAR, the duration of the patent is 15 years from the date of application. In the case of inventions covering processes relating to foodstuffs, medical drugs or pharmaceutical preparations the patent term is 10 years from the date of application

and there is no provision for extention of the term.

Secondly, you must have seen the report of the Committee of Enquiry into the Relationship of the Pharmaceutical industry with the National Health Service 1965-67 prescribed over by Lord Sainsbury in which they have said.

"The majority of the Committee is in doubt whether over the extensive field of products of varying importance, the result of varying periods of research, a patent period of as long as 16 years is necessary. Most of us are inclined to think it too long, and that the position would be met by a shorter period of complete protection the patents having a licence of right endorsement from same intermediate period within the 16 years."

Recently, the TIMES, LONDON, September 8 says.

U.S. TO SLACH DRUG PATENTS

"The US Department of Health, Education and Welfare will soon release a report to Congress urging sweeping new legislative reforms of the American pharmaceutical industry. The object of the reforms will be to cut industry profits on new drugs, which often yield their developers as much as 3000 per cent return on investment.

According to sources close to HEW, the reform scheme will contain two key recommendations: first, that Congress should change current patent laws to deprive patent owners of exclusive use after seven instead of the current 17 years period; (we have provided 10 years) and, second, that developers of new drugs be required to licence the new drugs to any other drug manufacturer which applies for such licence.

The NEW report blames the 17 year patent protection for current high drug prices and points out that sharp price reductions in drugs is virtually automatic after patent protection expires,, thus permitting competitors to manufacture the same drug.

The Department States that current high drug prices could well force the Federal Government to begin manufacturing drugs in competition with private industry or face the possibility of ending its current Medicare and Medicaid health schemes. It recognises, however, that certain legal problems may stand in the way of the patent proposals."

So the trend seems to be to reduce the period. As a matter of fact we have put 10 years though the US wants it to be 7 years.

MR. MACKINON: The report on the transfer of Technology to developing Countries, the UN Report, I am familar with that and have read it also. May I suggest that, from the Appendix to that report, where in details of the patent in great many countries are given, it is quite clear that there is no uniform period of patent life. It varies from one country to another. While the position in the UAR may well be as the Hon. Member has stated, please do not consider that that one example is characteristic of the developing countries as a whole. I think it will be proper to regard this report from the United Nations in the same context as the BIRPI recomendation for a model patent law for the developing countries where, if I remember well, the recommendation is for a 20 year patent life without any distinction between drugs, medicines, food and chemicals and other products. I believe therefore that the statement that I made that the general tendency in the rest of the world is for a longer period for the patent is indeed true and the examples from the UN report

do not in fact deny the correctness of the statement even though I do admit that there a number of countries where the life of a partant is short, but these perhaps are not necessarily the most inventive so far.

Secondly, with regard to the Sainsbury report I must admit that this is a long report and I cannot remember all the points made in detail, but, of course I have read it also and I do recall the passage which the hon. Member has read. May I say that what the Sanisbury Committee has said in its actual Recommendations, if I remember well, is merely that 'we consider that this question of life of a patent should be examined'. The majority did think that possibly the present life of 16 years is too long. But they recommended that this question should be examined by a Specialist Committee which is presently sitting in the UK whose recommendations when finalised we can assume will represent the current thinking in the UK.

With regard to the position in the United States I have heard that this report of and the proposals of the Health, Education and Welfare in Washington has been made available. I have no expertise in the developments with regard to the patent law in the United States, but I have seen a version of the report made by the Secretary, Department of Health, Education and Welfare and that report does not include any recommendation either for reduction in the life of patents or for taking over the patents by the US Govt. I believe, Sir, that the version of the Secretary of Halth, Education and Welfare's report that I have seen is the correct one and the summary of it given in the Press is not correct. I am sorry to say this. If you like to have a copy of the report of the Secretary, Health, Education and Welfare, I will be most pleased to try and submit it.

SHRI KRISHNA KANT: We are relying on the Sanisbury report and the American report which say that this is the position even in the developed countries. Why is it that saner elements everywhere are thinking of a lesser period?

MR. MACKINON: The report of the situation in the United States does not seem to accord with the facts and the report of the Sanisbury Committee is incomplete.

SHRI KRISHNA KANT: This shows the trend that it is too long. It may not be accepted because the lobby may be strong there. You have put your point of view and we have put our point of view according to the reports we have got.

Secondly you have said that the procedure of compulsory licence and licence of right is not required. I hope you know that case of Neo Pharma Industries Private Ltd. of Bombay trying to get chlorom penical process by compulsory licence from the Parke Lavies and you know what happened. The case was lying either with the Controller of with the courts. The case went up to the High Court and they got a stay order. Meanwhile a number of years lapsed and some of the patents also lapsed Then the High Court said that the Controller may decide.

SHRI KRISHNA KANT: When the Controller decided that it should be given to the New Pharma Industries Private Ltd., Bombay, Parke Davis went again to the High Court. Somehow it went on and so many years elapsed in this; the purpose of the patent also lapsed; hardly one single patent remained. So this compulsory licensing provision is a dilatory provision and it does not help the Indian industry to grow. Going to High Courts etc., it is a retarding process. Because of all this experience it was thought that the licence of right should be there till the time India grows into an industrial nation, rather

than going through the process of compulsory licensing in which I don't think anybody can gain.

MR. MACKINON: First of all, I am not fully familiar with the details of the case which the hon. Members mentioned. I know broadly about the position. This is not a case of a patent not being worked at all. The application for compulsory licence was not on the basis of its not working. The application was based on this that the patentee was not in fact supplying the whole needs of the community. This is somewhat a more difficult thing to establish presumably. In this particular case what is suggested is not that compulsory licensing provision would not work but since it leads apparently to such long delays, it becomes unworkable in practice. In our submission, we did deliberately introduce the word 'workable' in the acceptance of compulsory licensing. I am afraid I am not and I don't think either of my colleagues are sufficiently experienced in the legal aspects of patents in order to suggest how to make the compulsory licence provision more readily workable. It might be possible to introduce into the procedure, legal and otherwise, for implementing compulsory licensing some system of time-limits at each stage so that it is not possible to prolong the procedures indefinitely from one period to another. So far as the question of licence of right as an alternative to compulsory licence is concerned, if the suggestion is to try it for a period of time and subsequently drop it presumably when it is no longer necessary, I think it is tantamount to suggesting that India could do without any invention for a period of time and after that period it will be possible to re-introduce the spirit of inventiveness or re-introduce the ideal of scientific inquiry. But, I would say here that by that time we would have lost all the best brains in this country in these fields.

DR. VARADARAJAN: I think the points that are being made regarding compulsory licensing assume that inventions are often made only outside this country, not inside the country. Perhaps this may have been true 15 or 20 years ago when the scientific potential in this country was not very strong. I am a member of the scientific community and I certainly think that we have an enormous potential in our country now. There are so many scientists in our country who are very anxious to serve the country in the best way posseible. What is lacking is a proper environment and climate for making discoveries and the kind of facilities required, not just monetary resources. Today these facilities are building up through the agencies of the Government, Universities as well as industry. There are now opportunities for our scientists to make meaningful discoveries There are many inventions already patented in India from which very little royalties are derived. Now the conditions are changing and if we introduce now the licence of right, it will be self-defeating. I would like to refer to the very important discovery made in Hindusthan Antibiotics by Dr. Thirumalachar—Hamycin. This is now the best known cure for skin infections which were considered intractable before. The American Journal of Clinical Medicine has brought out an editorial about this and this has been acclaimed throughout the world. This invention was made eight years ago and even today the Drugs Controller of India has not given the licence to promote its free use. He has given the licence for use in specific clinical trial. Quite rightly, he ought to be satisfied that no harm shall be done. If there is going to be this licence of right, tomorrow every single manufacturer in this country can make it without spending large sums of money that goes into the discovery of such a medicine

Similarly, I must point out that over 20,000 new substances are made by chemists working in Drug Research every year and out of them

only one perhaps ever gets to the point of being made and marketed because it is important to make a drug which is superior to all other drugs known. So much money is to be spent in testing all these drugs, eliminating them, trying this particular drug in some cases to ascertain the reactions and then marketing it. If the licence of right is brought in, it will be the surest way of killing the incentive for investment in research.

SHRI KRISHNA KANT: You know that for the last 7 years there has been no patent in drugs and pharmaceuticals.

MR. MACKINON: I do know that there are a very large number of patents pending with the Controller and it must follow therefore that the inventions relating to these patents have not been put into effect. The commercial consequence of this during this period on the pharmaceutical industry is difficult to say. It can take 7 or 8 years before an invention is brought to commercial exploitation. Today there is this gap and I hope this long gap will be shortened in future so that the discoveries could be made available for the industry.

I would like to state that the patent law is in fact designed to protect the rights of the inventor, to encourage him, to create a climate of inventions, for the benefit of the community. The more the law is rigid, the more will it suffer. The scientist in India is already motivated by a spirit of discovery and invention. But he cannot make it alone; he needs laboratory and he needs other facilities and the support of others. And in order that he may get this support he must give return to the community which supports him or whoever supported him. And from the benefit they derive in the form of royalty and other payments they can enlarge the scope for research. I now this course is retarded, then our scientists have to go somewhere else.

MR. CHAIRMAN: Do you mean to say that our scientists have reached a stage where they can hope to go forward? Therefore, it is not the time to put restrictions?

SHRI VARADA RAJAN: Indeed, Sir. Here in India, we know that most of the research work is carried on mostly in Government subsidised research institutions.

The main thing is that the product of the invention of the scientist should be fully recognized and the institution which has supported it must be fully rewarded. Most of the scientific institutions in this country are helped by Government grants. If they really make discoveries or inventions, Government will naturally give them more grants. The expenditure of the C.S.I.R. has increased considerably during the last few years. So there should be no apprehension at all on this account.

AN HON. MEMBER: The Government will fully reward not only the person who makes an invention but also the institution that helped him to create. As far as individual inventors are concerned, instead of having this, supposing that fellow is fully recognized, rewarded and given honour in the society, will it not be sufficient and will it not give inspiration and incentive to him?

SHRI VARADA RAJAN: May I refer to the mechanism by which creative invention is managed? This management of inventions is only a part of the total management of the innovation. I would like to refer to the speeches and lectures and views expressed by the present Director General of CSIR, Dr. Atma Ram. We have had a long period of investment in scientific research and it has created a climate of research and correct understanding and it has certainly trained a large number of people. But, by and large the fruits of this research have not come back to us, because it is very often clear from the experi-

ence of other countries that research aimed for the benefit of any industry, whether it is public or private is best done closest to the industry. Unless we do so, our objectives are not very clear, and we often work in a vacuum and it is extremely difficult to translate these results into practical advantages and results. So the thought today in everybody's mind is to encourage investment in research by industry as a whole, whether it is Government supported or whether it is private. And because of this in the last Budget the Deputy Prime Minister kindly made a special provision for encouragement of research in industry. He has now allowed a good deal of capital expenditure on scientific research to be written off. So it is the intention of the Government to encourage industry to carry our research and therefore I would like to seek as much support from the patent laws as possible to create these conditions.

SHRI KRISHNA KANT: Can you tell me how much money is being spent by the Indian pharmaceutical industry on research? Please also clarify Dr. Atma Ram's statement.

DR. VARADA RAJAN: I would like to submit that it is not only in drugs and pharmaceutical industry, but in aeronautical, mallurgical and engineering industries also, our research potential is very high. We are using it first of all by training people in universities.

SHRI KRISHAN KANT: Is it in the private sector industry or Government subsidised institutions?

DR. VARADA RAJAN: I gave an example of Hindustan Antibiotics. It is an extremely successful institution. I think if we are going to make a special distinction between various concerns and companies,—if you feel it necessary—it may be necessery to prescribe it. At the moment, this particular law refers to patents which are filed in India. My submission is that the time and climate for making Indian invention for India's interest are becoming right and these inventions will not only be patented in India but they will be patented throughout the world. And the benefits of these inventions will flow back to India as a whole. I do not agree at all that the climate is not ripe for Indian research.

SHRI KRISHAN KANT: My point is whether this patent law will help the Indian science talent to grow or not. You know the example of tolbutamide The case went to the High Court and a process developed in this country was not allowed to be worked because certain patents covered all the possible methods of production of tolbutamide. So, our talent which produced a thing was not allowed to function. In the same way what is happening under clause 5 is we are giving patent right not for the process only but to the product by the same process, till that product is manufactured in this country. The foreign company or foreign enterpreneur who had patented the product in India are allowed to import. Till they are allowed even if others want to import they cannot import at a cheaper rate. My contention is the present patent law as such does not in any way help the growth of Indian science and technology but rather hinders it and helps the foreign companies and the foreign inventors to control our industry and our economy.

MR. MACKINON: In this particular case the Indian inventor of a different process found that his process infringed the patent of the original inventor. But it is not the case that any inventor can patent every possible every conceivable process for making a particular compound. What he does is Patent those processes which are known to him and which are broadly similar to the process which he primarily intends to use in order to protect the exclusivity of his invention which is the purpose of

the patent to provide, and which encourages him to go on. Had the Indian inventor in this case discovered a wholly new process for making tolbutamind which did not infringe the patent of the original inventor there would have been no problem in this case.

As to the general question it is my understanding that in the very recent past Dr. Vikram Sarabhai, Chairman, Atomic Energy Establishment has suggested that in order to even keep abreast in what I call the world technological race India should be prepared to spend 1 per cent of its gross national product on research and development. It is spending less than 1|3 of 1 per cent of the gross national product. I submit, Sir, in order to get rapidly from 26 per cent to 1 per cent of the gross national product the bulk of the increase in the expenditure will have to be found it solely by industry. It is not going to be possible to find in Government laboratories and in other Government institutions. If industry is going to find this sum then first of all it will be necesseary to ensure that Indian industry is protected by a strong patent law in order that it should develop in the way industries in other parts of world are developing.

Secondly, I am afraid, I do not understand the purpose of the distinction that is sought to be drawn between research carried on in India by subsidaries of overseas companies and research carried by Indian companies. From the point of view of the knowledge available, the training of Indian scientists and technicians and the dissemination of the results of the research, I submit there is no difference between these companies. The only difference is that, perhaps, in the of some of the large subsidiaries, the resources available for expenditure on research are more substantial and because their overeaseas associates are already spending very large sums of money it is reasonable to expect them to assist technically and scientifically in the process of establishing a useful and viable and sensible research and development programme here. It is a very great advantage which the Indian company without foreign collaboration would not have access to and would have to start on its own. Except for that I do not see my reason why there should be any distinction. It is the job of Indian industry in general to upgrade its research and development activity.

SHRI KRISHAN KANT: My point is that the product is there. We know the market is there. Indian research builds out a process. But they go to the High Court. Our Indian laws are such that they do not allow our industry to grow. That is why there was a feeling that in the case of foods, drugs and medicines there should be no patents so that we may grow. As far as Dr. Sarabhai's statement is concerned my contention is that we must increase our research expenditure to 1 per cent or 2 per cent or even more. You were quoting Dr. Sarabhai and may I quote Dr. Kothari who said in one of his talks in Parliament "For under-developed countries there should be no patent law for 20-30 years in order to help research and our industry to grow." So, I would like to ask you, is it not a fact that the arguments which you gave themselves go and show that this process which we want to develop need not be worked out. Instead of helping it is retarding. We should rather spend more on research, bring out more proucts an go ahead with production for 10 years and later on we can have patent laws as other countries are having. In an under-developed State the present Patent law gives a monopoly to the foreign patentees and they can control our industry and economy.

MR. MACKINNOD: I belive Sir, it is not correct to state that this Bill gives a monopoly to foreign patentees. I suggest that the proposed Bill and the present law are not discriminatory between Indian residents and

foreign residents. The two examples that have been quoted appear to have operated against the interest of Indian inventor. There are examples where the work of Indian inventor infringes that of the foreign inventor. But they are not typical.

In the case of Hamyun we have clear example of an important Indian invention. The patent is clear and is registered in overseas countries both in my own as well as United States. Royalties are being paid to the Hindustan Antibiotics.

I do not consider that Indian invention and Indian industry would be assisted by suspending the operation of the Patent Law.

SHRI KRISHAN KANT: How many Indian patent are being utilised in foreign country and how many foreign patents are being utilised in India?

SHRI MACKINNON: I am afraid I have no figures. I would expect that because India is in a comparatively developing stage both in terms of industry and the economy generally, the number of Indian patented inventions overseas would be small. Since there have been overseas inventors and organisations interested in the development of the Indian economy for many years, the number of foreign patents registered in India would be comparatively high.

SHRI KRISHAN KANT: How many foreign patents and Indian patents are being utilised? Can you suggest me anything?

SHRI VERDHARAJAN: We often made inventions and they do not become inventions in the terminology of the Patent Law unless a patent application accepted. I would like to say that the mechanism that exists to-day in the training of Patent agents for translating research results into patents is very meagre in India. It should not be so. There are number of example in the countries. For instance United Kingdom spends something 2.9 per cent of gross national product on research and development. Germany 1.8 or 1.9 per cent and yet it is well known that the number of applications of research into practical ends and actual production is greater in Germany than in England. This is because there is a continuous effort in Germany to see what is being done in research and to attach research by and large to industry. Finally a large number of people there are conscious of what is patentable in such countries.

I know from my own experience in my laboratory, I would say that many Indian scientists do not regard anything as achievement unless what they find is something wonderful. Indian scientists are very idealistic than others. They tend to regard very big advances which are epoch making through the word something worth attention. But in the patent law it is not so. You can patent a Rubber that is attached to the pencil. Many of us here use this invention. We are not conscious that what we are making is something new. Indian industry, specialy engineering industry, is a very big industry. I believe it ranks sixth in the world. But we are not conscious of it. Unless special such mechanisms are established, the number of patent applications will be small. Some measures to train patent agents are taken to see that ambitions made in laboratory are recognised and royalty from other countries are drawn.

SHRI KRISHAN KANT: Have you figures to show how many foreign patents are in India and out of them how many have been utilised? Supposing the number of them have not been utillised and if we put in the Patent Law and that after the sealing of the Patent if for 5 years foreign patent is not utilised, it will lapse. It will become public property. What objection can you have?

DR. VARDARAJAN: I believe there is a provision. I do not know whether it should lapse. After all an invention is private property. In fact it is this property for which Government gives a return, only because there is a certain amount of exclusivity, so that we should come forward to utilise the invention and manufacture goods of value to the society. If the Patent is not utilised for certain period, other people can apply for compulsory licencing as in any other country. I think the provision is already there.

SHRI KRISHNA KANT: I told previously that this compulsory patent is not useful. How much has been utilised. This present law allows the foreign patentee, foreign company only to import the product made by the process till that is manufactured and established in the country. Clause 5 of this Bill clearly shows that the Patent would be granted for method because they have exclusive right. We cannot import. Supposing we want to import at a cheaper rate, we cannot do so. Supposing we put in the Bill or some provision is made that they will have the Patent but as for the right to import is concerned that will be free for everybody or not even for them because they cannot have a suitable market. What objection can you have?

SHRI MACKINNON: It is again a question where it is implied that the Bill operates in favour of foreign inventor and not Indian inventor.

India has been developing fast over the last 20 years. The question is what effect would this be likely to have after 20, 30 or 50 years. I would suggest that it is a historical accident that many of the patents used in India at the present time originated overseas. Such a provision is not going to improve the position in future. If the type of amendment that is suggested by the Hon'ble Member is put in it will operate as detrimental against Indian inventor as well as the foreign inventor.

If it is copied out overseas, let us say in Italy, the product can then be imported by anybody, to the detriment of the Indian inventor. It will be a complete waste of Indian research and development effort.

By this type of discriminataion ostensibly against foreign invention, you are actually discriminating against inventors in general. That is a very dangerous thing to do.

SHRI KRISHNA KANT: We should not put in the law anything which will be detrimental to ourselves. Therefore, can we not put this restriction in the next 15 years?

SHRI MACKINNON: Indian invention, Indian research and Indian development are the important things. These are the things which this Bill must address itself to. We do not believe that it is possible to encourage Indian invention or Indian research by suspending operation of these vital clauses for a period of 15 years. Dr. Varadarajan has explained that the inventor will work if he is stimulated to work and provided he has the tools. For that purpose, somebody has to provide the tools. Somebody has to assure him of sufficient reward to make it worth his while. That somebody in the next 20 years is going to be Indian industry.

SHRI KRISHNA KANT: Japan before World War II was very restrictive in allowing foreign patents in Japan. In spite of that, Japan had done many things in the field of shipping. Is it not a fact that they have liberalised their patent law after the Second World War?

SHRI MACKINNON: It is not a fact. Japan joined the Paris Convention towards the end of 19th century—in 1899. It would not be possible for Japan to belong to the Paris Convention if they were operating their law in a discriminatory fashion. There was no discrimination in the Japanese Patent Law between Japanese patentee and foreign patentee. There was a strong patent law in Japan from 1899 onwards. Japan has developed as an industrial power primarily dur-

ing and since World War II. It has done so on the strength of the patent law which has not only stimulated Japanese inventors, but has stimulated foreign inventors to seek collaboration agreements with Japanese collaborators in order to exploit their invention in Japan also. The Japanese have several times said that that is the basis of their economic prosperity.

SHRI KRISHAN KANT: I can show from a paper printed by the UNESCO that they had admitted what I said.

SHRI C. C. DESAI: Both Mr. Mackinnon and Dr. Varadarajan have said that unless the patent law is strong, there will be disincentive to research and development. Now in this whole process of invention, there are three parties involved. One is the scientist who does research. The second party is the manufacturer who exploits the research and the third party is the consumer who is interested in the product of research. According to you who or which of these parties benefits by patent protection?

SHRI MACKINNON: All the three.

SHRI C. C. DESAI: I presume that the consumer does not benefit because he pays the royalty. Royalty is a component of the price charged. Therefore, to that extent he does not benefit. So far as the scientist is concerned, he is merely an employee or a Research Officer of the manufacturer who takes a big chunk of the benefit. Therefore, the benefit of the patent protection goes to the manufacturer and not to the scientist. Now our inention is to encourage scientists whose brains are behind the invention.

SHRI MACKINNON: I was not being fautious when I said that all the three benefit. The consumer benefits because he gets the result of the invention in a useable, economical form earlier than otherwise. The scientist benefits in the way as Dr. Varadarajan has explained. He may be paid relatively a high salary. In fact it is not what he is seeking in terms of scientific talents. The scientist is looking for the opportunity to pursue his natural bent. He is keen to discover new things in the most free and suitable atmosphere. This sort of atmosphere can be better created in industrial research laboratories which have perhaps some advantage over Government or university laboratories. At any rate the scientist benefits from the atmosphere in which he is permitted to pursue his scientific discipline free and untrammelled by any kind of intereference.

Industry derives benefit out of the invention which the scientist is able to make because it exploits the research. It must be remembered that in terms of money the investment made by the industry is greater than the investment made by the other two parties. By and large the consumer makes no investment at all. The scientist is investing his time and his scietific talent. But for that he is paid rather a high salary and is provided with a suitable atmosphere. In terms of the return on investments made, I submit that the industry only benefits to an equal extent as the other two.

SHRI C. C. DESAI: The benefit of the industry is primarily because the Government allows the entire expenses on research and to that extent it is really the Government, rather the public which pays for the research. But the royalty is collected by the manufacturing company.

SHRI MACKINNON: Not only the royalty, but the profit too, if any, on the product that results from this. I am sure my scientific colleagues has strong views on this.

DR. VARADARAJAN: I would like to treat invention exactly as any other piece of property. There is a contract between the industry and the scientist and this means that the scientists has to work on the basis of this contract. May I also suggest that industry often pays for the scientists who do not make any invention? I would like to show you some of the

annual reports of our laboratories. The number of papers and publications may amount to 200 or 300. But the number of inventions in very large number of laboratories is only two or three. This does not mean that our people are not doing any useful work.

MR. CHAIRMAN: It is a collective effort.

DR. VARADARAJAN: It does not mean that only Novel Prize winners are scientists....

SHRI C. C. DESAI: Has the industry thought of a scheme according to which the royalty collected by the industry or the manufacturing unit is divided between the manufacturer and the scientist whose discovery or invention has resulted in all this profit?

DR. VARADARAJAN: It varies from industry to industry. Even in C.S.I.R. certain laboratories have agreed to take a part of the royalty to themselves. Certain laboratories have also agreed to distribute a part of their royalty to the Scientists. In the case of industry, it varies from one industry to another. I would say that it is a matter of contract. To legislate on suitable awards whether it is correct or not, I believe, would mean interfering with the normal process of agreement.

SHRI MACKINNON: I have some knowledge being engaged in a "science-based" industry. It is not altogether unusual for an industrial research organization to pay its scientist partly his salary and partly a percentage of the royalty for certain inventions. Those who have tried this have found it extremely difficult to operate it fairly as between one particular set of research staff and another, simply because any invention involves such a wide range of scientific disciplines and such an enormous number of staff that it is impossible to pick out one or two or half a dozen people who were in fact responsible for the inventions to share the reward. This is the reason why it is not much more widely adopted.

SHRI C. C. DESAI: I know the case of a drug which has been developed by one factory. It is a very good drug. It was developed by a scientist or a research worker. He gets his salary all right but does not benefit by the research carried on it or by its development. It is the employer who benefits by it. It is common knowledge that patents are the monopoly of certain people. The word monopoly has been used here which may tend to rise the prices. There must be a fair price. When there is a certain kind of monopoly, that means a certain amount of extra price for the consumers. Therefore, there is a consumer's price for the product. He is prepared to pay for the patent if the medicine is also available. It would be more good to pay for the patents to the new society. The benefit goes now to the scientist or to the research worker. Is it not?

DR. VARADARAJAN: May I submit that there are certain things involved. Firstly the scientist needs an environment for creative work. The scientists need general support. If they reach a stage of eminance like Thomas Edision or someone else, these people are prepared to share a proportion of the royalties that they get. But, for ordinary inventions made others, industries are not prepared to share their royalties. Nevertheless, I have benefited, because every time my laboratory makes a discovery, I myself make use of the invention to give a return to shareholders and they are prepared to consider giving something back for the inventions. A company can invest in an industry or factory and they can also invest in research. If the return is greater they will certainly invest in the factory. Take for instance Hindustan Antibiotics. I am confident that they

will invest more on research because of the benefit accruing from research.

SHRI C. C. DESAI: It was also stated that an ordinary Patent Law does not encourage new developments. This Patent Bill has been on the anvil since 1965. At that time the Bill was not passed. Now this Bill has been introduced in the House. During the last four years there has been a number of cases of expansion of pharmaceutical industry and there has been new development. The reason for this is that we have a restrictive Patent Bill which is on the anvil. It is likely to be passed in some form or the other. And apparently, the Bill, if passed, is a disincentive. When a man invests he does not see the Patent Law to find out what it says. He wants to make an assessment on the general issues involved such as the market, technological development and various other considerations. He also finds out whether there is competition in the field and so on. It is only after this that he makes his assessment whether it is worth the investment. I am concerned with a number of investments. Although I am for the strong Patent Law, I never look at it—I never look at the provisions of the Patent Law. Whether it is introduced or not, it does not seem to me to be the only factor. I have to see whether it is worth making an investment. I would like to know from you as to how in spite of this Bill, the investment does not suffer at all.

SHRI MACKINNON: You said something about my company. With great respect even though I agree with you about so many things, I do not agree with certain other things. I would like you to consider the effects of the Patent Bill on some of our investments which are very substantial.

In the case of Glaxos, since this point has been raised as a specific example, I should say that we have been very successful. In recent weeks, on the basis of our proposals for expansion, substantial amounts need have been raised in the capital market to finance our new investments in India. But, none of them relates to any new invention, or any invention that is likely to take place in future. The company's proposed expansion is based on inventions already made, and the basis of the knowledge already existing. This company has been in existence in India for over 50 years—it has proceeded through various stages of importing finished pharmaceutical preparations, importing drugs and formulating pharmaceutical preparations here and finally all basic manufacture of these drugs is being done in this country as will be obvious from the materials read out by the Honourable Member. There is now a follow-up stage, namely the establishment of our own research and development facilities in India on a substantial scale. The intention here is that in future, the progress of the Glaxo organization in India will increasingly, and primarily depend on inventions made in these new research and development laboratories here and which are brought to commercial fruition through new investment made in India based on those inventions. If this Patent Bill with the Clauses to which we have drawn your attention are passed in the present form, Glaxo will not be able to justify for our shareholders spending anything on research and development activities. They are based on the assumption of a strong Patent Law. Compared with Japan, Germany, America and Britain or whatever be the country, the fiscal concessions available to us here certainly make for an attractive investment in research. In my opening remarks I have described that the Patent system is an umbrella under which all new inventions can be worked. But the patent system is not the only factor. I have not meant to suggest that this is the only factor. Finance is also an important factor on which the whole industry depends. The economic climate is also an important factor and availability of the

necessary scientific talent is an another important factor. If a strong Patent protection is not there as an umbrella, the effect of all the other factors will be significantly weakened and lots of useful research and inventions will be denied in this country. Therefore, no investment based on those inventions will take place because the inventions themselves will not exist.

SHRI C. C. DESAI: What do you think about royalty? Is a royalty of 4 per cent reasonable or unreasonable?

SHRI MACKINNON: In respect of products which are in small quantity and high value, 4 per cent royalty is unreasonably low and it would be better not to specify a ceiling of any description in the Bill. It would be preferable to leave the position about the royalty to be settled between the parties and if this cannot be done, then it will be fixed by the Controller having regard to the nature of inventions, the amount of money spent on it, the size of the market and, if necessary, it may be subjected to appeal. But I do think it is not appropriate to define the maximum rate of royalty in the Bill.

SHRI C. C. DESAI: What kind of tribunal or ultimate authority you think would be desirable?

SHRI MACKINNON: I am, as a layman, tempted to suggest the system of special Patents Tribunal, as in the United Kingdom, simply because this enables the Bench before which these cases come, to be foccupied by people who are interested and who are experts in patents and also the patent law. But the purpose is primarily one of speedy disposal of cases with of course, the necessary judicial safeguards and I am not at all sure that it would be practicable to adopt the UK practice in India *in toto*. It may be speedier and more effective in a judicial sense if these cases are to be dealt with by an appropriate Bench of the High Court.

SHRI GAURE MURAHARI: I would like to know from you whether a longer period of patent monopoly would not be a disincentive for further invention in the same line of manufacture. Suppose you have patented a product and you have a guarantee of 16 years, don't you think that such a long period would only introduce an element of lethargy in further progress in that particular line of research because once a product is there and you have a guarantee of so many years, it will amount to your concentrating on the commercial exploitation of that particular product without any further investment in research in that particular line? Don't you think that a shorter period of say 10 years or 7 years would guarantee an adequate commercial exploitation of that particular product and then also give an incentive to further improvement in that particular line of research and for producing better remedies in that particular field?

SHRI MACKINNON: I do not think so, Sir.

DR. VARADARAJAN: I also beg to disagree with this. I think though patents are granted, you will find that many improvements are constantly made on processes. It is certainly true of the chemical industry.

Secondly, I think we are imagining a situation in which a person makes a discovery and he is confident that no one else can exploit it because there is the incentive of protection for a longer time. He will then be inclined to invest money and discover. If you have a product with 15 years protection, the investor will be inclined to spend more and more money on research to make more discoveries and even the man who in fact first invented the product, must be conscious that competitors will be also investing more in making this discovery.

MR. CHAIRMAN: You want protection of 15 years?

DR. VARADARAJAN: You have got an investment in this industry and people are inclined to invest more and people will think for how long their discovery will be protected so that they can get back their investment. The amount spent on research in a number of industries such as aeronautics is equal to 40 to 50 per cent of the profits because the cost of new discovery is very high and so are benefits. In drugs and pharmaceutical industries it is between 15 to 25 per cent of the profits. The period of protection should be dependent on the costs of such discovery. I think that, as regards royalty payment, the period of protection must be related to this particular type of investment and it is not easy to decide except by close investigation. In most products the basic thing is the same but the competition arises out of other developments.

MR. MACKINNON: I don't think I am saying anything new beyond what Dr. Varadarajan has said. One of the main and essential consequence of early disclosure of a discovery is to stimulate other people to improve upon it so that better inventions could be tried. By making the period longer you are in no way preventing other people from making use of the same information for further research. Secondly, the longer the period of the patent the greater the incentive will be to spend money on new inventions. You are not closing off new inventions on the other hand you are stimulating them.

MR. CHAIRMAN: Inventions are going on in other countries.

DR. VARADARAJAN: You have to see how far the development of the country is inhibited by this. I think it is a mater of judgement.

MR. CHAIRMAN: A pertinent question was raised that the investment in research should be raised in India. The point is whether the Government can afford to put in 2 per cent of the national product or we should get something from the industry. How can we make the industry invest more on research?

MR. MACKINNON: May I begin by saying that at the moment the total investment is about one-third of 1 per cent of gross national product. Out of that we have to make up another two-thirds. I submit that both the Government and the industry will have to contribute to this increase. As Dr. Varadarajan pointed out earlier, if research is to be on practical lines, it is likely to be more fruitful of it, is carried out as near to the industry as possible and not in some kind of academic ivory tower. In most developed countries the climate for research and also for investment in research is more favourable. The profitability of a proposition is sufficient enough to plough back money into research and development. It is not only a question of patents or of fiscal incentives for research which will help in this. It is a matter of the general "climate" of profitability which will be the real incentive for an industrialist to invest more money on research. The authorities will have to bear this in mind if a greater share for research is to come from the industry.

MR. CHAIRMAN: If the profitability of an industry is increased, then more money will go back to research.

MR. MACKINNON: As I stated earlier, the patents are the umbrella under which all this will take place. As my colleague was pointing out earlier, in answering the question which part of an automobile is the most important for making it go, no one part of an automobile is, in fact, more important than another. All are essential. If industry is assured that it will be able to enjoy the fruits of its investment, in the long run industry will invest more in research.

MR. CHAIRMAN: The investment on research is dependent not necessarily on patents only but on various

other factors like profitability, market etc.

MR. MACKINNON: Yes, Sir. Not on patents alone.

MR. CHAIRMAN: If we make a restrictive patent law, it will not be conducive to growth of research. Don't you feel that if the overseas investments dry up so far as research sector is concerned, then there will be corresponding increase from the indigenous sector?

MR. MACKINNON: I don't think that that will be the way it will happen. Weakening of the patent law will first of all be interpreted as a further deterioration in the general "climate" wherein Indian research and development as also Indian industrial progress will have to take place. Unless an invention made abroad is protected by adequate patent protection in India, a foreign investor using that invention will be much less willing to enter into collaboration agreements with Indian investors. More important, however, India is in the stage now to depend primarily on the growth of its own research and development activities. What takes place in research and development in the next 5 years or 10 years will determine the future industrial and economic progress of India for 20, 30 or 40 years ahead. The ultimate investment in Indian manufacture will be based on these discoveries and inventions made in Indian research laboratories and that must not be jeopardised by weaking the patent protection at this stage. That is the basis of our argument and I am sure that my scientific colleague will agree with me in this.

MR. CHAIRMAN: Thank you very much. Let us see how we can benefit from your valuable evidence.

MR. MACKINNON: We are greatly honoured by this opportunity of giving evidence. We thank you, Sir.

(The Committee then adjourned).

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967

Tuesday, the 17th June, 1969 from 9.30 to 13.00 hours and again from 15.00 to 16.30 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Kanwar Lal Gupta
5. Shri Hari Krishna
6. Shri Amiya Kumar Kisku
7. Shri Madhu Limaye
8. Shri Jugal Mondal
9. Shri K. Ananda Nambiar
10. Dr. Sushila Nayar
11. Shri Sarjoo Pandey
12. Shri T. Ram
13. Shri Era Sezhiyan
14. Shri Maddi Sudarsanam
15. Shri Atal Bihari Vajpayee
16. Shri Fakhruddin Ali Ahmed

Rajya Sabha

17. Shri S. K. Vaishampayen
18. Shri Krishan Kant
19. Shri R. P. Khaitan
20. Shri Arjun Arora
21. Shri T. V. Anandan
22. Shri K. V. Raghunatha Reddy
23. Shri Pitamber Das
24. Shri Dahyabhai V. Patel
25. Shri C. Achutha Menon.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT INTERNAL TRADE AND COMPANY AFFAIRS (DEPARTMENT OF INDUSTRIAL DEVELOPMENT)

1. Shri K. I. Vidyasagar, *Joint Secretary.*
2. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks.*
3. Shri Hargundas, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

I. *The All India Manufacturers' Organisation Bombay—*

Spokesmen:

1. Shri S. G. Somani,
2. Shri G. M. Parikh.

II. Dr. S. Rohatgi, Ph. D (London), F.L.S., Post Box 227, Kanpur.

II. Dr. S. Rohatgi, Ph. D. (London), F.L.S., Post Box 227, Kanpur.

Spokesmen:

1. Shri G. P. Nair—*President.*
2. Dr. K. M. Parikh—*Former President.*

I. *The All India Manufacturers' Organisation, Bombay—*

Spokesmen:

1. Shri S. G. Somani,
2. Shri G. M. Parikh.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before we begin, I have to tell you that the evidence that you will be giving will be published and even if you want a part of it to be kept confidential that also will be made available to the Members of Parliament.

Now you can introduce yourselves and go ahead.

I would request you to be short and precise to the point.

SHRI SOMANI: I, Somani and my colleague Shri G. M. Parikh represent the All India Manufacturers Organisation. We feel very proud of our Association because we feel that our policies are more akin to the interest of the development of national industries. In fact we also have a very strong small-scale sector and there is a sub-committee which looks after the special needs of this small-scale sector and only very recently we had organised a very successful seminar in Delhi bringing forth problems of small-scale industries.

Before I begin on the points relating to the draft Patents Bill, we would like to urge that there is a feeling in our Association that...that it has taken

an unduly long time for this Bill. We were in fact very anxious that the Bill as it was introduced in 1965 to which we had given our general support should have been enacted into an Act of Parliament. We can only express this hope that at least your Committee would strongly recommend to Government—I am very happy that the Hon. Minister is also here now—for an early enactment of this Bill into an Act of Parliament as it will greatly assist the industry in its development.

I would like to make another general remark and that is this. As the time goes by the relevance of the legislation also has to be viewed from the increasing development of the industry in the country. I would like to mention here specially that in respect of the pharmaceutical and drug industry the research is now considerably stepped up both from the angle of national laboratories as well as by the individual scientists. And we are now hearing the important discoveries made by the Indian Scientists which are being recognised all over the world. It is therefore necessary that by keeping this background in mind we should finalise the Patents Bill.

I would also like to mention a word about the work of the National Research Laboratories. We in this industry were feeling a little frustrated for a long time due to lack of coordination and cooperation between the industry and the research laboratories. It is a matter of gratification that of late a greater effort and coordination is being established and the C.S.I.R. is realising the importance of applied research as it would be very beneficial for the use of the research in the industry. It is in this context again that I am quite hopeful that the proposed Patent Act should greatly encourage and step up the research effort. There were several items which were although in great demand, were in short supply and they could not be taken up for manufacture because the patents were held by certain firms who were not too anxious either to manufacture the entire quantity that was needed here at reasonable prices nor would allow other companies to manufacture even by a modified process. I would bring in in these specific clauses that in certain cases as many as 18 of what we call computorised processes had been patented which might enable the firms to take the opportunity to manufacture these items. I can hope that a more practical law would definitely encourage the national laboratories to step up their efforts and thus serve the Indian Industries for their expansion. I would say that in the past in the pharmaceutical and drug industry, the Indian companies have had several difficulties in having a rightful place in the industrial map of India. Of course patent was not the only case of this backward growth or relatively small percentage of production in the market. There are several failings also which contribute to this state of affairs. We now witness that we are getting more and more encouragement from Government. We do hope that this overall objective would be kept in view. I am glad to note that such an encouragement as we are now witnessing is coming in the thinking of our Government. We should be able to have a greater development. I would only wish to take a few clauses here for emphasising this. We have already given our memorandum. We have dealt with at great length some of the important principles which we wish to express here. I would take clauses 5 and 47. Here I would like to say that we would like to send to your Committee a note which we have received from one of our Member firms—a very important Indian manufacturer which has given a practical example as to how an important drug like chloropropamaibh has been blocked from further development. They started the manufacture of this item where the patentee had as many as 18 processes. Now, Sir, with the growing technological age and the aid of the computors, it will not be so diffi-

cult any more for the research scholars and the companies to come to the different routes for the manufacture of a product.

Not only this particular case, but several instances in the past which have been experienced indicate that these permutations and combinations of processes have blocked the other people from either making an effort to think of the most economic process or conducting any research in that direction. It is quite wellknown that fundamentally the patentee is interested only in one or two economic processes and therefore unless it is the intention to work those processes they should not debar others from making their own effort of research and thus put into use the same. We once again would like to emphasise that we strongly feel that the product should not be patented, but only the process and the product leading from the process, may be a composite part of the patent, need be patented. We have examined this point. We hope that, as it is at present provided in the Bill, we feel that it is definitely a right thing to do.

SHRI KRISHAN KANT: Could you suggest an alternative clause?

MR. CHAIRMAN: Are you accepting the Bill provision or suggesting some modification?

SHRI SOMANI: Could I come to it a little later? We would like to comment on Clause 48 where the exemptions to import all patented goods by the various agencies are specified. Here, we feel that the Government should not have unrestricted scope of import unless it is qualified that this import is made only during national emergency or epidemics etc. I would add another emergency also and that is, in case a manufacturer does not provide adequate production programme for a long time and sudden shortage is experienced.

DR. SUSHILA NAYAR: Why do you want to restrict it?

MR. CHAIRMAN: We shall come to that.

SHRI SOMANI: About Clause 53, we would like to see one clarification from the Committee and that is, about the term of every patent. Whether the date of patent means the date of filing of the patent or the date on which the patent is sealed or the specifications are completed, we would like to know about this clearly. In general, we are agreeable and we would like to support the 10 year period.

SHRI K. I. VIDYASAGAR (Ministry of Industrial Development and Company Affairs): From the date of filing of complete specification.

SHRI SOMANI: In this connection we want to bring in a modification. The period of sealing may be limited, if practical, to one year or a similar period and if that period can be specified, then we would suggest the date of patent may be deemed to be from the date of the period of sealing, which would mean approximately 11 years from the date of filing.

About Clause 87 and 88, on the subject of compulsory licence, we would like to make one or two observations. One is that it should be given only after about 2 years of the date of the patent as suggested by us. Therefore, the patentee has got sufficiently a good start and thus able to realise the fruit of his effort. Secondly, we would like to suggest that there should be some qualifying clause in having the right of obtaining the licence. We feel that not just any individual should write to the patentee or the Controller for the licence of right, but his application should be backed by certain minimum standards of either experience or technological background. In case of Clauses 99, 100 and 102, we feel that the Government should not assume unlimited power to take over the working of the patents, but that they should in normal situation be

subject to the same terms as are offered or available to the other parties who can have the licence of right. But there can be a qualifying clause—as it was pointed out by us in the case of imports—that in the case of epidemics or national emergencies they can take this right without any compensation. This completes my observations and we are now prepared to answer the questions.

MR. CHAIRMAN: On page 7 of your memorandum, at the end you visualise cartelisation of big companies as a result of the patent law. What is the kind of cartelisation you anticipate and how will you counteract it?

SHRI F. A. AHMED: What the Chairman is asking is that apart from a very minor suggestion that you have given, what are the other methods through which you want to combat this fear you entertain so far as cartelisation is concerned? You have given a minor suggestion that so far as it is possible that before orders are issued, this should be examined by the Controller. Apart from that, you have given no suggestion to combat the possibility of cartelisation of big industrialists. He wants to know whether you have any further suggestions to make in that regard.

SHRI SOMANI: Sir, we feel, of course, that the major effect of removing this cartelisation would be obtained especially through methods which we have given of the process which the patentee proposes to work himself, and not the computerized processes. We feel that by such a proposition it should be possible within a short time for the others, if they feel that a particular product is in great demand or that a patentee is making very high profits out of it, to come by alternate processes and therefore start the manufacture themselves and thus avoid the cartelisation. We can at least suggest that the organizations like the AIMO can from time to time examine the possibility of such cartelisation of products by some firms. We do have periodical meetings with the officials of the Government when the question of shortages of particular products is discussed, as well as the desirability of more manufacturers coming in each product is examined. Therefore, this would be reviewed by our Association from time to time and pointed out to the Government.

MR. CHAIRMAN: Mr. Somani, you have thrown a very good idea, but I am yet to be convinced about the methods.

SHRI ERA SEZHIYAN: In your memorandum, on page 6, while dealing with clause 48, you have stated: "In the opinion of my Committee this clause grants unlimited powers to the Government which would go against the interest of other local industry and is likely to hamper any local industrial progress and research initiative. . . . ." I am not able to catch it.

Secondly, you have stated "It militates against the basic objectives behind the grant of patent as set out in Clause 83." I do not know how it is going to militate against it.

Thirdly, dealing with clause 48, at the end you have stated: "My Committee, therefore, suggest that Government should take advantage of this clause only in those cases where the patent is not worked for producing sufficient quantity to meet the requirements of the country." In the case of a drug which was imported @ Rs. 60,000 per KG, the Controller intervened and it came down to Rs. 16,000/- per KG. What is your main objection to clause 48 as it stands now?

SHRI SOMANI: I will deal with clause 48 first. As we have clarified in our memorandum, the powers to import should be exercised with certain qualifications and those qualifications can be the abnormal shortage of a particular product. First of all, we would look at the positive side and that is this: in most cases if the shortage is

brought to the notice of the patentee, and if he is unable, for reasons beyond his control, to meet the demand, he would definitely ask the Government for the importation. Where such restrictive understanding can be made with the party concerned, allowing him to make only a reasonable profit on such imports as are specially granted by the Government to meet those shortages, we feel that this sort of procedure would put confidence in the patentee as well as the manufacturer, and with this goodwill he would be able to meet with the requirements in a short time. However, if there is an unrestricted power of import, we feel that the growth of the industry would be stinted.

SHRI ERA SEZHIYAN: Which industry?

SHRI SOMANI: Supposing, here is a patentee who is not able to meet the demand of a particular item. At the same time, I know most of the activities of this firm and in many cases I might feel that an item is profitable and I would make efforts to start production of that particular item. I can do that only if I see the scope of being able to supply the demand thus created or existing in the country. If these uncertainties of the Government imports indiscriminately are there, I would be very much hesitant to risk both the initial know-how that goes in the start of the manufacture of that particular item as well as the risk the investment in that . . .

SHRI ERA SEZHIYAN: You are talking of the shortage of a particular item. I am talking about the price level also.

MR. CHAIRMAN: Are you in favour of allowing imports?

SHRI ERA SEZHIYAN: I have given a concrete case—Dexa Methisone. Through the intervention of the Controller, the price was brought from Rs. 60,000/- per KG down to Rs. 16,000/- per KG. In such cases, unless there is some power, how are you going to control these things?

Regarding clause 87, about licensing of rights, you have stated:

> "Further, my committee are of the view that clause 87 would affect adversely the drugs and pharmaceutical industry in the sense that even before a patentee can work out the patent, any person would be able to apply to the patentee to grant him a licence for exploiting the patent.".

I do not understand what you mean by saying that a patentee can work out a patent. It is only after he has worked out the process that he can obtain a patent. Suppose you give this concession and allow a patentee to work out his patent, then he may apply for the patent and drag on for some time saying that he is still perfecting something or the other; and he can drag on for years together. And he may not perfect his patent at all and he may not utilise the patent at all and he may go on saying that he is still working out the patent. What will be your suggestion in such a contingency?

SHRI SOMANI: We have already suggested a time-limit.

SHRI ERA SEZHIYAN: Under clause 87, you have not specified any time-limit.

You have stated that clause 87 should be deleted completely. That means that you do not want any of the rights of licence to be given to persons other than the patentee. If you do not have clause 87 then a patentee can drag on for years saying that he is perfecting something or the other.

You have suggested a verbal change in clause 90. Instead of the phrase 'by reason of the default of the patentee to manufacture to an adequate extent', you want to have the words 'if the patentee has not manufactured in India'. There is a slight difference between the two things, namely 'manufacture to an adequate quantity' and 'default of the patentee to manufacture'. What do you gain by the

change that you have suggested? My feeling is that the draft in the Bill is wide enough. Even when a process is not being perfected, it can be brought under this Bill.

SHRI PARIKH: A patent is not granted until and unless it has been completed. First, the man has to work out the process on a pilot scale; then only he can apply for registration.

SHRI ERA SEZHIYAN: Here you have accepted the position that a patentee works out a patent and then obtains the patent. But in the previous clause you were saying something different.

SHRI PARIKH: I am referring to clause 87. You said a little earlier that a patentee could linger on for perfecting the process. But when once a person has worked out the process then he is granted the patent. After getting the patent, he has to work out the patent. Shri Somani has already suggested a period of three years in this connection; if within that period the manufacture is not started, then there could be compulsory licensing of licence of rights.

SHRI ERA SEZHIYAN: What do you gain by making the change that you have suggested in clause 90? I feel that there is some difference between default to manufacture and not manufacturing to an adequate extent. What advantage would you gain by the amendment suggested by you?

SHRI PARIKH: In the earlier paragraph we have stated that working of the patent in India is not to be looked upon as an essential obligation on the part of the patentee. The very fact that the patentee has not cared to manufacture in India a patented article should be sufficient to conclude that reasonable requirements of the public have not been satisfied. That is why we say that if the person has not worked out the patent in India licence should be granted.

SHRI ERA SEZHIYAN: What about the Government draft 'by reason of the default of the patentee to manufacture in India'? Why do you not accept it?

MR. CHAIRMAN: I think the difference is that between Tweedledum and Tweedledee.

SHRI ERA SEZHIYAN: Under clauses 99, 100 and 102 you have stated:

> "If at all it is felt that these provisions are necessary, my committee suggest that they should apply only so long as the patent is not worked by any party and the production is not undertaken in sufficient quantity to meet the requirements of the country.".

There are three things here; the first is non-working of the patent; the second is not producing it in sufficient quantity, but the third is the price factor. What about the price factor?

SHRI PARIKH: It can be included. We have no objection to it.

SHRI ACHUTHA MENON: You have stated that a period of ten years should be sufficient for patent, but you are not for any distinction between patents for drugs and medicines and things like that and other kinds of patents. Generally, the evidence so far has been that some sort of distinction should be observed, and the period for drug patents has been 10 years and that for the others should be 14 years. What is your reason for restricting the period to ten years? If you are for a shorter period for drug patents, why not reduce it still further to five years or six years?

MR. CHAIRMAN: Have you got any objection to reduce the drug patent period to five years?

SHRI SOMANI: Yes. Especially in the drug industry, the initial period before the drug is perfected and it can be marketed is fairly long, especially in comparison with other products. There have to be necessarily

quite a lot of clinical trials both for the purposes of the effectivity as has been claimed as well as to observe the side effects and these side-effects are known only after a certain length of time. Therefore, we feel that the period of ten years is more practical than the lower period that has been suggested by you.

SHRI ACHUTHA MENON: What is your opinion regarding the suggestion that there need not be any patent protection at all so far as drugs are concerned? On the other hand, the people can then freely use these inventions for manufacture of drugs because there will be no patent so far as these products are concerned. Would that be to the benefit of the country or not?

SHRI SOMANI: According to us, it will not be beneficial to the country. After all a substantial amount of money and effort go into research before many of the drugs|chemicals see the light of day. In this context, we feel that if it is not worded suitably in favour of the inventor, there will be a dampening effect.

Secondly, I would draw attention to the recent negotiations which Hindustan Antibiotics had in connection with their own research programmes relating to Hamycin which they have now licenced to other countries. I am told the royalties proposed and negotiated are higher than the 4 per cent ceiling adopted here. It is our experience that when we approach the CSIR for assistance in some of our own problems, we have to pay them certain royalties|technical charges, which is quite right if these research laboratories have to do useful work which they are doing.

SHRI ACHUTHA MENON: I do not understand your objection to cl. 5 as worded. As I understand the clause, protection only inures to the process and the product manufactured using that process.

SHRI SOMANI: The patent can incorporate the product and the process leading to it, but if by a different process the same product is arrived at, it should not be construed an infringement of the first product.

SHRI KRISHNA KANT: Cl. 5— you think there should be no product patent.

SHRI SOMANI: No product patent, but only process leading to a product.

SHRI KRISHNA KANT: Re: your submission on cl. 27, if you read cl, 27 with cl. 29, the point is covered and cl. 27 need not be amended.

SHRI SOMANI: Can we not qualify cl. 27 and make it subject to cl. 29?

SHRI KRISHNA KANT: It is there in proviso to (b) of cl. 27, and it is understood.

SHRI SOMANI: Then I think we should have no objection.

SHRI KRISHNA KANT: Cl. 48. This does not necessarily affect industry because for a certain period after a patent has been given, there will not be production and during that three or four years, Government should certainly be allowed to import those things for their own hospitals etc.

MR. CHAIRMAN: He wants to restrict import to the minimum possible.

SHRI KRISHNA KANT: Government will import only for those institutions for which it is responsible, not other hospitals. When production is not there, Government should be allowed to import. Secondly, the firm which has got the licence may not be running to full capacity for many reasons. There should be no objection to Government importing the drug for their own institutions during that period.

Regarding cl. 82, you have stid that the word 'process' should be defied.

My contention is that process would mean process as in the Bill or Act. So it will not create any confusion. The clause says: "'patented article' includes any article made by a patented process".

SHRI SOMANI: It should be properly defined; otherwise, it will have unlimited scope. When it goes to court, they may put a very wide interpretation.

MR. CHAIRMAN: His point is that if you do not define it here, the court is at liberty to give any meaning to it. We shall discuss it afterwards

SHRI PERI-SHASTRI: What is suggested is that the expression "patent" is a continual one, and it has to be left to the court. If we attempt a definition, there is the danger of certain items not being covered.

SHRI KRISHNA KANT: Then, clause 90. The modifications that you are suggesting may confuse rather than clarify.

MR. CHAIRMAN: Mr. Sezhiyan has covered the point.

SHRI KRISHNA KANT: It says: "If by reason of the default of the patentee to manufacture in India to an adequate extent and supply on reasonable terms...." Here, I say "and or". What is their view?

MR. CHAIRMAN: That can be looked into afterwards.

SHRI KRISHNA KANT: Then, in clause 93, if we delete this clause, especially those provisions saying that the decision of the Controller should be subject to the control of the High Courts", what is the harm? You are suggesting a tribunal. Supposing this whole thing is deleted, what is the harm? The courts are there by natural law in the country.

SHRI SOMANI: We would prefer an independent tribunal.

SHRI KRISHNA KANT: Even then, an appeal can go against it, as in the case of the labour disputes as you know. The decision of the Controller is subject to the high vourts. If this is deleted, what is the harm? What do you think about it?

MR. CHAIRMAN: We have to define in what particular areas the court of appeal will have a final say.

SHRI KRISHNA KANT: I want to go on record that you should explain in a better way certain statements which you have made here. Firstly, "the theory that the patent system stimulates research and encourages the industry is not a universal one". Secondly, "one can easily see that our patent system as it exists today is certainly not suited to us, judging from the result of industrial progress." I would request you to kindly elaborate these views with examples from your experience.

SHRI SOMANI: May I suggest that we can do so in the memorandum that we are sending you?

MR. CHAIRMAN: Yes.

SHRI PITAMBER DAS: I also have one question relating to clause 48: almost the same question in my own way. . The witness says that this clause gives unlimited powers to the authorities. I would like to point out the limitations laid down in this clause which are almost the same in all the sub-clauses (b), (c) and (d). Don't you think that these limitations are there? How do you then say that they are unlimited powers?

SHRI SOMANI: It has been our experience that what is intended at the stage of framing the laws and the Acts are not necessarily interpreted in the spirit in which they are enacted, at the time when they are applied. I would like to submit that there should be qualifications which should not hamper the growth of the

industry as such. Due to circumstances beyond anybody's control, there are shortages as well as other difficulties, and therefore, if the party is not given a chance of explanation as well as reasons thereof, I think it will hamper the growth of the industry by keeping more arbitrary powers to import. As I said, every shortage has also caused a blessing in disguise. We feel for example that if a particular chemical can be manufactured with some effort and know-how, we should be able to manufacture it but today, we are not able to do it under the present Patent Act, but with the amendments as are being suggested now, we feel that several Indian companies would be encouraged whereby they can, if the price of the product is high and profitability is assured, go in for the manufacture of those items. If they have the fear that the Government is going on importing, and there would not be sufficient demand, the growth of the industry may perhaps be affected.

SHRI PITAMBER DAS: You are afraid of the implementation of the this clause and not about the provisions in the Bill as such.

MR. CHAIRMAN: The idea of free import, they do not encourage.

SHRI PITAMBER DAS: The clause as it stands has laid down limitations. He may be apprehensive about the working of the provisions of the Bill. He has no objection to the provisions in the Bill as such, but he is anxious that the working of the provision should be in the interests of the indutsry and the country. Is that not so?

SHRI SOMANI: Yes, my colleague has just now mentioned that we do not have any objection if the prices continue to be high because, if the price level must be corrected then, the Government can take powers whereby they can import or intervene or take over the licensing.

MR. CHAIRMAN: It should not be a perpetual check.

SHRI PITAMBER DAS: I would like to know very specifically which of these four sub-clauses in clause 48 you want to be deleted or if you want another sub-clauses to be added as (e) with regard to emergency and epidemic?

SHRI SOMANI: Can we give that in the memorandum?

MR. CHAIRMAN: Yes.

SHRI VAISHAMPAYEN: In the Patent law at present, there is no ceiling, but in the prescent law there is a provision whereby a ceiling has been proposed—four per cent for patents on medicines, food and drugs. Do you think that that ceiling will still affect research in the industry or even the public sector which is there? What is your opinion on the ceiling on compensation?

SHRI SOMANI: It is rather a difficult question. We personally of course have submitted in our memorandum that we are in favour of 4 per cent but however if we examine this question from a more overall objective of the progressive research that is being made in the country we might feel that it may at one stage damage our own interest by limiting our own powers of being able to sell for exploitation in the foreign countries and therefore definitely restrictive clauses like that have got both advantages as well as disadvantages but to begin with we feel that we may start off with a ceiling of 4 per cent and we can always review this provision as more advancement of research is done in the country.

SHRI VAISHAMPAYEN: You said advantages and disadvantages. Do you want that Government should have some reserve power to go into the question of payment of compensation?

SHRI SOMANI: I am tempted by this suggestion. It is definitely a useful suggestion. There may be exceptional circumstances. We may know

that the effort of research is of very high order both in terms of monetary as well as other values and Govt. may as well withhold power of authorising the controller to sanction percentage in deserving cases, while keeping the overall ceiling at 4 per cent.

SHRI ANANDAN: Is the country having enough talent today if the period is restricted to 10 years from preventing foreign know-how into this country so that the country can develop on own and serve the needs of the country?

SHRI SOMANI: We, do feel that 10 year period is sufficient in the present rapid growth of technology in the whole world as well as our own capacity which is progressing and increasing.

SHRI ANANDAN: You do not want know-how to go out of the country.

SHRI SOMANI: We would be very proud. Already, as I said, in the pharmaceutical field 3 or 4 important research has been noticed all over the world. Period is changing and it may be that our know-how and technology is also adopted by other nations of the world. Therefore I have a very optimistic view but notwithstanding that we still feel that in present context of things more encouragement may be given and it is necessary in any proposed legislation for the rapid growth of the country.

SHRI ARJUN ARORA: How many of your members are engaged in manufacture of pharmaceuticals?

SHRI SOMANI: About 180 approximately, out of total number of 1300 members.

SHRI ARJUN ARORA: They are also members of the OPPI; the views of your organisation and that of OPPI differ drastically. Have you ascertained from your members whether they subscribe to your view or of their view?

SHRI SOMANI: We have ascertained views of individual members and they are more identical with our views than theirs. A particular memorandum can go to some length. And, I find, in one of the arguments in the memorandum of a particular association, Justice Ayyangar's views have been found, that they reflect views of 50 years ago. Now I would definitely revolt against any such statement or suggestion that is implied. I feel that Justice Ayyangar has done remarkable or wonderful work to the growth of industry by ascertaining the various implications of patent bill and therefore I am rather amused when such remarks are made . . .

SHRI ARJUN ARORA: We were told, Indian technical knowhow is not sufficiently developed. 16 years patent period has ended. Nobody has thought it proper to produce such drugs or products for which patent period has expired. What is your comment?

SHRI SOMANI: This is rather vicious circle. Our manufacturers have in recent past at least attempted to manufacture products in short supply and which are having high demand. The efforts have been rather curbed by the Government and I think if we have encouragement we would be able to develop the industry much faster.

MR. CHAIRMAN: Why is it that you did not develop the medicines about which patent right is gone?

SHRI SOMANI: It may be, if the patent right has gone, the demand also may have gone considerably down.

MR. CHAIRMAN: Demand is there.

SHRI SOMANI: There are certain technologies of very high degree which

are involved and we are not certain that we are capable of manufacturing all of them.

SHRI ARJUN ARORA: You are convinced that if Indian manufacturers think that technical know-how is available to them to manufacture the things for which the patent period has expired, and if they find it profitable to do so, they can do it.

SHRI SOMANI: In many cases they should be able to. In fact, as I mentioned earlier, our national research laboratories should also co-operate in that effort, but today they would not touch any such product.

MR. CHAIRMAN: Is it your case that technologically we have to go a long way yet?

SHRI SOMANI: We have definitely reached an advanced stage, but even in Japan we find that they are entering into several technical collaborations with USA etc.

MR. CHAIRMAN: Are you proposing collaboration when the patent life is over?

SHRI SOMANI: Yes, in certain cases.

SHRI ARJUN ARORA: Why do you want to limit certain powers of the Government only to emergency or epidemics?

SHRI SOMANI: Otherwise it may curb the growth of the indigenous industry unless demand exists and Government is one of our biggest consumers.

SHRI ARJUN ARORA: You do not want Government to import things which are already being produced in the country.

SHRI SOMANI: Yes.

SHRI C. C.DESAI: From the manner in which you have given constructive suggestions with regard to the Patents Bill, am I right in assuming that you are not in favour of abolition of the patent law altogether like the Indian Drug Manufacturers' Association?

SHRI SOMANI: I am not in favour.

SHRI C. C. DESAI: There must be members common to your association and IDMA. What is their demand when you want continuance of the patent law and the IDMA wants abolition of the law?

SHRI SOMANI: We have discussed it with all the members interested in our committees, and therefore the views in our memorandum and in the evidence here reflect the views of the Association as such. Individual views have not been ascertained.

SHRI C. C. DESAI: When you say that patent life should be 10 years, I presume it is 10 years from the date of sealing.

SHRI SOMANI: We feel that the period for sealing should be limited to one year, but we have further suggested that in case the period for sealing exceeds one year, then the period of 10 years should start one year from the date of filing.

SHRI C. C. DESAI: Should the appeal from the order of the Controller-General of Patents be to a court or to an hoc tribunal?

SHRI SOMANI: We are in favour of a tribunal.

SHRI C. C. DESAI: On the ground that the tribunal will consist of technical knowledgeable people and they will decide the case early, whereas the court procedure is likely to be cumbersome and expensive.

SHRI SOMANI: Yes.

DR. SUSHILA NAYAR: In Britain the Government imports drugs from other countries for the National Health Service because they are

cheaper outside. On that analogy, is it not natural that the Government of India should have those powers in case the drug industry forms cartels and raises prices?

SHRI SOMANI There might be some exceptional cases, but we have to look at it from the point of view of the growth of the indigenous industry. Under the regulations which give unlimited powers to the Government, both in getting a licence and importing of drugs, the growth of the indigenous industry is likely to be affected, which may not be too welcome.

DR. SUSHILA NAYAR: You think that the porovision may remain, but in its working care should be taken. Apart from epidemics or emergency, Government may have some crash programmes for eradicating T.B., leprosy etc., where an ample supply of drugs is very important to the Government. You will agree that under such conditions, import provision is necessary.

SHRI SOMANI: In such situations to safeguard the interests of the public, Government and the industry, some suitable modifications can be made.

DR. SUSHILA NAYAR: What modifications?

SHRI SOMANI: I agree with the suggestion.

DR. SUSHILA NAYAR: It has been suggested to us that in a number of cases the patent is there, but the production has not started within the country. But the patentee imports the drug from outside. Don't you think that so long as the patentee does not start production within the country, it should be free for anybody who has a licence to import the drug? This has been pointed out very pointedly in the Talbutomide case.

SHRI SOMANI: We feel that it would be impossible to cover all the situations within the peremeter of a particular law. I think such situations can be dealt with individually.

DR. SUSHILA NAYAR: But is it not the usual practice? The patentee only imports. It is only recently that some of these are being produced in the country. If they know that they will get this protection only if they start production within the country, would it not be in the interest of the Indian drug industry and the Indian economy?

SHRI SOMANI: The protection which was afforded to the patentee under the existing Act is much stronget than what it would be under the proposed legislation and we think that by and large the situation would be corrected by the provisions that are being brought forward. It would be impossible to cover all the exigencies within the scope of the law. If Government have adequate powers, it should not be attempted to cover every aspect of the situation which may have arisen or which may arise in future, in the law.

DR. SUSHILA NAYAR: You are aware that the Indian drug industry would rather do away with the patents law altogether and if it is not done away with, they at least want import facilities pending the setting up of production within the country.

SHRI SOMANI: If this kind of unlimited power to import is allowed, I think it would harm the interests of the development of the industry. In certain circumstances, Government may be given power to import. But otherwise, the situation would be taken care of by licences of right.

DR. SUSHILA NAYAR: What do you say to the suggestion that if the patentee does not start porduction within three years, the patent should be cancelled?

SHRI SOMANI: We are not in favour of this revocation since other

parties can take it up. Licence of right is there to take care of this situation.

DR. SUSHILA NAYAR: With regard to licence of right, you said that the qualifications of the person should be gone through. Don't you think that a person who applies does so keeping his own capacity in view? If he does not produce, then he will pay only the licence fee. Why do you want to open the gates of corruption or at any rate accusations of corruption that somebody's palm is not greased and that is why it is not given to him? This thing is so frequently talked about.

SHRI SOMANI: When the growth of the indutsry has to be protected, the right of the person who has put in great effort in a particular research has also to be recognised. We feel that it will be a great harrassment to him if anybody just takes a post-card and write: "Please make a note that I proposed to take over the process for the production of such and such a thing".

MR. CHAIRMAN: Don't you think that industrial licence will take care of the objection that you have raised?

SHRI SOMANI: Nevertheless, the fact remains that the patentee will be harrassed. In this particular case, clearance from the Controller will be required. Even then we feel that in order that at least the patentee should be protected from undue harrassment, applications from technically qualified people only should receive cognizance. The Committee may specify certain minimum qualifications.

DR. SUSHILA NAYAR: There is already a Drugs Act. Under that Act whoever manufacturers has to satisfy a lot of conditions. Anybody and everybody cannot take up drug manufacture.

SHRI SOMANI: In this country anything can happen—may be what I say that if the person has not woked certain foreign manufacturers who told me that they receive letters from people like Panwallas to the effect that they want to set up a chemical factory or other factories.

DR. SUSHILA NAYAR: The Drug Act will take care of this. You said that the patent expires and for cercertain difficulties you are not able to exploit it. I have not understood your difficulties. Are they trade mark difficulties? I am told that 93 per cent of Pfizer's sales relate to patents that have expired.

SHRI SOMANI: There is truth in that statement. But it is not my intention to comment; upon that aspect because it has got both advantages and disadvantages. But, if you take one particular instance, chloremphenicol, to-day the name that is registered by most of the medical practitioners and others is chloromycytin which is consdered to be a basic drug itself although the fact remains that it is not so. But, it is a patented medicine now. Therefore, this situation should have been exploited by the firms to manufacture it. Although they need a reward for a discovery, they cannot get it. Certainly the fact remains that in our market conditions as they exist today, we do want to have the opinions of these people. The trade names do definitely play an important role in our efforts of promotion of the effectivity of a particular medicine but I would not have to suggest that we should think in drastic terms of total abolition of this system.

श्री आर० पी० खेतान : ए० आई० एम० ओ० के आपके कितने मैम्बर हैं और यूरोपियन ओ० पी० पी० आई० के कितने मैम्बर हैं ?

श्री सोमानी : ए० आई० एम० ओ० के टोटल मैम्बर्स 1300 हैं लेकिन इग इडस्ट्रीज के ओ० पी० पी० आई० के मैम्बर 70 के अन्दर अन्दर हैं ।

श्री खेतान : यह मालूम हुआ कि यह जो रुपया खर्च करते हैं फंडामेंटल रिसर्च के लिए, वह पहले खर्च कर देते हैं और उसके बाद पेटेंट करवाते हैं । पहले खर्च कर देते हैं तो फिर पेटेंट कराने की क्या जरूरत है । उनका नफा ज्यादा रखते हैं तो तीन या चार वर्ष के अन्दर सारा रुपया निकल जाता है, इसके बारे में आपके क्या विचार हैं ?

श्री सोमानी : रिसर्च एक ऐसी चीज है कि उसके लिए यह वायदा नहीं किया जा सकता कि अगर हमें दस हजार रुपया खर्च करके सफलता मिल सकती है और वही हमें दस करोड़ रुपया खर्च करके मिल जाएगी । इस लिए उस चीज के लिए हम ज्यादा पैसा नहीं लगा सकते । इसलिए मैं अपने खुद के अनुभव से बताता हूं कि छोटी से छोटी चीज के लिए भी हम लोगों को हजारों रुपये खर्च करने पड़ते हैं लेकिन उसका नतीजा सन्तोषजनक नहीं होता हैं । यह बात कितनी गलत होगी कि हम रिसर्च के ऊपर खर्च करते जायें तो वह दो तीन साल में निकल जाएगा, इसलिए उनको प्रोटेक्शन की आवश्यकता नहीं है । मैं समझता हूं कि उन्हें प्रोटक्शन बहुत जरूरी है । नहीं तो बड़ी से बड़ी रिसर्च का काम नहीं हो पाएगा । उससे प्रगति भी रुक जाएगी । लेकिन जब हम रिसर्च के साथ साथ अगर उसमें यह व्यवस्था करदें कि उनको प्रोटक्शन दी जाए और अगर उस वस्तु की कीमत अधिक रखी जाती है या उसे पूरी तरह नहीं बनाया जाता तो दूसरे व्यक्ति को लाइसेंस मिल जाए तो मेरे ख्याल से वह उचित नहीं होगा ।

श्री खेतान : इनकमटैक्स में रिसर्च को पूरी छूट होती है । कम से कम पचास परसेंट तो गवर्नमैण्ट का लग ही जाता है उसके बाद भी प्रोटक्शन की क्या जरूरत है ।

श्री सोमानी : हमारी इंडस्ट्री के अन्दर जब से प्राइस कंट्रोल आया है तो इसके द्वारा एक प्राइस बनाई गई है । हमारे पारिख साहब ने काफी इसके बारे में लिखा और एक लेख भी प्रकाशित किया था और उसको कई जगह भिजवाया था । उस वक्त भी काफी प्रेस किया गया था कि जिस दवा की कीमत फारन कम्पनीं ने फर्ज कीजिए 10 रु० रखी हुई थी वह देसी कम्पनी ने केवल 5 रु०, 4 रु० या 3 रु० ही रखी थी । इस तरह उनको घाटा कितना पहुंचता है । कीमत के ख्याल से उनके माल को बेचना पड़ता है । लेकिन उसमें मार्जिन कम था और जब यह प्राइस कंट्रोल किया गया तो उसमें नई इंडस्ट्री को काफी असुविधा हो गई और वे लोग इतना नफा कम पाते हैं तो वे रिसर्च पर ज्यादा खर्च कैसे कर सकेंगे ।

श्री खेतान : कौन कौन सी ऐसी दवा है जिनके बारे में आप.....

श्री सोमानी : इस बारे में हम एक स्टेटमेंट भिजवा सकेंगे ।

श्री खेतान : अंग्रेजी कम्पनियों को बैलेंसशीट के हिसाब से शेयरों पर तथा सेल्स

टैक्स देने के बाद भी खूब नफा होता है । क्या कारण है कि वे इतना नफा लेती है ।

श्री सोमानी : बात यह है कि उन लोगों का जो तरीका है अपने काम करने का और कारखानों का वह हम लोगों से कहीं ज्यादा अनुभव तथा टैकनीक में कुशल है । हम लोग इतना अच्छा नहीं कर पाते हैं । अमरीकी टेक्नालाजी कारखाने की या मैनेजमेंट की इतनी ऊंची बनी हुई है कि उसके सामने हमारा हिन्दुस्तान तो क्या यूरोपियन देश भी उनके मैनेजमेंट का—टेक्नालाजी रिसर्च की बात दूसरी रही—मुकाबला नहीं कर पाते हैं । इसलिए अमरीकन इंडस्ट्री उनके ऊपर ज्यादा बढ़ती जा रही है । इसलिए जब तक हमारा अनुभव मैनेजमेंट में नहीं बढ़ जाएगा यहां परिस्थिति में सुधार नहीं होगा ।

श्री खेतान : रिसर्च पर वे लोग ज्यादा खर्च करते हैं और इंडियन मैन्यफैक्चर कम करते हैं, क्या यह बात ठीक है ?

श्री सोमानी : जैसा कि आपने कहा. उनका नफा अधिक होता है, इसलिए उनको ज्यादा पैसा मिलता है, उनकी वर्ल्डवाइड आर्गनाइजेशंस है । हिन्दुस्तान में तो बहुत कम रिसर्च होती है ।

श्री कंवर लाल गुप्ता : आपने मैमोरंडम के पहले पृष्ठ पर लिखा है—

"Thus it can be seen that the Patent System is certainly beneficial but to derive the full benefit of the Patent System, the country must be technologically advanced **sufficiently to work the invention.**"

इसी तरह से आपने पृष्ठ 2 पर लिखा है—

"The Indian Patent system as it exists to-day has failed in its main purpose, *viz.*, to stimulate invention among Indians and to encourage the development and exploitation of new inventions for industrial purposes in India, so as to secure the benefit thereof to the largest sections of the public."

इस पर मेरा कहना यह है कि आपने एलोबरेट नहीं किया किसी तरीके से कि जो आब्जेक्शन है, यह कहां तक ठीक है । इसका मतलब मैं तो यह समझता हूं कि चूंकि हाइली टेक्नीकल डेवलप्ड नहीं है और अभी तक जो पेटेन्ट ला है, हमारे देश को उससे लाभ नहीं मिल रहा है । अगर आपका यह कंटेन्शन है तो आपने इतने स्टेस्टिक्स नहीं दिये हैं कि कितना रुपया हमारा बाहर गया, कितना रिसर्च इंडियन हुआ, कितना बाहर हुआ—इनके बारे में आपके पास आंकड़े हैं या नहीं ?

श्री सोमानी : जी हां, हमारे पास आंकड़े हैं और हम लोग आपको शीघ्र ही भिजवायेंगे ।

श्री कंवर लाल गुप्ता : दूसरा मेरा सवाल यह है कि अभी आप से पूछा गया था कि पेटेन्ट बिल अगर हटा दिया जाए तो कैसा रहेगा, तो आपने कहा कि हम पेटेन्ट बिल के हटाने के पक्ष में नहीं हैं । इसमें भी आपने कहा कि सभी देशों में तो पेटेन्ट ऐक्ट नहीं है लेकिन जब तक टेक्निकली हम ऐडवान्स न हो जायें तब तक इसका लाभ नहीं होगा तो आपका मतलब यह समझा जाए कि क्या अभी दस वर्ष के लिए या पांच वर्ष के लिए पेटेंट ऐक्ट बिलकुल हटा दिया और उसके बाद फिर जब हम टेक्नालाजी में डेवलप कर जायें तो उसके बाद पेटेन्ट ऐक्ट बनाकर के लागू किया जाए । इसके बारे में आपका क्या सुझाव है ?

श्री सोमानी : मेरा अनुभव थोड़े से अरसे का है, लेकिन हमारी इंटरमीडियेट टैक्नालाजी काफ़ी आगे बढ़ चुकी है । इसलिए अब आज जिस रूप में वह ऐक्ट आ रहा है उसके अन्दर शायद हमें इसका लाभ भी मिलेगा और लाभ के साथ साथ हमारे सांइंटिस्ट्स को भी इनकरेजमेंट मिलेगा । इस लिये मैं कहना चाहता हूं कि जिस प्रकार वह

बिल अभी प्रकाशित किया गया है, उससे हम सहमत हैं और हमें यह भी उम्मीद है कि इस बिल के कारण ज्यादा प्रोत्साहन मिलेगा । हम यह नहीं चाहते हैं कि इसको बिलकुल निकाल दिया जाए ।

श्री कंवर लाल गुप्ता : अगर अभी खत्म कर दें तो क्या नुकसान होगा ?

श्री सोमानी : उसमें नुकसान यह होगा कि अभी जैसे कि हमारे देश में दोनों गवर्नमेंट और प्राइवेट साइंटिस्ट्स जो आज अनुसंधान कर रहे हैं, उन्हें प्रोत्साहन न मिलेगा । इसलिए यह आवश्यक है कि इस प्रोत्साहन को बनाने के लिए या बढ़ाने के लिए हमें कुछ न कुछ प्रोटक्शन दी जाय ।

श्री कंवर लाल गुप्ता : जैसे अनुसन्धान की बात आपने कही । पिछले दो साल के आंकड़े या तीन सालों के आंकड़े बताइये जिसमें इंडियन रिसर्च करके अपना कुछ पटेन्ट कराया । जिससे यह मालूम हो कि अगर हमने पेटेन्ट ला हटा दिया तो इतना नुकसान होगा ।

श्री सोमानी : मेमोरंडम जो आपके पास भेजेंगे उसके अन्दर एक दो ऐसे उदाहरण भी भेज देंगे जिसमें भारतीय साइंटिस्टों ने यहां पर उसको पेटेन्ट कराने के बजाय उसके राइट्स आफ पेटेन्ट दूसरे देशों में, और दूसरी कम्पनीज को दिये हैं । इसलिए यह मानना ठीक नहीं होगा कि हमारे जो साइंटिस्ट्स हैं इस बात से उनको प्रोत्साहन मिलता रहेगा, जब तक कि उनको थोड़ा सा प्रोटेक्शन इस चीज के बारे में नहीं होगा ।

श्री देशमुख : साइंटिस्ट्स के बारे में उन्होंने कहा कि अनुसन्धान से पैसा आता है ।

श्री सोमानी : यह बात भी है कि पैसा आता है । इसलिए मैं कहता हूं कि इंडियन साइंटिस्ट अपने राइट्स दूसरे देशों को देते हैं। एक वजह यह भी है कि पैसे के अलावा उनको यह उम्मीद भी रहती है कि वह लोग उनके पेटेन्ट के ऊपर अधिक काम कर सकेंगे बनिस्बत भारतीय फर्म के ।

श्री देशमुख : ऐसे कितने साइंटिस्ट्स है जिनको लाभ हुआ है ?

श्री सोमानी : पूरे आंकड़े तो नहीं, मैं एक दो उदाहरण दे सकूंगा ।

SHRI JUGAL MONDAL: I will come back to Clause 48. Much has been discussed about it. I would like to know your feelings on one point. You are against the importing of this thing because the growth of local industry will hamper. Suppose there has been some trouble in a particular concern where the patented articles are being manufactured—labour trouble, strike followed by lock-out, etc. In the case of closure, should the Government be a spector or should it take some steps to get these products manufactured elsewhere?

MR. CHAIRMAN: Mr. Mondal, why do you drag Mr. Somani into this controversial issue? Don't embarrass him. It is for us to decide.

SHRI ARJUN ARORA: The strikes and lock-outs have not been patented yet.

SHRI KRISHAN KANT: The application has been filed, but not sealed yet.

SHRI JUGAL MONDAL: As Dr. Sushila Nayar pointed out, after the expiry of patents, there seems to be no entrepreneurs coming and trying to exploit them. You stated, I think, that it was due trade mark and quality control. I want to know whether in the course of 14 years, which is definitely a long period, a particular firm has advanced so much, with so many sophisticated machines, technical know-how, etc., the new

entrepreneurs are finding it difficult to compete with them or is, there any gentleman's agreement in your association and one should not come into competition with the other.

SHRI SOMANI: There is no gentleman's agreement existing at least in our association. I can assure you of that. Secondly, I admit that in respect of lapsed patents the progress may have been better, but I must submit that this thing between the pharmaceutical industry *vis-a-vis* purely Indian interests is only of a more recent origin, and that is, when they have come up to the stage of intermediary technology. I think this situation is changing very rapidly. We have every hope that the indigenous units would be established and with the assistance and encouragement and cooperation now being communicated with the Research laboratories that they would be able to give better performance.

MR. CHAIRMAN: We thank you, Mr. Parikh and Mr. Somani for the valuable evidence you have given. We shall try to take advantage of your evidence and information. We may call Dr. Rohatgi.

(Shri Somani and Shri Parikh then withdrew)

II. Dr. S. Rohatgi, Ph.D. (London). F.L.S.

Post Box 227, KANPUR

(The witness was called in and he took his seat)

MR. CHAIRMAN: Dr. Rohatgi, you are going to give your evidence in your individual capacity. Please give a brief resume of what you want to say. Please note that no part of your evidence is to be considered as confidential; it is likely to be made public.

DR. ROHATGI: I have given a second memorandum which probably has been circulated this morning.

SHRI PITAMBER DAS: Mr. Chairman! The witness has given a memorandum which was circulated to us some time ago and he has made out a case that the law of patents in India should be abrogated, as I understand it. I would request you to ask the witness to elaborate this particular aspect of his recommendation.

SHRI ARJUN ARORA: For the rest you may be brief and precise.

DR. ROHATGI: The point raised by the hon. Member just now refers to the suggestion made by me in my earlier memorandum that it would be advantageous for the country to have the law of patents abrogated. In the memorandum which has been circulated just now, Sir, if you will kindly examine, this point has been specifically mentioned and reasons given why this suggestion has been made. I have given an example of the situation that existed in Switzerland in the early years of the 19th century when Switzerland had no patent laws, and the manner in which the absence of patent laws were instrumental in stimulating the development of the industry in Switzerland. I have quoted from the journal published by the well-known firm CIBA, which manufactures dyestuffs, and drugs, which clearly indicates how this was done.

The main point which one of the Directors of CIBA seems to have mentioned in a conference held by the British Society of Chemical Industries is that in the earlier days when France and Germany had patent laws, Switzerland did not; and Switzerland took full advantage of this situation by manufacturing the particular dyerstuffs which were covered by patents in other countries and they specifically mentioned that it was a 'piracy', but still, whatever be the reasons, the fact remains that the Swiss industry reaped benefits from this and this situation was instrumental in the establishment of the Swiss industry.

MR. CHAIRMAN: In which year?

DR. ROHATGI: This was in the 19th century Earlier part.

DR. SUSHILA NAYAR: The patent first came into existence in 1906; that is, 20th century, and not the 19th century.

DR. ROHATGI: This relates to dyestuffs.

The Swiss industry was very much benefited by the situation and further with the advent of the two World Wars it developed in a very big way. As we all know, the drug industry in Switzerland is an off-shoot of the dyestuff, industry, and it can definitely be presumed that the drug industry also benefited from this earlier impetus.

Now, the fact is being quoted that Italy wants to come back on the Convention. My contention is that it suited Italy at one time to abrogate patent laws so that they could help develop the industry. After the industrial base was developed and a firm foundation laid for research, they find it advisable to way to think in terms of coming back . . .

SHRI KRISHNA KANT: Which year?

DR. ROHATGI: I am not sure of the date.

I made a suggestion that either we could declare a holiday on patents for some years to come, based on the points raised in the earlier part of the memorandum, or if this appears to be unreasonable or difficult, then we could think in terms of abrogating patents on drugs and foodstuffs If, however, this also is not acceptable to the Committee, an arrangement should be made whereby the utilization of patents on foodstuffs and drugs could be facilitated by any party who wants to utilize them without the provision of going to law courts. That is my humble submission.

MR. CHAIRMAN: Now, Members will put you questions. Mr. Gupta.

SHRI KANWAR LAL GUPTA: Dr Rohatgi, can you tell me are you for complete abrogation of the patent law or you want to abrogate it for some time?

DR. ROHATGI: The point I have raised is that in the present circumstances it might be advantageous for us to abrogate the patent law entirely.

SHRI KANWAR LAL GUPTA: In how many years?

DR. ROHATGI: This depends on the circumstances, Sir. In case we find at any stage that the situation is advantageous for us we can certainly re-introduce the patent laws.

SHRI KANWAR LAL GUPTA: My second question would be how many medicines and drugs which are patented we can manufacture if this Act is abrogated? Have you got some idea about it?

DR. ROHATGI: So far as medicines that are commonly used in this country are concerned, I would say that barring a few exceptions and given due opportunity, the majority of them could be manufactured, and the process of their manufacture could be developed by Indian scientists.

SHRI KANWAR LAL GUPTA: It is argued by some that if you do away with this Act, it will hamper the research and the development of the industry. What will be your reaction to it?

DR. ROHATGI: I could not understand that logic, because, at the present moment. I find that any time an Indian technical worker, both in the private sector and in the national laboratory, develops a process for manufacture of a drug, which is covered by patent in India, he is blocked. That is the present situation. So, I cannot understand how this would hamper the development of Indian drug research and technology,

SHRI KANWAR LAL GUPTA: What are the specific advantages that would accrue as a result of the abrogation of the patent law?

DR. ROHATGI: The main point would be that wherever we are being prevented from utilising a process because it is patented or where we are being compelled to import, or depend on others for a foreign item which is covered by a patent, we would be in a position to try and manufacture it here, and that, I think, would help develop industry in this country.

श्री बी० डी० देशमुख : आप का जो नजरिया है कि इस कानून को एब्रोगेट कर दिया जाये, क्या इंडियन मैनुफेक्चरर्ज उस को सपोर्ट करते हैं ?

डा० रोहतगी : जो मैनुफेक्चरर्ज फ़ारेन इंडस्ट्री की प्रासेस को इस्तेमाल नहीं कर रहे हैं, या जिन का फौरन इंडस्ट्री के साथ साझा नहीं है वे इस बात से सहमत है। वे इंडस्ट्रीज भी इस से सहमत हैं, जिन के साइंटिस्ट कोशिश कर रहे है कि देश में ही नई नई चीजे बनाई जाये।

श्री बी० डी० देशमख : आल-इंडिया मैनुफ़ेक्चरर्ज एसोसियेशन के रिप्रेजेन्टेटिव के नाते श्री सोमानी ने इस बात की पूरी-पूरी ताईद नहीं की। वे लिमिटिड ढग से पेटेन्ट की ताइद करते है। इससे लगता हैं कि बाज इंडियन मैनुफ़ेक्चरर्ज इस विचार को सपोर्ट नहीं करते हैं कि इस कानून को एब्रोगेट कर दिया जाये।

डा० रोहतगी : यह तो देखने का अपना-अपना पहलू हैं। सवाल यह है कि साइंटिस्टस अ.र इंडस्ट्रीज में काम करने वाले देश में नई नई चीजें डेवेलप कर सकें। कुछ लोगों का मत है कि अगर हम पेटेन्ट ला बिल्कुल हटा दें, तो उससे ज्यादा सुविधा मिलेगी और कुछ दूसरों का मत है कि हम दूसरे देशों के विरूद्ध कुछ न कर के सिर्फ इतना क कि पेटेन्ट ला को इस तरह से माडिफ़ाई कर दें कि हमारा उद्देश्य पूरा हो जाये। मतलब वहीं है, दो अलग अलग रास्ते हैं।

श्री खेतान : इस बारे में इंडियन साइंटिस्ट्स की क्या राय है ?

डा० रोहतगी : मैं नेशनल लेबोरेटरीज और बाहर के जितने भी साइंटिस्टस से मिला हूं उन सब का मत है कि या तो पेटेन्टस बिल्कुल न हों और अगर हों, तो कानून इस किस्म का बने कि हम वे सब चीजें खुद यहां बना सके और उसमें हमें रुकावट न हो।

श्री खेतान : क्या यहां के साइंटिस्ट्स को इस ला से कुछ लाभ हुआ है ?

डा० रोहतगी : जो मामूली किस्म की दवायें हैं, उन के लिए बहुत लोगों ने नई नई चीजें बनाई है। लेकिन जो चीजें मानोपली के बेसिस पर बिक रही है, जिन पर बे-इन्तहा, तीन सौ परसेंट तक, मुनाफा लिया जा रहा है, उनके बारें में कुछ नहीं किया जा सका है। उदाहरण के लिए मेंने अपने पहले मेमोरैंडम में मेट्रोनाइडेजोल का जिक्र किया था। एक दूसरी हिन्दुस्तानी फ़र्म ने उस के लाइसेंस के लिए एप्लाई किया।

श्री कृष्ण कान्त : कम्पनी का नाम क्या है ?

डा० रोहतगी : मे एंड बेकर।

होता यह है कि कम्पनियां अपनी पेयरेंट कम्पनी से दुगने, ढ़ाई गुने दाम पर रा मैटिरियल मंगाती है। पहले तो वे रा मैटिरियल को इम्पोर्ट करने में फ़ारेन एक्सचेंज खर्च करती हैं और फि फिनिश्ड प्राडक्ट को अपने मनमाने दाम पर यहां बेचती है। जहां तक कास्टिंग का सवाल है, इटली से वही माल मंगाने पर कम्पेयर किया गया, तो पाया गया कि तीन सौ परसेंट का मुनाफा कमाया गया था। दूसरी हिन्दुस्तानी कम्पनियों को लाइसेंस करने से इन्कार किया जाता है। कहां जाता है कि हम ने पेटेंट लाइसेंस कभी नहीं किया।

श्री जैतानः फर्में कहती हैं कि हमारे नाम से चीजें बिकती है और मुनाफा ज्यादा मिलता है; 85 परसेंट बिना पेटेंट के हैं और 15 परसेंट पेटेंट के हैं।

डा० रोहतगी : तब उन्हें इसमें क्या एतराज है कि वे हिन्दुस्तानी कम्पनियों को लाइसेंस कर दें। वे नाम का फ़ायदा उठाये और वाजिब मुनाफा लें वे तो लाइसेंस नहीं करना चाहते हैं। आपका यह कहना ठीक है कि उन कम्पनियों को विलायती नाम का काफी फ़ायदा मिलता है।

डा० सुशीला नायर : आपने कहा है कि सबसे अच्छा तो यही होगा कि कुछ अर्से के लिए पेटेन्टस को बिल्कुल एब्रोगेट कर दिया जाये और अगर जेनेरल तौर पर नहीं किया जाता है, तो दवाओं और फूड्ज के बारे में कर दिया जाये। आप कितने अर्से के लिए एब्रोगेट करना चाहते हैं ? कहा जाता है कि अगर पेटेन्ट्स नहीं रहेंगे, तो बाहर वाले अपना नो हाऊ नहीं देंगे और हमें अच्छी दवायें नहीं मिलेगी। इस बारे में आपका क्या कहना है ?

डा० रोहतगी : जहां तक एब्रोगेट करने के समय का सवाल है, ऐसा हो सकता है, कि हम एक कमेटी बनाएं जो देखती रहे और जब हम देखे कि हमारे पास दूसरे देशों में बेचने के लिए कुछ पेटेन्ट्स हैं, तो फिर हम कानून को बदल सकते हैं। यह तो हमारी इंडस्ट्रियल डेवेलपमेंट पर निर्भर रहेगा।

डा० सुशीला नायर : क्या सिर्फ पेटेन्टस को खत्म कर देने से हमारे रास्ते खुल जायेगें। इस बारे में आपकी क्या राय है कि पेटेन्ट्स नहीं होंगे, तो नो-हाऊ मिलने में कठिनाई होगी ?

डा० रोहतगी : सवाल यह है कि हम कब तक फ़ारेन टेकनालोजी और नो-हाऊ पर निर्भर करेंगे। आखिर एक न एक वक्त आयेगा, जब हमें बिल्कुल बेस से अपनी टेकनालोजी बनानी पड़ेगी।

DR. SUSHILA NAYAR: Will you expose the people to the denial of life-saving drugs in order to develop the technology in our country? Will any of us be prepared to do that?

DR. S. ROHATGI: Let me elaborate this point; firstly, there are some countries in the world which do not have patent laws and we are free to get most of the drugs from these areas, if we were not under the Patent Convention; most of the drugs are available from those countries...

आपने कहा है कि हमारे यहां ऐसा मौका आ जायेगा, जब वह दवा यहां नहीं मिल सकेगी। मान लीजिए हमें अपनी टेकनोलाजी को डेवेलप करने में समय लगेगा। इस बीच में क्या होगा ?

डा० सुशीला नायर : इम्पोर्ट करने में फारेन एक्सचेंज का सवाल आ जायेगा।

डा० रोहतगी : आपने पूछा है कि पेटन्ट्स को हटा देने से मरीजों को वे दवायें मिल सकेंगी या नहीं। ऐसा मौका तो नहीं आयेगा कि वें दवायें न मिल सकें। जब हमने पेटन्ट्स को हटाया, तो साथ ही हिन्दुस्तान के साइंटिफिक वर्कर्ज नेशनल लेबोरेटरीज में और दूसरी जगहों में यह कोशिश करेंगे कि यहां पर वे दवायें बना सकें मान लीजिए कि इसमें समय लगता है। उस समय में दूसरे मुल्कों से वे दवायें खरीदने में मुश्किल नहीं हो सकती है, जहां पेटेन्ट ला नहीं है। ऐसे मुल्कों से दवायें हमको बहुत सस्ते दाम पर मिलती हैं, बनिस्बत उन मुल्कों के, जहां पेटेन्ट ला है। इसलिए हमें कोई नुकसान नहीं रहता है। फारेन एक्सचेंज लगता है, लेकिन बहुत कम। वे जरूरी दवायें मरीजों के लिए सस्ते दामों पर मिल सकती हैं।

डा० सुशीला नायर : अगर पेटेन्ट्स ला हटा दिया जाये, तो डेवेलपमेंट में भी रुकावट नहीं आयेगी और मरीजों को भी दवा मिलती रहेगी ?

डा० रोहतगी : जी हां।

डा० सुशीला नायर : कुछ लोग कहते हैं कि हिन्दुस्तान के साइंटिस्ट्स नई नई डिस-कवरीज कर रहे हैं, उनको पेटेन्ट करने से हिन्दुस्तान को फायदा होगा और अगर पेटेन्ट्स को हटा दिया गया, तो रिसर्च रुक जायेगी। आप साइंटिस्ट्स के काफी टच में रहते हैं। क्या हिन्दुस्तान के साइंटिस्ट्स दूसरे लोगों से अलग किस्म के हैं, क्या उनको मनी इनसेन्टिव से उतनी गर्ज नहीं है, जितनी कि दूसरे लोगों को और क्या हिन्दुस्तान के साइंटिस्ट्स में बहुत ज्यादा आइडियलिज्म है? लोग कहते हैं कि पेटन्ट्स को हटा देने से रिसर्च की जायेगी, क्योंकि साइंटिस्ट्स को लगेगा कि उन्हें क्या फ़ायदा है। आपके विचार में साइंटिस्ट्स फ़ायदे के उद्देश्य से काम कर रहे हैं या रिसर्च के लिए रिसर्च कर रहे हैं? इन इनवेन्शन्ज का फ़ायदा साइंटिस्ट्स को होता है या इंडस्ट्रियलिस्ट्स को?

डा० रोहतगी : हिन्दुस्तान के साइंटिफ़िक डेवेलपमेंट पर इसका कोई असर नहीं पड़ेगा। कुछ साइंटिस्ट्स ऐसे भी होंगे, जो सिर्फ़ रुपये या ज्यादा आमदनी या प्राफिट के लिए किसी खास प्रासेस को डेवेलप करते हैं। लेकिन आम तौर पर अगर साइंटिस्ट्स रिसर्च करता है, कोई नई दवा ईजाय करता है, तो उसका प्राइमरी आबजेक्ट यह रहता है कि वह एक नई ईजाद कर सके। आपको बहुत से साइंटिस्ट्स ऐसे मिलेंगे, जिन को कतई दिलचस्पी नहीं है कि इससे हमें फायदा हुआ है या नहीं। बहुत से साइंटिस्ट्स यह समझते हैं कि अगर उनकी बनाई हुई कोई चीज किसी नई चीज से सारी दुनिया फायदा उठाती है; तो कोई हर्ज नहीं है, लेकिन अगर कोई इंडस्ट्री उससे फ़ायदा उठाती है, तो वे सोचते हैं कि उस फ़ायदे का कुछ हिस्सा उन्हें भी मिलना चाहिए। जब कोई प्रासेस डेवेलप होती है या नई चीज ईजाद होती है, तो उसका नो-हाऊ साइंटिस्ट के पास होता है। वह इंडस्ट्री के साथ इन्तजाम कर सकता है कि उसको भी उसका फायदा मिले।

डा० सुशीला नायर : कहा जाता है कि अगर इस ला को एआगेंट नहीं करना है, तो फिर इसकी लाइफ़ छोटी करनी चाहिए और इम्पोर्ट की खुली इजाजत होनी चाहिए। जब तक पेटेन्टी हिन्दुस्तान में प्राडक्शन शुरू नहीं करता है, तब तक दूसरे लोग उसको इम्पोर्ट कर सकें। इस बारे में आपकी क्या राय है?

DR. ROHATGI: The point raised is that if the product is not being manufactured by the patentee in India but is being imported, Indian parties also should get the facility of importing the material, I would like to elaborate this a litfle from the practical point of view too illustrate how things move.

If in a perticular case a patent is granted and manufacturing licence issued, usually the manufacturing licence is issued on what is known as a phased programme basis. In the earlier stages, they are allowed to import the material because they say that they want to build up a market before they set up manufacture and production. In the second phase, they go one step further and do part of the manufacture and so on till it is envisaged that the entire production of that drug or material would be effected completely in India. This is how Government base their phased programme.

But what happens in actual practice? I can quote examples where for years on end either the product has been imported by the company or complete manufacture has been delayed for years to the detriment of this country. I will illustrate by a specific example.

DR. SUSHILA NAYAR: We accept it; many people have told us. I am asking what is your remedy. Are you suggesting that there should be free permission for import for Indian parties during the early phase when they are building up the market?

DR. ROHATGI: My point is very simple. If the foreign party is permitted to import, they import from their parent company. Since it is a specialised drug, there is no comparison in the world market; it is a monopoly item. With the result that they are free to purchase it at a comparatively high price. Instances have come to light where if a dozen Indian parties are also permitted to import it, they could it get it at a very much lower rate. So till such time as production is set up, it should be possible or permissible to the Indian parties to import.

SHRI C. C. DESAI: Is it the same drug or similar drug?

DR. ROHATGI: Same.

SHRI C. C. DESAI: How is it that the parent company sells it at a lower rate?

DR. ROHATGI: It will make the foreign firm which has the patent here keep prices in check. Secondly, it will compel him to increase the pace of the manufacturing programme which is very easy to delay on the mere plea of non-availability of iron and steel, cement, electric conection etc. Yet a person who is keen to set up manufacture can get all these things done in a much shorter period.

DR. SUSHILA NAYAR: So it will be a healthy provision to allow other Indians to import during the early phase before he sets up production.

DR. ROHATGI: Yes.

DR. SUSHILA NAYAR: There is a provision in the Bill regarding licences of right whereby anybody can ask for it and undertake production; only he pays certain royalty. Will that suffice or for this purpose? You think this licence of right will take care of this emergency or not.

DR. ROHTAGI: The Bill has a provision that the grant of a licence of right is subject to revision by appeal to the High Court. If this is permitted, the entire provision becomes infructuous. It amounts to this that the party who wants to have a licence must be prepared to spend Rs. 15|20 lakhs in litigation and wait for five or six years.

SHRI C. C. DESAI: Is there any particular reason why you are giving evidence in your personal capacity and not as President of the Pharmacy Council of India? Do we understand that the Council does not endorse your views?

DR. ROHTAGI: Certain relevant facts have to be brought before the Committee and I would not like the Pharmacy Council, which is a statutory body, to take sides or commit itself. I felt that if I appeared in my personal capacity as a scientific worker, I could easily place these facts before the Committee.

SHRI C. C. DESAI: Your personal view is in favour of either abrogation or partial suspension of the patent law. In these matters we cannot be guided by personal opinions. We should be guided by the experience of other countries. What has been the experience of other countries as a result of the abrogation or partial suspension of the patent law?

DR. ROHATGI: In my memorandum, I have mentioned two specific cases. One relates to Switzerland in the 19th century, and the second to Italy. These patent laws are supported by Western countries which have already developed, and it is a struggle between the haves and have-nots. Is there any developing country like Burma or Ceylon which has told us it is admissible to have patent laws?

SHRI C. C. DESAI: Switzerland is a very old case. Even in the case of Iatly, the evidence before this Committee by an expert on the subject from Italy is that the abolition of patent law was not favourable to that country and that is why they are now going to have patent law.

DR. ROHATGI: When their industry and research have developed with the help of the absence of patent laws, they are now thinking of going back to the patent law.

SHRI C. C. DESAI: Have you visited any centres of the pharmaceutical industry in this countdy? We have, and our view is that it is not exactly an undeveloped country in the pharmaceutical industry today. We hav seen Alembics, Sarabhai Chemicals, a number of wholly Indian companies.

DR. ROHATGI: Alembic is 100 per cent Indian. The entire technology has been developed by themselves. I cannot think of a better example to support what I said. Here is a case where Indian scientists without foreign help have developed and set up an entire plant by themselves. So this fear as to what would happen if patent laws are not there is clearly refuted by this one simple example. Take another case, CIPLA. They had hormones.

SHRI C. C. DESAI: They are at a snail's pace compared to others. This is a matter of life and death, preservation of the life and health of the community not research for the sake of reaearch.

DR. ROHATGI: If we do not have patent laws, we are not going to be cut off from the world. If we cannot produce it, we can certainly get it from somewhere.

SHRI C. C. DESAI: You will not get the first-rate life-saving drug, but the second-rate.

You refered to the scientists and research people in this country. We have also met a number of research scholars. My impression is that even these research scholars recognise that patent law is necessary. For instance, Mr. Tirumalai Ayyangar of Hindustan Antibiotics, who is a well-known research scholar, who has a number of patents and is well known in the international world, is of the view that patent law is necessary for the encouragement of research.

DR. ROHATGI: I may refer to your earlier statement that technology in this country is not under-developed. So, if the feeling is that technology has developed I do not see the need for the fear that we will be in a vacuum.

SHRI C. C. DESAI: The reason is this, that an invention is a property right, a thing which you have acquired after spending a certain amount of money, and the preservation of property rights is a thing which all civilised countries follow. If we do not want to be counted among uncivilised countries by not giving protection to property right . . .

MR. CHAIRMAN: Even G. D. R. and Yugoslavia have patent rights.

DR. ROHATGI: In some few cases where our scientists have developed a few processes, reciprocal arrangement would be of benefit to the country, because we can also sell our processes abroad. But how many processes are there of that nature? We have to weigh between what you lose and what you gain. The moment that we reach the stage, by all means this august body can revise the law. There is nothing to prevent Parliament from changing the law.

SHRI C. C. DESAI: On page 6 of your memorandum, you have said that "there are many such patent applications that are being filed specially those relating to the formulation and combinations, and many of them have already been been accepted." Is that not a matter of procedure in the office of the Controller-General? The Controller-General should be a little more strict in accepting the patents which are really based on sound invention. It is merely strictness and a discretion that should be exercised in the office of the Controler-General of Patents. It has nothing to do with the law.

DR. ROHATGI: When I appeared before this Comimttee along with the Pharmacy Council delegation, I made out a point that since science is getting very specialised in different branches, it is very difficult for the office of the Controller-General to thoroughly go into each application in its entirety and reject those which are not patentable. My submission at that time was that there should be a Committee of Experts preferably drawn from among men in the national laboratories which could scrutinise. But the provision that exists, namely, that we have to maintain a certain degree of secrecy before applications are filed, prevented this suggestion from being accepted by the Controller at that time. I was wondering whether there could not be a method by which a Committee of Experts drawn from various national laboratories could be formed who can enter into an oath of secrecy. How could any other man scritinise whether an application is valid or not? For example, I can read out to you the kind of applications that are coming up, from the Chemical Industries News, published by the Indian Chemical Manufacturers' Association.

MR. CHAIRMAN: What are you trying to make out?

DR. ROHATGI: What I want to make out is this. We have these firms keeping so many patents. Firstly, they get patents for some of the chemicals that are used in the manufacture of these articles. These relate to pesticides. Then they get a patent on the final material. Then they get a patent on the formulation. The formulation merely consists in either converting into a solution with a surface active agent or any other carrier. After the patent for the product is got, a patent for the formulation is applied for. A process for the formulation is not just patentable. I do not know any reason why such an application is ever to be accepted in the first stage. When these patents are filed, and when the Government insist that these people should manufacture it, they say, "One of our associates in Australia has got the patent on one of the chemicals used as a constituent in its manufacture, and for the other patent, we will have to get from Germany, and a third one from America for the final product, and a fifth one from some other country for the formulation. To what extent are we bound?

SHRI ARJUN ARORA: You want a holiday on patents for some years to come. What do you mean by some years to come? Will 20 years do?

DR. ROHATGI: It is difficult to assess. I have a feeling that within a period of five to 10 years, this country should develop its own technology, given proper encouragement and impetus.

SHRI ARJUN ARORA: You have said, "till it is found convenient to leave the Patent convention." When has he to leave it?

DR. ROHATGI: They are think ing in terms of leaving the Convention They find it of interest now. Now, they are thinking in terms of leaving the convention. They have not left.

SHRI ARJUN ARORA: They have left. They want to rejoin. When did they leave it?

DR. ROHATGI: I am sorry. I do not remember.

SHRI ARJUN ARORA: Did they leave it after the first World War or the second World War?

DR. ROHATGI: I could not say it just right now.

DR. VEDARAMAN: In Italy, under the Law of April 1941, under the law as prevailed till 1957 processes for the preparation of medicines were patentable though product claims were not allowed but since that date even the processes for the manufacture of medicines are not patentable.

SHRI ARJUN ARORA: You have said that "a number of processes in the field of drug manufacture have been developed by Indian scientists in the national laboratories but in most cases the manufacture cannot be undertaken." Could you give us some examples?

DR. ROHATGI: I can give one example of a radio contrast material which is used for radiography. The country produces barium preparation for radiography, but we do not produce in India material for the radiography of the bile duct or gall bladder or the genito-urinary system. The Central Drug Research Laboratory, in collaboration with other firms, developed a process for the manufacture of an iodine compound known as Acetrizoate the brand name is Diaginol or Biligraphine. The material was synthesised and passed the chemical analysis. But when it came to the stage of clinical trials, it was discovered that there was a patent and this process could not be utilised.

DR. SUSHILA NAYAR: It was a product patent.

DR. ROHATGI: Both are covered: product and process. This is a clear-cut example, and the price at which that material is being sold is very high.

SHRI ARJUN ARORA: The foreign firms own patents and they do not utilise them for production in India. How long could they remain so, and for how many years, in your opinion, could this be tolerated?

DR. ROHATGI: A time-limit might not be necessary. My humble suggestion would be, if they are allowed to import, the Indians should also be allowed to import, and if they are allowed to manufacture, the Indian firms should also be allowed to manufacture. This is the best way by which either we compel them to manufacture her speedily or we simultaneously set up a competition here which is the to the benefit of the country.

MR. CHAIRMAN: What Mr. Arora want to know is this. After how many years of their sitting over the problem can this be done? It should be given to Indians to manufacture. From what stage can it be done?

DR. ROHATGI: That is not what the licenses of right envisages....

MR. CHAIRMAN: Some time is given to them for compulsory licence..

DR. ROHATGI: Thre is no difficulty to get it from the beginning. Why should there be time limit? If compulsory licensing is granted it is not necessary that know how and technology is also passed on. Indian firms would be at a disadvantage in developing their own know-how and technology.

SHRI ARJUN ARORA: There is one thing and I wish to know your views on that. Do you face any particular difficulty out of the present Patent Act in respect of the manufacture of useful drugs in the country?

DR. ROHATGI: There is one example which I have given earlier. This item was imported by Indian firm for which a foreign firm had held licence for 8 years. There was no indication on the container that the medicine was covered by Patent It was a pharmacopoeial product and they considered it desirable to enter into this field. The manufacturing license was obtained and also the import license. On the basis of that it was done. After this import the foreign firm came out with the fact that they own a patent which orginally was taken by a French firm. It was a British company. No Indian firm could utilise it. The patent was held by a British firm and they refused to licence it.

SHRI ARJUN ARORA: The Bill provides for aggrieved party rushing

to high court. They go to high court with writ and the aggrieved party could do it. What is your view in this matter about this Patent Law which concerns the life and death of people?

DR. ROHATGI: There are two aspects. If patent is obtained on the basis of known information or under certain things which are not permissible under the Act the patent be should be revoked at the controller's level. It is not necessary for the person to go to court for its revocation. It amounts to giving misleading information or misguiding the controller or the public. We have certain examples, where, after misleading informations is given, that patent can be revoked. In case sombody has reason to say that the patent is wrongly given the only recourse is to go to the courts. I will give example to indicate my point. This is from one of the patents and the language used is like this: They say, 'known methods as used in this specification'. Then they say, 'methods heretofore employed or described in the chemical literature'. It is not understood how a process which is already described in the chemical literature can be patented. In the claims it is said, here in before particularly described or ascertained or any obvious chemical equivalent thereof. All possible methods of manufacture of this are just shut. All research and all avenues are blocked.

SHRI T. V. ANANDAN: Would it not lead to the situation where this country would be singled out against the world trends as they are today? We should adopt progressive methods. Is it in the interests of the scientists| industrialists that you advocate that policy?

DR. ROHATGI: This country does not want patent laws for a certain period. Advanced countries have it. We should not fight shy.

SHRI S. K. VAISHANPAYAN: You have made some useful suggestions about the Patent Bill. Apart from them, have you any suggestions to encourage scientists to become more and more research-minded?

DR. ROHATGI: I have given amendments in the last page. One is abrogation at the level of controller, in case they are based on misleading or false information. In the other case under compulsory licence or licence of right, this provision, should not be subject to revision in the court of law. After all the patentee is getting his royalty. How much royalty does he get that can be gone into. But the fact that licence be given should not be a matter for revision and if this is made a matter for revision, then all these provisions are nullified.

SHRI S. K. VAISHANPAYAN: You want all references to High Courts should not be there in the law.

DR. ROHATGI: Only in these two cases.

SHRI S. K. VAISHANPAYAN: You are more interested in giving more powers to the Controller rather than giving justice to the party.

DR. ROHATGI: If you will see my memorandum, there are only two spheres where I have suggested that Courts of Law should not interfere. One relates to grant of patent. If there is something wrong here, it should be possible at the Controller's level to amend it or revoke it That is one aspect. There is one provision here which appears to be very peculiar. It suggested that if certain part of the specification is valid and the other is invalid, then the court of law can revoke only the invalid part. That is not a reasonable suggestion at all. It should be that if the patent contains any part which is invalid, the whole patent should be revoked. That is a commonly accepted principle. The second part relates to grant of compulsory licence and licence of right. These two spheres should be kept outside the purview of the Courts of Law.

श्री सरजू पाण्डेय : पेटन्ट एक्ट के बनने से आपका कन्टेंशन यह है कि एनकरेजमेंट नहीं मिलेगा और हमारे मल्क के लिए जरुरी नहीं है यह नहीं बनना चाहिये । तो इससे खासतौर से नुकसान क्या होगा ?

डा० रोहतगी : मने तो यह नहीं कहा कि इस बिल के पास होने से हमारे मल्क को नुकसान होगा ।

श्री सरजू पाण्डेय : आपने कहा कि इस की जरुरत नहीं है ।

डा० रोहतगी : मेरा तो यह सुझाव था कि या तो पेटन्ट बिल्कुल हटा दिये जायें और यदि नहीं तो इस बिल में जो लाइसेंस वगैरह के बारे में प्रोवीज़न्स हैं उनके अन्तर्गत सुविधायें दी जायें । ये सब चीजें लाभदायक हैं ।

श्री फखरुद्दीन अली अहमद : वह कहते हैं कि अगर एनफोर्स करें तो बहुत अच्छा है । लेकिन इन का एक और स्टेप फारवर्ड है कि अगर लागू करना चाहते हैं तो उसकी मजबूती से चलायें यह डा० रोहतगी का कहना है ।

श्री पीताम्बर दास : जो आप का पहला मैमोरेन्डम है इस में पेज 2 के पैरा 4 को देखें :

> The present trend in the West seems to be in favour of reducing the life of patent on drugs.

तो इसमें आपने यूनाइटेड स्टेट्स का जिक्र कर दिया कि उन का कहना यह है कि बजाय 17 साल के 7 साल कर दिया जाये । इस देश के अतिरिक्त और कोई देश ऐसा है जिसे देखकर आप को ऐसा लगा कि यह ट्रेंड चल रहा है ?

डा० रोहतगी : यह तो ऐसा होता है कि क्यों कि ये देश आपस में एक दूसरे से पेटेन्ट लाज में बन्ध हुए हैं और एक दूसरे से अफीलियेशन रखते हैं तो अगर एक देश में यह सिलसिला शुरू होता है तो मुझे उम्मीद है कि दूसरे देशों में भी उसी तरह की तबदीली हो जाएगी ।

श्री पीताम्बर दास : इस समय यूनाइटेड स्टेट्स के अतिरिक्त और कोई देश में ऐसा नहीं है ?

डा० रोहतगी : जी नहीं ।

SHRI KRISHAN KANT: In continuation of the earlier question put by my friend, I would like to know whether you have got any references or literature to show that the United States want to restrict the life of the patent?

DR. ROHTAGI: Not except this one.

SHRI KRISHAN KANT: That is from the Sunday Times. That I have seen. We were told that it is not a correct news. Nothing of the type is done there. So, this needs to be substantiated further.

In the last paragraph of your first memorandum, you say that it is time that we have amended the patent law in such a fashion that research in India can progress unfettered and the scientific worker allowed a free hand to help the country. Could you tell us what are the clauses or items in the patent law that should be amended as a result of which the scientific worker will get unfettered freedom for research?

DR. ROHTAGI: I have explained that.

SHRI KRISHAN KANT: You said that High Court should not be there for certain purposes. That only gives power to the Controller. How does it give more freedom to the research worker?

DR. ROHTAGI: That helps scientific workers. If there is a particular process and that process has been declared licence of right, Indian scientist is free to develop and exploit that.

SHRI KRISHAN KANT: You know that research is being done in Government laboratories and private firms. The royalty goes to the private firm. Does the persent Bill or the earlier one any way safeguard the right of getting some portion out of it for research work?

DR. ROHTAGI: I think in the earlier Bill there was some provision.

SHRI KRISHAN KANT: Is the research worker compensated? Is he getting his due?

DR. ROHTAGI: When I used the word 'encouragement' I did not mean monetary compensation. I just meant freedom to Indian scientists to be able to develop processes.

SHRI KRISHAN KANT: On page 2 you have said that patent specifications are usually designed to cover much more than the real invention. Which clause of this Bill or the earlier Bill prevents or helps this growth or do you suggest any modifications so that this cannot be done? Your know that these blanket patents have now come up. How would you avoid that? What regulations or amendments would you suggest to see that these blanket patents cannot be filed or accepted?

DR. ROHTAGI: One suggestion that I have given refers to a Consultative Committee of some outside experts. I do not know whether the oath of secrecy is at all permissible under the Patent Law. I cannot understand how in an office like the Controller of Patents, in a matter of a highly specialised nature, each branch can possibly cover every aspect.

SHRI KRISHAN KANT: One is that the Controller, while granting a patent, may make a mistake in spite of any law being there. There is a specific provision in the law which helps the Controller to give the blanket patents. I want to know whether there is any clause in the previous Bill or Act or in the present Bill that is before us which gives such a blanket power to the Controller?

DR. ROHATGI: You please see clause 54 of the Act specifically relating to revocation of patent's. Please see sub-clause (1) which says that 'the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;

'(m) that the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge.' And then there are a number of clauses. All these, if I may say so, are under Sec. 64(i) and they can possibly be revoked only by the High Court. That means if anyone, on the basis of false information has obtained the patent, it is only possible to revoke it when a person challenges it in a High Court.

SHRI KRISHAN KANT: I agree with you. You mean to say that the Controller should have the powers without going to the court for revoking the patents. I am making the other point. Just now you read out from something that a blanket type of power was used by the Controller with regard to granting of patents. The present law permits the Controller to give the blanket type of patents. I want to know whether the present Patent Law should be modified or not.

MR. CHAIRMAN: He has already given his views.

DR. ROHATGI: My suggestion is that in case a patent has been accepted, it should be possible for the Controller to revoke it also.

SHRI KRISHAN KANT: I agree with you. That is not my point. There

are a number of patents. Take for example Talbutomide. That is also covered by the present law. The present law permits the blanket coverage of grant of patent. What should be done according to you? Do you want the sanctioning of patents under the law? Or do you think that it is not possible to grant patents under the law?

DR. ROHATGI: I should say 'Yes'.

SHRI KRISHAN KANT: It has been suggested when we visited some factory that some of the patents were sixteen years old. But, still, our Indian industries are not able to exploit them. They are not coming forward at all. Does it mean that our drug industry or the research and engineering technology has not gone to that stage when we can make use of these things especially when the patents are known to us?

DR. ROHATGI: This is rather vague. I can't give any suggestion.

SHRI KRISHAN KANT: Take for example Tetracycline. Its life is over.

DR. ROHTAGI: This is one of the antibiotics. Once we have started developing the knowhow for antibiotics in our own country—national laboratories—as also in the private sector laboratories, I do not see any reason why we could not develop this.

SHRI KRISHAN KANT: We were told specifically that sixteen year period for this is over. There is no patent working in our country. I want to know whether the public or private sector has tried to utilise that patent and make it independently or they feel that it is not possible for them to make it.

DR. ROHTAGI: I do not subscribe to this point of view.

SHRI JUGAL MONDAL: Since you advocate complete abolition of patents, what protection do you envisage for the patentees? If the entrepreneurs come forward, they always feel that they might have to face a very unhealthy competition. Therefore, their investment cannot be safe. What are your feelings about that?

DR. ROHTAGI: Are you refering to the patentees—foreign people—who have taken the patents or our own people?

SHRI JUGAL MONDAL: I am referring to our Indian people. You felt that there should be no Patent Law. So, if any entrepreneur or a new manufacturer wants to do certain things, what protection can there be for them? Unless you give them some protection I don't think they will come forward and invest money. Even if there is protection, there might be ten or more people coming forward with doing the same thing resulting in an unhealthy competition.

DR. ROHTAGI: So far as industries are concerned, if I can understand you correctly, they are all developed from the profitability point of view. Industries are setting up their projects keeping that point in view. I do not see how the patents come in way or the absence of the patent prevents them or discourages them from setting up industries.

SHRI JUGAL MONDAL: That is because there is already ten or sixteen years safeguard. Within that period, he is sure that there will be no competitors. And within that period he can establish himself and can realise the money and things like that. If you do not have protection for the entrepreneurs, nobody would come up with the idea of setting up an industry. What do you think will be their fate?

DR. ROHTAGI: You cannot expect anybody to come forward for setting up an industry unless he has some technical know-how developed. Only the party who has the necessary resources can get himself involved in it. Even if anybody comes in, he cannot succeed in that.

SHRI JUGAL MONDAL: Then comes the question of technical know-how. If you do not have patents law, do you think that you would get the technical know-how from foreign countries?

DR. ROHATGI: Personally speaking, I am not one of those who would subscribe to this view. If this country is to develop an industrial base, the earlier we stop depending on foreign know-how the better it is for us. We have reached a fair stage of development of our own technology. The only way to do it further is not by buying it from foreign countries but to develop that on our own within the limited sphere. If we develop technology right from the base that gives us the knowledge of doing thousand things that do not work. To me the knowledge of those which do not work is equally important. By that many more things can be developed.

SHRI JUGAL MONDAL: I was under the impression that the dye-stuff in Germany was mainly based on coal. In our country we have the coke oven for a pretty long time. But the output has been wasted; so far, no entrepreneur has come forward with the idea of manufacturing dye-stuff from out of coal. Of course recently someone has come forward for manufacturing dye-stuff from out of petro-chemical complex which is considered to be much cheaper.

DR. ROHTAGI: As I can see it, manufacturing dye-stuff from out of coal has nothing to do with that manufactured out of petro chemical complex.

SHRI JUGAL MONDAL: That is the reason why in Germany they have started exploiting it.

DR. ROHATGI: It had nothing to do with patents as such, but with the development of our basic coal-based industry it did not come up as it should have in this country.

SHRI JUGAL MONDAL: Tatas were there; Indian Iron were there; Durgapur was there.

DR. ROHATGI: We ended up with Benzine and Toluene. Further products for the development of drug industry were not available. With the Government of India project coming up, it will cater to the needs of these things.

SHRI JUGAL MONDAL: Which will be cheaper?

DR. ROHATGI: If petroleum is produced in the country, naturally, it will be cheaper.

SHRI F. A. AHMED (MINISTER OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS): I have been hearing very interesting views from you and I think the objective which you have before you is indeed very laudable. As far as I was able to understand, you want that in the name of patent, those people should not be allowed to advance their exports of the item which will be manufactured through that patent. That is one of the objective. The other objective is that you want to have an encouragement for your scientists so that they may also be allowed to develop the knowhow in our country. Through these efforts we may be able to have an industrial base in our country. But, I have not been able to understand one thing. You are asking for abrogation only for a certain period and after that period you will have the Patent law.

SHRI PITAMBER DAS: Abrogation for an unspecified period till we reached a certain stage of development.

SHRI F. A. AHMED: May I tell you, from the little knowledge I have of things, we are not in a stage where it is not possible for our scientists to develop the knowhow. Even in the pharmaceutical industry, four units are engaged in our country—the Hindustan Antibiotics, CIPLA, Lucknow Drug Institute, etc. They are asking us for a patent also. They have

developed the knowhow. If you suggestion is accepted and the patent law is abrogated, the two-way traffic will be stopped for our country.

SHRI ARJUN ARORA: At the moment, we are not able to ensure the two way traffic.

SHRI F. A. AHMED: This is what I am saying. If we give them the patent, it will not be of any use because they cannot take it to other countries unless and until there is a reciprocal arrangement. We will not be allowed to take advantage of the research we are doing. Your view is that you will give them the patent only when we are in a position to give. It is not because you want to give protection to your scientists but because you want to have advantages through reciprocal arrangement. We have reached a stage, I think, where it will not be wise not have a Patent Law. 72 countries have patent laws. Italy is the only country which have not patent law so far as drugs are concerned. There also the Bill is pending before the Parliament. During the period when they did not have the patent law, they were having spurious medicines and drugs in the country, which are very harmful to the people. What are the kind of provisions which are not now there in the Bill and which you would like to have which will enable our scientists to have the freedom to undertake research activities and what are the provisions in the Bill which, according to you, do not serve this purpose—kindly give us a note including in it your concrete modifications to the existing provisions which will ensure protection to our research activity in the country. You need not answer it now. Let us have it in writing.

DR. ROHATGI: Yes. I will do that.

MR. CHAIRMAN: You have suggested the import of medicines which will involve in loss of foreign exchange. Already there is shortage of foreign exchange. We can manufacture with foreign collaborations in our country itself. We cannot only save foreign exchange, but the knowhow also will come into our country. How are you suggesting the import of medicines in a big way?

DR. ROHATGI: I am not suggesting that the import should continue. If we are able to develop the knowhow and technology, the patent should not prevent us from carrying out the process. With regard to the comparison between importing this material and producing it with foreign collaboration, I find that these collaborations have proved very expensive to our country. In Japan...

MR. CHAIRMAN: Let us take up our own country. Can we afford to get rid of foreign collaboration completely? Have we reached such a stage?

DR. ROHTAGI: I don't see how that could easily be done. That is why I did not mention that aspect. What I would like to emphasise is, when the foreign firms are established here, I would like an opportunity to be given to our people to compete with them and thereby lower the price to the benefit of the country. We are not getting an opportunity to arrive at the stage where we can get rid of the foreign collaboration completely.

MR. CHAIRMAN: Is the patent alone responsible for this?

DR. ROHATGI: Patent is not alone responsible. But the patent does play a very important part because the drugs sold at very high profits are all covered by the patents.

MR. CHAIRMAN: When you suggest the abrogation of the patent law and the pushing out of foreign collaboration, why don't you suggest taking over of the pharmaceutical industry by the Government? Otherwise, there will be business cartels and they will exploit not only money but will also exploit the public health. For example, the water ampules produced by certain firms in Calcutta proved very

dangerous to the health of the public. Spurious drugs will develop with greater speed.

SHRI ARJUN ARORA: The Patent law is no guarantee against spurious drugs. Honest Administration and a strong police force are the things we want against spurious drugs. Inspite of the antiguated 19th century Patent law, we have spurious drugs all over the country.

MR. CHAIRMAN: Do you mean to say that the patent law is responsible for this or something else?

DR. ROHATGI: May I take them one by one? The first point raised was with regard to the spurious drugs and all kinds of mischief that is being carried out. That comes under the purview of the Drugs Act. And there is one particular provision in the Drug Rules which has not been changed so far inspite of our repeated efforts, which relates to the qualifications of the Drug Controller at the State level. And unless this is revised, the question of spurious drugs in this country will not vanish. That is very clear.

SHRI ARJUN ARORA: What is the qualification

DR. ROHATGI: The point is that we have qualification laid down for the man who dispenses at the chemist's shop or the hospital or clinic. We have qualification laid down for the man who manufactures. We have qualification laid down for the man who analyses the drugs. We have qualification laid down for the man who inspects the premises. But we have no qualification for the licensing and the controlling authority. The man who licences, if he has no knowledge of the industry if he has not studied pharmacy, if he has no experience in manufacture,—how can be licence properly?

SHRI PITAMBER DAS: Is it necessary for a criminal lawyer to be the murdered himself?

DR. ROHATGI: I would like to answer that. If the man does not possess the basic. fundamental knowledge, how can be work efficiently?

MR. CHAIRMAN: What about unhealthy competition?

DR. ROHATGI: I want to make it clear that I do not want to distinguish between the private and public sectors. I mean, everything belongs to the country. Now, my main contention is that if a considerable amount of competition is developed in the field, prices will definitely come down.

MR. CHAIRMAN: All right. Dr. Rohatgi, thank you for taking the trouble in coming here to give evidence before this committee. We shall try to be benefitted from the opinion you have expressed. Thank you once again.

DR. ROHATGI: Thank you very much for giving me this opportunity.

(The Committee then adjourned)

(The Joint Committee re-assembled after Lunch at 15.00 hours)

III.—*The Indian Drugs Manufacturers Association, Bombays*—

Spokesmen: 1. *Shri* G. P. *Nair*.

2. *Shri* K. M. *Parikh*.

(Witnesses were called in and they took their seats)

MR. CHAIRMAN: First, you may give a brief resume of what you are urging, and then Members will put questions for clarification.

SHRI PITAMBER DAS: The witnesses have laid great emphasis on abrogation of patents. I would request you to kindly ask them to lay more emphasis on this aspect.

SHRI G. P. NAIR: We are laying more importance on abrogation of

patents. We are of the view that our country has come to a stage where we should give an opportunity to our scientists to utilise their talents in the national interest but they are not able to do so because the field is covered by gigantic foreign interests To begin with, my prayer is that we should give a free period of 20 years, and when I plead so, I am confining my remarks only to drugs patents and not to the Patent Bill as a whole, for the simple reason that I represent the Indian Drugs Manufacturers Association exclusively employing Indian capital, labour and know-how. So, whatever I say on the Patents Bill will be confined only to the patents on drugs and medicines. When I speak on drugs and medicines, my observations should be treated on a different footing altogether because it is a matter affecting the public health of the nation. It is not a commodity like an engine or some other device which we may use is other walks of life, but it is a matter of life and death for a patient so far as drugs are concerned. In this respect, I plead that this should be treated on a special footing. When I say 'special footing', I say that when we are enjoying the benefit of so many inventions which other people have made with or without rewards, as far as medicines are concerned, we should be in a position to give the benefit of our invention free of cost. That is why medicines should be treated on a different footing. It should be with a missionary zeal that the scientists should set out to find something new in the field of medicine. Whatever may have been the justification or the promptness in the olden days to give a reward to an inventor, that justification no longer stands, for the simple reason that formerly it was an individual who invented something; especially in the field of medicines, that ground no longer holds good. To my knowledge, there is no individual who is carrying on research in drugs and medicines; the gigantic organizations or for that matter even moderate-sized industrial units are having their own department of research, because it is a matter of existence for an industry. Even a small-scale industry cannot exist or progress or compete with similar units in the market unless it has got a unit, whatever may be the size, smaller or bigger, engaged in ordinary or fundamental research. For, research departments have become an integral part of the drug industry these days.

A research worker who does a job does not know today what he actually does. He goes on gambling or I should say enterprising, in the course of which he may come across certain interesting phenomena which he may verify, or with respect to which he may compare notes with other research workers; and somehow the gigantic organisations may put A and B and C together and come to a particular formula.

I would like to impress, therefore, on the hon. Members that if there was a justification in the olden days to give a reward for an individual for his research, that ground does not stand today because it is being done by an industry. Industry does not belong to a single individaual, and it is almost a corporation which is owned by shareholders who reap the benefit of the profit of the concern, so the impetus or inducement or reward for an individual to do research no longer arises.

Coming to the question, if at all we are thinking of it, of granting a patent, I would like to submit that in other countries what they do is that when they allow a patent to be registered in their country, the patent of this country is allowed to be patented in that country. But we have not come to that stage. That is why I began telling in my opening remarks that we must have some time target so that we will be in a position to have certain inventions and we will be in a position to patent

these inventions in other countries and on a reciprocal basic we will have to give them patents in our country. Without that if we allow foreign patent holders to register their patents in this country, they will be exploiting our country economically and industrially. That will also kill the initiative of our scientists to do research in the medical and drug fields. Therefore, giving of licence on a unilateral basis is not in our interest. It is not in the interests of scientific advance, nor it helps the country economically and nor is it in the interest of industrial development of our country. We are totally against granting any patent rights on drugs and medicines in our country. That, in short, is our submission.

MR. CHAIRMAN: You propounded the theory that in the drug industry, invention is done by a collection of people, big or small. For this purpose, don't you think that there should be some incentive to compensate the investment in the form of some sort of patent?

SHRI G. P. NAIR: In my remarks, I stressed two points. One was that the research is an integrated part of the industry. Whether Government comes forward with an offer of reward or not, any industry worth its name must have a research department. It is not for the sake of reward that the industry does research. It is not that somebody comes with some capital to invest in research. I plough back my profit so that I may improve upon the products. What I spend today is what I had earned yesterday.

MR. CHAIRMAN: For the purpose of research, you have to invest a lot of money. Some experiments have to be conducted. Laboratories have to be put up. Some intricate instruments have to be had and for all these things, money is needed, investment is needed.

SHRI G. P. NAIR: That part is covered in my answer. If there is any reasearch institute in this country, I could make it clear that research is not the sole motive of it.

SHRI JUGAL MONDAL: Why do you say that? What are the other motives?

SHRI G. P. NAIR: There are ever so many advantages in having a research institute. If we have one unit, it can help a unit in some other part of the country. This is only for aiding a bigger unit. There is no complete research unit.

DR. PARIKH: The question was raised that money is required for the purpose of research. From 1911 we have got a patent law in this country. Even after Independence we have this patent law which gives unlimited protection. From 1948 to 1969, in spite of the patent law and in spite of protection, what is the position of research in India? Even if it is claimed that the production of pharmaceuticals . . .

SHRI DAHYABHAI PATEL: You are contradicting what Shri Nair has been saying.

DR. PARIKH: If you want really research to be done, we should see that the indigenous people are benefited.

SHRI DAHYABHAI PATEL: You represent the Indian Drug Organisation?

SHRI G. P. NAIR: Yes.

SHRI DAHYABHAI PATEL: How old is the Association?

SHRI G. P. NAIR: Nine years old.

SHRI DAHYABHAI PATEL: How many members are there?

SHRI G. P. NAIR: 190 members and it is probably the biggest numerically.

SHRI DAHYABHAI PATEL: You have been in the drug trade for a very long time?

SHRI G. P. NAIR: I have completed 39 years.

SHRI DAHYABHAI PATEL: How much do you spend on research?

SHRI G. P. NAIR: That I must check up.

SHRI DAHYABHAI PATEL: I want only roughly. Out of your expenditure, what percentage are you spending on research?

SHRI G. P. NAIR: It is not a research institute. Some form of research is going on at every stage. We have not taken up any research venture and therefore it does not form any separate heading. But at the same time some research is there at every stage. For instance, for stability or incompatibility some observation or research has to be done.

SHRI DAHYABHAI PATEL: Don't you think that your colleague was saying contradictory to what you were trying to say?

SHRI G. P. NAIR: My friend was answering Chairman's question. He was saying that in spite of the fact that we are having patent rights in this country, nobody has come forward to spend money on establishing research centres. There is no contradiction according to me.

SHRI SEZHIYAN: You have said in the fourth paragraph of your memorandum that industrial units carrying on research spend money out of their own profit already earned from the public on the sales. If any institution wants to start or do some research, they should have already have earned profits . . .

SHRI G. P. NAIR: There is a clear misunderstanding about research and research work. By research I do not mean a particular institution, with a particular staff, apparatus or particular machinery. Research is a process of experiment to improve upon what we are alreay doing.

SHRI SEZHIYAN: For invention.

SHRI G. P. NAIR: In that process, you may even come across new inventions. Every industry doing this ploughs back its profit and expands the research department. If it has more profit, it will spend more on research because it can have better utility.

So it is a question of profitability. If the profit is more, one can spend more on it; if it is less, you have to spend less.

SHRI SEZHIYAN: That may be admirable in the ordinary run of industries. But here in the drug industry, as far as we know, they have certain objectives and they set apart certain funds for research.

SHRI G. P. NAIR: If you can cite the example of one or two institutions, I will be able to answer better.

SHRI SEZHIYAN: You say out of the profit they have to do it. If they want to do research on a larger scale, they should naturally have more profit. So your theory can only apply to the big institutions because the smaller concerns cannot do that. So it will become a monopoly of the bigger ones excluding the smaller ones. When we discuss this patent, we think that an industry or an organisation anticipates a certain profitability. We have also instances.

SHRI G. P. NAIR: For instance?

MR. CHAIRMAN: Do you accept the proposition of the hon. member?

SHRI G. P. NAIR: I do not find many institutions like that. That is my difficulty. We have got our National Chemical Laboratory. Apart from that, if the hon. member has in view certain institutions, I would like to know because I do not find many research institutions solely engaged in research.

MR. CHAIRMAN: Not solely, but as part of the drug industry.

SHRI SEZHIYAN: The Haffkine Institute.

SHRI G. P. NAIR: That is a government institution.

SHRI SEZHIYAN: It is not a question of government or non-government institution. We have the Central Leather Research Institute in Madras. They have patented so many things. So your point that an institution shows profit and then only it does research does not hold good in many cases. Probably your experience may be so.

SHRI G. P. NAIR: In the private sector, research is done out of profit. In government institutions, they may do it separately, as they are doing already.

SHRI PARIKH: Research grows slowly and slowly. It is like a child growing. In a concern, first they develop a product and then they go in for combinations. First they do simple processes. Then they develop slowly. When I am talking of industry, I mean Indian industry hundred per cent without any foreign collaboration, because there are two types of industries in the drug industry. This is the industry which can definitely make a slow progress and grow. At the same time, they must be given an opportunity to grow. Those who have been given an opportunity in the last twenty years by the patent protection have made profits, and yet in India we have not seen the results of that patent protection.

SHRI SEZHIYAN: We are not going to contest that. But your analogy of a child growing is not apt. Somebody has to feed the child. Therefore, your contention that research can be done only out of profits is not tenable.

You told us about the profit motive. You say that giving a patent should not be a method of encouraging profit. The profit motive might not be there. But there should be profitability in any venture. No one can sink money into anything without a good return. That is more applicable in the case of public funds; it applies to private funds also. That should not be the sole criterion. But a concern should be able to maintain itself and for that a good return is essential.

You say that after 20 years we will be able to patent so many new products in India. At that time, if somebody says, 'We will not accept your patents', will you accept that proposition?

SHRI G. P. NAIR: I cannot guarantee what will happen after 20 years. That depends on so many conditions, internal and international.

SHRI ACHUTHA MENON: You say that there should be a period of 20 years during which there should be no patent protection here. So you visualise that after 20 years, there may be some sort of patent protection. Your argument comes to this: now our country is not in a position to compete with foreign-owned enterprises which are having their patents in India and are exploiting our market. So in order to enable us to go ahead and be in a position to compete with them, we should get these 20 years; at the end of the period, you visualise that our country will be in a position to compete with others and then you do not find anything wrong in patent protection. According to your own argument, there is some incentive in patent protection. You may say that there is no research going on worth the name in private industry. I may or may not agree with that. Some sort of research is going on. But the point is that if industry should develop, it should put more money. What is the motive with which they are doing all these things? They wish to make profit. Suppose you are able to invest a new drug which is very effective in curing certain diseases, if you have got a patent for that, your market is assured and you can even raise your price and you will

be in a position to make very high profit. That is a very big incentive, for discovering a new product. This cannot be entirely denied.

SHRI G. P. NAIR: When I was referring to 20 years, I was giving a sufficiently safe period for our scientific talent to try in the research field. That does not mean that we should tie it down to 20 years. If our country attains that stage in 5 or 10 years when our scientists come out with so many inventions which we think we can patent, I do not think there is anything objectionable in reducing the period.

As regards the question of incentive, my emphasis was that as it stands today, it is a one-way traffic. I did not say there should not be profit motive. I did not rule it out. But there should be a limit to exploitation. Today it is limitless. A product costing Rs. 200 which is being imported today was imported by the patent holder for Rs. 5,000 only six months ago.

SHRI PARIKH: According to Thomas Jefferson, society may give the patent or monopoly rights, but this may or may not be done according to the will and convenience of the society without claim or complaint from anybody. I take it that by society we mean India for our purposes. Secondly, the period of 20 years is only to bring up our scientists to the level of the scientists of developed countries.

SHRI ACHUTHA MENON: Can you say that the level of technology to which India has attained will enable us to utilise and exploit all the patents that are now available, if tomorrow the patent protection is entirely removed from the country?

SHRI G. P. NAIR: That is why we want 20 years because as at present we have not reached that standard. The progress in the last 20 years may be praiseworthy in some respects, but where the field is already covered by others, it is insignificant. Let industry and technical talent put their heads together. Today they know that their future is bleak. Given these 20 years, we will be able to exploit the inventions to a very large extent.

SHRI ACHUTHA MENON: During this period you will have to import certain essential things, and as there is no patent protection in this country, those who have those drugs will not sell them to us except at exorbitant prices. We will have to spend a lot of foreign exchange. How will you meet this situation?

SHRI PARIKH: India offers such a large market that nobody will be interested in losing it. Secondly, even today there are countries where patents are not granted and restrictions are put on prices. In our pamphlet *Abrogation of Patents* we have quoted instances, how Aureomycin which was sold at 5.10 dollars in 1959 in USA was being sold in Argentina at the same time by the same firm at 1.19 dollars. This is from the Kefauver Committee's report.

SHRI ACHUTHA MENON: I do not agree with your view that in research it is not a question of an individual's initiative or originality, but rather the collective effort that counts. Individual initiative and originality has also a very important contribution in making discoveries and inventions, and in order to encourage it, some sort of incentive should be provided. One of the defects of the patent system is that the real scientists or the originators of the discoveries or inventions are not adequately compensated, and only the people who invest money are getting the profit. So, don't you think some method should be devised by which scientists and inventors are compensated and given some incentive?

SHRI G. P. NAIR: If the individual scientist can be traced, we are not against rewarding him.

SHRI SEZHIYAN: Why not an institution? Why not reward the individuals or institutions? What is the harm?

SHRI PARIKH: We can give them.

SHRI KRISHAN KANT: It was a pleasant surprise for us to see your memorandum. The views which you have given are national views. How many members of your association are using patents? Are there any who are indigenously manufacturing things without any patents?

SHRI PARIKH: Many are using patented drugs which were patented in the past. There are cases against some which are still pending.

SHRI KRISHAN KANT: Are any of your members also members of the OPPI and the AMIO? The views of the OPPI seem to be quite different from yours. Is it because of the foreign interest?

SHRI G. P. NAIR: It is so. I know their views. I am a member of A.I.M.O. I have got a copy of the memorandum. In the medical field foreigners are holding way and our Government is inclined to give them licences even for gripe water, cough mixture, tooth paste, etc. I am sorry to speak of this state of affairs. The gripe water which I can give for one rupee is sold at the rate of Rs. 3 in the market. I had raised this point in the pharmeceutical enquiry committee twenty years ago. That position still continues.

SHRI KRISHAN KANT: Are any of your members exporting?

SHRI G. P. NAIR: Exporting is difficult because to some extent we have to depend upon the import of raw material. The process is too complicated for ordinary firms. Still there are some units whose individual contribution amounts to Rs. 5 lakhs or Rs. 10 lakhs.

SHRI KRISHAN KANT: You have made a correct statement in your memorandum. Still I shall ask a clarification so that it can go on record. You refer to international cartels. Can you explain how they are functioning?

SHRI G. P. NAIR: I can illustrate the working of the patent system by giving an example. Suppose I am the original applicant for a patent and about five persons have put in their objections. The method of ascertaining who was the first to start that experiment is complicated. It is practically impossible. We have to depend upon some scribbling of some chemist and I shall say that my project was started in 1942. The other person will show some other scribbling that he started it in 1932, so that it becomes almost impossible to determine who started the work and on what date. The only possibility is a compromise. We go outside the court and settle among ourselves: I take the patent for this country, you take the distribution and the third will have the selling rights. We thus share the spoils and then the objections are withdrawn and the matter is settled. That is how it works.

SHRI KRISHAN KANT: When any of our scientists or research workers who do research work either in private industry or in the national laboratory do outstanding work and bring out results, do you think that he should be rewarded?

SHRI G. P. NAIR: If he could be traced out, we can give him Padma Bhusan or even financially reward him. But I consider national honour more than the money value.

SHRI KRISHAN KANT: At present some exemptions are given to

some industries which do research work. Do you think that the present provisions are sufficient? Or something more has to be done so that the industries can turn their attention towards more and more research so that we can compete better with the foreigners.

SHRI G. P. NAIR: All facilities should be given for research.

SHRI KRISHAN KANT: Would you in your association think of those things and make any proposal? We want research to grow and our industries also to grow.

SHRI G. P. NAIR: We had a proposal to start a research institute. But looking to the present state of affairs we know there is no chance.

SHRI KRISHAN KANT: For cooperatives research the CSIR gives some money. What is the present position of the firms in your association?

SHRI PARIKH: There are ordinary formulations like tablets, pills, injections, syrups, etc. For these our people are well trained and there is no need for foreign collaboration. If it is reserved for indigenous production, that will be a good incentive.

SHRI KRISHAN KANT: It is not merely formulations. We have to go deeper into the research work. Have you tried to analyse the cost structure of the drug industry? Because there is a general feeling that the prices of drugs in under-developed countries are much higher than in other countries. What is the difference in the cost structure between them? Price and all that.

SHRI G. P. NAIR: Definitely, the prices of foreign firms are more than double these of the Indian concerns.

SHRI KRISHAN KANT: Do you think that their cost structure is double?

SHRI G. P. NAIR: The balance-sheets show that they are making profits. There are concerns which make profit up to 300 per cent, while the Indian margin varies from 15 to 16 per cent. The published balance-sheets are there. According to my information based on the published balance-sheets, those concerns make up to 300 per cent profit, and they are making ordinary products. They may be having their own patents also, I do not deny that.

SHRI PARIKH: There were also some surveys made and were also published. I can give you some instances. It has been found out that in the case of 8 to 10 Indian concerns, where their average profitability before tax, etc., was taken into consideration, the profits ranged in the case of 8 to 10 Indian while in the case of the foreign concerns, which collaborate with us in this country, it was ranging from 18, 100, 150 to 300 per cent.

SHRI JUGAL MANDAL: Please give us a list of it.

SHRI G. P. NAIR: This is taken from the reports of the Registrar of Companies.

MR. CHAIRMAN: You are making a serious statement when you say that those companies are making a profit of 300 per cent, whereas we are making a profit of 10 to 12 per cent only. Please see that it is properly substantiated by furnishing the records.

SHRI G. P. NAIR: I said I would send you a tabulated statement on the basis of the statements collected from the reports of the Registrar of Companies. That is the only source which I can have.

SHRI KRISHAN KANT: You have said that the patent law on drugs and medicines, if allowed to continue, will kill all the initiative and obstruct the development of the industry in this country and it may ad-

versely affect public health. Would you kindly elaborate on this?

SHRI G. P. NAIR: I think we have covered that point in the questions and answers. Why I said that it will kill the initiative for research is for the simple reason that our scientists are not at all inclined to start any research for the sake of research, because they know they have no future. They are simply concerned with getting a job, and work as paid servants. Working merely for the sake of the belly and working for the sake of science are quite different from each other. That is what I meant when I said it will kill the incentive.

Secondly, when the foreigners monopolise the market and when we are prevented from going in for production or even for formulation of some of the inventions, our industry cannot thrive. It is now a situation where the inventions of today become obsolete five years hence. The doctors no longer use such products. Unless the field is open at least to import these things and give the formulations, the industry cannot thrive. If the things are not available in India, it affects public health.

SHRI PARIKH: One of the drug laboratories, one of the companies' laboratories in India was unable to sell its product than by selling it at Rs. 30 per kilo which was far below the patented price.

AN HON. MEMBER: Thalbutamine.

SHRI PARIKH: Yes; that was because of the patent litigation, etc. I think the Haffkine Institute was not able to manufacture or sell, and it has stopped it.

SHRI KRISHAN KANT: Have you any comments or suggestions to make on the various provisions of the Bill? You have not given them in the memorandum.

SHRI G. P. NAIR: Yes, because my stand was entirely different. Now, I have gone through the Bill. I have made a few suggestions. One is regarding the compulsory licence. It should not ultimately end in a cartel. That is the point. The Government will have to look into it.

The second is regarding the period. I have mentioned in my memorandum that 16 years for an invention in the medical field—if it is not unparliamentary—is absurd. Any product which comes into the market becomes obsolete after five years. To have a monopoly of 15 or 16 years is I do not know what word to use—unreasonable to say the least.

Regarding royalty, we have made a provision of four per cent, but I think we should not pay a royalty of more than two per cent on the finished product, the bulk material.

SHRI PARIKH: In clause 5,—process patent—it should be restricted to process only and the product arrived at by that process and not by any other means.

SHRI G. P. NAIR: That is the practice prevalent in almost all the countries except two.

SHRI PARIKH: By obtaining many of the process, even known and unknown, they are preventing the furtherance of scientific knowledge of the world, and therefore, only one process which has been used or for which it has been manufactured, should be patented and not all the processes. Even the types of changes are being supported in very developed countries, and we should not lag behind. That is in regard to clause 5.

About clauses 87 and 88,—compulsory licence—it should be made such that it should be easily available and immediately available; I mean the implementation should be immediate. It cannot be delayed or stopped. Even an initial fee may be charged by the Controller for initial licensing, but I

do not see any reason why one should go to him or why the Controller, without going into the details regarding the financial and technical feasibility of the party, ask for a licence or restrict the number of licences.

The third point is about royalty. Even in all the developed countries, they say that royalty should include the necessary technical know-how for the manufacture, because when it is patented and when they are paid royalty, it is the duty of the patentee to give the technical know-how to the one whom they are licenced.

SHRI PITAMBER DAS: You say in your memorandum that "it is not in the interest of our country to continue patent rights on drugs and medicines at least for a period of 20 years." I want to know whether there is any rational basis for this period.

SHRI G. P. NAIR: I just put it because there will be a sort of feeling of security for the scientist that there is ample time before us to take up the work earnestly.

SHRI PITAMBER DAS: Do we understand that you mean to suggest that it should be so till such time as our country or the condition of the country demands it?

SHRI G. P. NAIR: Yes.

SHRI PITAMBER DAS: In the last paragraph of the second page of your memorandum, you have said that the "royalty as and when to be paid should be in proportion to the cost of the basic material and not on the selling price." I would like to know what the reasons are, why you do not want to make any payment for initiative, knowledge, intelligence, skill and the effort which a particular man takes in transforming the cost into price, or the basic material into the finished goods. When all these are important factors, why do you not want to make any allowance for them?

SHRI G. P. NAIR: Royalty should be based on the cost of material at the finished stage but the selling price may be anything because it may go into formulations. If we say that it is on the basis of the cost of material, there cannot be any dispute about it; otherwise, there are likely to be disputes about it. There is nothing new in it because there are products which foreigners are giving on the basis of royalty of 2 per cent, not medicines but other inventions.

SHRI PITAMBER DAS: You know probably that royalty on books is not determined by the cost of paper and printing. It is determined by the selling price of the book. What are the factors which compel you to differentiate between books and medicines?

SHRI G. P. NAIR: I cannot make any comment or comparison because I am not dealing in books; I can only substantiate my stand that the royalty we give should be something reasonable and should not be too much because, as I started my argument in the beginning, after all it is medicine which is going for the sake of the ailing public and the minimum possible royalty should be allowed.

SHRI PITAMBER DAS: So far as too much and too little are concerned, do you not think that it is more a matter of opinion than of reason?

SHRI G. P. NAIR: Everything is a matter of opinion.

SHRI PITAMBER DAS: Royalty may vary from one product to another; so, is it not safe to fix a maximum and give the discretion to the Controller?

SHRI G. P. NAIR: That is all right.

SHRI S. K. VAISHAMPAYEN: Supposing, the Bill is modified taking into consideration the comments that you have made, will it satisfy the objective of encouraging the drug industry as well as research?

SHRI G. P. NAIR: Definitely it will be better than the present state of affairs. We have only taken the national interest into consideration. I am aware that in a measure like this other considerations will weigh and if the Government, for any reason, cannot go strictly according to the national interest which we have enumerated and have to go into wider considerations, we are prepared to accept it.

श्री सरजू पाण्डेय : अपने मेमोरेंडम के दूसरे पेज पर आपने लिखा है :

"If the Patent Law on Drugs and Medicines is allowed to continue, it will kill all initiative for research among our young Scientists and obstruct the development of Drugs Industry in this country and may adversely affect the public health services of our nation."

और लोगों का ख्याल है कि इस कानून से हमारे मुल्क के साइंटिस्ट्स को एनकरेजमेंट मिलेगा, लेकिन आप उल्टी बात कह रहे हैं। इसकी क्या वजह है ?

डा० पारिख : अभी तक इस कानून से एनकरेजमेंट नहीं मिला है। अगर उन्हें एनकरेंजमेंट देना है तो इसको बदलना चाहिए। जो एक्ट अभी है उससे कुछ नहीं होगा; उससे इनसेंटिव नहीं मिलेगा। जो थोड़ा बहुत इनसेन्टिव है भी वह भी खत्म हो जायेगा।

DR. SUSHILA NAYAR: You have ated in your memorandum that the e of the patent should be five years. om what date do you calculate this e of five years?

SHRI G. P. NAIR: From the date the sealing of the patent.

DR. SUSHILA NAYAR: There are ite a large number of drugs which e still popular of which the patent s expired but there are not very many Indian manufacturers or industrialists who have taken up the production of those drugs.

SHRI G. P. NAIR: That statement does not seem to be very correct because there are even small-scale industries which have taken up the production of drugs of which there are no patents. As to how much we produce depends on the demand. If the production is less, it is only because there is no demand for the product.

DR. SUSHILA NAYAR: Do you mean to say that know-how is not of very great importance? The expiry of the patent does not *ipso facto* give you the know-how. It is the know-how which is important and which is lacking. So, if you abolish the patents or create such conditions which are very much against their interests, they will not be interested in co-operating with you and giving you the know-how. In the ultimate analysis, therefore, you will be worse off.

SHRI G. P. NAIR: If there be an invention of very great importance with regard to public health, we can try to get the know-how by purchasing it; or, in the alternative, our scientists are there to find out even cheaper or more expeditious ways to reach the product. So, there will not be any starvation of that product as far as our country is concerned.

DR. SUSHILA NAYAR: Anything from 85 per cent to 93 per cent of the sales of the big factories, like Pfizer and Glaxo, consist of products on which the patent has expired. That means that those drugs are very much in demand.

SHRI G. P. NAIR: What happen is that even after the expiry of the patent right, the brand name remain. The brand name and the patent have become almost synonyms. There are many firms which can manufacture and sell chloramphenicol but the sale

for of choloromycetin. If there is a patient in my own house, I will say, "Purchase chlormycetin" and not Choloramphenicol capsules. That is why drugs on which patents have expired are still selling to a great degree.

DR. SUSHILA NAYAR: The trade mark comes in your way. I remember, we had taken a decision that on all drugs the generic name will be given prominently.

SHRI G. P. NAIR: It is a fact that there is a directive from the Drug Controller's Department that we should put the generic name; one thing is this. The order is not very completely or effectively or cent per cent put into practice. Secondly, there is a certain thing which the public believe. There is a psychological feeling. They have got a feeling for instance that this particular product of Glaxo is better. About brand name, the institutions have to establish confidence in the medical profession and there is public feeling that foreign products are something superior in spite of the fact that we have got only one standard of drug control in the country. But the trend is changing. Unless these people are prevented from exploitation we will come to a state where we will feel helpless. If the sale price is less we should not come to the conclusion that we are producing less. There is a statement made by foreign people that 90% of their products they are controlling. There is a lacuna in that statement. Their average selling price is more than 2 or 3 times. They are thus admitting that 60% quantumwise we are producing.

DR. SUSHILA NAYAR: Which Indian manufacturer sells the same drug or the effective drug at 1/3 price. I would like to have such list.

SHRI G. P. NAIR: I would send half-a-dozen names.

SHRI NAMBIAR: What about quality?

SHRI G. P. NAIR: In the case of Aspirin Indian concern is selling at Rs. 7 per thousand. At what rate it is sold by foreign importer in the country? And the quality?—It is certified by foreign experts that Indian Drug Control or Standard is if not rigorous, is equal to the best in the world and they have given such certificate. As far as quality is concerned I could make the statement, and I think this can be substantiated by Drug Control authorities that Indian system is more rigorous than anywhere in the world.

DR. SUSHILA NAYAR: You want total abrogation of the Act. It is a one-way traffic you said. It was stated that we are not so much backward as we were perhaps 20 years ago. There are many scientists who are making discoveries in India which we can exploit also. Have you anything to say on that?

SHRI G. P. NAIR: Why not give a chance to them? Let us have 1 or 2 examples. I am all in favour of according our encouragement and enthusiasm to our young scientists.

DR. SUSHILA NAYAR: They are doing one or two things. Whether it is public sector or private sector, the benefit comes to the country. To what extent we will be losers if we abrogate patent law?

SHRI G. P. NAIR: We will not be losers if we wait for some time. We will be gaining as well as things are today. There may be isolated one or two cases; I am not denying it. Some people may come forward and if we find it is in the interest of the country or scientific talent to give protection we can think of that. We should not put cart before horse. We should give chance to hundreds of the country's talents.

श्री खेतान: अभी आप ने बताया है कि हम लोग जो दवा बेचना चाहते हैं, वे सेटल किये हुए कम दाम पर भी नहीं बिकती है और वे लोग अपनी पेटेंट कराई हुई दवाओं पर तीन सौ परसेंट मुनाफा करते हैं। आप

बताइये कि क्या लोग किसी दवा को उस के पेटेंट होने के कारण खरीदते हैं या उसके नाम की गुडविल के कारण खरीदते हैं। रोगी किसी दवा को पेटेंट के कारण नहीं खरीदता है, बल्कि चूंकि उस दवा पर उसका विश्वास जमा हुआ है और डाक्टर उसको प्रैस्क्राइब करता है, इस लिए खरीदता है, चाहे वह पेटेन्ट हो या न हो ।

श्री पारिख : जो चीज पेटेंट है उसके सिलसिले में और कोई रास्ता ही नहीं है, और कोई चीज खरीदने का सवाल पैदा नहीं होता है । जो चीज मिलती है वह खरीदनी पड़ती है और निश्चित किये हुए भाव पर। पब्लिक को ही नहीं, गवर्नमेंट को भी उसी भाव पर खरीदनी पड़ती है। गवर्नमेंट के टेंडर्ज में दी गई प्राइसिज़ को देखने से पता चलता है कि पेटेन्ट की हुई चीज गवर्नमेंट को उसी भाव पर मिलती है जिस पर रिटेलर को मिलती है । इसके मुकाबले में जो चीजें पेटेंटिड नहीं हैं उनके दाम रिटेल प्राइस से शायद दस बारह गुना कम दिये जाते हैं ।

श्री खेतान : ऐसी बात नहीं है । उन लोगों से हमारी बात हुई थी और आपने भी बतलाया है कि हम लोगों की एस्प्रीन का दाम मामली होने के बावजद भी लोग उन्हीं चीजों को ज्यादा खरीदते है । ऐसा किस लिये होता है । दूसरों के मुकाबले झण्डू का द्राक्षासव ज्यादा बिकता है दूसरों की कीमत कम होने के बावजूद भी उनका कम बिकता है. इसका क्या कारण है ?

श्री पारिख : इसके दो कारण हैं, एक तो यह कि जो कुछ फौरन है वह ज्यादा अच्छा है सामान्य जनता पर ऐसा प्रभाव है । इम्पोर्टेड चीज का दाम ज्यादा होता है उसी तरह की यहां की बनी हुई चीज सस्ती बिकती है लेकिन फिर भी लोग ज्यादा दाम देकर इम्पोर्टेड चीज खरीदते हैं । यह चीज डाक्टरों पर भी बहुत कुछ डिपेंड करती है । जिन चीजों में सरकार ने फौरेन कोलाबोरेशन को प्रोत्साहन नहीं दिया है इण्डियन कन्सर्न यदि उन चीजों को बनाती हैं तो सब डाक्टर उसी को इस्तेमाल करते हैं और कोई कम्पलेंट भी नहीं है । एस्प्रो से ही सिर दर्द दूर होता है यहां की दवा से नहीं होता है ऐसी बात नहीं है लेकिन जहां तक वह चीज फौरेन मिलती है तो आदमी उसी को लेना चाहता है ।

श्री खेतान : बिना दवा के भी आदमी रह सकता है । अगर दवा न भी ले तो अच्छा हो सकता है । इसलिये इसका यह जवाब तो नहीं हो सकता है । इसका कुछ न कुछ कारण तो होगा ही ।

दूसरे—रिसर्च के लिये हमारे हिन्दुस्तानी भाइयों ने जो एसोसिएशन बना रखी है, उसके जरिये सालाना कितना रुपया खर्च करते हैं और अंग्रेज लोगों ने जो पेटन्ट कराया हुआ है वे कितना रुपया खर्च करते हैं—क्या इसके लिये आ ने कुछ मालूम किया है ?

श्री पारिख : जो कुछ रिपोर्ट इसके बारे में हमारे पास है, उसके अनुसार टर्न-ओवर का तीन-चार या पांच परसेन्ट खर्च करते हैं । यूरोप में बहुत सी कन्सर्नों में 5–10 15 परसेन्ट तक भी खर्च होता है । अमरीका में जिन चीजों का मार्केट नहीं है, ऐसी चीजों का प्रोडक्शन ज्यादा है—वहां 7–8–9 परसेन्ट तक खर्च होता है । इसी तरह से हिन्दुस्तान में कई कन्सर्न ऐसी हैं जो इस पर खर्च करती हैं, लेकिन सभी खर्च करें—वह भी ठीक नहीं है, फिर भी सब को थोड़ा बहुत खर्च करना पड़ता है ।

श्री खेतान : क्या आप ऐसी राय देंगे कि पेटेन्ट बिल में कुछ ऐसा कानून बनाया जाय, जिसमें रिसर्च के लिये कुछ परसेन्टेज खर्च करना कम्पलसरी कर दिया जाय ?

श्री पारिख : मैं किसी भी चीज को कम्पलसरी करने का विरोधी हूं, क्योंकि उससे

कोई फायदा नहीं होता है, लेकिन अगर कोई इन्सेन्टिव दिया जाय तो आप देखें कि यह अच्छी चीज है।

श्री खेतान : लाइसेंस के बारे में आपने कहा कि उनको कम समय देना चाहिये। जब तक वह किसी चीज को मार्केट करने के लिये बनाना शुरू न करें तब तक लाइसेंस नहीं दिया जाय। क्या आप ऐसा पसन्द करेंगे कि उन पर कुछ कम्पलशन डाला जाय कि वह इतना रुपया डिपाजिट जमा करायें—अगर निश्चित दिनों के अन्दर वे उस चीज को नहीं बनायेंगे तो वह रुपया फोरफीट कर लिया जायगा।

श्री पारिख : ऐसा कम्पलशन डालने से कोई फायदा होने वाला नहीं है—यह तो डिले करने का रास्ता है। आप स तरह से सोचिये कि उसको लाइसेंस फीस जमा करानी पड़ेगी, अगर वह उस चीज को नहीं बनायेगा तो इसमें किसी का नुकसान नहीं होगा।

श्री खेतान : जब रुपया फोरफीट करेंगे तो उसका नुकसान हो जायगा।

श्री पारिख : एप्लीकेशन के साथ जो रुपया उसने दिया है, वह तो वैसे भी फोरफीट होने वाला है।

श्री खेतान : इस समय तो फीस कम है, अगर इस को डिपाजिट की शक्ल में ज्यादा कर दिया जाय तो तब तो उसको बनाना ही पड़ेगा।

श्री पारिख : लाइसेंस देने और बनाने में बहुत सम्बन्ध नहीं है। अगर लाइसेंस 10 आदमी ले लें, दो आदमी ही बनायें तो इसमें गवर्नमेंट को क्या फर्क पड़ता है।

श्री खेतान : फर्क तो पड़ जाता है। जिसे गवर्नमेंट लाइसेंस देगी उसको कहा जायेगा कि इतने दिनों में बनाओ, नहीं तो तुम्हारा इतना रुपया फोरफीट हो जायगा। ऐसी हालत में जो बनाने वाला है, वही लाइसेंस लेगा, दूसरा नहीं लेगा।

श्री पारिख : लाइसेंस तो वही लेगा जिसको बनाना है।

श्री खेतान : बहुत से ऐसे लोग भी होते हैं जो नहीं बनाते हैं। इसलिये टाइम देना चाहिये कि इतने दिनों के अन्दर बनाना होगा।

SHRI NAMBIAR: We have before us the evidence given by many of the foreign producers particularly of Germany, Italy and other countries. Their main objection was this that if you stifled the incentives to work on research and study, that would do harm for the development of a certain scientific knowledge which is very vital for the nation. Therefore, they said that there must be patent protection for, in these matters, a large amount of money is required to be spent. At least those things which are known so far we can copy. But, where is the guarantee that the people will go in for new inventions? Therefore there must be a field open to these men who are prepared to venture on that and spend highly on it. Therefore don't stifle the incentive. This is the argument which our friends from abroad had put in. I want an answer to this in support of your view.

SHRI G. P. NAIR: You started telling that this was the advice given by some foreign firms. Whose interests are they concerned with? I suppose they are more concerned with their own interests rather than our interests. Let us take the chance. The same argument was also advanced when we achieved our independence when the British withdrew from here. So, let us have five years and then let us see how our talent works. We have to face the situation. I shall not be able to answer one after the other.

I do not see any reason why should our people suffer in this field. That argument does not hold good. We shall know how to protect our interests.

SHRI NAMBIAR: What I want to know from you is an answer which will be able to convice us on merits—not on political basis.

SHRI G. P. NAIR: We have got sufficient talents in this country both new and old—We have got engineers both new and old—and if we give them chance, they will prove their merit. So, let not the foreigners worry us about that. At least for some time let us have a free time and let us give them sufficient impetus or anything that we want to give them. Let us tap our talents and there is no harm in that. We have to look to our national interests and we shall take care of them.

SHRI NAMBIAR: You please compare the position of Italy and Japan before the Patent Law was in existence. Take Japan and Germany where Patent laws are in force. They gave us some examples to show that a country like India which is having such a big potentiality should be benefitted by the know-how which is already existing. You can purchase the know-how or do whatever you like. But, don't stifle that incentive.

SHRI G. P. NAIR: We are not stiflying it. We are only telling them to keep our field open to us. Italy has not suffered at all. Japan have got their own advantages by having the patents law. I don't think we are losing.

SHRI NAMBIAR: I also do not think that we are going to lose much.

SHRI G. P. NAIR: We are not going to lose much. In fact I have said that in my last paragraph of our memorandum. We have got sufficient talents to take care of ourselves.

MR. CHAIRMAN: From your evidence it seems that the foreign companies either in collaboration with Indians or independently have large marketing in our country. Secondly, because of their brand name, we are not in a position to sell our goods as we should. Is this your case that foreign collaboration should be banned for 20 years just as patents should also be banned because the unpatented products consist of 90 to 95 per cent. Then, the Doctors and the patients go by the brand name, Glaxo, etc. Is this your suggestion that, apart from the patent law, that these people should also be thrown out of India for sometime to come?

SHRI G. P. NAIR: We don't need foreign collaboration for formulations because 90 to 95% of the work done today in the pharmaceutical field is done by our people. Our country is prepared to take care of them. The hon. Members must be aware that in 1948 the investment in this industry was about Rs. 10 crores only and today it is almost 200 crores.

MR. CHAIRMAN: That includes foreign collaboration.

SHRI G. P. NAIR: Even if it is not there, there would be only marginal differences. 90% of the existing things are taken care of by Indians themselves. Where is the foreign element there except controlling the organisation?

SHRI PARIKH: Marginal difference will be only in terms of money, but production will definitely be more. Without any foreign collaboration the Indian Companies are able to comply with the requirements within the country so far as formulations are concerned.

MR. CHAIRMAN: Thank you Mr. Nair and Mr. Parikh. We are glad that you were able to come and give your evidence. I am sure the Committee will take due note of what you have stated here.

(The witnesses withdrew)

(The Committee then adjourned).

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967.

Wednesday, the 18th June, 1969 from 09.30 to 11.55 hours and again from 15.00 to 16.45 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Hari Krishna
5. Shri Amiya Kumar Kisku
6. Shri Jugal Mondal
7. Dr. Sushila Nayar
8. Shri Sarjoo Pandey
9. Shri Era Sezhiyan
10. Shri Atal Bihari Vajpayee
11. Shri Maddi Sudarsanam
12. Shri K. Ananda Nambiar
13. Shri Fakhruddin Ali Ahmed
14. Shri Kanwar Lal Gupta
15. Shri T. Ram

Rajya Sabha

16. Shri S. K. Vaishampayen
17. Shri Krishan Kant
18. Shri R. P. Khaitan
19. Shri Arjun Arora
20. Shri T. V. Anandan
21. Shri Om Mehta
22. Shri K. V. Raghunatha Reddy
23. Shri Pitamber Das
24. Shri Dahyabhai V. Patel
25. Shri C. Achutha Menon

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT, INTERNAL TRADE AND COMPANY AFFAIRS (DEPARTMENT OF INDUSTRIAL DEVELOPMENT)

1. Shri K. I. Vidyasagar, *Joint Secretary.*
2. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks.*
3. Shri Hargunas, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Federation of Indian Chambers of Commerce and Industry, New Delhi—*

Spokesmen:

1. Shri Ramanbhai B. Amin, *Committee Member, FICCI.*
2. Shri P. Chentsal Rao, *Secretary, FICCI.*
3. Shri V. P. Juneja, *Research Asstt., FICCI.*

II. *Electrosteel Castings Limited, Calcutta*

Spokesman:

Shri P. L. Pasricha, *Director.*

III. *Indian Chemical Manufacturers Association, Calcutta*

Spokesmen:

1. Shri M. S. Sastry, *Chief Executive, M/s. Synbiotics Ltd., Wadi Wadi, Baroda—*

   Chairman, Pharmaceutical Division, ICMA.
2. Shri A. M. Gadgil, *Dy. Secretary, ICMA, Bombay.*

I. *Federation of Indian Chambers of Commerce and Industry, New Delhi*

Spokesmen:

1. Shri Ramanbhai B. Amin,
2. Shri P. Chentsal Rao,
3. Shri V. D. Juneja.

(*The witnesses were called in and they took their Seats.*)

MR. CHAIRMAN: The Rule is that the evidence given is liable to be made public. No part of the statement may be kept confidential.

SHRI AMIN: That's all right.

MR. CHAIRMAN: Give a sort of a resume' of your statement and then hon. Members will put questions and you may answer.

SHRI AMIN: Mr. Chairman, we are thankful for the opportunity given to us for tendering evidence before you and your colleagues. With your permission I will first make some general observations and then answer any points either from the memorandum which we have already submitted or from whatever I might say now during my general observations.

There has been delay in improving upon the existing Indian Patents & Designs Act. As early as in 1948 the Government appointed the Patents Enquiry Committee. Twenty years have passed and yet the desired amendments have to be effected. I would like to emphasize that patent protection is necessary for investment in research and research is necessary for growth. There is need to stimulate inventions among our own people, and at the same time we should not hesitate to make use of the results of research abroad, and pay for the fruits of such research. We are particularly happy that special provisions have been included in the Bill to ensure that patents can be exploited through 'Licence of Rights'.

In short, the approach of the Federation is based on two principles; Healthy competition and fair compensation or royalty. And, again, I would emphasize and request Members to put in their best and see that this Bill goes through and becomes law as early as possible, so that we can start accruing the benefits.

SHRI ERA SEZHIYAN: We have been presented with a letter you have written to the Secretary to the Government of India. Apart from that, have you submitted any other memorandum in response to the call made by this Committee?

SHRI AMIN: No.

SHRI ERA SEZHIYAN: Regarding Clause 48 your only objection is that there should be some compensation to the patentee. Is that the only objection, or do you object even to the basic principle giving the power to the Government to import certain patents?

SHRI AMIN: We do not object to Government's power, because we do understand that in case of some emergency there may be the need for this. But we would like that fair compensation should be given to the patentee.

SHRI ERA SEZHIYAN: Regarding clause 53, you are objecting to the period being reduced to 10 years. Am I right?

SHRI AMIN: We are objecting. If the patent is given in case of other things for longer duration, some clear thinking is necessary as to how much duration should be kept for foods and drugs; and again there is the question from which date it should be made applicable from the filing of the complete specification or from the sealing date. And, here, I would request that it should be from the filing of the complete specification. For, quite often, from the time of the filing of the complete specification to the time of selling, it might take more than three or four years, and during all these years, even with the provision of licence of right we shall be depriving the consumers of the benefit except through one channel, namely the one who is having for the patent but is not using it.

SHRI SEZHIYAN: In the present draft of clause 53 the term has been reduced to 10 years while it is 16 in the existing Act. You have stated that the proposal to reduce the term of the patent to ten years in the case of patents relating to drugs and medicines is not realistic because the holder of the patent cannot derive benefit from it. That means that you want 16 or 20 years?

SHRI AMIN: We have thought that the 10 years period may be short and, therefore, some reconsideration is necessary. In the case of other patents, the period is 16 years, but in

the new Bill I understand that the periods are 10 years in the case of drugs and 14 years in the case of other items. There is a difference of four years, and therefore, some reconsideration is necessary. What I was suggesting was this. Even if you want to keep the date from the date of filing of complete specifications, if it can be increased from ten to 12 years or something like that, it would meet the requirement. . .

SHRI SEZHIYAN: In the existing Act it is 16 years. But with the advancement of transport and communications, and India being a very vast market, do you not think that ten years would be a sufficient period for any patentee to exploit the patent and derive benefit there from? Do you not think that the time has come now when the period of the patent could be shortened?

SHRI AMIN: There is another reason as to why the period for a patent should not be shortened. It is not just the patent which makes it possible for the drug manufacturer to put the drug on the market. There are many other things which he has to do besides doing inventions; he must get the drug authorities to approve of it; toxicity studies have to be made and a host of other things have to be done before he can market the drugs, and even the development of the market itself takes several years. If you look at it from that angle, even the ten-year-period is not enough.

MR. CHAIRMAN: While giving your objection to clause 48, I think you are objecting mainly to the power to enable Government to import medicines in certain circumstances. So far as compensation is concerned, the compulsory licence of rights etc. is there. The Canadian provision is something different. . . .

SHRI AMIN: As I understand it, clause 48 enables Government to import without paying compensation. Licence of right is something different.

MR. CHAIRMAN: The question of import does not necessarily involve compensating the party concerned, because he is not in a position to supply the requisite quantity, and therefore an additional number has to be imported.

SHRI AMIN: We want to develop all our industries very fast. We shall be putting the indigenous industry to a disadvantage if Government import in bulk something from outside.

MR. CHAIRMAN: In an emergent situation, the question of compensation does not arise normally. Suppose a situation arises when we actually need something from outside; then alone this power is to be exercised. The patentee also will have the right to distribute his things, and Government also will have the right to import.

SHRI AMIN: Government may import to meet any emergency; we are not against such imports. But there might be several sources of imports. For example, we may import from a country which has already given a license to the patentee, in which case there is no problem. But we may also import from a country like Italy where there are no patents. Then, that particular drug may not have been subjected to the research that the patentee has put in. To that extent the imported drug will be interfering with the indigenously manufactured drug.

MR. CHAIRMAN: Normally, your argument will hold good. But it is an emergency for which provision has been made in clause 48. Therefore, the question of compensation cannot come in.

SHRI ARJUN ARORA: Are you objecting to the import of drugs from any country?

SHRI AMIN: I am not objecting to the importation of drugs from any

country. But if we are thinking of patents in our country then provision should be there for compensating the holder of the patent.

SHRI KRISHNA KANT: We are thinking of an emergency here, or a situation where the licensee is not producing the requisite quantity or is not selling at the right prices. In such a situation, where is the question of paying compensation?

MR. CHAIRMAN: In the Canadian enactment there is provision to the effect that the Government of India may at any time use a patented invention. But here it is not a question of using the patented invention at all. But it is a question of supplementing the patented invention. I have not fully read the Canadian provision. That may be with regard to compulsory licensing or things of that sort.

SHRI AMIN: I would like to understand what is meant by emergency. If emergency means that there is not adequate production in the country and you have to import from outside, then that is one type of emergency. But I would consider it to be a different type of emergency if the import is needed for defence purposes or for combating any epidemic in the country. That is why I submit that you cannot club all types of emergencies in the same group.

SHRI ARJUN ARORA: The normal health requirement of the people is also an emergency. Will you like the normal health requirements of the people to suffer in order to safeguard the interests of somebody who holds a patent and holds the society to ransom by not providing adequate quantities of the drug?

SHRI AMIN: I would not for a single moment like the health of the people to suffer. If it is that important, then we can probably supersede any other thing. But if normal commercial considerations are to prevail them the position is different. That is why this Patent Act has come in.

MR. CHAIRMAN: Clause 48 is not going to be applied in normal circumstances, as we visualise it. Therefore, the question of paying compensation does not arise. I hope you will apply your mind to it once and again and read the Canadian provision also.

SHRI NAMBIAR: This being an important piece of legislation which is on the anvil, the Federation, being such an important institution should have submitted a detailed memorandum to the Committee. But we find that you did not submit any memorandum to the committee. On the other hand, in the last paragraph of your letter dated 7th December, 1967, you say:

> "The Committee of the Federation will be thankful if their views mentioned above receive due consideration by Government."

so, you have nothing to talk to the committee about?

SHRI CHENTSAL RAO: As the secretary of the Federation, I should like to apologise to the committee for this lapse. What we should have really done is that we should have used the phrase 'Committee there, but we would have merely changed the Address and submitted it. We thought that it was not really necessary, but anyhow, I apologise to the committee for not submitting the memorandum separately to the committee.

In regard to clause 48, I would like to submit that the term 'emergency' has not been spelt out. If it is the thinking of the committee that it could be spelled it out, then we shall give a second thought to the problem.

SHRI NAMBIAR: You are more or less supporting the point of view of the foreign representatives who appeared before us. But yesterday we had a representative from India who

gave a contrary view. He said that India has got sufficient potentialities for research and development, our boys are doing very good research work and if we give much of leeway to the foreign drugs and other things in the matter of import and take shelter under the patent law, it will harm our development here. Can you enlighten us on this?

SHRI AMIN: Yes, Our Federation has over 200 members and we represent the business interests in the country, whether foreign or Indian, because as soon as foreign business come on Indian soil, they have to abide by our rules and regulations and must work for the economic growth of the country. From that angle, we take our stand. There is no question of our supporting foreigners or anything like that. We would certainly like that research should develop fast in our country and our industry should grow fast and most of the drugs we are importing today must be manufactured here. We support business interests in India which includes anyone who has established here and functions under the country's laws.

SHRI NAMBIAR: Many of your members are producers themselves. In how many of them, have they research and development wings doing serious drug research?

SHRI AMIN: From my personal experience, in our own company we have been spending 4-5 per cent of our turnover purely on research. We have developed many drugs and are also doing a lot of applied research ourselves. The same is the case with many other companies. So all the drug industry units in the country are spending on research, some more some less. But the trend is towards more and more research because with more innovations and the situation of the drug industry in the world which is one keen competition, unless you develop newer and better products, you will go out of business.

SHRI ACHUTHA MENON: Representatives of some organisations have deposed before us that it would be in the best interests of the country to declare a patent holiday for 20 or 10 years during which there will be no patent protection whatsoever in the country. The reason given is this. Now especially in the medicine and pharmaceutical field, there is domination by foreign interests because they have more capital, technical know-how etc. and their patents are registered and valid in India and Indian enterprise is not able to compete with them. Even if some Indian enterprises were to discover some new product, they are not in a position to develop it because of the patent rights held by foreigners here. So if patent protection is removed, indigenous industry will be able to develop on its own and will be able to supply the country with all its drug requirements, and this is the best way to develop our industry and economy. You hold a contrary view to this. Can you explain?

SHRI AMIN: I am not holding any contrary view to what you are expressing except that instead of complete abrogation, the licence or right provision in the Bill will take care of that aspect. Then again, this growth does not depend entirely on patent; there are many other factors which the drug industry or any other industry has to take into account; there is the difficulty of finance, licensing and a whole host of other obstacles to be got over before you can develop things. There may have to be some foreign component, may be for capital or for raw material etc. This is a whole complex situation where all factors operate, and if all these factors become favourable and if the licence of right provision stays, I do not think there will be any need for abrogation of patents.

Again we must understand that we are one nation in the world and there is no reason why we should do something which is probably not very correct. Italy has certainly developed its

drug industry, but now they are finding it difficult because of absence of patent rights which is creating a lot of problems between Italian firms themselves.

SHRI ACHUTHA MENON: All these things were also explained to us. Still they say that abolition of patents is the correct policy in the best interests of the country. You do not agree.

SHRI AMIN: I personally would not agree with that viewpoint because the licence of right clause will take care of that. Now inventiveness in the country itself is generating a lot of original research. If we do this, we will have no moral right to go to other countries and sell our know-how.

SHRI ACHUTHA MENON: One clarification re cl. 48. Apart from emergency, there may be a case where the patentee is selling his product at a very high price. Government also must have the right to see that supplies for the purpose of its institutions, hospitals etc. are got at reasonable prices. In the British law, there is a similar provision whereby they get all their requirements for the National Health Service—you know there is health insurance there—and by this means they are able to get supplies at reasonable cost whereas in the open market the costs are very much higher. For such purpose, is not cl. 48 necessary?

SHRI AMIN: Not at all, because if there are enough people taking recourse to the licence of right provision and there is competition—which there is already here; we have over 2,000 drug manufacturers—the situation can be taken care of. You will find that prices today in our country for the majority of our products are far below world prices prevailing in any other country. It is only in respect of the basic manufacture that prices are 2-3 times higher than world prices, but that is because the whole economy is operating at a very high cost level, our raw materials and labour are expensive, capital investment is very high, and there are a lot of hurdles to cross. Even in respect of basic manufacture, if for the same product, three or four units compete, prices will come down.

SHRI ACHUTHA MENON: This is an interesting point. You say cost of production in India is the highest.

SHRI AMIN: For basic products.

SHRI ACHUTHA MENON: At the same time, prices of end-products are the lowest.

SHRI AMIN: Prices of formulative drugs, not basic ones.

SHRI ACHUTHA MENON: Then how is it possible to sell these end products at the lowest price?

SHRI AMIN: It is because of very heavy competition. There are two thousand manufacturers of formulated products.

SHRI ACHUTHA MENON: I would like to get some more facts and information on this particular aspect of the matter because it is very difficult to believe this. My impression is quite different.

SHRI AMIN: May I explain this aspect? This is about the price-structure. About the basic manufacture, for example, in the manufacture of a basic drug such as vitamin B12 or B6 or B10, in that manufacture, there are only two or three manufacturers within the country; because there are only two or three manufacturers there may not be enough competition, but at least when there are two or three there is some competition that kind of manufacture of a basic drug will need sugar and probably some imported component or other local component. All those prices compared to the international prices are higher. We need starch, we need sugar and other chemicals, but most of the other basic chemicals today produced in the country are at a

higher price. Even our soda ash and caustic soda and chlorine today cost two or three times more than that in other parts of the world. So, all the inputs which go into the manufacture of the basic drug are already high-priced. There is no economy of scale because we are still developing our chemical industry. When we are developing on a smaller scale, the plant investment and the overhead etc., add up to the total cost and that is why the price of manufactured goods in our basic drug industry are two or three times higher.

But when it comes to the question of formulations, there is packaging and tableting and distribution. All these things are so competitive in our country that there is no comparison with the high prices that are prevalent in most of the other countries which have developed. Our retailers will retail with a 10 per cent margin. In foreign countries, nobody will touch the goods unless there is a 50 per cent margin. These are the things which make the retail product available to the consumers in the other countries at higher prices, whereas the formulated products are available here at competitive prices.

SHRI ACHUTHA MENON: About clause 48, there are a few cases in which there is more or less a monopoly so far as one particular product is concerned, and the Government find that during certain emergencies, and other situations, it is very necessary to have large supplies of this particular product at comparatively reasonable prices. So, in such circumstances, should not the Government have the power to resort to clause 48 in order to see that the supplies are made at a reasonable price?

SHRI AMIN: I shall answer it in a different way. We on the side of the Federation are absolutely against any monopolistic advantage to any one party. If the drug is not available within the country, it will have to be imported in large quantities and put in the market, and distributed through the real trade channels and then automatically the drug prices will come down. And the licence to import those drugs should be given to some manufacturers, some parties, and we should not restrict it any one party to manufacture or import. The rules regarding licensing and the Industries (Development and Regulation) Act must operate and the Government must see that more people do come in the field and produce these important drugs. If necessary, import also must take place. When the imports do take place, and if the licence is properly taken and exercised, and if we decide four per cent royalty should be paid, then that four per cent royalty should be paid to that particular patentee if there is a patentee in this country. Four per cent is not going to make any material difference.

What you are probably referring to is the very high margin which may be double or treble. But if we are having a law, there must be some sanctity. In emergencies, if it is defence or some epidemic, it is entirely a different issue. But if it is just to tackle high price, then clause 48 should not be used.

SHRI KRISHAN KANT: I think there is some confusion in your statements here, because if we look to it, we find that sub-clause (a) and (b) relate to importation of patented machine or drugs, while sub-clauses (c) and (d) refer to the making of patented machines or drugs. I can appreciate your point if you say that some compensation should be paid when the Government utilise all the patents for production in India but not for importation. So, it is better if you do not confuse one with the other.

Then, you have mentioned the case about Canada, which may at any time use any patented invention. . . if a reasonable compensation for use thereof is paid, and any decision of the Government is subject to that.." and so on. So, you have a case for confining yourself to (c) and (d) but

you should not confuse with (a) and (b) where only importation is required.

SHRI CHENTSAL RAO: We are aware of the fact that in clause 48, there are two parts, one for importation and the second for making use of the patent. In the very cryptic and short memorandum which we have submitted, we did take note of both the parts in clause 48, namely, imports as well as utilisation. As Mr. Amin has pointed out, the question is simple and straight forward, namely, we do not believe in monopolies by anybody in any field. At the same time, if we really want to take away monopoly, the solution to it is not imports but increased production in the country and greater competition.

There are a number of instances where I can show that one has entered the vicious circle—because of apparent scarcity imports one permitted and as you know, in quite a few instances, *ad hoc* imports have really stood in the way of the natural growth of indigenous industries.

Coming back to patents and to the drugs in particular, if there is an epidemic in the country, that situation is different from inadequacy of supplies at any particular point of time. When the industry has not grown there will be inadequacy. If the demand increases, there will be inadequacy. I think there is a distinction to be drawn here. We must clearly define what an emergency is, and the normal short supplies are bound to be there. In our economy it is not as if we have got full employment, and it is not as if we have grown to our maximum extent. This inadequacy is found in drugs and everywhere else also.

SHRI KRISHAN KANT: You may have read the report of the US Senate Committee—the Keafauver Committee's report. They have mentioned the manner in which the patents tend to stimulate competition and lead to monopoly, oligopoly, etc., in the drug industry. A view is also put forward that patent is so construed as to be the base for international cartel. Plenty of illustrations have been shown to the effect that drug manufacturers cash in on patent applications and as to how they resort to intervention in patents and so on.

Yesterday, a witness told us how they decide things in relation to monopoly prices and how things are done so that the prices may remain at a very high level. The Keafauver Committee has said that the prices in India have a very broad spectrum and the price of Aureomycin is among the highest in the world and they say that as a matter of fact in drugs generally, India ranks about the highest-priced nation in the world because of inverse relationship between per capita income and the level of drug prices.

In view of the evidence that we have, and since we know how the drug cartels in the world function with monopoly prices. and as you know, when some foreign companies are part of the international cartel, is it not necessary for Parliament to safeguard our people from 'the dangers, through suitable provisions in this law?

SHRI AMIN: This committee report is a 10 year old report.

SHRI ATAL BIHARI VAJPAYEE: Situation might have worsened....

SHRI AMIN: Or improved. We are not at all for monopoly. There is no license of right in American patent Act., That is why this broad spectrum has come up. This year there was settlement by five American firms, you may be aware of this. They had to pay 100 million dollars for the American consumers and consumers of other products and within our country also. There was no license of right provision. That is why it had to be made. Otherwise other manufacturers would have gone into the field. 13 years advantage that they enjoy of high prices would not have been there. We welcome licence of right in the country With

this Bill there is not likelihood of that sort of thing happening in the country. When we talk of high prices of drugs it is imported drugs only. We are interested in basic manufacture and formulations in the country. There are two distinct cases. One is imported; it is not manufactured in the country. We have to pay the price. If it is manufactured in the country it is a different thing.

SHRI KRISHAN KANT: AIMO and other organisations are there. Their view is quite different. From the Federation of Commerce. Whereever Indians are there they are against. They do not want it. Where foreign companies are members their views are different. Why is it so?

SHRI AMIN: I cannot tell about their view point.

SHRI KRISHAN KANT: We went to various research places and they say the Indian industry started coming to our laboratories after you put restriction on drug patents. If our research is encouraged, we can go forward, that is their view.

SHRI AMIN: I have not understood you.

SHRI KRISHAN KANT: Drug patent is not given for last 2 years. They teld us, now the industry has started coming to us. Otherwise they don't look to us.

SHRI AMIN: That is not the real thing. Drug industry is coming up very fast in the country. From 10 crores this has come to 200 crores, 20 times. When it needs that kind of effort apart from its own facilities the industry will go to other agencies which can help in research and development.

SHRI KRISHAN KANT: Clause 87 is there. You can go to the high court and then the thing is stopped. For 7 years the person could not get licence and loses interest. Because of inherent shortcomings these things do not work.

SHRI AMIN: About compulsory licensing and licence of right in the Bill as it stands today there is something which we welcome. Compulsory licence provision as it is enacted in the Bill is defective. They will be deprived of the benefit for the last 7 years. We do not support that. We would like to have automatic licence of right. Our research work or project work can go ahead.

SHRI KRISHAN KANT: You say under licence rights, the advantages accrue neither to Govt. or general public but only to third party; they make unjustified profit.

SHRI AMIN: That is not correctly worded.

श्री पीताम्बर दास : प्रोडक्ट को पेटेन्ट करें या प्रोसेस को ? आपकी क्या राय है ?

SHRI AMIN: I would like to have process only, not product ;process leading to particular product. There are only process patent in countries such as Germany. We would like to have process patent only. We would like that word in the Bill to be deleted.

श्री पीताम्बर दास : जब आप प्रोसेस पेटेन्ट की सिफारिश कर रहे हैं तो पीरियड को आप लम्बा क्यों करना चाहते हैं । प्रोसेस को अगर हमने पेटेन्ट किया तो पीरियड पर कोई असर नहीं पड़ेगा, चाहे 10 साल रखें या 4 साल रखें ।

I can understand if one who advocates for product patent insists on a longer period. But why should one who advocates process patent insist on a longer period?

SHRI AMIN: Process and period are relevant. When you take a patent, you try to cover it from all sorts of processes that you can think of because that is to the advantage of the patentee. There is nothing wrong in it. When you have to break a process and when the process coverage is so wide, you have to make a tre-

mendous effort to develop something which is not conflicting with the patented process; and it takes a lot of ingenuity and hard work to develop that; therefore there has to be a sufficient period for adequate compensation. There has to be some link between invocation and the period.

श्री पीताम्बर दास : जैसे ही किसी का पीरियड ग्राफ पेटेन्ट खत्म होता है तो वैसे ही उन दवाइयों की कीमतें गिर जाती हैं । यह बात कहां तक ठीक है ?

After the expiry of the patent period, there is a tendency for the price of the drug to fall. Do you agree with this?

SHRI AMIN: What you say is true to a certain extent, but not entirely. The law as it stands gives complete protection. If you have a licence of right and if the royalty is only 4 per cent, then the fall can be only to the tune of 4 per cent.

MR. CHAIRMAN: After the patent period is over, there is a tendency for the drug price to fall. Can you explain?

SHRI AMIN: Because many more people will enter into that field and there will be competition and that competition will reduce the price.

SHRI PITAMBER DAS: I do not want the reason. I want to know if you agree with this or not?

SHRI AMIN: What you are asking has different connotations with different types of drugs. In the case of certain drugs, the price will not fall while in the case of others the price will fall substantially depending on the competitive situation of that particular drug in the country. If there is one manufacturer of a particular drug, then even after the patent expires, there may not be any fall in price. But if there are more than one manufacturer, then there will be a substantial fall.

SHRI PITAMBER DAS: Don't you think that we should break monopoly in this field?

SHRI AMIN: I am hundred per cent for breaking monopoly in any field. I want competition and that is why I am very glad that you have a provision here for licence of right which allows any manufacturer to enter into that field.

SHRI PITAMBER DAS: If you agree that breaking of monopoly is to the advantage of the country, don't you think that the earlier it is broken the batter it is?

SHRI AMIN: I am in full agreement with you.

SHRI PITAMBER DAS: Then why do you object to a shorter period? The falling down of the price will, according to you, depend upon the competition. If you want to stop monopoly and develop competition, why not we do it earlier?

SHRI AMIN: But that can be stopped by other measures. For instance, there is a licence of right. As far as the period of patent is concerned, we have to go by the period allowed to others, apart from drug. If you are allowing 14 years for others, then there has to be some relationship with that because law has to be equitable to all—whether it is the invention of a mechanical thing or chemical thing. That is why we have been saying that there should not be too much deviation between these two periods. We are not for monopoly. We welcome competition. But at the same time we would urge the Members to remember that in all countries foreign patents are always more—there are so many other countries simultaneously inventing these things. In our country we must have the benefit of the inventions taking place in the world and we must have some conformity with the practice in other countries.

SHRI PITAMBER DAS: You have no objection to reducing the period.

Your only objection is to the discrimination. Whether it is 10 or 14, it should be uniform. You do not mind if it is 20 or even 2, but there should not be two separate periods. Is that what you mean?

SHRI AMIN: Yes.

MR. CHAIRMAN: When you say 'yes', are you agreeable to reduce the period of patent to 7 years or even 5 years in case of all?

SHRI AMIN: There are two things. One is that there should not be any discrimination between patents for different commodities. About the reduction of the period of the patent, we will have to fall in line with what is happening in the world. We should not deviate too much from the world practice because we are part of the world. If we try to follow our own policy—I have not thought about the repercussions—it might at some stage prove to be disadvantageous to us. Perhaps we might give a lead in reduction so that other countries may think about it. But we should not deviate too much from what is happening elsewhere in the rest of the world.

SHRI PITAMBER DAS: Can you suggest to this Committee any rational basis for determining this period?

SHRI AMIN: The rational basis depends on how much we want to reimburse the inventiveness. We have to think of how much time the inventor is going to take to produce a thing. Looking to these, some period has to be fixed and that is why say that the period of 14 years is reasonable.

SHRI PITAMBER DAS: The considerations that you mentioned will vary from country to country.

SHRI AMIN: There will be slight variations. But with the vast communication that has developed, the variation will not be that much.

SHRI PITAMBER DAS: How much variation has there to be is a matter of opinion and that may differ from country to country, and from person to person.

SHRI AMIN: I may not be able to subscribe to that particular view, but there is some rationale which can be worked out.

SHRI PITAMBER DAS: Coming clause 48, regarding compensation, you have yourself accepted that the rights of the Government should be rather limited. The Government should have the right to acquire all these things, without compensation, only in very exceptional circumstances—that is what you have stated Now, I would like to know whether the existence of the word "merely" in different sub-clause is not sufficient to restrict that right.

SHRI AMIN: "Merely" will not be adequate.

SHRI T. V. ANANDAN: Would you agree that the intention of the Government in clause 48 is not profit motivated but only service motivated?

SHRI AMIN: What the intention of the Government can be is difficult for me to completely understand. But it certainly would be that it is in the interest of the country, otherwise the Government would not think of it. But it has to be viewed from various angles. It is not just a straight thing as you think.

SHRI T. V. ANANDAN: No motive of profit. Do you agree with this?

SHRI AMIN: Of course, Government and profit have no relevance.

SHRI T. V. ANANDAN: There has also been evidence tendered before this committee that one drug today is superseded by some super drug, and even 10 years should be reduced to five years in the interest of the

country and industry. You still hold the views that the period should be increased to 14 years?

SHRI AMIN: I have not quite understood what you are saying. New drugs are definitely coming and continue to come. But it does not mean that old drugs become completely out of the market. They continue in the market, because just bringing the new drug is not the only thing. This also involves developing that drug, putting it into doses, developing the marketing channels, etc. Doctors are not always willing to use new period. In fact, the period for put-period. In fact, the period for putting the drug to commercial use is lengthening.

SHRI T. V. ANANDAN: Suppose the discrimination between the drug industry and other industries is removed and the period is reduced to five years, will it be agreeable to you?

SHRI AMIN: I have already said that we want that there should not be any difference between one industry and the other. There should be some sort of rational thinking behind it.

SHRI C. C. DESAI: It is quicker in drugs and medicines that in engineering idustries.

SHRI AMIN: That is not quite correct. As I told you, drugs cannot be marketed straightaway. First, you invent them in the laboratory, then test them on animals, then try it in hospitals and clinics under the strict supervision of doctors, then prepare it in dose form and put it in the market; you have to give heavy sampling.

SHRI VAISHAMPAYEN: You have just now stated that the producers in this country invest 4 to 5 per cent of their capital in research. May I know from your whether this research that has been carried out, so far as drugs are concerned, with this investment of 4 to 5 per cent is production oriented; or freedom to the scientists given which is essential in the research institutions?

SHRI AMIN: Research can be developed only in conditions of comparative freedom. Without freedom, the scientists do not give their best, because they have to go on thinking 24 hours on a problem. A sort of freedom has to be built. If you do not build up that freedom, you do not get the best out of the research team. There has to be clearer thinking. This is best done in a comparatively free atmosphere.

SHRI VAISHAMPAYEN: My Second question is that you have suggested reference to the court, as a number of questions will arise. Don't you think that that is a legnthy procedure?

SHRI AMIN: As I said in the beginning, we welcome the 'licence of right' provision. There you have to apply to the Controller and then the party who is interested can go to the court. That provision is superseded by the new provision in the Bill. The 'licence of right' provision is a very welcome feature, because the courts really delay and it is coming in the way of growth. It is automatic.

SHRI VIDYASAGAR: Only the terms of licence are justiciable. He can start manufacture.

SHRI AMIN: In the Bill you have not provided for that.

SHRI VIDYASAGAR: Clause 87 provides.

SHRI S. K. VAISHAMPAYEN: So, it is justiciable?

SHRI VIDYASAGAR: Only the terms are justiciable. But he can begin and continue the manufacture.

SHRI C. C. DESAI: But who will continue and begin manufacture in uncertain conditions, because one does not know what price will be allowed?

SHRI AMIN: My impression is that there is a certain amount of definiteness in the Bill. If it is not there, I would urge Members to introduce definiteness in it.

SHRI S.K. VAISHAMPAYEN: From your observations I find that you do not stand for a ceiling of 4 per cent on the royalty. Suppose the present clause is retained and an additional clause is put in under which Government will be empowered to intervene in genuine cases to give a greater percentage, would that satisfy you? Do you like an additional clause or do you stand for the retention of the present clause?

SHRI AMIN: As I understand, there is a certain definiteness in the Bill because you pay 4 per cent and not more than 4 per cent.

MR. CHAIRMAN: His point is this. Suppose an additional clause is put in to the effect that in exceptional cases Government in their wisdom may give a greater percentage, would that be all right? Would that satisfy you?

SHRI AMIN: Yes.

श्री सरजू पाण्डेय : बहुत से लोगों की यह राय है कि इस पेटेन्ट एक्ट की जरूरत नहीं है। इसके बारे में आपकी क्या राय है ?

SHRI AMIN: I personally think that the Patent Act which is there already should not be abrogated, but we should cotinue to have it. But we should have the Bill enacted in such a way that competition is not stalled and the only monopolistic advantage which a person can have is to the extent of the royalty only. Complete abrogation of the patents is something we would not like.

श्री सरजू पाण्डेय : इस एक्ट के बनने के बाद क्या मोनोपोली को एनकरेजमेंट मिलेगा या नहीं मिलेगा ?

SHRI AMIN: Then there will not be any monopilistic tendency because the licence of right will make other competitors to enter the field and there will be competition.

SHRI ARJUN ARORA: You said that there was an expenditure of about 5 per cent of the turnover on research. Is that true of all the manufacturers?

SHRI AMIN: I cannot say about other manufacturers. I was giving the example of my own company. But as I understand it, the other manufacturers are also spending on research. It is difficult for me to indicate the percentage which they are spending.

SHRI ARJUN ARORA: I know that your company has done good work. But do you not think that such expenditure should be made compulsory for all manufacturers?

SHRI AMIN: Anything compulsory will not bring in results. Money may be spent but you may not get results. It is something which one has to do, and the competitive forces working within the country will make them spend, because unless they do it they will go out of business.

SHRI ARJUN ARORA: Are you in favour of process patents or product patents? What we find is that when a patentee applies for a patent he mentions all possible process. Yesterday we were told that with the introduction of computers, the number of possible processes will become even greater. Do you not think that only that process should be patented which a particular manufacturer is actually using or wants to utilise and not all possible mathematical combinations?

SHRI AMIN: I quite agree with you. If you can find a way to make it applicable only to the process which he is using or has developed, that will be the right thing.

SHRI C. C. DESAI: I would like to address my questions to you more in your capacity as Shri Ramanbhai Amin and chairman of the Alembics than as the president of the Federation, for this reason that the Federation contains a number of units; it is a cosmopolitan body, and it is a composite institution; some are wholly Indian owned, and some are partly foreign owned and partly Indian

owned. So far as Alembics are concerned, they are wholly Indian owned. They have done a vast amount of work and are one of the front-ranking institutions in the drug industry in the country. If you can divest yourself of your capacity as the representative of the Federation, I would be grateful.

One of the criteria for judging the Patents Bill is that it must encourage Indian research and industry. What according to you will be the result of the Bill as it is drafted on the development of Indian research and industry? An argument has been advanced that the Patents Bill ought to be weakened in order to make essential drugs available to the people at more reasonable prices having regard to their importance for the health of the community. In the light of your own experience, what would be the effect of this Bill on Indian research?

SHRI AMIN: As an Indian company we find that our research people are continuously hampered because as has been pointed out just now, a patent as granted today covers a large number of processes, and if we have to exclude those processes and develop our own process, then it takes a lot of time. That is why, as I understand it, the provision for licence of right in the Bill will give a certain assurance to the firm which is indulging in research that even if there is some encroachment at some end there will be only a limited liability of 4 or 5 per cent; then one can go ahead and develop one's own process, and the research team will have a certain type of freedom to develop this process. That is why in the Alembics we are very keen that a licence of right provision must be there, and there must be some definiteness and the possibilities of litigation later on and stalling should be avoided as far as possible by proper wording of the Bill.

SHRI C. C. DESAI: One of the arguments for a weak patents Bill is that when a country is under-developed, it is in the interests of that country to have a weak patents Bill so that it can pilfer or copy or imitate other people's patents and make advancement in the country. What do you think of that? What is the situation of this country at the present stage? Is it in the category of developed countries or under-developed countries or is it a country which is sufficiently developed so that it could be regarded as a developed country for the purpose of this Bill?

SHRI AMIN: I personally think that weakening of the patents will not help us much. So far as the present Bill is concerned, we find that already we have taken a number of years to bring about the necessary amendments. At least now there should be some definiteness and we should have the Bill enacted within a reasonable period of time.

Another thing that we have to remember is that the drug industry has already grown to a certain stature, because our internal market is so big and it is really working as a dynamic force for continuous growth and development, and we may be coming up with a lot of new inventions ourselves, and when we have developed our own new inventions, we would like to exploit the same in other countries also. So, looking at it from this angle, I would not like the Act to be made weak. A definite licence of right or a provision like that will take care of the particular point.

SHRI C. C. DESAI: You said that there should be no distinction between food and drugs on the one side and the other industries on the other. Is that view also shared by the engineering unit members of the Federation?

SHRI AMIN: I think so.

SHRI C. C. DESAI: Supposing because of the imperative necessity of having a short duration for food and drugs, the Committee comes to the

conclusion that it should be of a short uniform duration, will not the engineering units kick up a row?

SHRI AMIN: As a Federation, we would like to have uniformity but not for a very short period, as suggested by some members.

SHRI C. C. DESAI: One of the reasons given for the licence of right provision is that the 4 per cent compensation should be sufficient to the inventor. Most of the inventors are paid research workers getting salaries. They do not share in the compensation paid or royalty paid. That goes to the company employing them. But the company gets practically full exemption from income tax on expenditure incurred over research and development. So the royalty does not benefit the research worker. Correct?

SHRI AMIN: No, not completely, because in modern research there has to be a team; the one-man inventor is gone.

SHRI C. C. DESAI: Will the research worker get more than his monthly salary prescribed due to the compensation paid?

SHRI AMIN: There is no direct relation, but there is an indirect relation, in the sense that every organisation knows which are its group of research workers and they would pay them and not like to lose them. That is how they benefit. It indirectly benefits because the benefit goes to the organisation where all the people are employed.

SHRI C. C. DESAI: You said the royalty should not be fixed at a uniform 4 per cent but it should be left to the Controller or tribunal to determine the rate in individual cases. Who should determine the royalty?

SHRI AMIN: A tribunal. I would personally like some definiteness in the Bill itself. Genuine cases of difficulty may have to be referred to a tribunal; in that case, there should be a tribunal which may periodically clear up the cases.

SHRI C. C. DESAI: You prefer a tribunal to a court of law.

SHRI AMIN: It will be quicker. Also there may be a certain amount of expertise necessary and there has to be built up a case law.

SHRI KRISHNA KANT: What about appeal from the tribunals decision?

SHRI AMIN: No appeal; it should be final.

SHRI C. C. DESAI: Re: the date of operation of the patent, one view is that it should be from the date of filing specifications, the other that it should be from the date of sealing. Which is the right date?

SHRI AMIN: It should be from the date of filing of the complete specification.

SHRI C. C. DESAI: Not from the date of sanction of sealing?

SHRI AMIN: I personally think that will create a lot of complications, because from the filing of complete specification to the sealing date, it may take 3-4 years, and that will be an additional advantage to the patentee if he is interested in delaying it.

SHRI C. C. DESAI: That may be disadvantageous. If the period is ten years from the date of filing and 7 years from the date of sealing?

SHRI AMIN: If you want to distinguish between the two, that is very difficult.

SHRI C. C. DESAI: You should have only one date?

SHRI AMIN: I think it will be more correct to have it from the date of complete specification.

SHRI C. C. DESAI: What is the technical difficulty in having it from the-

date of sanction or sealing, because the patent becomes operative from the date of sealing? Until then it is merely an application. If it is from the date of firing, you are in fact shortening the duration of the patent.

SHRI AMIN: I had worked out a table which is not readily available with me now. From filling to the sealing ma ytake 3 to 4 years. That is why. I say that if the intention is that too much advantage should not be given to the patentee, we should word the provision in such a way that it would be in the interest of the patentee that the sealing takes place as fast as possible.

SHRI C. C. DESAI: That is an executive function; you cannot provide for it here in the Bill.

SHRI AMIN: Previously we had something like that—from the filing of the complete specification to the sealing should not take more than 22 months.

SHRI C. C. DESAI: One letter from the Controller saying that the application is not 'complete' is enough to upset that. It is at the discretion of the Controller.

MR. CHAIRMAN: The 22 months provision is an enabling provision.

SHRI AMIN: Yes.

SHRI C. C. DESAI: I still do not see the practical difference between date of filing and that of sealing.

SHRI AMIN: That will have to be a difference in period. We should enact it in such a way that it will try to shorten the period rather than try to lengthen it. What happens is that if I am a patentee and I develop a process, I would naturally like to have the period lengthened as much as possible.

SHRI C. C. DESAI: You still have the licence of right.

SHRI AMIN: But the licence or right will become operative from the sealing date.

SHRI VIDYASAGAR: During that period, nobody else can apply.

MR. CHAIRMAN: There is some sort of foreclosure.

SHRI B. D. DESHMUKH: You said you are in favour of a sound patent policy. There is a lot of criticism by other witnesses that the policy has been weakened by the amendment of sections 47, 48, 88, 89 and 104. What is your view?

SHRI AMIN: The present Bill as drafted is certainly far better than the existing Act, and slight modifications here and there should meet the requirements of the country.

SHRI B. D. DESHMUKH: By there amendments, has the policy been weakened?

SHRI AMIN: I think we have clarified it more. I do not think you can say 'weakened'. If introduction of the licence of right provision can be construed as weaking it, it may be so. That is a view point. But in my opinion, it is an improvement.

SHRI AMIN: The whole country will benefit because of the inventiveness of research people.

SHRI OM MEHTA: As employees what will the research people get?

SHRI AMIN: I understand from whatever talk I have had with our research staff that they would like comparatively to be engaged in developing newer and newer things. A certain type of patent protection does allow an organisation to go ahead and spend more money and allow the research workers to spend more money and develop newever products. This Bill, as drafted now, permits the research workers to go ahead and produce something new.

श्री आर० पी० खैतान : पेटन्ट होने से इसमें जो फायदा होगा, वह रिसर्च करने वालों को होगा या जो फाइनान्स करते हैं, उनको ज्यादा होगा—इसके सम्बन्ध में आपकी क्या राय है ?

SHRI AMIN: Research is a continuing process and the research workers are in the service for almost 20, 30 years. An invention which is developed today may bear fruit to the organisation after 3, 4 years. These people by that time may be devoting themselves on some other new inventions. The organisation is continuously earning something and it is able to feed the research. It may be that the benefits of a particular research work may come after some years, but it accrues to the benefit of the whole team.

श्री खैतान : रिसर्च पहले हो जाती है, फिर उसको पेटन्ट कराने के बाद जो कम्पनी उसको बनाती है, सारा प्रौफिट उसके हाथ में चला जाता है, लेकिन जिन्होंने पहले उस रिसर्च को किया था, उनको कोई फायदा नहीं मिलता है । हम अभी हाल में जब लखनऊ गये तो वहां की लेबोरेट्री के साइन्टिस्ट्स ने हम से कहा कि दवाओं के बारे में पेटन्ट होना ही नहीं चाहिये, इससे हमारी डेवलपमेंट को नुकसान पहुंचता है—इसके बारे में आपकी क्या राय है ?

SHRI AMIN: The licence of right provision will take care of the particular difficulty that the research workers are having. If that provision is enacted properly, it should help them. There is no need to abrogate the patent bill.

SHRI C. C. DESAI: Why don't you have of sharing the royalty with the inventor, say 25 per cent or so?

SHRI AMIN: It is not one person; it is the whole team which should get the benefit.

SHRI C. C. DESAI: At present it goes to the Company. You can distribute the money to the whole team.

SHRI AMIN: The Company belongs to the shareholders and workers, not only to the research team.

MR. CHAIRMAN: A progressive industrialist will naturally plough back the money in research wing; other industrialists may not do so. This distinction may be made.

SHRI MADDI SUDARSANAM: The patented medicines appear to be costlier than the unpatented medicines. Is that the argument for the withdrawal of the patent law?

SHRI AMIN: This term 'patented medicine' as commonly used by the chemists and the druggists has nothing to do with the patents. They call the registered trade mark of a medicine as the patented medicine.

SHRI MADDI SUDARSANAM: So that is not an argument for the withdrawal of the patent bill. Has the patent stimulated research in the country and if so, what is the state of research in the drug field with which you are very familiar?

SHRI AMIN: In the drug field, there has been much more result than in other fields. There is definitely far greater research effort in the drug field—newer combinations and by products—than in other sectors.

SHRI MADDI SUDARSANAM: When the licence of right is granted, the royalty ceiling has been fixed at 4 per cent. Some witnesses who appeared before the Committee have said that the ceiling is very low. What are your views?

SHRI AMIN: Whenever a party feels aggrieved, there may be a Tribunal which may go into it and give higher rates. There should be a certain definiteness, no vagueness about it.

MR. CHAIRMAN: You simplified the whole issue very much by stating that when the licence of right is there, the rigorous of patent law will. not affect the Indian people and if the licence of right is not there, there is no necessity for patent law also. Is that so simple?

SHRI AMIN: Patent law is definitely necessary. As I told you, we do believe in fair compensation and competition. When the patent law, as it has happened in some imported drugs, leads to creation of monopoly, then one who has a patent can hold the country to ransom. That is why there is the provision of licence of rights so that other people also can enter into the market and continuously bring down the cost of production and bring down the price.

MR. CHAIRMAN: The reason which is advanced goes against the retention of patent law. Where is its utility?

SHRI AMIN: It does lead one to continuously innovate and delop new things.

MR. CHAIRMAN: One has perforce to go in for research and innovation if he wants to survive in the modern market, if he is to subsist in the modern market.

SHRI AMIN: But, there are hazards in research and development.

MR. CHAIRMAN: Whether there is patent or no patent, you have to go in for research and development of new things if you are to survive in the modern market.

SHRI AMIN: I agree with that to a certain extent. But there is a certain amount of stimulating effect of patent protection. That is why we should not do away with the patents.

SHRI JUGAL MONDAL: You have said that there should be no distinction in the period of patents of drugs and food and also of engineering patents. Is this the view of the entire Chamber?

SHRI AMIN: Yes, there should not be any distinction.

SHRI JUGAL MONDAL: Do you agree that food and drug patent has got a wider and quicker market than of the engineering patent goods?

SHRI AMIN: Not necessarily so. With all the restrictions now in force, it takes quite a long time before an invention is exploited. We have to make toxicity studies or some other studies in the hospital before a drug invention is exploited commercially.

SHRI JUGAL MONDAL: That applies also to the engineering goods. You have to make a study and get the drawings and you have to have a chemical analysis of the material and so on. The jigs and fixtures have to be done and pilot training is also there. It is the same process.

SHRI AMIN: In the case of the others, you have to develop an invention and produce it to the concluding stage. In engineering, if we have developed the invention and produced that, there is no other blocade as in the case of the drugs.

SHRI JUGAL MONDAL: If you think on a mass scale marketing, that is quite a different thing. There is a lot of processing needed. But you agree that the sale volume of the package and drawings is much more than in the engineering goods and you have said that within a period of 15 years, it has gone up from Rs. 10 crores to Rs. 200 crores. Is it also possible in the engineering patents?

SHRI AMIN: There also a phenomenal increase. It can go to a greater extent. There is no reason why it should not.

SHRI JUGAL MONDAL: The entrepreneurs in the engineering patents will recover their investment within

the same period as in the case of the food and drug industry.

SHRI AMIN: That is also my viewpoint. There should not be any distinction between the two.

DR. SUSHILA NAYAR: You have stated that we need not fix the royalty at four per cent. Various people have told me and the Controller was also telling me that, in the collaboration and other agreements that have been reached, we have not allowed more than one to two per cent royalty up till now. The royalties allowed by the Controller of Patent are much less than four per cent and also the royalties that have been mutually agreed upon between the various parties are much less than four per cent. What is your objection to this four per cent, because, in actual practice it is much less than that?

SHRI AMIN: In actual practice, as I know, it is not much less. Even in the formulation, Government have allowed—they have stopped it now—7½ per cent royalty to be paid. It is now reduced. I do not know of any case where it is one to two per cent.

DR. SUSHILA NAYAR: Most of the people said it was one to two per cent.

SHRI AMIN: I have not heard of it. As a matter of fact, the normal practice is, it is never less than five per cent. If the patent is new, in foreign countries, between two companies it goes up to 10 or 10½ or 12 per cent. When a patent comes to an end, it gradually tapers off, may be two per cent, but if the life has to go through for five to six years, I have to pay seven per cent. It is a varying rate.

DR. SUSHILA NAYAR: I was given to understand that in actual practice, it is less than four per cent: one to two per cent only.

Further, do you think there is any justification for patenting formulations? It is only mixing up a little of this with a little of the other. There is no reasearch or originally involved. Why is the formulation to be patented at all? Can you throw some light on this?

SHRI AMIN: Actually I can tell you my personal view; as far as the Federation is concerned, we have not discussed this point, and arrived at any opinion in our Committee as to what should be our stand in regard to formulation. But, I personally think that there is less of necessity to give that sort of protection as far as formulation is concerned. That is my personal view, not the view of the Federation.

DR. SUSHILA NAYAR: You know why so often a patentee takes a patent and then goes on importing drugs from outside. He does not manufacture the drug within the country for many, many years. In some cases he may not do it at all. The only fact is that he has registered it, which can give him the sole monopoly of importing it at whatever price he wants. Would you consider it in the interest of the country that protection be given to him only when the party begins to manufacture it within the country? Otherwise, if the patentee is allowed to import or should any other individual be allowed to import, the risk is, in the beginning they import in order to create a market; you know there will be enough consumption of the drug. The market need not be a monopoly concern; it may be confined to others also. Will you throw some light on this? Anybody should be able to import; not necessarily the patentee alone.

SHRI AMIN: I personally think that in the provision of licence of right, as it is now, if there is a party and if royalty is to be paid, it automatically takes care of what you are saying. But this particular question that you have asked has several implications. If I am importing a parti-

cular drug from an outside source and if that source is also a licencee of the patentee, then the problem does not arise. We need not protect him because he is already protected in the other country where he is manufacturing and the other people should be allowed to import. But, what is normally operating is that the licences which are given to the various manufacturing units in other countries are exclusive, they are only for their use, and that is why it is almost impossible for other parties to import that particular product except through countries where there are no patents. He may be able to import it through Italy, sometimes perhaps through France or Germany or Japan.

DR. SUSHILA NAYAR: Now, the Drugs Act is found to be a very useful Act. Suppose, I take a patent and I am the only importer: I can sell it at any price I want to. There is no reason why you should not allow the import and why you should not give protection only when I produce.

SHRI AMIN: Protection should be given only when you produce in the country. I quite agree with you. I was thinking of the implication if we have patent protection within the country. But there is no need to protect just imports. You should be free to import as long as it is not manufactured within the country.

DR. SUSHILA NAYAR: You have stated that the life of a patent should be long. We have proposed 10 years and you have stated that it should be 16 years or something like that. You are aware that even in the United States they are thinking in terms of reducing the life of a patent to seven years. Further, we were told in our recent visit to a number of places that after the first three years generally the prices are reduced, which means that the greatest benefit that the patentee derives is during the first three years. In the circumstances, would you not agree that we should think in terms of seven years rather than 10 years or 16 years?

SHRI AMIN: I have already said that there should not be any distinction between the patent and the other. It should be equal. If it is 10 years for engineering goods, it should be 10 years for drugs too. This distinction should not be there. As I understand, in the United States there is no move to reduce it.

DR. SUSHILA NAYAR: We have got a note from the Secretariat here in which some people have been quoted.

SHRI AMIN: There is no move in the advanced countries to reduce the patent period. There has been a lot of thinking on the amending of the Patent Act as they also realise certain difficulties that we are having here.

DR. SUSHILA NAYAR: You will be interested to know that most of the arguments, and most of the points coming and representations made are from the Drug industry and there is hardly any outside drug trade. Why it is so?

SHRI AMIN: It is difficult for me to throw any light except to say that Drug interests are more active.

DR. SUSHILA NAYAR: Have the efforts taken so far hampered development in any way? Do you think when we fix royalty it should include giving know-how?

SHRI AMIN: Patent granted within the country could often create difficulties for our research team. We hope the licencee of right provision will take care of that difficulty. Patents and know-how are separate and can't be linked up. Even if we get it will be obsolete know-how.

MR. CHAIRMAN: We are very thankful to you and we have taken note of what you have said. Yours is cent-per-cent Indian industry. We are glad to have the benefit of your views. Thank you.

(The witnesses then withdrew)

II

ELECTROSTEEL CASTINGS LTD., CALCUTTA

Spokesman SHRI P. L. PASRICHA.

(The witness was called in and he took his seat)

MR. CHAIRMAN: In your letter you say about infringement or non-infringement of certain things: they are all personal matters and the Committee are not interested in that. The Committee is interested only in the framing of the Bill. If you have anything on that point, you may say. We are not concerned with your personal matters etc. It is for the court to say.

SHRI PASRICHA: We have cited certain cases in the Memorandum to bring certain points. There are two provisions (e) and (f) of 64(1).

This gives protection to some patentees which they do not enjoy at present. We say, this is not in the country's interest. In 1939 the Patents Bill of 1911 was amended, whereby the right was given to the Indian public to challenge any patent on the ground of prior knowledge of the process having been published anywhere, either in India or abroad. That right subsists till today. But that right, we feel, is being taken away by these two provisos.

SHRI JUGAL MONDAL: What is this prior knowledge?

SHRI PASRICHA: I shall explain. If the process has been notified or published abroad as may have happened in cases where a patent has been sought in some other country before it is sought in India, that would constitute one example of prior knowledge.

MR. CHAIRMAN: Can you elaborate it a little further?

SHRI PASRICHA: If someone in America has a patented process and he publishes that process in America or England or any other country outside India for whatever purpose he may consider necessary including patenting of the patent in one of those countries and subsequently he obtains a patent in India, then I have the right at present of challenging the validity of that patent on the ground that I have prior knowledge of the process abroad, long before and therefore I can resist his claim for infringement of his patent in India. This right was given to the Indian public by a deliberate Act in 1939 and when the Act of 1911 was amended and this right has been upheld by the High Court of Allahabad in Suit No. 2 of 1954 connected with Original Suit No. 3 of 1955. They upheld that this right is available to the Indian public to challenge a patent made in India on the ground that there was prior knowledge of this process abroad and it is in that context that we have submitted the memorandum. I am sorry that we have brought our own instance which is only illustrative.

MR. CHAIRMAN: Do you mean to say that the present amendment, if passed will affect that right of the Indian public and to that extent they will be put to a disadvantage?

SHRI PASRICHA: Yes. The public in India have in many cases invested heavily in processes which are or could be challenged under such patent. They have done so deliberately under the view that such challenges could be resisted. There are certain cases pending in courts on the same issue. They would be adversely affected. Therefore, our submission is that the Committee may consider deletion of these provisos.

SHRI ARJUN ARORA: There is much in what he says. Let our Draftsman examine it.

MR. CHAIRMAN: I think our Law Department will examine this.

SHRI PITAMBER DAS: We should not summarily reject it. We will consider it.

SHRI K. V. RAGHUNATHA REDDY: We have taken note of the point. When we come to clause by clause discussion, we will consider this point.

SHRI JUGAL MONDAL: Are you the manufacturer of electro-steel?

SHRI PASRICHA: That is the name of our company. We are manufacturing cast-iron pipes and steel castings.

SHRI JUGAL MONDAL: Is it a patented process.

SHRI PASRICHA: Tyton Cast-iron pipe joint is the patent held by America.

SHRI JUGAL MONDAL: Patented by which firm?

SHRI PASRICHA: By U. S. Pipe.

SHRI SEZHIYAN: Do they have patent in India? In which year they have taken?

SHRI PASRICHA: That I do not remember. But I believe that it can be successfully challenged under the present law, as it exists. And we may seek challenging it.

SHRI KRISHAN KANT: If the Bill is passed?

SHRI PASRICHA: Then I am debarred. This cast-iron pipe joint is a very important part of the pipe because it helps to join without lead which we have to import.

SHRI JUGAL MONDAL: Do you have factories here?

SHRI PASRICHA: It is near Calcutta.

SHRI R. P. KHAITAN: What is the total quantity that you are manufacturing?

SHRI PASRICHA: We have a capacity ranging between 25000 to 45000 tons of pipe a year depending upon the size of the pipe.

डा० सुशीला नायर : लेकिन ग्रारिजिनल चीज़ कहां से ली ?

श्री पसरीचा : बाहर से ली ग्रौर हमने उसको थोड़ा सा माडिफाई करके बनाया ।

डा० सुशीला नायर : दिक्कत क्या है ?

श्री पसरीचा : यू० एस० पाइप्स वाले फ़रमाते हैं कि हमने उनके पेटेन्ट को इनफ्रिज किया है ।

श्री जुगल मण्डल : जिस तरह ग्रापने माडिफ़ाई किया है, वैसे ही कोई दूसरा भी कर सकता है ।

श्री पसरीचा : कुछ लिमिट्स होती हैं । उसको चैलेंज किया जा सकता है । जापान ने किया है ।

SHRI F. A. AHMED, (THE MINISTER OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS): They are more clever.

SHRI PASRICHA: I concede the point.

DR. SUSHILA NAYAR: You would be happy if there are no patents.

SHRI PASRICHA: We don't say so. If I have a right not only in India but in some other countries also to challenge a patent successfully, I shall certainly try and exercise

DR. SUSHILA NAYAR: If there are no patents you can make whatever you want.

SHRI PASRICHA: We ourselves have sought patents for some two or three inventions we have made in one

of our companies in other countries. We went to Japan for patenting. We came up against the same thing. They told us, "when you sought the Indian patent, you had notified it publicly and so it is no longer notifiable in Japan for patenting. This is more or less on all fours.....

SHRI K. I. VIDYASAGAR: Under the Paris Convention, within one year it can be filed.

MR. CHAIRMAN: You give us a copy of the judgment of the Allahabad High Court.

SHRI PASRICHA: I shall be happy to do that.

MR. CHAIRMAN: Thank you very much. I am sure the Committee will take due note of your views on this Bill.

(The Committee then adjourned for lunch and reassembled at 15.00 hrs.)

III

INDIAN CHEMICAL MANUFACTURERS ASSOCIATION

Spokesmen:

1. Shri M. S. Sastry,
2. Shri A. M. Gadgil.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Mr. Sastry and Mr. Gadgil, we welcome you here. Please give a brief statement of what you propose this Committee to take note of. Thereafter, members will put you questions for clarification.

SHRI SASTRY: Thank you, Mr. Chairman. I am very happy to say that the ICMA have been invited to give their views on this important subject. I am sorry that two of our colleagues could not join us because one is ill and the other is abroad.

I would like to take five minutes to give the salient points which we think as important in respect of the Patents Bill, 1967.

MR. CHAIRMAN: What is the number of your members?

SHRI SASTRY: We have 160 members now, out of which 46 are Drugs and Pharmaceutical members. But the entire ICMA is interested in the Bill apart from the special interest of the Drugs and Pharmaceutical members.

MR. CHAIRMAN: Please note that your evidence shall not be treated as confidential; it is likely to be made public.

SHRI SASTRY: Sure.

The ICMA would like to concentrate its attention on three of the important clauses of the Patents Bill and the three are the following: (1) Clause 48, which gives powers to the Government to infringe Patent rights without compensation; (2) Clause 53 which discriminates between foods, medicines and drugs and all other items of patent in regard to the "term of patent"; and (3) Clauses 87 and 88 which empower Government to stamp "licences of right" on all patents issued on foods, medicines and drugs and also to fix an uniform ceiling of royalty on all inventions irrespective of the value of the invention. Our endeavour before the Joint Select Committee would be to focus the Committees attention on these three important clauses to the greatest possible extent.

The stand of ICMA on clause 48 is very clear. In the Association's view a patent is an "intellectual property" acquired by the inventor as a result of his efforts and investment. Infringement of patent rights by the Government for whatever purposes, in effect, is a repudiation of the fundamental concept of a patent as a property. It is therefore against the basic objectives behind the grant of a patent as set out in clause 83. Such

infringement proposed in the Patents Bill would be damaging to the general public policy of the Government, which is to encourage invention and development of indigenous research.

The ICMA suggests that, only in case of emergency like war-time or at the time of an epidemic the Government may exercise the right to use patents and this too after payment of due compensation. Such a provision has already been made in clause 100 of the proposed bill and as such, clause 48 should be deleted with the exception of sub-clause 48(d) which may be retained.

Under clause 53 in the proposed Patents Bill, 1967, the "term of patent" for all products other than foods, medicines and drugs has been fixed a 14 years. However, in the case of foods, medicines and drugs, the period has been fixed at only 10 years from the date of filing of the complete specifications for a fresh application. For all existing patents the term has been fixed at 10 years from the commencement of the Act or 16 years from the sealing of the patent, whichever is lower. There is no provision for extension of the term of patent. It can be seen that patents on foods, medicines and drugs have been deliberately discriminated against by fixing a shorter term of patent of 10 years from the date of filing the specifications. Since it is well known that it takes at least 2 to 3 years to seal the patents after filing the applications and a further period of 4 to 5 years to develop the pilot plant and scale up activities before any commercial exploitation is possible, the ICMA feels that the term of patent in the case of foods, medicines and drugs also should at least be the same as it is in the case of others *i.e.* 14 years and this should be calculated from the date of sealing the patent. Further, a provision must be also made to extend the term of patent by an appropriate period in deserving cases.

As regards the stamping "licences of right" at the time of issuing the patents, the Association is strongly against this proposal. The Association feels that at least a period of three years should be allowed after the sealing of the patents for the inventor to try and exploit his patent commercially. However, a provision may be made for the granting of "compulsory licences" after the lapse of three years from the date of sealing the patent. For such compulsory licences the inventor should be adequately compensated with an outright licence fee or a suitable royalty rate which could be negotiated between the patentee and the licensee. In case there is no agreement between the patentee and the licencee, the Controller of Patents may award an adequate compensation, taking into consideration the value of the patent and the investments made on it. The decision of the Controller of Patents on such awards, however, should be subject to appeal in a court of law.

The proposed provision of the stamping "licences of right" on all patents on foods, medicines and drugs at the time of sealing the patent as provided in clause 87 should be deleted.

The "ceiling on royalty" at an uniform rate of 4 per cent as provided in clause 88(5) of the proposed Bill, irrespective of the value of inventions, is considered a retrograde step and is not conducive to a strong patent system. If this clause is left as it is, the incentive to research and development in the industry will be greatly curtailed and this would adversely affect the development of the industry in the country. As it happens, the number of patents by the Indians have been gradually increasing from year to year. A recent report says that the number of Indian patents in 1967 was 1,125 as against 960 in the previous year, 1966. Even here, it should be seen that nearly 700 are individual patents. If the ceiling on royalty is fixed at 4 per cent, the incentive for such indigenous research and patents would be definitely curtailed and thus adversely affect the

development of the industry. This is true not only for the drug and pharmaceutical industry but the entire chemical industry. In 1967, we had about 5,469 patents, out of which nearly 2,260 are chemical patents. About 42 per cent are chemical patents. So, it is quite clear that in an industry like the chemical industry which icludes also the drugs and pharmaceutical industry which has come to a stage of take-off, the free flow of technical know-how from foreign countries is very essential, and if this free flow of technical know-how is necessary, it is necessary to have a strong patent system and a strong and protective patent system at that. Otherwise, the absence of a strong and protective patent system would lead to secrecies in important discoveries and such secrecies are not in the interest of the flow of scientific knowledge.

Further, the low rate of royalty of 4 per cent maximum, and that to taxable, will not encourage the flow of technical know-how from other countries. At this stage of development in our country when we are obliged to import technical know-how from other developed countries, conditions should be such that the flow of technology is easy. In order to keep this flow of technology unimpaired, the Association submits that clause 88 (5) should be complectely deleted and the existing clauses 84 and 85 may be made applicable to the inventions on foods, drugs and medicines also. I do not want to go into the various details, but this in short is what I would like to submit.

MR. CHAIRMAN: With regard to licence of copy right it has been the opinion of so many that licence of right will minimise the mischief of monopoly which patents may lead to. But you suggest that the licence of right is a retrograde step. Could you elaborate on this? Do you mean that licence of right should not be automatic but it should be given after some time, and if so, what are your arguments in favour of such modification?

SHRI SASTRY: As I have said, a patent comes out of a certain amount of effort and investment on the part of an individual or an organisation. There is an investment in this by an individual or an organisation. If this intellectual property gained by some effort and expense is denied the immediate use of exploitation of its own finding, it naturally means that the incentive to such inventions would be definitely curtailed.

I am strongly for compulsory licences because we cannot do without compulsory licence but the compulsory licence should be given after about three years from the date of the patent, so that meanwhile, the inventor has adequate time to exploit or to get a fair compensation from the person who exploits his invention. If this is not done, then automatic giving of licence of right would diminish interest in the organisation as well as in the individual in research and development.

SHRI SEZHIYAN: We are glad to have the memorandum prepared by you and circulated to us. The memorandum does not, however, bear any date. Could you tell us when this was prepared?

SHRI GADGIL: The first memorandum was prepared and sent as early as August, 1968. The latest was in March, 1969. We have sent two, a first one and a supplementary one.

SHRI SEZHIYAN: I am referring to the one which contains two annexures, one being a copy of a letter dated the 7th October, 1964, and another containing some proposed amendments. This was submitted by you in March, 1969?

SHRI SASTRY: It was a supplementary note which was sent in March, 1969. Earlier, in January, 1969 we had sent a memorandum; we had referred to the earlier letter in that,

and that was why we had enclosed a copy of the correspondence.

SHRI SEZHIYAN: Which is the final memorandum?

SHRI SASTRY: The final one was sent in March, 1969.

SHRI SEZHIYAN: Could I have the one sent in January?

SHRI SASTRY: Yes, I shall pass it on to you.

SHRI SEZHIYAN: I shall reserve my questions to the end.

SHRI ACHUTHA MENON: You are raising objection to clause 48 of the proposed Bill. Clause 48 is intended to meet an eventuality. Suppose there is an epidemic in the country and the drugs necessary for meeting the situation are in short supply and the patentee is not in a position to supply in such cases, should Government not have the power to import it and supply it at a reasonable price to the public?

SHRI SASTRY: In case of an epidemic or in an emergency like that, if the drugs are imported, there is no harm in that, and we have no objection to that. But what we are objecting to is the giving of production facilities ad knowledge of the patents for production within the country either for a Government company or for any other company.

SHRI ACHUTHA MENON: That is not covered by Clause 48. You are referring to clause 48 along with clause 100. Clause 100 contemplates another situation in which Government acquire the right to use the patent or uses the patent; in that case, there is some justification for awarding compensation. But so far as clause 48 is concerned, there is nothing like that. It is intended to meet a particular situation and for that Government should have such power.

SHRI SASTRY: Re: cl. 48, we have no objection if any drug is imported, but that cannot go on for long.

SHRI ACHUTHA MENON: That will depend upon the conduct of the patentee also. The patent is issued in the expectation that he will work it and make the product available to the public at a reasonable price. If that is not done, Government should have the power to take this step.

SHRI SASTRY: Certainly, it is already there in the patent law; after three years, compulsory licence is available.

SHRI ACHUTHA MENON: There are other provisions also. But this provision is also necessary. There may be delay. If you want to start manufacture, it may take one or two years. Meanwhile, there may be urgent necessity to get the product in the country and it may be necessary to import.

SHRI SASTRY: I understand in the new Bill there is no product patent. If the product is not available here, import of the same should not be a problem. But here, the objection is with regard to use of the patent to manufacture or to use continuously even though certain people within the country are manufacturing the product. If at any time supply of the product is not adequate, Government can always import.

SHRI JUGAL MONDAL: It is not very clear. You mean import the basic material and then manufacture.

SHRI SASTRY: Yes.

SHRI ACHUTHA MENON: With regard to your argument for a strong patent law, the situation is not quite as you visualise because evidence has been led before the Committee already to the effect that there is a practice among patent-holders to take out patents and then not show any anxiety to start the industry, thus delaying it by various means. Mean-

while they get the product from the abroad and sell it here at a very high price to the public. To meet this situation and to encourage local people to go in for research, inventions and discoveries, this step is necessary. One view is that there should be no patent protection at all and anybody can manufacture any product he likes. The other view is that at least the licence of right provision should be there. Even this morning, the FICCI representatives laid much stress on this that in order to prevent abuse of patent rights by the patentee, this provision should necessarily be there so that people can work the patent, of course on certain payment of royalty.

SHRI SASTRY: I have said that at least three years should be given to the patentee for having spent his time, money and effort to see whether he can exploit the patent or not If he has not done it at the end of the period, the compulsory licence provision automatically comes and anybody can work it. Within these three years I do not envisage any extraordinary development of in the manufacture of revolutionary drug taking place. Hence "Licences of Right" are not necessary.

SHRI JUGAL MONDAL: A clarification. You refer to a minimum 3 years after sealing. When you apply for it, you have two years before you and then there is sealing. That means five years plus your advocacy of another 14 years. How many years it comes to?

SHRI SASTRY: From our own experience, in any laboratory research, not all patents will product fruitful results in the form in which they could be used for commercial exploitation. It may be one in 300, apart from one in 5,000 producing a fruitful laboratory result. If the patentee does not get this 2 plus 3 years to exploit one in 300 which is commercially exploitable, the incentive for research is definitely curtailed. This is our firm view not only with respect to drugs but also with respect to many chemicals and other products which we want to produce. For example, we are going in a big way for fibre plants, plastics, downstream petro-chemicals etc., in our country In all these, if we do not have a strong patent system, we cannot expect a transfer of technical know-how very smoothly from outside. Otherwise, if we think we can do everything all alone, then we can abolish patents and live in isolation. I do not think that is the intention of the patent law. From what I have understood, the intention is to see that international and Indian research is promoted and benefits thereof made available to our people.

SHRI ACHUTHA MENON: Are all the members of your Association Indians or there are foreigners also?

SHRI SASTRY: I do not understand what is meant by 'foreigners'. All the companies are Indian companies incorporated here under our law. Such companies are members of our association.

SHRI ACHUTHA MENON: Is there any foreign capital and foreign management?

SHRI SASTRY: In some there is foreign management and in some there is foreign investment. Take the case of our own company. There is foreign investment but no foreign management. May be Merck, Sharpe and Dohme may have foreign management and majority of foreign investment also, but essentially all are Indian incorporated companies. We do not make any distinction between Indian and foreign companies. As long as they are incorporated in India, they are Indian companies.

SHRI ACHUTHA MENON: Everybody need not have the same opinion.

One clarification. You say in p. 3 of your memorandum that on an esti mate nothing less than Rs. 3-4 crores have to be spent before one is able to achieve any commercially useful result. What is the basis for it?

SHRI SASTRY: We have started a research division in Sarabhai Chemicals and for the last five years we are spending about Rs. 25-30 lakhs a year and we have not found one single substance so for which could be commercially even thought of.

SHRI ACHUTHA MENON: So from the experience of your firm, you are generalising. We have it on other evidence that many of the companies are not spending any worthwhile amount on research.

SHRI SASTRY: Talking on drugs and pharmaceutical companies, with which I am more familiar, there are nearly 2,500 drug and pharmaceutical companies. Out of them about 110 or 115 are affiliated to the D.G.T.D. and the rest of all these come under the category of Rs. 5 to 10 lakhs of capital. You can understand what type of research they can afford to do. Even among the 110 or 115 G.D.T.D. affiliated companies, the Companies which have a sale of 1 crore of rupees and above per annum are only about 30. You can expect only these 30 companies to start spending money on research. Those companies which have started making some profit have started investing money in research. If there are some the companies are there, which do not make adequate profit, it is well nigh impossible for them to start research particularly in the drug field where investment on research has to be very heavy to produce an expected result

SHRI ACHUTHA MENON: In the same page further down, you say: "The patent system may to a certain extent influence the finished drug prices; however, this affects only the bulk drugs and not the prices of finished consumer products." Will you explain?

SHRI SASTRY: I made a statement a few minutes before. In the new Patent Bill there is no recognition of product palent. We have got only process patent. When I say that the bulk is only affected and not finished consumer packages, it is the process patent, for manufacturing bulk drugs which is recognised and not the finished product patent; we have to keep this in mind. An active ingredient is not the only part of the finished consumer package which goes to the consumer; while the price of the bulk drug itself may increase slightly because of the patents, such an increase would not object the price of patents but not the finished consumer package.

SHRI KRISHAN KANT: Mr. Sastry, I hope these are the two things which you have sent to us and you stand by them.

SHRI SASTRY: Yes.

SHRI KRISHAN KANT: Out of the 160 major units, how many of them have foreign capital investment or the foreign companies have interests in them?

SHRI SASTRY: Nearly about 40 to 50 per cent.

SHRI KRISHAN KANT: I expected that from the memoranda. They reflect that. I would like to draw the attention of not only the witness but also that of the Chairman and the hon. Minister to these references in the memorandum. There is a copy

of letter No. AB|L-1|7/1248 dated 7-10-64 addressed to the Secretary, Government of India Ministry of Industry and Supplies from the Secretary, Indian Chemical Manufacturers Association, Calcutta. The Association expressed its fear that the life of a patent might be restricted to seven years instead of fourteen years. They have based their argument on this fear and wanted that the life of the patent should be 10 years. They have built up their whole argument in this memorandum on this fear. At that time they were threatened with 7 years. In their proposed amendments, they say: 'Having regard to the essential need of having a system that should provide incentive to the country's scientific talent and encourage rapid industrialisation and not be abused in practice, the Association strongly feels that the proposed fresh enactment should provide for the following: (a) patents should be granted only for a process and not for the products manufactured by such process; they have changed the position now. It is very necessary that this Committee takes note of it. The charge that is being thrown on the Government and this Committee is that they are being pressurised. The Government is pressuried by the business and foreign interests. That is why the Report is not coming. I would like to say that the foreign interests and the big business are trying to pressurise the Government. When they feared that the term of the patent was going to be 7 years, they wanted 10 years. When it is 10 years, they will ask for 14 years. When process patent is given, they will ask for product patent. Now they want, in fact, product patent.

SHRI DAHYABHAI V. PATEL: Mr. Chairman, this is not the occasion to refer to these things. He passed some remarks about me yesterday, which were uncalled for. He has been persistently doing this kind of thing.

SHRI KRISHAN KANT: This is my freedom. I want this to go on record. While we take up clause by clause consideration, these things should be looked into. That is why I asked the witness whether he stood by the memoranda.

SHRI JUGAL MONDAL: After the witnesses withdraw, we can have a discussion.

SHRI KRISHAN KANT: Why do they want to have a change now?

SHRI SASTRY: Even today the I.C.M.A. says that process patent is enough. Nowhere in our memorandum, we have said that product patent should be given for all types of Patents We do not want product patent in all cases except foods, drugs and medicines Even if it is felt that we are changing our position, we are prepared to go for the original request of process patent. We are satisfied with the process patent in all cases except foods, and drugs.

SHRI KRISHAN KANT: About 10 years?

SHRI SASTRY: When the Patent Bil came up in 1965, we had to make a distinction between the manufacture of chemicals and the manufacture of drugs and foods. In the case of chemicals, the question of getting them tested clinically and various other procedures do not come in the picture. As soon as a product passed the chemical test, it could be put in the market. But, we realised that while 10 years or 12 years may be enough for chemicals, such period is not adequate for drugs, foods and medicines. We found that as much as 7 years are necessary to get the clinical tests done before a drug could be marketed. Even today, the Hamycin, discovered by Hindustan Antibiotics has not been commercially exploited. This is in

spite of the fact that eight years are over after the discovery had taken place. It shows the tremendous amount of work that is to be done on toxicities and other clinical tests that the international body and an own drug control authorities has prescribeed. The work done is so much in the case of drugs that one has to make quite a lot of distinction between drugs and chemicals. At that time of the first memorandum we did not make a distinction but we definitely found the necessity later and hence sent supplementary memorandum.

SHRI KRISHAN KANT: It is now 14 years and next time you will say it must be 16 years!

SHRI GADGIL: Even if we do that, asking for 16 years, it is up to the Committee to decide it.

SHRI KRISHAN KANT: I am only bringing to your notice how the industry has been functioning. Now, let us go clause by clause. In clause 2(h), you say that the CSIR and similar institutions should not be brought under the scope of the definition of public undertaking. Is it not a fact that when the Government takes up a process of manufacture, it would certainly like to take the help of research laboratories like those under the CSIR whenever any modification or some such thing is reqired?

SHRI SASTRY: For research activities, they can always use the scientific knowledge, which is open from the patent literature for furthering the knowledge available, but not for the commercial exploitation of the scientific knowledge.

SHRI KRISHAN KANT: The definition of "public undertaking' is given here. CSIR and such other institutions have been put in particularly because in the processing of the material the Government would like to know whether the process is good, valid or not. In the case of the private industry, they can go to the court, but the others cannot. So, in order to allow the Government to do it properly and take the help of the research organisations that the Government have at their disposal, this has been included.

SHRI SASTRY: There is a misunderstanding I wish to clarify it. For the CSIR or even the private research laboratories, the patents are open, and they can go and buy the patent for a certain sum of money but not for exploitation. They can use the knowledge for furthering or improving or altering their process. If they can do so by obtaining the patent by paying a few rupees from the Patent Office, why should it be incorporated here? That knowledge will be freely available.

SHRI KRISHAN KANT: It is in the difinition of a public undertaking.

MR. CHAIRMAN: The witness says that when you can get the information from the Patent Office for a nominal fee, what is the necessity.

SHRI KRISHAN KANT: Public undertaking has been mentioned in the Bill. Your modification may not be acceptable because of this.

SHRI SASTRY: I do not see why it cannot be accepted. What you need in the public undertakings like the CSIR and the research laboratories, is the scientific knowledge, and it is not denied to these organisations.

SHRI KRISHAN KANT: Supposing the Government takes up the manufacture which the private industry is doing—

SHRI SASTRY: When the Government wants to take it up, the Government cannot usurp the property. The Government have to pay compensation and do it. I do not say that the Government should not take it up; Government have every right to do that.

SHRI KRISHAN KANT: If the Government has to pay compensation, I agree with you. But in the definition of the words, CSIR has been included. What is your objection?

SHRI SASTRY: Because we feel that some of the CSIR labs. may be come a producing laboratories and a situation may arise where they may commercially exploit the patent without compensation.

SHRI KRISHAN KANT: Compensation is a different problem. It may be taken up separately.

SHRI SASTRY: It can be taken up by the CSIR for commercial use through a "compulsory licence". Why duplicate the procedure?

SHRI KRISHAN KANT: Now, let us take clause 5. You want to delete clause 5. You have said:

> 'The novelty of the pharmaceutical research is inusing the known processes to obtain new compounds for new unexpected uses. Hence, there is a necessity in the case of pharmaceuticals for the recognition of both process patents and product patents, depending upon the nature of the inventions.."

SHRI SASTRY: But not in all the chemical industries, only in the case of drugs and medicians.

SHRI KRISHAN KANT: Previously, they had regard to the essential things. They said that patents should be granted only for the process and not for the product. That was their earlier statement. They said they stood for the process patent only.

SHRI SASTRY: May I clarify it? in the beginning we were only considering the chemecial industries as the Indian Chemical Manufacturers' Association. But when we found that the drug and pharmaceutical industries who are also our members had special problems of their own, we had to reconcile their problems with the general problems the result was that we found that as far as the ICMA is concerned, for chemical industry, there is no necessity for product patent. Only in the case of drugs we expect some difficulty and we said that product patent may be necessary. But we would even now say—and we still stand by our original statement—that we are not desirous of having a product patent, and we would be satisfied with a process patent.

MR. CHAIRMAN: It all depends on how we understand it, Mr. Krishan Kant.

SHRI KRISHAN KANT: We want to know their interpretation. Now, the AIMO has given us certain information and the OPPI has given as a certain information as far as the foreign interests are concerned. May I know why there is a conflict between the two opinions?

SHRI SASTRY: I do not know what is in the mind of the OPPI or the AIMO. All I can say is that we strongly believe in what we have said here on behalf of our Association.

SHRI KRISHAN KANT: How many Indian patents are worked abroad and how many foreign patents are worked in India?

SHRI SASTRY: How many years is it since we started research in India? It is just four to five years. How many patents can there be in India? There can be one or two or three which can be exploited.

Hamycin of Hindustan Antibiotics has been licenced now to three firms in the United States and they are going to exploit it much earlier than we would do in India. That is the present situation.

SHRI KRISHAN KANT: At present Japan imports 40 per cent. of the patents and exports 60 per cent. At a certain stage of development when you can give and take patents more or less on an equal basis, you can say that these patents are useful; otherwise, you will always remain under the control of foreigners as your Association is.

SHRI SASTRY: From 1899 onwards Japan has been a member of the Paris Convention and it has got a very strong and protective patent system. Because of this protective patent system Japan has procured enormous amount of technical know-how from the United States and other countries and has improved over that and then exported. If we have not improved on the technical know-how that we have received from outside, it is our mistake and not that of the patent system. Our indigenous research has not reached that level where it could start giving returns. Japan was in the industrial field even before we got independence and hence could develop faster.

SHRI KRISHAN KANT: In the last memorandum you had said regarding drug prices—

> "This is a highly debatable point and requires intensive and extensive study of the sectors concerned to settle the point, particularly in relation to the patents system."

Have you now studied it and got any report on this subjects?

SHRI SASTRY: Let alone my studying it, there was a Tariff Commission's report which, I think, is with the Government. In drug prices you have got to take two things into account—the bulk product and the finished consumer product. The bulk product cost may be three or four times higher in some cases but the price of the finished consumer product is nearly two to three times lower in all cases. This is a fact which can be proved.

SHRI KRISHAN KANT: We have got some statements which show that while the profits of some Indian manufacturers are 10 to 15 per cent, in the case of others many of whom may be members of your Association, profits range from 100 per cent to 200 per cent.

SHRI SASTRY: We can give you an analysis of the profitability of the pharmaceutical industry on the total capital employed as well as on the total turn-over. It has never been more than 16 to 17 per cent.

SHRI KRISHAN KANT: Please do send this statement.

SHRI SASTRY: We shall submit it to you.

SHRI PITAMBER DAS: From what I had been hearing of your arguments I have a feeling that the underlying idea behind all that you said is that if you reduce the royalty or abolish the compensation, there will be no incentive left for research. Is that correct?

SHRI SASTRY: I believe so.

SHRI PITAMBER DAS: I would like to know what incentive those people, who do research work in biology, zoology, botany, chemistry physics and a number of other subjects have?

SHRI SASTRY: Research in science does not get compartmentalised like that. Today biological research is necessary even for going to the moon. Bio-engineering research is going on; how bioligical cells adapt themselves to space or different atmosphere; physics is very important because chemical reaction depends upon certain physical laws. So, there is an

inter-relation. All this basic research is necessary. It is just like expansion of education and it is left to the universities and some institutions which can take up basic research. What we are talking in patent is not basic research; we are mostly talking about applied research.

SHRI PITAMBER DAS: You mean to suggest that research in basic sciences and research in applied sciences have got different incentives.

SHRI SASTRY: The expenditure on research in basic sciences is meagre. Once you go from that to a pilot plant, it comes to nearly ten times and when you go to design and commercial production it comes to hundred times. So, when you are commercialising an idea, it becomes almost 100 to 500 times costlier and this has to be recovered from some place.

SHRI PITAMBER DAS: So, you are now advocating financial considerations not because of incentive but because of the financial requirements of the agencies concerned. You plead for royalty and compensation? Is it so?

SHRI SASTRY: Of the individual too, if the individual has spent.

SHRI PITAMBER DAS: In that case, compensation or royalty will have to be determined by the expenses incurred. If it is a question of incentive, then the consideration will be different. So, I want to know very clearly from you whether you are advocating royalty and compensation to meet the expenses of research or to give incentive to the person doing research?

SHRI SASTRY: For both.

SHRI PITAMBER DAS: What percentage of it would you like to keep for incentive and how much to meet the cost?

SHRI SASTRY: In the case of applied research the expenditure on cost is nearly 90 per cent and on incentive about 10 per cent.

SHRI PITAMBER DAS: What objection have you if we fix the royalty or the principle of compensation taking into consideration the cost involved in particular products?

SHRI SASTRY: Cost is a historical item. What was 'cost' ten years ago is not the 'cost' ten years hence. If an organisation or an individual has spent, say, Rs. 100,000 in 1965 on research and is expecting to realise it in 1975 or so, you can see the difference in cost because what was Rs. 100,000 ten years ago may be Rs. 800,000 ten years later. So, it is very difficult to assess the cost involved at present so that compensation can be given later. What we do is to take the potential earning value of the patent. It may be that we might have spent only Rs. 1,000 on a particular item of research but there are hundred or thousand others which have become a failure the cost of all of which will have to be taken into account. On that basis if you add and see, you will see what can be the potential earning capacity of that particular patent when it is commercially exploited. On that basis it should be left to the exploiters and the patentee to nogtiate the value of compensation.

SHRI PITAMBER DAS: In deciding matters of life and death of the people, do yu think it is proper for us to be guided mainly or mostly by materialistic considerations?

SHRI SASTRY: In a famine area hundreds of thousands of people die without food. There food is the basic consideration. Perhaps medicine comes only next to food. This is a matter of life and death of people. What action do we take in regard to food? The same should apply in the case of medicines. If the food index

goes from 100 to 200, why not medicine cost go up by a few rupees at least?

SHRI PITAMBER DAS: In the case of famine, we compulsorily acquire all the stocks of food. We are providing the same thing in regard to medicine.

SHRI SASTRY: Well you may compulsorily take over. But you pay the price for it as you pay for the grains that you take over even at the time of famine.

SHRI PITAMBER DAS: In famine conditions, we do not pay exorbitant prices for the grains.

SHRI JUGAL MONDAL: What are you saying? You are putting the Government in a very awkward position.

SHRI DAHYABHAI PATEL: You forget that we are in a democracy.

SHRI T. V. ANANDAN: You have argued that a strong and protective patent system is very necessary for this country for the inflow of foreign know-how. But at the same time the Committee was made to understand from the evidence tendered before it yesterday and the other days that a patent system creates monopoly and enables the patent-holders to fix their own price. What, with your vast experience, can you suggest to the Committee to get over this difficulty?

SHRI SASTRY: From my own experience, the flow of technical knowledge starts with the patent. Laboratory research alone will not give you complete know-how. When we have a strong patent system, which would protect the persons from whom we obtain the technical know-how, it is quite easy to get the technical knowledge transferred because they also know that we have also a protective system and that we intend to pay for the know-how.

MR. CHAIRMAN: Do you mean to say that if you make the patent law rather not very strong, the technical knowledge that you need from outside may not be forthcoming and it may be scared away?

SHRI SASTRY: Exactly.

SHRI S. K. VAISHAMPAYEN: One of the justifications for the patent law is that the country wants to make headway in research. Another view is that the country is still underdeveloped. Have you got any facts to show that the country is really making headway?

SHRI SASTRY: As I told you, we in India, have started research and development activities only a few years back. Already, out of a total number of 5,000 patents which have been granted in 1967, 1,125 are Indian patents. The percentage of Indian patents is increasing year by year. In 1966 it was only 950. Given time, definitely the number of Indian patents will increase.

SHRI S. K. VAISHAMPAYEN: Have you studied this problem and if so can you give us the results of your study?

SHRI SASTRY: I have a report actually from the Journal of the Patent Office Technical Society. In the year 1966 the total number of patents was 5,190. In 1947 the number was 5,429. Out of the figure in 1967, 1,125 are Indian patents and about 4,000 are foreign patents. This has further been brought . . .

SHRI S. K. VAISHAMPAYEN: You can give those figures

SHRI SASTRY: I can give you a copy of it.

MR. CHAIRMAN: We can get all this information from the Patent Office.

DR. VEDERAMAN: I can give you all these.

SHRI SASTRY: We have obtained this from the Patent Office. We can pass it on to you.

SHRI S. K. VAISHAMPAYEN: Your objection is to Cl. 48. Are you objecting to the unlimited powers of the Government or are you concerned about the fact that there is no provision for compensation.

SHRI SASTRY: I am only concerned with the fact that there is no provision for compensation.

SHRI S. K. VAISHAMPAYEN: You have nothing against the unlimited powers or according to you they are not unlimited.

SHRI SASTRY: It is not necessary to include powers in this clause because there is already Cl. 100. What is the point in duplicating?

SHRI S. K. VAISHAMPAYEN: Cl. 100 is different. That is with regard to invention.

SHRI SASTRY: We do agree that Government should have the power to import in the case of epidemics or under special circumstances, but not under normal circumstances.

SHRI S. K. VAISHAMPAYEN: That is exactly what Cl. 148 lays down.

SHRI SASTRY: But compensation is important. That is not specified in 48. If proper compensation is allowed under this clause, then I have no objection to that.

SHRI S. K. VAISHAMPAYEN: With regard to 87 and 88 you have said that the ceiling on royalty at 4 per cent should be increased to a higher figure. Have you got any figure in view?

SHRI SASTRY: It is very difficult to fix the figure at 1 per cent or 20 per cent. Then other countries will also go on fixing the figure. Why should we specify any figure in our patent law? It should be left for negotiation. After all, exhorbitant royalties are not going to be sanctioned by any intelligent Government. They will also put a stop to it. So, why should we not have a commercial transaction as far as royalties are concerned?

SHRI C. C. DESAI: Should it also be depnedent upon merits of each case?

SHRI SASTRY: That is what I feel.

SHRI C. C. DESAI: What should be the life of a patent? What should be the date from which the duration of a patent should count? There are two theories—one is that it should be from the date of filing of complete specifications and the other is from the date of sanction or sealing of a patent. What are the practical differences between one or the other?

SHRI SASTRY: I shall explain to you. In the case of general chemicals and engineering materials and so on where you can immediately start producing or commercialising it should be from the date of sealing. The problem in the case of drugs and pharmaceuticals is special because we find that it takes at least five to seven years to develop them.

SHRI C. C. DESAI: What you are arguing is that the duration of a patent should be different in the case of food and drugs from any other case. My question is: What should be the effective date from which the duration of a patent should start?

SHRI SASTRY: It should be from the date of sealing of a patent.

SHRI C. C. DESAI: I want to know the technical difference between these two. Some people want that the date of patent should be from the date of filing of a final—complete—specification.

SHRI SASTRY: The date of filing of complete specifications is only to give seniority or priority to the person who has discovered it. It is not for considering the terms of a patent. The two are inter-related. If the term of a patent starts from the date of filing, then the term of a patent will also get reduced. So, we have to read the two together and understand it.

SHRI C. C. DESAI: I want to know the scientific date for the purpose.

SHRI SASTRY: The scientific date should be the date of sanction or grant of a patent.

DR. SUSHILA NAYAR: From what date do you wish to give protection? If the earlier period is not covered by the Patent, then the information may be useless.

SHRI SASTRY: No, Madam. According to my knowledge, the Paris Convention clearly says that the priorities are always given to the first man who files a patent. So, whatever may be the date of granting of patent, the priority to the patent is always given to the first man who files the complete specifications irrespective of the date of sanction of a patent.

DR. SUSHILA NAYAR: I am not only trying to understand that the protection of a patent will be available to you or you would like that to be given to anyone. I just want to know whether the date of filing of complete specification or the date of obtaining of a patent should be taken into consideration for the purpose of protection of a patent.

SHRI SASTRY: Patent protection should start from the date of filing.

SHRI C. C. DESAI: In that case the duration may be from the date of filing and there cannot be any protection otherwise. What I am asking you is a scientific date for commencing the duration of a patent.

SHRI SASTRY: For protection, the date should be from the date of filing of specificaions. I suppose you are talking of protection.

SHRI C. C. DESAI: We are talking of protection.

SHRI SASTRY: I think it should be related to the term of a patent.

SHRI C. C. DESAI: You have stated in your memorandum that the objective of the Patent Law is to offer adequate reward for development of an invention. Upto the stage of commercial exploitation you should provide adequate financial incentives to the inventor. As was explained by Shri Pitambardas, there are two elements involved here—one is research and the other is incentive. Our experience is that research is done by permanent employees. They do not receive any incentive; they do not receive any compensation for their inventions. Piece-meal they get pay or whatever it may be. They may perhaps get accelerated promotions. Beyond this they get nothing as a result of their inventions. The benefits of their inventions—royalties on research or whatever they may be—still go to the industry which provides finances. That expenditure is already covered by the Income-tax Act for exemption purposes.

SHRI SASTRY: Out of 1,125 patents filed in India in 1967, 777 are by individuals and 103 are obtained from the firms.

SHRI C. C. DESAI: The man may work in a laboratory or in a company. What will he get?

SHRI SASTRY: He may even be working in a university. But he gets his pay. The man working in a university may get compensation. A certain portion of money that is got by the universities goes to the person who has invented a certain thing. Ultimately the university also benefits by that.

SHRI C. C. DESAI: Take the case of Sarabhai Chemicals. There the

research is done by an individual and he gets a patent and not the Sarabhai Chemicals.

SHRI SASTRY: Patent is got by a man and it is in his name. But, the company can, with a reasonable understanding, get the patent for exploitation of it to themselves. The patent is always obtained by and is in the name of a person and not in the name of the company.

SHRI C. C. DESAI: There has been a trouble over the income-tax exemption being extended to all expenditure incurred on it. A certain portion of it goes to companies also.

SHRI SASTRY: Income-tax exemption provision does not provide for all the expenditure on research.

SHRI C. C. DESAI: You say that the company shares in that which comes to 40 per cent and government's share comes to 60 per cent. The entire expenditure is covered.

SHRI SASTRY: 40 per cent goes to the company on the expenditure.

SHRI C. C. DESAI: You also said that there should not be any fixed ceiling on this. Let me tell you frankly that although you are opposed to licence of right, a bulk of the people who gave evidence before this Committee felt specially that the Patent Law had been made to the effect that the licence of right was necessary to break the monopoly. Whether it is right or wrong even the witnesses have said so. The question of royalty will arise if the licence of right is agreed. So, what do you think, should be the criterion —should it be left to the Controller or should it be laid down in the law itself?

SHRI SASTRY: I think that it should be left to the negotiations as between the patentee and the licencee —the man who exploits the patent as they know what they are buying or what they are selling.

SHRI C. C. DESAI: But the licence of right is issued by the Controller.

SHRI SASTRY: Maybe that is issued by the Controller. As I have said earlier, we are against the stamping of the licence of right, at present there, we do not agree that the licence of right should be automatic by the Controller. But the Controller can issue "compulsory licences" for which compensation also can be settled by him with a provision for an appeal to the court.

SHRI C. C. DESAI: You know that one has to apply for the licence of right on the ground that the patentee is not for the benefit of a company. In that case, the Controller endorses that on the licence of right.

MR. CHAIRMAN: Here the licence of right is automatic as provided for in the Bill. So the question of royalty comes in.

SHRI C. C. DESAI: What should be the royalty? Should the royalty also be left for negotiations?

SHRI SASTRY: Yes, it should be left for negotiations. If the parties concerned do not agree during the negotiations, then there is court of law. They can always go to the court.

SHRI C. C. DESAI: They can go to the court of law only for compulsory licence of right.

SHRI SASTRY: I am sorry if I am not clear. As soon as three years' period is over, a compulsory licence can be issued by the Controller. The right of exploitation of a patent can be immediately given to anyone by the Controller if there is no agreement and the court could settle the compensation later for which both the parties are bound.

SHRI C. C. DESAI: You know that there is an injunction by the High Court.

SHRI SASTRY: Under our Patent Law where negotiations have failed, the Controller, under the compulsory right of licence, can allow a person for exploiting it pending the high court decision of course. We do not come in the way of exploitation of the patent at all. We would like to say that after three years of sealing of a patent, compulsory licence should be issued by the Controller if negotiations do not take place properly. He can allow any person to exploit it pending of course the court's deciding on the royalty payment or whatever the compensation it may be.

SHRI KRISHNA KANT: Will a person start production?

SHRI SASTRY: He can start production.

SHRI C. C. DESAI: How will he go into production? He does not know the price at which he will be able to sell.

SHRI SASTRY: Approximate indication during negotiations has come. He can always know.

SHRI C. C. DESAI: Do you want a Court or Tribunal?

SHRI SASTRY: It should be a court. Since a question of justice is involved, it should be a Court. A tribunal will only give a sort of a compromise. But justice is more involved than compromise.

SHRI C. C. DESAI: We have had evidence from different Associations. Is the Indian Drug Manufacturers' Association a member of your Association?

SHRI SASTRY: No, IDMA is not a member of ICMA.

SHRI C. C. DESAI: They stated that the provision should be scrapped. There are two views from members of the same Association.

SHRI SASTRY: In any democratic organization, there are always differences of opinion. We are here giving the Association's view. The majority of our members have decided on the views I have presented to you.

SHRI C. C. DESAI: Did you send a copy of your memorandum to them? Did you get any reaction?

SHRI SASTRY: We always circulate that.

DR. SUSHILA NAYAR: You said that you want these cases to go to court. You are aware that while a provision for compulsory licensing has been there in the old Act, there is hardly any case in which it has been exploited. I believe one or two people tried to get it; the proceedings dragged on for 7 or 8 years. Don't you think that the same fate will be that of the licence of right if we drag it into a court?

SHRI SASTRY: In the first place, I am opposed to the licence of right.

DR. SUSHILA NAYAR: You don't want the monopoly to grow. You don't want licence of right. You don't want compulsory licence. You want to go to courts. You have always the upper hand.

SHRI SASTRY: Madam, there is some misunderstanding between us, I think. I said I do not agree with the automatic licence of right. I have said before that I strongly believe in the compulsory licensing system, and I repeat that,—compulsory licences after 3 years. And if the court machinery does not work satisfactorily and takes years, it is the mistake of the court, and not of the Patent holders.

DR. SUSHILA NAYAR: We are not here to adjudicate as to whose fault it is. We are only facing facts as to what has been the position in the past years. You agree that the court procedures have stood in the way of parties making use of compulsory licensing?

SHRI SASTRY: Well, I am not aware of any.

SHRI GADGIL: The Committee would be fully justified in recommending it to courts....

DR. SUSHILA NAYAR: Can Government interfere in courts?

SHRI GADGIL: The procedure should be recommended.

DR. SUSHILA NAYAR: Once you go to the High Court, no Government can come into the picture. All the other parties that appeared before us have pleaded to leave the courts. They say that a Tribunal consists of experts. Now, do you agree that the experts will be able to do better justice than the judges?

SHRI SASTRY: Well, we do not.

DR. SUSHILA NAYAR: You said that the licence should be given after 3 years. For 3 years or even more, the party who takes a licence does not start production in the country. In the first instance, they import. They say they want to test whether there is a market, and that if there is a market they will start production. Do you think it is right and fair that the patent grants an exclusive right to a particular party to import?

SHRI SASTRY: I believe that it is not necessary that only that particular party should import; any party can import. After all, you have paid the price for it. The party that has applied for the patent, which wants to exploit should also be alllowed to import.

DR. SUSHILA NAYAR: Do you want the special provision to come into operation after they start producing within the country, and not before?

SHRI SASTRY: Yes.

DR. SUSHILA NAYAR: Supposing you take a patent in England for a particular drug which is produced in England today. Under the present law, you, and you only, can import. . .

SHRI SASTRY: I do not agree with you.

DR. SUSHILA NAYAR: Then you want permission that others should not import or produce?

SHRI SASTRY: If others want to produce, of course, after three years they have got compulsory licences available.

DR. SUSHILA NAYAR: About three years we will take later. Once you start producing, you want all this import to stop?

SHRI SASTRY: Provided adequate quantities are produced within the country. Otherwise, as already stated, if three years are over, any other person can start production.

DR. SUSHILA NAYAR: Supposing in three years you do not start producing and continue your patent indefinitely. . .

SHRI SASTRY: Patent system does not work like that. If for five years a man does not exploit it, there is always the possibility of some others exploiting it after three years.

DR. SUSHILA NAYAR: For just registering the patent, you want a share of the royalty from the man who produces?

SHRI SASTRY: That is perfectly natural. For securing the patent we have spent enough time and money and so on. We have to be compensated for that. So whether it is three years or six years, within the patented period, I have to be protected for my knowledge.

DR. SUSHILA NAYAR: Even if you do not exploit it?

SHRI SASTRY: I may not exploit, but I may allow somebody else to exploit.

MR. CHAIRMAN: Royalty is paid under the law not for production but for the patent.

DR. SUSHILA NAYAR: That is the present law. I am trying to understand whether the law should stand as it is or whether it needs any change. You know that patents are taken-in India, of course, we have product patents now but we are trying to do away with them and have process patents instead; and I suppose you agree that there should be process patents and not product patents . . .

SHRI SASTRY: We agree. For pharmaceuticals only we prefer product patents, but as I have said, we agree to the basic position which we have taken, that the product patent need not be there and process patents are adequate for all other products.

DR. SUSHILA NAYAR: In regard to process patents, people with adequate resources can develop several processes, and they may think of all possible processes. They may not be working all of them, but they may patent all the processes. We saw how your brilliant scientists were calculating which hydrogen and carbon atoms could go where and what would happen in such a case and so on. So, they could file all the possible combinations and permutations and prevent others from discovering that process and from carrying on research.

SHRI KRISHNA KANT: We had the example of tolbutamide.

SHRI SASTRY: I think that Dr. Mukerjee told you the other day that even in spite of the strongest patent in respect of tobutamide, he could still produce it by effecting a change in the process and he could beat that patent. So, even though you may have six processes, a seventh process could always be developed, if scientific talent is available; so, it is not only that particular unit which has got the scientific talent which could work out all the possible processes, but other units with scientific talent could develop different processes and end with the same product.

DR. SUSHILA NAYAR: I am not a chemist, but I am told by experts that by filing all possible processes, they could prevent others from producing the same product. . . .

SHRI SASTRY: Actually, Albert Davids produced tolbutamide by a change in the process, and no patent lay could prevent them from doing so.

DR. SUSHILA NAYAR: But I think in India they failed and they could not produce it. . .

SHRI SASTRY: In India itself, Messrs. Albert Davids produced it. Tolbutamide was produced in the country and sold in spite of the patents, because the process for making tolbutamide was changed by the Indian scientists and the process became a little different from the original.

DR. SUSHILA NAYAR: I think you are wrong there. . .

SHRI SASTRY: Dr. Mukerjee himself was the person who did it.

DR. SUSHILA NAYAR: I think that later on that case was lost. There have also been other cases regarding sulpha drugs where certain indigenous new processes were discovered by our scientists but we could not produce it. We know for how long the case of Pfizers went on in the courts.

SHRI SASTRY: With product patents, this was the problem. But when we do not have the product patents but only process patents, the processes can always be changed. The chemical processes cannot be only four or five or six; they could be even a hundred in number. So, we could always change the process; the starting materials could be changed, but we could always and with the same finished

product. There is a quite large number of scientists available who if only they had the time, money and the resources, could always change the processes. So, there is no difficulty at all on that score, but it only involves time and money. But if there is product patent then what you say is true.

DR. SUSHILA NAYAR: Yesterday, an example was given of a patent where all the processes had been filed....

SHRI SASTRY: I do not know whether they file all the processes. Shri Vedaraman may be knowing better. . . .

SHRI VEDARAMAN: They always file all possible combinations and permutations.

SHRI SASTRY: Normally from my understanding they may be filing just three or four . . .

SHRI VEDARAMAN: They cover all possible combinations and permutations.

SHRI SASTRY: But how many do they continue to keep under patent?

SHRI VEDARAMAN: They keep all of them under the patent right through. If it is a success, they keep it through the entire period; if it is not a success then they leave it.

DR. SUSHILA NAYAR: Would this type of situation come in the way of development of research or would it promote research?

SHRI SASTRY: It does not come in the way. On the others hand, it will give an incentive to scientific talent to find out new processes to produce the same end product.

DR. SUSHILA NAYAR: But they may file all the processes and prevent others from using any process; this would be a dog-in-the-manger policy.

SHRI SEZHIYAN: There are certain differences in the two memoranda. Of course you are entitled to have differences in views because things may change.

Regarding the term of the patent, in the previous memorandum you had stated that the life of a patent should be restricted to ten years and not 16 years. I understand that you have given the explanation then that at that time you thought that is applied only to drugs. . .

SHRI SASTRY: Only to chemicals. That decision was meant predominantly for the chemical industry. . .

SHRI SEZHIYAN: You thought that that was for the chemical industry, and you thought that 10 years would be enough?

SHRI SASTRY: 10 years could be adequate, but if it is going to be 14 years it would be good.

SHRI SEZHIYAN: For the chemical industry you wanted 10 years and for the other industries more?

SHRI SASTRY: For the drugs and medicines we wanted that it should be more.

SHRI SEZHIYAN: At page 3 of the memorandum, you have stated that the term of a drug patent is restricted to only 10 years, and it is difficult to understand why such discrimination should be made between one industry and another. I think your argument seems to be why there should be discrimination.

SHRI SASTRY: It is a fundamental point. Our association has chemical industries as well as drug industries as members and we do not want our members having discriminatory periods.

Secondly, in the case of the drug industry we feel that it has been discri-

minated against very badly, since the period has been reduced from 14 to 10 years, whereas we feel that it should be increased to a maximum of 16 years, because the initial period of testing etc. is much more important in the case of the drug industry than in the case of the chemical industry.

SHRI SEZHIYAN: Since you do not want discrimination but uniformity, why not have a uniform period of ten years for both cases?

SHRI SASTRY: What I have suggested is that for the drug industry it should be at least 14 years, extendable by a year or two in cases where such extension is needed.

SHRI SEZHIYAN: Regarding the definition of 2(h), as explained by Shri Krishna Kant, the definition of a Government undertaking includes in the operative clause others also. You want to exclude them.

SHRI SASTRY: Because it is not only importing; ultimately the knowledge can be used even for production also.

SHRI SEZHIYAN: There is a difference between your first and second memoranda on this point. In the first you say on p. 2:

> "It is also very important to see that the definition of a government undertaking given in cl. 2(h) is limited to the Government departments only and not extended to the government corporations and other undertakings".

In the second, you say that universities, CSIR and other bodies should not be brought under this and in the last para you say that the rest of the description for the definition of a government undertaking can remain as it is provided in the Bill. In the first, you want to exclude government corporations and other undertakings, in the second you are amenable to include them. Which is the correct position?

SHRI SASTRY: The final and last. The position we have taken is that as far as universities, CSIR and others are concerned, as long as there is no commercial exploitation and they get the scientific knowledge through patent publications, they can use it and there is no need to bring them in the list. But when corporations come, there is the question of commercial exploitation of patents. When a patent is used by such a corporation or even by a government organisation, compensation has to be paid. As long as compensation is paid and the three year initial term is respected, we do not mind government corporations taking it.

SHRI SEZHIYAN: What is your final view. Do you want government corporations and undertakings to be included in the definition of a government undertaking or not?

SHRI SASTRY: From 2(h), 'government corporations should be taken out.

MR. CHAIRMAN: You mean that these items should be taken out because there is no corresponding provision for paying compensation?

SHRI SASTRY: Yes.

SHRI SEZHIYAN: You have given the first memorandum. The other one is a supplementary memorandum. In the first in the second para you refer to the Patents Bill, 1965. In the third para, you say the Association has made suggestions on the Patents Bill, 1965. I hope you have studied the Patents Bill, 1967.

SHRI SASTRY: Yes.

We sent the supplementary memorandum only after going through the 1967 Bill.

SHRI DAHYABHAI PATEL: I would like to ask whether witness has

had to change or amend his evidence or statement, as it seems to some members, due to any pressure being put on his association?

SHRI SASTRY: There is no such pressure or anything. We have a democratic body in the ICMA. From what we considered in 1963 or 65, we could change our position in 1967, provided we have strong reasons to change.

MR. CHAIRMAN: I thank you for the evidence given before us which we shall take due note of.

(Witnesses then withdrew)

The Committee then adjourned.

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967.

Thursday, the 19th June, 1969 from 10.00 to 13.00 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Kanwar Lal Gupta
5. Shri Hari Krishna
6. Shri Srinibas Mishra
7. Shri Jugal Mondal
8. Shri K. Ananda Nambiar
9. Dr. Sushila Nayar
10. Shri Sarjoo Pandey
11. Shri Era Sezhiyan
12. Shri Maddi Sudarsanam
13. Shri Atal Bihari Vajpayee.

Rajya Sabha

14. Shri S. K. Vaishampayen
15. Shri Krishan Kant
16. Shri R. P. Khaitan
17. Shri Arjun Arora
18. Shri T. V. Anandan
19. Shri Om Mehta
20. Shri K. V. Raghunatha Reddy
21. Shri Pitamber Das
22. Shri Dahyabhai V. Patel
23. Shri C. Achutha Menon.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT, INTERNAL TRADE AND COMPANY AFFAIRS (DEPARTMENT OF INDUSTRIAL DEVELOPMENT)

Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

Trade Marks Owners Association of India, Bombay:

Spokesmen:

1. Shri S. H. Gursahani, *Chairman.*
2. Shri R. A. Shah, *Solicitor, Partner Crawford Bayley & Co.*
3. Shri C. K. B. Rao, *Secretary.*

(*The Witnesses were called in and they took their seats*).

MR. CHAIRMAN: We welcome you here, and we hope that you will be giving the right evidence before us so that it would be helpful to us in coming to a right conclusion while framing the Bill.

SHRI GURSAHANI: In the first place, I must apologise for the fact that you may find us somewhat less than fully prepared for the reason that we were scheduled to come here only at 3 p.m. as had been intimated to us earlier, and were just sitting down amongst ourselves to compare notes and to clear our thoughts. When we received an urgent request to come at once. We will do our best but you may have to bear with us to some extent.

MR. CHAIRMAN: I think it will be very easy for you to give evidence whether we sit at 3 p.m. or now.

SHRI GURSAHANI: We have already submitted a memorandum. I would only mention two or three additional points and re-emphasis one or two more, knowing full well how valuable the time of the committee is.

But may I first take the opportunity of introducing ourselves by saying one or two words about the Association which we represent and which is now before you? We represent the Trade Marks Owners Association of India, of which I am the honorary chairman and Mr. Rao is the permanent secretary; it was formed in 1956 at the desire of the then Finance Minister Dr. John Mathai. This was because the industry had been approaching Government with acute problem that was then facing namely infringements of well known trade marks, particularly in the vital fields of drugs and pharmaceuticals, food and other essential commodities. And we requested the Government to enforce the Trade Marks Act rigorously and preparatory to that, to undertake a review of the Trade Marks Act in order to make it more stringent and safeguard the interests of consumers and Industry. As a measure of self-help, it was then suggested to us that we should first of all get all the industrial units together in the form of an Association and then assist with Government in devising a new Trade Marks Act. It was as a result of this that this Association was formed. Let me mention that in this Association is represented almost every type of industry in this country, ranging from light engineering to heavy engineering, consumer goods industries like soaps, toiletries, pharmaceuticals and so on; there is in fact hardly any industry which is not represented in

this Association.. The Government of India constituted a Trade Marks Inquiry Committee and the Chairman of this Association was one of its Members. Thereafter when the Trade Marks Bill was drafted and presented to Parliament, we were very active in assisting Government in arriving at the kind of provisions which we thought would safeguard industry, commerce and also the consumer. The contribution made by the Association was acknowledged by the then Commerce Minister, Shri Kanungo, in the House. Encouraged by this, we have undertaken research and study of industrial property law, not only trade marks, but patents, designs and copyrights. We have undertaken this study not from the point of view of any particular Industry but objectively representing the interests of Industry as a whole. Therefore, we claim our study to be objective, and we hope you will find it so. It is in this spirit that we have come before you to render such assistance as we can.

We have already submitted a memorandum, but there are a few points we would like to re-emphasise.

Cl. 3(d): My submission is that in the field of inventions and technological progress, inventions can take place in various ways. You can invent new processes, you can invent new substances, you can invent new methods of manufacture of a known substance. If by inventive genius and by industrial research, new properties of an already known substance are discovered it may be of very great importance, because they may open the door for progress in a vital field. Therefore, this discovery or invention should be equally patentable. After all we are on common ground when we say that patents are necessary; I do not find any provision in the Bill which says that patent protection is not necessary. So if these new processes or new properties cover the vital field of new uses of known substances or new properties of known substances to that extent their patentability will encourage disclosure of these new properties or new uses for the national good.

Cl. 53. This deals with the term of patent. A great deal has been said about the advisability of a shorter or longer period of time for protection of a patent. But in order that the protection ultimately achieves the result intended for it, namely, to give the inventor or the person who has invested large sums of money in research an inducement or incentive to continue his research effort and enough time subject to be able to get from his invention a certain return which will encourage him and others to invest money in this kind of effort, the period has to be realistic. If I may mention, everywhere in the world the trend is for increasing the period rather than reducing it. There are one or two countries, I concede, where the period of protection is less. But everywhere else where a period of 10 years is prescribed, there is at the same time a clearcut provision for giving one or more substantial extensions of time, depending upon the facts and circumstances of each case, so that if the authorities which administer the patent law are satisfied that for no fault of the inventor, he has not been able to work his invention or has incurred a loss in working it he is allowed further time to work the invention.

Therefore, the period of protection of ten years for food and pharmaceuticals and 14 years for the others should either be raised uniformly to 16 years or there should at least be a provision put in to enable the authorities to grant two extensions of up to three years each. Where the inventor has made out a case, there should be no bar for the authorities to consider his request and grant one or two extensions; in some cases it may be only one, in others it may be none, in some others it may be two. This will be discretionery. But the patentee should be able to come to the authori-

ties and say, 'I have not been able to do this for no fault of mine. Because of these factors; could I therefore have a small extension of my protection?'

We have also said that the period should begin not from the date of application but from the date of acceptance. As you know, acceptance has to be granted within two years, 18 months in some cases, so that as the provision stands, 10 years from date of application is in effect reduced to 8 years. So our suggestion is (a) the protection should be informaly for 16 years or there should be provision for extension and (b) the period should be reckoned from the date of acceptance and from the date of application.

Cl.87: Licence of right is, to my mind, only an extension of compulsory licensing, with this undesirable difference begin that one is automatic and the latter is to be granted on account of non working of patent for a certain period. Should not the same principles apply and a provision made in the Bill that as in the case of a compulsory licence-under at 84 "Licence right" should only be endorsed if the invension is not worked for a period of three years. There may be arguments for and against this. But our submission is that if in the field of food, pharmaceuticals, alloys, chemicals and so on, every licence is marked as licence of right automatically at the very inception, any person, X,Y or Z who would otherwise, have wished to undertake research in this field has only to wait for others to do it and patent a particular invention and then only to say, "I am prepared to pay royalty upto 4 per cent and work the patent". Surely the intention of the Bill is not to create a situation where people do not want to undertake research. The purpose, I am sure, is to encourage research and therefore, this waiting period of three years should be there so that people do not wait for other people to invent and say, "Why should I spend a colossal sum of money on research, 90 per cent of which may not produce any result whatsoever?"

Why should I undertake this inherent risk. All that I have to do is, to wait until somebody invents and then I can go up to the Government and say, " I am prepared to pay royalty. No one can prevent my licence of right."

SHRI SHAH: Alternatively, people will tend to become secretive; they will stop obtaining patent and stop giving to the world the benefit of development undertaken by them. They will keep it upto themselves, and preserve it, just as knowhow is preserved as a secret. They will tend to preserve processes on the same footing as knowhow. This will not be conducive to sharing of new development and research with the community.

MR. CHAIRMAN: Will you explain how technical knowhow remains a secret?

SHRI SHAH: The knowhow remains secretive within the factory and amongst its own technicians. For instance, for Coca-Cola there are only three technicians in the whole world who know how the Coca-Cola concentrate is made. This is the sort of secrecy. And that would be engined if there is not enough protection.

SHRI GURSAHANI: The other argument which may have been put forward also by others also is this. The controller should have the right to inquire into the suitability of the licence. It is even more necessary in the field of drugs and pharmaceuticals where any person under the sun, if the present provision goes through will have the right to say "I am going to use this invention and make the drugs", whether the person concerned has an abiding interest in the industry or he is one of the mushroom, back-door operators whose only aim is to something for a couple of years and make unconscionable profits and disappear from the scene thereafter. It is in this field more particularly where screening is necessary to decide who will operate the invention. It may be argued that this screening is already provided for in other laws like the

Industries (Development and Regulation) Act and so on, but I submit, with great respect, that the Industries (Development and Regulation) Act does not apply up to a certain level and size of operation. As you know, Rs. 25 lakhs is now the exemption limit. So, any operation which requires an investment of less than Rs. 25 lakhs in fixed assets is not covered by the Industries (Development and Regulation) Act, and therefore, in the manufacture of drugs, if you do not need a big investment; and can make do with say Rs. 24 lakhs, you do not have to take out a licence under the Industries (Development and Regulation) Act, and therefore, as long as you are willing to pay two per cent or four per cent royalty, you can proceed. as a matter of right of course we have the drug control authorities but they are already over worked. Should we not be concerned about people who are not suitable to manufacture the drugs dumping into the field? This will be to the detriment of public health. Drug control authorities in our country are somewhat overworked in the sense that they already have so many of manufacturers of spurious drugs to watch out for: In spite of the greatest good will on the part of those who administer: the Act, it is inadequate, and it will be appallingly inadequate if the floodgates are opened for everyone to manufacture drugs. If merely by having access to the patent specifications under a licence of right anyone could start manufacture drugs, the Drug Control administration could be strengthened tenfold and even then, it may not be enough guarantee to ensure the correct potency or effectiveness of the product. Screening of the people is very necessary, and therefore, as in the case of compulsory licences, the Controller must determine the suitability of the person. You might then say that a licence of right. This I think is the fundamental issue. If we can strengthen the provision for compulsory licence,—I think it has already been done—then the licence of right is really not necessary.

In the case of compulsory licence, it was being argued that because of administrative delays and dilatory tactics adopted by some people, not many compulsory licences were being successfully granted. The answer to that is that while the administrative machinery is moving, the applicant should be allowed to work the invention. With that provision, I submit, the needs of the present society will be adequately met.

SHRI SHAH: Even under the compulsory licence regulations, there is a special exception in favour of drugs and foods. Any one can apply for a compulsory licence and you do not have to wait for three years' limitation. There is already special treatment, even in the existing regulation, being meted out to drugs and foods. If this can be continued, I think it would adequately take care of any possible abuse of patents.

SHRI GURSAHANI: To summarise, the compulsory licence provides for the granting of compulsory licence even before the three years period in the case of drugs and food. There is already a provision that while the administrative machinery is moving and royalty is being considered, nothing can prevent an applicant from working the invention. Therefore, the only difference between clause 84 and clause 87 is that in the latter case, the Controller loses the right of determining the suitability of the person who proposes to undertake the manufacture of this vital substance like food, drug or medicine.

My last comment—after which I shall answer such questions as may be put—would be on clause 88 which is about ceiling on royalty. My submission here would be that I do not quarrel against four per cent as such. Whether it is four per cent or 10 per cent, any figure that may be decided upon will certainly be arbitrary because no one can determine in advance what the position would be ten years hence, and what kind of royalty would be required in order to encourage in-

ventions and also for a fair and reasonable compensation to the inventor in a particular case. Therefore, to fix the limit—whether it is a four per cent or 40 per cent—is not realistic, because any limit that is fixed would be arbitrary.

The second argument is this. It is human nature or human failing that the very moment you fix a maximum for anything, in a few years' time it degenerates into the minimum. If I am told that I can give somebody Rs. 10 even though I am told that it is the maximum I am quite sure that in course of time, it will become the minimum and I will find it hard to pay less. I do not know whether I am making myself clear. This happens in our daily lives: when you fix the maximum, it becomes the minimum in course of time. Even in a case where less than four per cent royalty is justified, the question is whether we should not examine each case on its merits, we may fix it at half per cent wherever necessary or eight per cent or 10 per cent where it is necessary and leave this matter to the competence of the panel of senior Government Secretaries to examine all these things at various levels and determine how much the invention is worth to the country in the context of the prevailing situation.

SHRI SHAH: This is particularly so after the constitution of the Foreign Investment Board under which royalty limitations have been spelt out and if any royalty in excess of that is to be given, the matter has to go to the Cabinet Sub-Committee.

SHRI GURSAHANI: If you fix an arbitrary limit, to some extent that shows that there is distrust of those who are going to eventually examine such proposal in detail and secondly this, in course of time, may well become the minimum. This is our experience in day-to-day life and nothing really is gained by having a rigid figure. There is no magic in a figure. This is all what we wanted to submit.

SHRI SHAH: Under the policy of the Government, ordinarily no royalty payments in foreign exchange are approved merely for grant of patent licence. It is always a package deal. It involves transfer of know-how abroad, foreign technicians and our visiting India technicians going to there and having training total royalty does not exceed 5 per cent.

SHRI SEZHIYAN: You have commented on clause 2h. What do you want to be excluded from the definition of 'Government undertaking'?

SHRI GURSAHANI: We would exclude CSIR and universities because their needs are catered to in another clause of the Bill.

SHRI SEZHIYAN: If it is on the ground that it is included elsewhere, then it is our look out to decide whether it should be only in one place or two places.

SHRI GURSAHANI: I don't deny that the final decision is with the Committee. It will be presumptuous for me to say that the decision will be mine. This is only a suggestion. We are dealing with a legal document or statute. If there is overlapping, it is my duty to bring it to your notice.

SHRI SEZHIYAN: Apart from overlapping, have you got any fundamental objection to include these things in the definition?

SHRI GURSAHANI: First I want CSIR and universities to be excluded. My objection extends to Government undertakings also because my point is that in many fields, particularly in the fields in which certain restrictions are sought to be placed on patent protection, namely, food, pharmaceuticals and drugs, Government undertakings are engaged in commercial manufacturing activity in competition with the units in other sectors of our undertakings. Therefore, use by Government should not be regarded as Government use. We do not object to Government Departments. We

never say that Government departments should be excluded. Our objection is only to CSIR and Universities on the ground that there is overlapping, and to Government undertakings because they are engaged in commercial activities side by side with private sector units and therefore we feel that there is no justification in meeting out any special treatment to them.

SHRI SEZHIYAN: You have commented on Cl. 53 on page 3 of your memorandum. You have stated that if it is not possible to apply a uniform period of 14 years, the shorter period should commence not from the date of the application but from the date of its acceptance by the Controller. In many cases, wherever patent is applied for, the article is put in the market with the patent marked on it. This means that it becomes operative even from the date of application. That is why we say that it should be from the date of application.

SHRI GURSAHANI: This, I do not think, is a Common practice. In some cases it may be possible to do it even simultaneously with the filing of patent specification. But by and large quite a bit of work is involved even after patent specification is filed. Therefore, effectively the use of patent begins only some years later. In the case of drugs and pharmaceuticals, a great deal of work is involved in connection with clinical test, dosages and potency. If it is not to be from the date of acceptance, then we think it should be at least 15 years because the trend all over the world is to increase the period. Otherwise, it should be a uniform period of 14 years from the date of acceptance.

SHRI SHAH: The general position is that when you just find out that you have hit upon something new without being able to put it to commercial use, without perfecting the invention, you just file the provisional specification. Then it takes some time before you finalise the details of the invention and therefore in most instances merely filing application for patent does not mean that you are in a position to put it to commercial use. That is why the Patent Office allows you to file complete specification within 18 months. That itself envisages that there could to be lot of refinement in between.

SHRI ACHUTHA MENON: Can you tell me about the nature of membership of your Association? How many members are there? Does the membership include foreign companies as well as Indian companies?

SHRI GURSAHANI: We have at present 126 companies units as members. These include a very wide cross-section of industrial activity in this country. The membership is both Indian as well as foreign controlled companies. We represent almost every industry in this country, such as light engineering, heavy engineering, chemicals, food, pharmaceuticals, soaps and toiletries and textiles. In fact there is no major industry which is not represented on our Association.

SHRI ACHUTHA MENON: You have made certain observations about Cl. 48 of the Bill. You have observed: "Only when it is necessary or expedient in public interest such as the control of epidemics etc., Government should exercise its right to authorise importation by a private hospital, dispensary, or other medical institution. It is not clear from your memorandum whether even in that case you insist upon compensation being paid. Would you like to make it clear?

SHRI GURSAHANI: I will say that in every case where somebody's patented invention is taken, compensation should be given. You may argue that in a particular instance, it is so vital that in the interests of the nation somebody's property should be used. Nobody would question that. It will be wrong for me to say that in an emergency like that the property should not be used in the interests of the nation.

But, I see no justification even in such a case for the States not paying a reasonable compensation. After all, yo are curtailing somebody else's rights and therefore a reasonable compensation should be paid.

SHRI ACHUTHA MENON: As you have observed, under clause 48, there is no question of the Governments confiscating the patent or for using it for its own purposes. The party is free to work the patent and bring the product into the market. Nobody prevents it. Only for a specific purpose the Government is making some medicines or drugs or other products and making them available to the public. Here, therefore, there is no question of property right being infringed.

SHRI GURSAHANI: The property right in the patent is not only the right of the patentee to use the invention. The patentee a'so has the right to exclude others. In other words, this right has got two facets—one is using his own inventions and the other is his right to use it for a certain period of time and to the exclusion of others. This is very important. To that extent his right on property is very important in industrial properties like patents, Trade Marks etc. If a process or a product by process has been patented and is taken over for any purpose compensation should be paid. This should be so even if there be no general appropriation of the patent but only his right to exclude others is being interfered with.

SHRI ACHUTHA MENON: Don't you agree that so far as Government is concerned, in the interest of the public—in an emergency as you have visualised in your memorandum—they should have powers to take over the property?

SHRI GURSAHANI: I agree that the Government should have the power to use it. Nobody questions the right of the Government to take over any property in an emergency. I do not see why, as a corollary, this should be done without saying any compensation. If I have my own house, I have the right to live in it. I have also a right to exclude others. It is no argument to say that as long as you are living there why do you not allow 15 others also to live there.

MR. CHAIRMAN: Do you think that this is a right as per the provisions of the Constitution?

SHRI GURSAHANI: It is a basic principle of our Constitution that property rights should be respected within the bounds of national interests and reside upto a point in relation to national good. But, whenever property is taken over, compensation should be given.

MR. CHAIRMAN: Did you examine this point in the light of the provisions in our Constitution?

SHRI GURSAHANI: I am sorry I have not undertaken any study in that regard.

SHRI ACHUTHA MENON: You are agreeable to government's using this right only in cases of emergencies. I am putting you a particular case. Suppose a patentee does not work the patent to the extent necessary. Supplies are not made available to public with the result that a product is selling at a very very high price in the market. Should not government have powers to intervene even in such a case? Should they not at least make the drugs available at least to Government institutions, hospitals at a reasonable price? There is a similar provision in the British Act and as far as I can understand, they make available the medicines supplies to the national health services at a reasonable price.

SHRI GURSAHANI: This is really a question of what you consider to be a national need or national emergency. If it is found by Government in its

wisdom that a particular invention is not being worked and therefore the country is being starved of such medicines, then the Government, in the interest of national health—I agree entirely with this—should have the power to take over. What we are arguing about is that even when a patent is taken over in such a situation, they should pay compensation.

SHRI ACHUTHA MENON: It is not a case of emergency. I am referring to cases other than the emergency where the necessary supplies of medicines are not being made available to hospitals, dispensaries and other institutions run by Government or public institutions at reasonable prices. Even in such cases too should not the Government have some power to intervene and make these things available at reasonable prices.

SHRI GURSAHANI: Basically I would agree. There are provisions in the Bill about compulsory licensing and various other provisions which will take care of such a situation. There is also a provision for revocation of a patent which is not worked. If there are shortages or if there is any default on the part of the patentee, this power can be used. All these should be provided for in the Bill.

SHRI KRISHAN KANT: That will take some time.

SHRI SHAH: You are quite right that in England there is this exception—in favour of national health services. But this is done upon payment of compensation or royalty to the patentee. It is not done without any compensation.

SHRI ACHUTHA MENON: Now, about Clause 53, what is your view? With regard to the exact date from which the period of a patent should count, what is your view? Is it from the date of filing of complete specifications or from the date of sealing of a patent?

SHRI GURSAHANI: Both the dates are extremes—the date of filing of application is one extreme and the date of sealing is another extreme. What we have suggested is that the time should be reckoned from the date of acceptance. This is an alternative suggestion. Our basic suggestion is that fourteen and ten years' period is not an adequate period for protection of a patent. In keeping with the trends elsewhere this period ought to be extended much more, that is to 16 or 18 years if not to 20 years.

SHRI SHAH: If it is from the date of sealing, it could be abused to prolong the period. If the period is specified then there cannot be any abuse, in so far as the period of patent is concerned.

SHRI GURSAHANI: I would like to supplement what my friend has just now said. Whatever may be the provisions of the Bill, the basic period should be at least 16 years from the date of the application. If it is from the date of acceptance of the patent, it should be at least 14 years informly. We should recognise this.

SHRI SEZHIYAN: There is a lacuna here. If it is the date of acceptance, in between this and the date of filing of a patent, anybody comes in and misuses it, you cannot be protected.

SHRI GURSAHANI: I am not here talking the commencement of protection against infrigement but I am talking of duration of the life of the patent. So far as protection is concerned it is an accepted concept under the industrial property law including the Trade Marks Act. That it commences from the date of application. At the same time the life of the patent could be reckoned from the date of acceptance.

SHRI ACHUTHA MENON: Coming to clause 87, you are objecting to the granting of the licence of right automatically with regard to the patents on food, drug and other things. In this Committee evidence has led to the fact that there is a tendency in this coun-

try that those who are taking out patents do not use that invention for the manufacture of certain things in India but they delay it as far as possible. In the meanwhile, some drugs are got from abroad and sold at a very high cost. In order to prevent such abuses, very responsible people representing some organisation such as the C.C.O. and others told us in their evidence before this Committee that this compulsory licence of right should be there. It is a very good thing to have that in order to safeguard the interests of the public. What is your opinion with regard to this?

SHRI GURSAHANI: Dealing with the first observation, namely that several patents are taken out but only some of them are used while the others are merely maintained on the register, I might mention that this is, to some extent, a direct result of the provisions that we do not grant any product patents in our country. In a country where product patents are not granted, it is natural for several processes to be covered by patents so that the end product which will be manufactured from one of the processes will be adequately protected. In course of time a manufacturer or an inventor realises that some of the processes are uneconomic and sticks to one or two and other patents are allowed to lapse. A number of processes are allowed to lapse in the first 2, 4 years. This way, probably 50% to 60% of patents are allowed to lapse, particularly in the drugs and pharmaceutical field. As for your observation regarding the desirability of licence of right, as I have said earlier, if the licence of right is to be granted because the people do not work their inventions, then three years period of waiting should be given. That would be a reasonable proposition because an inventor will take at least a period of two years to decide whether it is going to be possible to utilise the invention. At the end of this period, if he still does not use, then you may have this licence of right.

SHRI ACHUTHA MENON: You are against fixing the maximum of 4% royalty. In your memorandum you have stated that in some cases even a royalty of 1 to 1½% would be sufficient. The fixing of maximum royalty will have the tendency to bring that maximum to minimum. That is the experience which you have related here before the Committee. We are trying to fix maximum ceiling in respect of land, income etc. What is objectionable, according to you, in fixing the maximum royalty for the patentee?

SHRI GURSAHANI: With due respect to you, I don't think there is really a valid analogy between ceilings fixed here and those fixed on landholdings. That is entirely for a different purpose.

SHRI ACHUTHA MENON: Even on income we are thinking of fixing a ceiling.

SHRI GURSAHANI: In which case there will also be I, hope a ceiling on income tax. I am opposed in principle to any ceiling.

SHRI ACHUTHA MENON: What is your objection?

SHRI GURSAHANI: It was not to 4 per cent that I was objecting. Any ceiling to be fixed now will not be relevant to a future state of affairs which are not known. It will fetter the hands of those who are going to be responsible for evaluating such matters, invest something.

SHRI ACHUTHA MENON: For 10 per cent also you will object.

SHRI GURSAHANI: Even if it is 40 per cent, I would object.

SHRI SRINIBAS MISRA: Do you consider that the manner of thinking, walking, squinting etc. of a person is his property?

SHRI GURSAHANI: This is a fundamental question . . .

MR. CHAIRMAN: Will it be helpful for us? It looks too academic

SHRI SRINIBAS MISRA: It will be helpful. His whole argument is based on this that it is his property. I am trying to show that it cannot be his property. He will also admit that.

SHRI GURSAHANI: There are two forms of property. One is which you can see, touch and feel like furniture, building, etc. which is tangible property. Every society recognises this property subject to whatever may be the limitations according to socialogical environment of the country. There is another property which is intellectual. Inherently it may not be property. We have however recognised it along with the civilised world that this is also a kind of property and it is respected as such. Though you cannot feel it. It is conceived as property and treated as property. The trade marks are protected by common law and the Trade Marks Act; the patents are also similarly protected by law.

SHRI SRINIBAS MISRA: Patents were never recognised as property. The Bill proceeds on the assumption that the patent is not property. The Bill wants to give some right to the licensee. If we have recognised it as property, we would be confronted with constitutional provisions.

SHRI GURSAHANI: Since long we have recognised the patents as property, from 1911 onwards.

SHRI SRINIBAS MISRA: The introduction of the Bill itself shows that it is not property. From 1911 this has been the position. Now, the right of some people is being licensed for the purpose of framing out. I allow someone else to come on my property and that is licence. Supposing, a dancer finds out new types of steps, will that be property?

SHRI GURSAHANI: It would not be property unless there is some law which could recognise such artistic innovation as porperty.

SHRI SRINIBAS MISRA: Would you think of any invention as property unless it is patented?

SHRI GURSAHANI: That is again a fundamental issue. We have recognised patents as properties, along with 80 other countries. When some limitations are being put in, we would like to know the nature of such limitations.

SHRI SRINIBAS MISRA: Would it be property without patents?

SHRI SHAH: If it is maintained as secret information, the common law recognises it as property.

SHRI SRINIBAS MISRA: Would you not prefer action for infringement of a patented article if it is manufactured by somebody else?

MR. CHAIRMAN: Unless the law gives you protection; there can be no infringement.

SHRI SRINIBAS MISRA: He has not said so in so many words.

SHRI PITAMBER DAS: Mr. Misra has put it in his own way and I will raise the issue in my own way.

SHRI SRINIBAS MISRA: In a democracy, it is open to everybody to have his own opinion. The whole point is compensation. Do you think that the gurantees provided for in our Constitution can be invoked if this Patents Bill is not passed?

SHRI GURSAHANI: I have not studied the Constitutional aspect. I do not wish to argue on the sovereign power of the Parliament and its constitutional limitations.

SHRI SRINIBAS MISRA: There is no question of argument.

Now, coming to the comments that you have made in regard to clause 3(d), you seem to think that a new

use of a known substance should also be included. I will give you only one example. Somebody invents a type of Manila rope for commercial use. Another person discovers new ways of hanging himself with the same rope. Do you think that this use can be patented?

SHRI GURSAHANI: This is one invention the inventor will be averse to work and other people reluctant to infringe.

SHRI SRINIBAS MISRA: In 3(e) you have suggested that the word "known" should be inserted before the word "properties". How do you justify that?

SHRI GURSAHANI: The clause says that mere aggregation of properties will not be patentable . . .

SHRI SRINIBAS MISRA: As a result of aggregation of two substances, if an unknown property is generated, your opinion is that they should be patentable and should be considered an invention? Is that so?

SHRI GURSAHANI: Yes; because the other test is of course that the invention or discovery should have a commercial or industrial use. That usefulness or utility is another factor and therefore if by combination of these known properties something is achieved which is going to be commercially beneficial to the country as an invention, I see no reason why this should not be protected as any other invention.

SHRI SRINIBAS MISRA: In my school days I was taught two things: chemical mixture and physical mixture. Does it mean that you want chemical mixture, and not physical mixture?

SHRI GURSAHANI: I claim very little knowledge of chemistry. But, obviously, this is too simple.

SHRI SRINIBAS MISRA: You have stated regarding clause 8: "While we agree that unsubstantiated claims should not get protection and that sufficient safeguards should be provided, the Controller's discretion to ask for all the information to determine the novelty or the patentability of the invention should be subscribed. It is, therefore, submitted that sub-clause (2) of this clause should be amended to read as "if the Controller entertains reasonable doubt as to the novelty or the patentability of the invention, he may for reasons to be recorded in writing require the applicant to furnish the details relating to the objections, if any,.."Will you give your reasons for that?

SHRI GURSAHANI: This follows from the basic concept that we have accepted the concept of universal novelty. Now, while the universal novelty is acceptable to us, I think we should not put the patentee to the exercise of collecting a mass of the material for the application elsewhere. But if the Controller feels that he has some doubts about universal novelty, he may call upon the patentee to produce material to show how his application has been treated in other countries where examination of the patents may be a little more sophisticated than it is in India.

SHRI SRINIBAS MISRA: What change do you suggest to be made in this clause for bringing out or giving effect to your suggestion?

SHRI GURSAHANI: In the beginning of clause (2), by inserting the words "If the Controller has reason to believe, and for reasons recorded in writing, require the applicant to furnish..."

SHRI SRINIBAS MISRA: Please turn to Clause 47. Your suggestion is that the word "Import" should be inserted before the word "use".

SHRI GURSAHANI: This actually arises only as a point of clarification. It may be said that using the patent

does not include importing the patentable article . . .

SHRI SRINIBAS MISHRA: Would it not encourage patentees in India to import articles without manufacturing them in India?

SHRI GURSAHANI: No, Sir, it would not, because of rigorous import control.

SHRI C. C. DESAI: It may be a life-saving drug, the import of which may become necessary in the interests of the health of the community. Then we have get to make foreign exchange available in the interests of the health of the people, and we cannot dispense with the import.

SHRI SRINIBAS MISRA: If some manufacturer or patentee has been licensed to manufacture a certain drug or material here, I think it will be preposterous to allow that patentee to import that very material, because after having had the monopoly and after having obstructed and foreclosed other manufacturers from manufacturing it, he cannot be allowed to import it without manufacturing it here. Anyway, we differ on this.

SHRI JUGAL MANDAL: Suppose he says that he wants to do it just to see the marketability of it, then you may have to allow.

SHRI SRINIBAS MISRA: Then there will be licence of right.

SHRI SHAH: Clause 47 refers to exclusive right to use. The term 'use' is a very wide expression. It includes manufacture, and when have imported, you just do not import for storing. You always use the imported article. Therefore, implicit in this exclusive right to use is also the exclusive right to import. We are only suggesting that this should be made explicit.

SHRI SRINIBAS MISRA: I have a right to use my pen which may be a foreign pen, but that does not give me the right to import. Would you agree that the word 'use' does not connote the word 'import'?

SHRI GURSAHANI: We are not discussing the rights of import. We are discussing the right of exclusive import. In other words, this clause confers upon the patentee certain exclusive rights; he may not be allowed to import because of some other controls but what we are now concerned with is whether he alone can import or his right does not extend to exclusive to import.

Shri C. C. Desai had asked me a question about the need to import certain essential drugs. There are provisions in the Bill which enable the importation of those drugs, if it is found that it is necessary in the interests of the nation. All that we were earlier on discussing was whether in such an event any compensation need be paid.

DR. SUSHILA NAYAR: Suppose a patentee deliberately and purposely does not start production and he imports in order to charge exorbitantly high prices. There have been such instances. The drug may be valuable nationally or individually, but it is a valuable drug. Why should this may be allowed to exploit other people's misery? Why should the Government or any other drug importer or trader not be allowed to import the drug to break this man's monopoly and to make the life-saving drug available to the people who need it?

SHRI GURSAHANI: I thought that there was a provision which said that in certain situations Government could authorise importation.

DR. SUSHILA NAYAR: But you are objecting to it.

SHRI GURSAHANI: We are not objecting to it in that sense; if it is

necessary in an emergency that that drug should be allowed to be imported, it should be imported. All that we are then saying is that same compensation should be paid to the patent-owner.

DR. SUSHILA NAYAR: Why should compensation be paid for the laziness of the man who has not started production?

SHRI GURSAHANI: If there is laziness, then there are enough penal provisions in the Bill. Firstly, after three years there will be compulsory licensing . . .

DR. SUSHILA NAYAR: There can be licence from the very first day.

SHRI GURSAHANI: Also, as the Bill stands, there is licence of right as from the same day; so, there is enough power in any case to take him to task if it is found that he is deliberately lazy. There may also be reasons for his apparent laziness . . .

DR. SUSHILA NAYAR: You want this man to be compensated for doing nothing more than filing a patent or sealing a patent even to use the process, as Shri Shah put it a little while ago. You want that the other people who make the effort to work and put in all their energies should pay this man royalty just for the mere fact that he was smart enough to go and file something which may or may not materialise; he has not done anything to materialise it or put it into practice. And you want that he should be paid compensation. Is that fair?

SHRI GURSAHANI: He has alone much more than merely file the application. He has invested in research and made the invention. There is one thing which I would like to mention here. You may be right in a few specific instances where this may require remedial action. But should we not consider at the same time the effect that this would have on genuine inventors and genuine patent-holders? Suppose I file a patent today and I know that anyone can import because I do not have the exclusive right to import, then that invention is of no commercial use to me. Suppose I am a person who is enterprising and I want to set up a unit and on the very first day that I patent my invention, it is thwarted by importation in an unrestricted manner, then I gain nothing and my exclusive right is taken away.

SHRI ARJUN ARORA: How do you say you gain nothing? If you have patented it, you should manufacture it in the country, but you want to import it from some other country where somebody else is manufacturing it; and you will be getting a share in the profits.

SHRI GURSAHANI: That visualises a situation where I have a manufacturing plant elsewhere.

SHRI ARJUN ARORA: You want to give the right to import to a patentee who does not manufacture it in anywhere but who merely holds a patent? It is an absurd proposition which you are advocating so vigorously.

SHRI GURSAHANI: I am not arguing on that at all. What I am saying is this. There are people here, our own inventors, who have no manufacturing places elsewhere.

SHRI ARJUN ARORA: If the thing is not manufactured, anywhere, where will it be imported from?

SHRI GURSAHANI: I thought that you made the point that he might be manufacturing it elsewhere. I am referring to the case where he has no manufacturing place anywhere.

SHRI ARJUN ARORA: Either he is manufacturing or somebody else is manufacturing under a licence from him and he is getting his royalty. Unless the thing is manufactured somewhere, how could it be imported?

MR. CHAIRMAN: The whole point is that the patent law should not be

utilised for enabling a man to import goods from outside and then capture the market and get the profit.

SHRI GURSAHANI: I would entirely agree if that were the situation in certain specific cases. But the clause as is worded deprives the patentholder of the exclusive right to import; or let me put it this way; it entitles anyone else to import and thereby defeat the exclusive right in that patented process.

SHRI SRINIBAS MISRA: In clause 66, you have suggested the introduction of due process before Government exercise the right under this clause. What else do you want except an opportunity to be heard?

SHRI GURSAHANI: The points we have made on this clause are three in number. One is that the words used are of a general nature and may give rise to difficulties of in interpretation. What is 'mischievious' is also something which can cause a bit of difficulty and something must be done to give it a more concrete meaning. The third point that we have made is that while the clause says that opportunity should be given to be heard, it does not say who will hear him and whether there will be a right of appeal.

SHRI SRINIBAS MISRA: So, you want an indication to be given of the officer who will bear it, and you also want a right of appeal. You also want that the word 'mischievous' should be defined.

SHRI GURSAHANI: These are the submissions we I have made in our memorandum.

SHRI SRINIBAS MISRA: While drafting your memorandum have you considered the phrase 'capable of being used' used in clause 87 (1) (a)?

SHRI GURSAHANI: We must have considered that. I did not realise that it called for any comment from me.

SHRI SRINIBAS MISRA: Do you consider that they are very clear words which should be used?

SHRI GURSAHANI: I see your point. Your point is that anything may be capable of being used, and, therefore, the term may be very wide. I agree it is very wide. Perhaps we could use the word 'intended to be used'. I am grateful to the hon. Member for pointing this out.

SHRI GURSAHANI: It should in fact be 'ordinarily intended to be used'.

MR. CHAIRMAN: This point should be noted.

SHRI SRINIBAS MISRA: Are you of the view that whenever there is any provision for granting some licence or revoking it or compulsory acquisition there is any penal provision, there should be an appeal provision?

SHRI GURSAHANI: We firmly believe in due process. Particularly when somebody's rights, whether they be rights of property or any other kind of right, are restricted, it is only just that he should be given an adequate opportunity to be heard and there must be an independent review by a higher authority. As a principle, we should be firm on this and I do not think we should depart from it.

SHRI SRINIBAS MISRA: Clauses 99-100. Why are you against government undertakings being included in this?

SHRI GURSAHANI: I explained this earlier. Government undertakings are, to my mind, not in any way superior to any other undertaking except that they are formed by Government. Therefore, to the extent they engage in any commercial activity like any other undertaking, *prima facie* there appears to be no justification for putting them on any different footing.

SHRI SRINIBAS MISRA: Would you be satisfied if this is limited only

to commercial undertakings by Government?

SHRI GURSAHANI: Yes, I shall be satisfied if my objection is restricted to commercial undertakings of Government. The non-Commercial Government undertakings are taken care of in the first clause of section 48 where government departments are included. We have ourselves said we have no objection to that particular part. That should meet your point because any government department which wants to use it in the interest of public health or nutrition should be free to do so.

SHRI KRISHNA KANT: On 2(h), you have made two contentions. One is for excluding the CSIR and the other is for excluding corporations established by Central or State laws. You mean to say that where there is a government company or any departmental undertaking—even Bokaro is a departmental undertaking—they engage in competition?

SHRI GURSAHANI: I was not aware of Bokaro as a government department.

SHRI KRISHNA KANT: For exaample. There are other departments also. There are the examples of State Government undertakings also. If this is your argument for the non-inclusion of government companies, then the whole chapter relating to Government undertakings need not be there.

SHRI SHAH: Your point can be so.

SHRI KRISHNA KANT: If we accept your contention, the whole chapter XVII will have to go.

SHRI SHAH: Your point can be taken care of by qualifying the definition of a government undertaking as any industrial undertaking carried on not for commercial purposes.

SHRI KRISHNA KANT: As you know, government thinking now, even in regard to defence requirements, is in favour of giving some orders to the private sector because Government is not able to do all that by itself. If we accept your view, the whole of Chapter XVII will have to go.

Then 3(d): could you give an example of a new use. Supposing an antibiotic is found to have a new use for a disease, do you think that should also be patented?

SHRI SHAH: I know for a fact that a company which owns a patent in respect of pesticide has recently evolved a new use in respect of dyes and colouring matter. This was not contemplated earlier. It has revolutionised the particular field of industry. The original patent would be limited to use as a chemical, as a pesticide.

SHRI KRISHNA KANT: The patent is limited to the process, not the product.

SHRI SHAH: There is a further limitation. The product has to be used as a pesticide in this case. Any other use would be outside the scope of the patent.

SHRI KRISHNA KANT: The clause clearly says that only the process will be patented, not the product.

SHRI GURSAHANI: But in the detailed specification, we also make a claim as to what it would give rise to, and that by manufacturing it there would be certain commercial use.

SHRI SRINIBAS MISRA: The new use can come as an addition.

SHRI SRINIBAS MISRA: The new use may be by somebody else. For example, prontosil which was used for diseases in the urinary tract has a new use for treating mastoid abscess found out by some doctor. So that doctor must get it patented.

SHRI VEDARAMAN: The man who finds it will get it, not the manufacturer.

SHRI KRISHAN KANT: Cl.8. The patent office is unable to do all the searching with the technical skill required. We want to make our patents firm. This is done so that later revocation may not take place. So it is better that this provision is put in. We also know the difficulties of working in the patent office. This will help them. This will also ensure that later revocation may not take place. Why should you object to it?

SHRI GURSAHANI: I concede that it will take time for us to have facilities necessary to cope with the increasing number of patents. I do hope that whatever the final form of the Bill, it will be in the form which will encourage patents. A central examination facility which could be used by all the countries is a good thing, but until, this comes about, I would say you are right that our patent office do not go on registering patents which do not call for anything in terms of inventiveness and commercial utility, but whether we need a provision which will result in a mass of Paper in for every application for patent, produced, is the question. That would be putting a strain on the Patent Office, instead of helping it.

SHRI KRISHAN KANT: Then otherwise we will have to do with them.

SHRI SHAH: Revocation possibility would be only an exception.

SHRI KRISHAN KANT: Now, I need not deal with clause 48 which has been dealt with sufficiently. I come to clause 53. May I know if any case study has been done by you or any of the organisations to show the details—when a patent has been filed, when it was sealed and accepted and how much time it takes and so on. Our feeling is that nothing of that sort has been done. It is all only hypothetical now.

SHRI GURSAHANI: We have not taken any such survey which could be universally accepted. It takes a very long time to work a patent, the period varying from industry to industry and from invention to invention. All I can say is that it stands to reason that in the field of drugs and pharmaceuticals a much longer period would be required. Very elaborate clinical trials are necessary and you cannot straightaway experiment on human beings. You have to go on experimenting with animals in the laboratory and later confirm them by hospital trials which must necessarily take a minimum period of three to four years.

SHRI KRISHAN KANT: When the patents are being evolved, it may take 14 to 16 years. In the literatures, it is mentioned that for training one person to work out a patent, it requires seven years. That is historical. So, to train every person, it will take another seven years, which means it takes a total of 14 years. The literature tells us that this is the period and how this period was arrived at. It is by trial and error and hit and run methods, so to say. At that time, probably they did not have any scientific method of survey and calculation, how the payment should be fixed and all that. This is how the original patent laws were made. At present we have a fixed period, five, seven or 20 years as the case may be. What you have said about clinical trials is a general one. Is there any case study made? Unless that is done, we cannot really come to any scientific conclusion.

SHRI GURSAHANI: I entirely agree with you. It cannot be that in every country, the period fixed is arbitrary. In every country, either it is 10, 14 or 16 years, because it seems to be the generally accepted term of patents, although 16 years is the standard.

SHRI KRISHAN KANT: The question again is, it should be remunerative. Supposing a process can be paid back in five years, should we not have an organisation to see whether the patent process is really paid back in five years. It may be seven to 10 years, but should there not be a system so that the organisation or the industry can get back the money which they have invested in a reasonable period?

SHRI GURSAHANI: That should be an ideal thing, but I do not think we will ever have a machinery to evaluate how much it means in terms of commercial return. Therefore, some kind of period has to be devised, and that is why we have said that whatever is the period you fix, you must not close the door so that in a fit and proper case you can extend it.

SHRI KRISHAN KANT: Supposing after five years, the Patent Office finds that the patent has not been used and no attempt had been made to use the patent, should it not be that they should abrogate it after five years?

SHRI GURSAHANI: That is already there.

SHRI KRISHAN KANT: The question is, should it not be automatically done. Supposing that the Patent Office finds after keeping itself in touch with the patentee that even after five years the patent has not been used or no attempt had been made to use it, should not such a provision for revocation be necessary?

SHRI GURSAHANI: I thought you said earlier that the Patent Office would undertake an enquiry into it. Or, are you suggesting that automatically every patent would be revoked after five years? You mean that it should be cancelled after five years for non use? They would be hard as there may be a genuine reason for non use and the patentee should have the apportunity to explain.

SHRI KRISHAN KANT: Supposing no attempt has been made at all.

SHRI SHAH: It would require an investigation in every particular case, and it is already provided that if in the opinion of the Controller, a patent has not been adequately exploited, it can be revoked. But somebody has to make an application.

SHRI VEDARAMAN: What he says is that the Patent Office should revoke it automatically.

SHRI SHAH: It will be a colossal task for the Office to determine it. It is better to be selective. Only in cases where the parties are interested and where the patent is commercially exploitable, it might be necessary. We should restrict it to such cases. Wholesale enquiry would be unfeasible.

SHRI KRISHAN KANT: If the Patent Office is made powerful and strong enough, you have no objection.

SHRI GURSAHANI: It is provided in clause 64. This can be done on the petition of any person or by the Central Government. The Central Government can always revoke, or invoke revocation proceedings against any patent which has not been used.

SHRI KRISHAN KANT: Automatically, *suo motu*, after the Controller is satisfied.

SHRI GURSAHANI: It cannot be automatically done. He has to be satisfied. The only point is, at whose instance it has to be done. Clause 64 says that the Central Government can institute revocation proceedings. In this context, I would consider the Central Government not being different from the Controller-General but instead of the "Central Govern-

ment, " you may substitute the word "Controller".

SHRI KRISHAN KANT: In clause 66, you have made a very valid point. That a patentee should be given an opportunity to be heard. Can you suggest some methods?

SHRI GURSAHANI: Since it is the Central Government whose opinion forms the basis for the institution of proceedings, anyone who is not the Central Government would be the fit person here. Here, perhaps it is contemplated that a tribunal may be necessary: a tribunal to consider these things, just as the income-tax tribunal or the sales-tax tribunals. If there is a tribunal for intellectual property, it may cover all kinds of industrial property rights. But certainly it should not be the Central Government because the Central Government would then become the judge in its own case.

SHRI KRISHAN KANT: Clause 90: definition of default. The clause says:

> "If by reason of default of the patentee to manufacture in India to an adequate extent and supply on reasonable terms the patented article or a part of the patented article....

SHRI GURSAHANI: This is not a definition, with due respect, of the word 'default'. It means failure. If you fail to manufacture, then the consequences of revocation will follow. Where there is default arising out of situations and circumstances which are beyond one's control, it should had to revocation. In other words failure arising in this way should not be regarded as "default".

SHRI KRISHAN KANT: One instance you have given is that the State economy is not yet ripe for a certain thing. Then it will not be commercially feasible.

SHRI GURSAHANI: That is only one aspect of it.

SHRI KRISHAN KANT: It is only when all these things are feasible. Otherwise Government will not go in for revocation.

SHRI GURSAHANI: If that assumption is correct, my objection is met.

SHRI PITAMBER DAS: I would like to go into the concept of property as advocated by you. I want to understand as to what do you actually mean by property rights. You have told us that there are two ways of asserting those rights. One is to make use of the right and the other is to exclude other persons from using that right.

SHRI GURSAHANI: In every property right, the negative and positive must co-exist. Otherwise, it is not an effective property right.

SHRI PITAMBER DAS: You gave us an illustration of the house. You have the right to enjoy the house as well as the right to keep away trespassers from the house. I want to know from you whether it is correct that the status of a person with regard to any property, movable or immovable, depends upon the rights that he enjoys in it. If I have the right to remain in a house and pay rent, I am the tenant; if I have got a licence for the property, then I am the licencee; if I have the exclusive right of the property, then I am the proprietor; so that the status of the person depends on the rights that he enjoys, whether those rights are acquired or inherited.

SHRI GURSAHANI: Correct.

SHRI PITAMBER DAS: Suppose you have the exclusive right of a house and you are the owner of that house, do you have the right to keep that house standing at a particular place view when it has become so old and dilapidated that it poses danger to persons, who pass in the street below. Have you got the right to keep it there even under these conditions.

SHRI GURSAHANI: No.

SHRI PITAMBER DAS: Even if you have the right, the Municipality will not allow you.

SHRI GURSAHANI: That is a restriction on my right of ownership. My right is abridged.

SHRI PITAMBER DAS: Therefore you will agree that your exclusive proprietary rights are also sometimes curtailed.

SHRI GURSAHANI: I would concede it straightway.

SHRI PITAMBER DAS: What are those rights which you, as a patentee, enjoy with regard to your invention? Are they, something different from those mentioned in the model form of patent which the Government issues to the person concerned? Government, on application, issues a document to him, and is it not that document above by virtue of which he can claim right, or is there any other source?

SHRI GURSAHANI: This document does give effect to certain rights of property in regard to invention and the exercise of those rights is subject to the statute from which those rights emanate. As my colleague explained, this is a statutory recognition of a right which under the common law already exists. In other words, if I have some knowhow, if I have some expertise which I have developed, it is my exclusive property in the sense that I can prevent others from using it.

SHRI PITAMBER DAS: I want to be clear on that point. You have conceded that the status of person with regard to property will depend upon the rights that he obtains in that property. Those rights can be either inherited or acquired. Invention is not inherited in itself. Only when you make an invention, the question of right arises. So that you acquire certain rights in that invention.

SHRI GURSAHANI: Property right is not always an inherited right. It may be a right arising from its recognition by Society and later put on the statute book to give it a formal recognition and protection. Therefore, there. Ultimately your intangible property is only a bundle of rights which are conferred upon by common law or statute or common law. Common law rights are recognised as in the case of trade marks. In addition to those common law rights, there may be more regulated rights of property as conferred by various laws. When you made an observation that this right of property....

SHRI PITAMBER DAS: Have you seen the model form of patent that is granted? The words are: "... he shall, as patentee, have the exclusive privilege (*not right*) of making, selling and using the invention throughout India. You have thus the exclusive privilege of making, selling and using the invention throughout India. You are a party to this document and you have to abide by that. If you break the provisions of this document, then certainly the Government comes in.

SHRI GURSAHANI: I would not deny that. Our exclusive right the rights to exclude others from using it. True, the word used here is 'privilege' and not 'right'. But this privilege confers upon the patentee the right to exclude others.

SHRI PITAMBER DAS: But the moment you break the provisions of the document, that is revoked.

MR. CHAIRMAN: This is a right conferred on the State. This cannot be a right recognisable under the law. This is what you yourself admit. He did not deny that.

SHRI PITAMBER DAS: Take the case of compulsory licensing of right. If the patentee does not work the patent, then the authority will step in.

SHRI GURSAHANI: I have not objected to compulsory licensing.

MR. CHAIRMAN: He is not objecting to the compulsory licensing.

SHRI GURSAHANI: I am not objecting to compulsory licensing. I have said that it is inherent in a situation like this that the invention should not work as a monopoly to the detriment of the national interest. Therefore, some form of compulsion whereby the invention is worked for the national good must be written into the Bill. Nobody can deny this. This is in our bill, in our previous Act and in the Acts of other countries. Therefore, I have no objection whatsoever to the compulsory licensing procedure. All that I am saying is that in view of the provisions for compulsory licences, licences of right are not necessary and that in any event we should include in this licence of right something which would entitle the Controller to determine the suitability of a person who wishes to exercise or work the invention, the more so in the fields of foods and drugs where protection against substandard products is even more necessary than in any other field.

SHRI PITAMBER DAS: So, your objection is with regard to the procedure and not the principle.

SHRI GURSAHANI: On principle I cannot object to any provision which allows the inventions to be worked. The very purpose of a Patent Law should be to encourage the creation and working of patents. My objection is that we have in compulsory licencing provisions adequate means to take care of this and hence no special provision is necessary.

SHRI S. K. VAISHAMPAYEN: Let me be brief. I shall put to you very few questions. Do you agree that we have certain objectives to achieve in our egalitarian society? You know we have a mixed economy.

SHRI GURSAHANI: Yes.

SHRI S. K. VAISHAMPAYEN: If you agree with that, then why do you want to exclude all Government public undertakings from making use of these inventions as contemplated in the Bill?

SHRI GURSAHANI: When we are in a mixed economy, the Government also enters the field of commerce and industry. I am not prepared to go any further than saying that if Government has to enter the field of commerce and industry, they have to face competition without any special advantages.

SHRI S. K. VAISHAMPAYEN: Government undertakings are in a different type of industry.

SHRI GURSAHANI: What I say is that if the Government enters the field of commerce and industry, they should also face like any other unit the competitive forces. That, to my mind, is one way of making the Government undertakings alive to the need for efficiency on principle, no discriminatory provisions should be made which would give the Government undertakings engaged in commerce and industrial activity an advantage over the other units.

SHRI S. K. VAISHAMPAYEN: Now, my second question is with regard to the period of the patent. Do you want that we should have processed patents and not the product patents in our country as we have been having uptillnow?

SHRI GURSAHANI: Well, we have not, in our representation, said that we must have a product patent. I would only make one observation. Earlier I said that if you only have processed patents and not the product patents then you have to reckon with the fact that there will be a

large number of patent applications because every possible process will have to be protected. Since the end-products is not protected, you, will find that a large number of patent applications will be filed some of which, in course of time, will be discarded. When an invention is made, the same product may be made by several processes. And it takes a long time for the manufacturers to determine as to which one is the most economical or most efficient process. Therefore, of necessity he must prevent other people copying his process and thwarting his research.

SHRI S. K. VAISHAMPAYEN: You are insisting more on the uniformity of the period for a patent. Irrespective of whether there are patents for food, drug or other products, you would like the present period of 10 years to be extended. Is it so?

SHRI GURSAHANI: As I mentioned earlier, there seems to be no particular reason why there should be this discriminatory provision with regard to the duration of protection? Let there be uniformity in this regard. I go a step further and say that there is little justification that it should be reduced from 16 years to 14 years without a provision for extension.

SHRI S. K. VAISHAMPAYEN: If the period is for ten years, should it be for all types of patents?

SHRI GURSAHANI: When I say that there should be uniformity, as a corollary, that uniformity should be at the higher period.

SHRI S. K. VAISHAMPAYEN: You have also taken objection to putting a ceiling on the royalty that is to be paid to a patentee. As you have already stated in your memorandum this particular ceiling has been put with the prime object of containing the foreign exchange outgoing. If that is so, why should we not retain the clause as it is and have one more enabling provision by which the Government can entertain individual cases of claiming this royalty? Supppose if such a provision is in the Bill, will you agree?

SHRI GURSAHANI: This provision would be a too circuitous to achieve the object mentioned by hon. Members. Every royalty should be considered based on the merits of each case. If you put in that clause in the Bill, this 4 per cent will tend to become a norm in every case.

SHRI B. D. DESHMUKH: The witness has submitted a memorandum. On page 6 of his memorandum, he has suggested some modifications to clauses 99 and 102. Do you want that power of acquisition of the inventions by Government to be curtailed or restricted or should this clause be deleted altogether from the Bill?

SHRI GURSAHANI: All that we are saying is that there should be a proper review of circumstances. We have not said in so many words that this clause should be deleted but it should certainly be restricted to the circumstances mentioned in our memorandum.

SHRI KRISHAN KANT: We understand what is intended for.

SHRI B. D. DESHMUKH: What is your answer to the remarks made by you in regard to clauses 99 and 102. Specifically tell us whether you want this clause as it is or you want restrictive powers to be given to Government to some extent.

SHRI GURSAHANI: It should be restricted in regard to the kind of undertakings which can take advantage of it. As Shri Krishan Kant has said, whenever power is exercised, it should be power exercised by due process of law. The Government ought to be satisfied that it is required in the interest of national need but subject to a judicial review.

SHRI B. D. DESHMUKH: Do you suggest amendments to Clause 102?

SHRI GURSAHANI: We have stated here: "This clause enables the Government to acquire compulsorily all the patent rights of an applicant or patentee in a particular invention 'if satisfied that it is necessary....for a public purpose'. This is effected by a mere publication of a notice and the only appeal is on the amount of compensation." You can join issue with the Government only as regards compensation. If the need is challenged there is no independent judicial review.

SHRI B. D. DESHMUKH: You suggest specific amendments to this clause.

SHRI GURSAHANI: Once the principle is accepted, the draftsman of the Government of India will do a better job than myself. That is why I did not deliberately indicate the manner in which it should be amended.

MR. CHAIRMAN: With regard to clause 8, you say that the search for other inventions in countries other than India should not *ipso facto* be imposed on the applicant. We have heard from the representatives of drug industry that only 30 companies are in a position to have research facilities and the rest of them have no such resources. Will it be in the interest of Indian applicants to compel them to file all the necessary information? Will they be in a position to do it? Will it not be the position that these 30 or 15 firms would have all the advantage and the others nothing?

SHRI GURSAHANI: We expect that Indian inventors will also approach other countries for patent protection and this requirement will be as cumbersome for them as it would be for any foreigner in our country. It is also possible that the Indian inventors will not have international contacts or channels of communication to be able to fulfil this requirement in every single case.

SHRI KRISHAN KANT: All the copies of papers may be sent to the Patent Office. You get it typed and send it.

MR. CHAIRMAN: The point is whether the small firms will be in a position to collect the information as is contemplated by the law.

SHRI GURSAHANI: All the objections are not contained in one single communication from the Patent Office. It is not in one paper that all the things required by them are incorporated. Letters are exchanged. The applicant will have to produce the entire correspondence in each country, wherever he wants patent protection. There will also be difficulties of language involving expensive translations.

MR. CHAIRMAN: He will have the discretion to ask a particular applicant to get all the information when he is in doubt so that he can examine the same.

SHRI GURSAHANI: With due respect to the Patent Office, I should say that we must develop better know-how and expertise for examination, because we have to keep in mind the position 15 years later. In every case if you give the right to the Patent Controller to ask for these details, I don't know whether we will not become far too dependent on finding out what has happened elsewhere in this world.

SHRI KRISHAN KANT: Till we develop, for 15 to 20 years, you may have this provision.

SHRI GURSAHANI: This may hamper development.

MR. CHAIRMAN: It will take some time to collect all the information from outside India.

SHRI KRISHAN KANT: Only when the Controller entertains reasonable doubt about the novelty, he may ask the applicant to furnish details relating to the objections.

SHRI SHAH: Generally, an applicant files his application in about 50 countries. For instance, the Hindustan Antibiotics have filed an application in all countries.

MR. CHAIRMAN: If it is a global patent, then they are required to submit all the information. Otherwise, our people will be at a disadvantage.

SHRI GURSAHANI: We do not lack in inventive genius. There are very useful inventions, but the inventors do not know that their inventions can be protected. Firstly, our inventors should become patent conscious. I hope they will soon become patent conscious. From the 1967 Report of the Patent Office, you will find that whereas the number of Indian patents of Indian nationals have increased, the number of total patents have not come down. Patent protection is being increasingly sought by Indian Nationals. We have also to see that our export markets, foreign markets, are protected by patents. If an Indian inventor files an application on a global basis, he will be required to furnish all the combersome details in every case.

MR. CHAIRMAN: With the advancement of science, it has become inevitable to have research, whether there are patents or no patents. How is it that the licence of right provision will prevent the growth of research efforts?

SHRI GURSAHANI: The requirements of modern Industry is to run even in order to hold the current position. Therefore, you are right that some little research effort will be there even if there is no patent protection. There is however the other more important aspect namely research will be addressed to ensuring that he will not lose the existing market for his goods. He may not invest money in massive research for future growth and development. I would like to make one general remark here that the days of a lone wolf, a scientist, sitting in a laboratory by himself and producing something are over. As the technology becomes more and more complex, we also have more sophisticated facilities for conducting research activities. Research will largely be undertaken by the industry as a collective effort amongst scientists if it is sure that adequate returns will be forthcoming on the investment in research. In order to encourage research, the patent protection should be strong rather than weak. I have to make one general observation. While dealing with the period of patents, I gave the impression that my comments applied to the Drug and Pharmaceutical industry only. Actually, they apply equally to chemicals and food because these are covered under the same provision.

MR. CHAIRMAN: Mr Gursahani: We are very much pleased that you have come, I am sorry that you were put to some inconvenience on account of the change in timings from 3 P.M. to 10 A.M. which was due to some misunderstanding. On behalf of the Committee, I thank you and your colleagues very much.

SHRI GURSAHANI: Thank you.

The Committee then adjoured.

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967.

Friday, the 20th June, 1969 from 09.30 to 11.45 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Kanwar Lal Gupta
5. Shri Hari Krishna
6. Shri Amiya Kumar Kisku
7. Shri Madhu Limaye
8. Shri Srinibas Mishra
9. Shri Jugal Mondal
10. Dr. Sushila Nayar
11. Shri Sarjoo Pandey
12. Shri P. Parthasarathy
13. Shri T. Ram
14. Shri Maddi Sudarsanam
15. Shri Ramesh Chandra Vyas.

Rajya Sabha

16. Shri S. K. Vaishampayen
17. Shri Krishan Kant
18. Shri R. P. Khaitan
19. Shri Arjun Arora
20. Shri T. V. Anandan
21. Shri K. V. Raghunatha Reddy
22. Shri Pitamber Das
23. Shri Dahyabhai V. Patel
24. Shri C. Achutha Menon.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT, INTERNAL TRADE AND COMPANY AFFAIRS (DEPARTMENT OF INDUSTRIAL DEVELOPMENT)

1. Shri K. I. Vidyasagar, *Joint Secretary.*
2. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

Indian Merchants' Chamber, Bombay

Spokesmen:

1. Shri J. H. Doshi, *President*
2. Shri S. P. Godrej, *Vice-President*
3. Shri P. A. Narielwala, *Member.*
4. Shri C. L. Gheevala, *Secretary.*

(*Witnesses were called in and they took their seats*)

MR. CHAIRMAN: We welcome Shri Doshi and his colleagues from the Indian Merchants' Chamber, Bombay. Before the evidence starts, I would like to remind you that the evidence that your tender is liable to be published, and if you desire that any part of your evidence is to be treated as confidential you may indicate it, but such evidence is, however, liable to e made available to the Members of Parliament.

At page 14 of your memorandum you have said that section 21 of the existing Act is sought to be omitted in the present Bill. But I find that it has been incorporated word for word in clause 156 of the present Bill. So, it is not proper to say that section 21 of the existing Act is sought to be omitted.

SHRI DOSHI: We are sorry for it.

We have already submitted our memorandum and I do not intend to dilate on it or go over the same points, because I am sure hon. Members must have gone through it. We shall be happy to answer any question that hon. Members may like to raise.

MR. CHAIRMAN: We would like to have your view regarding licence of right *vis-a-vis* compulsory licence. One of the points that you have raised is that licence of right is an extension of the compulsory licence. If it is an extension, why are you objecting to the licence of right? Particularly in the drug field, there has been sufficient modernisation and no drug industry can survive today without a proper research organisation of their own, whether or not there is patent. If that be so, why should there be a serious objection to licence of right?

SHRI DOSHI: We have not objected to licence of right in our memorandum. All that we have said is that this should be effective three years after the patent is sealed, and not automatically.

SHRI KANWARLAL GUPTA: Has our country gained or lost as a result of the patent law in the last 20 years and if we abrogate it now, what will be the consequences?

SHRI DOSHI: If we ever thought of abrogating it, we should have done it immediately after independence.

But now it is too late at the present stage of our industrial development. We have built up research organisations and are developing; to think of abrogation at this stage would be suicidal for us.

We have gained from the patent law. We have been able in the last 15 years to attract a number of foreign industries and have made considerable progress of which in the outside world we can be legitimately proud. This is because of the Patent Act. It may be that it is time to modify the Act, which is under consideration. It is a pity we have taken so much time to effect this modification. But we have certainly gained and not los anything by the patent law.

SHRI KANWARLAL GUPTA: The number of patents registered here are mostly foreign, and it is the foreigners who have gained, not Indians. Our research organisations and scientists are very few in number. Our technical know has not developed much. So can we abrogate patents for five or ten years and consider reintroducing it later, and if we do it, what will the consequences? Secondly, let us do away with existing patents registered for five or six years because they have made a lot of money, but we can register new patents in the future. What is your reaction?

SHRI DOSHI: The question of foreign patents being in larger number than Indian patents is not unique to India alone. It happens even in advanced countries like UK, Germany, Switzerland, and Japan and France. It is only in the USA that they have indigenous patents in larger number than foreign ones. That depends on the research progress of each country. We started research only 15 years ago. It would take time. Percentage-wise our patents are increasing in number. I was told that by 31st Dec. 1968, the percentage has gone up from 5-10 to 20. This will increase from year to year. We have to build up a tradition of research which we have not been able to do till now. As everything goes slow in this country, progress in this field is also unfortunately slow.

SHRI KANWAR LAL GUPTA: How many members of your Association are foreigners?

SHRI DOSHI: No foreigners; but we have no bar against them.

SHRI NARIELWALA: We have foreoign concerns as members, but no members on our Committee.

SHRI KANWAR LAL GUPTA: Any other concerns having direct or indirect interest in foreign countries?

SHRI DOSHI: Many of our members have foreign collaboration.

SHRI KANWAR LAL GUPTA: Percentage?

SHRI DOSHI: I cannot say. We have 140 affiliated bodies and 1800 members. We cannot say in each affiliated body how many have foreign collaboration. It is difficult to give the percentage.

SHRI KANWAR LAL GUPTA: There are some patents which were registered long ago, but they have not manufactured the products.

SHRI DOSHI: That is because the compulsory licensing clause was not effective. Now we are trying to make it more effective. If this clause was made effective and simplified, even in ten years we would have achieved some progress. People went to High Courts and got it stopped for 7-8 years, like that. By that time, the patent would expire. There are at present a number of expired patents, but we have not been able to do anything about it, because mere expiry does not mean anything; we have to develop the know-how and design to produce the thing. We are not able to do it without foreign collaboration. So that is not the sole criterion.

SHRI M. SUDARSANAM: Some unpatented medicines are cheaper than patentented ones. Is that an argument for dispensing with patent law?

SHRI DOSHI: No. It is a question of inspiring confidence in the consumer. Our Indian concerns sell vitamins at almost half or one third the price of so-called foreign-concern-produced vitamins. Vitamin patents have now expired. You have a fifty or hundred companies producing them. Why do you want to buy from a particular company? Why not buy from another whose price may be half or one-third?

SHRI M. SUDARASANAM: It has been represented to us that special tribunals will enable disposal of disputes and complaints quicker.

SHRI NARIELWALA: We have suggested in our memorandum that disputes on the question of law should be dealt with by the High Court, but where administrative questions are concerned, it may be advisable to have something like the appellate tribunal on income-tax which would ensure quicker disposal.

SHRI M. SUDARSANAM: Do you consider the patent system has stimulated research in the country?

SHRI NARIELWALA: We should look at the background. As our President has mentioned, our real research has begun only in the last 15 years when we started the CSIR and the laboratories. Today there are many laboratories which are able to produce papers and formulate which are patentable and are being patented. That is why the number of patents registered has gone up. Last year, about 6,000 patents were registered in India here, out of which nearly 20 per cent 1,000 were of Indian origin. So, if you abrogate the Patent Act, as has been suggested, it would really inflict a serious hardship on the Indian scientists and the Indian research workers because they also wish to enjoy the fruits of their labour.

SHRI DOSHI: If I may add, we have to establish a position between two extremes. One extreme is complete abrogation and the other extreme is a complete tightening like what it is in the United States process patented, product patented, application patented and a period of 17 years to be extended by another five years or so. That is another extreme. We have to examine at what stage of the industry and research progress we stand today and what compromising position we should adopt in this country. I think the wisdom of bringing this sort of Bill is admirable and we agree with it as it stands today, by and large, except minor suggestions which we have made. It is a god cmpromising attitude that this country can adopt at the present stage.

SHRI C. C. DESAI: Mr. Doshi, you said originally, at the outset, said that if we had thought of abrogation we should have done it 20 years ago. Do you think that we have advanced to such an extent as to say that abrogation is now completely ruled out.

SHRI DOSHI: Yes, I would say that. At present, if we abrogate it, we would be retarding our progress. Nobody will come and like to put up factories because once you start manufacturing a product, what is the idea behind abrogation? There are two things: one is, our boys can develop it without bothering about patent rights and they can start manufacture. It will take a long time. We will have to incur a lot of expenditure. It cannot be done overnight. In the patent applications, people do not give out all the secrets and it is so vaguely written that it requires a lot of developmental work. I have done it and I maintain a research laboratory and those people who are involved in research know that by reading the papers they cannot do everything. We know very little.

Take for instance, a dyestuff; we know that such and such a product mixed with such and such a thing will give a dye-stuff. But to arrive at a better dyestuff will take five years. Even when the patents of the ICI, for instance, are valid, it took me seven years to develop this reactive dye. So more abrogation does not mean that the fruit is hanging and it will fall directly in our mouth!

SHRI C. C. DESAI: You said we should have done it 20 years ago. Have you not made sufficient advance?

SHRI DOSHI: I think so.

SHRI C. C. DESAI: People from outside will not come, you said. As far as I know when there are big companies now existing, Pfizers, CIBA everybody is here—where is the scope for a new company to come here?

SHRI DOSHI: I meant new products which they may not be able to make.

SHRI C. C. DESAI: They will; and they will make the same profits.

SHRI DOSHI: Well, the know-how is exposed. You cannot keep it a secret. If you are manufacturing here, the other people, in the absence of patent protection, will start copying it immediately.

SHRI C. C. DESAI: This Bill was on the anvil. even in 1965. The foreign companies knew what was the trend at any rate in the minds of the majority of the Members of the Committee. They knew that the Patent Law was going to be much weaker than it originally was. Even then, during the last five years, all these companies have sunk crores of rupees in investment in India, taking all the risk of the weakening of the Patent Law. Park Davis, for instance, has invested substantially; Mercke of Germany and others are expanding substantially. Pfizers are also expanding. Every company is expanding knowing fully well that patent law is going to be weaker than before.

SHRI DOSHI: Have you examined how many products they are making, and how many of them are valid in respect of the patents and how many patents have expired? I am sure that if you study this, you will find that out of the list of products which they are manufacturing, in India, for 95 per cent of them, the patents have expired, and there may be two to three per cent for which the patents will be likely to expire in the next two or three years.

SHRI C. C. DESAI: The new products can determine the basis of profitability and not the basis that the patent has expired. The availability of raw material in the market is also there.

SHRI DOSHI: You must give compensation to the people who have done research work.

SHRI NARIELWALA: The hon. Member has mentioned about profitability. I would like to say that after all you are here to protect the interests of the consumer. If you go into the quantity of the product which goes into a vial of penicillin or any other compound, you will find that the cost of it varies from nine per cent to about 12 to 13 per cent. The rest of the cost is build up by the cost of packing material, cost of advertisement, cost of clinical and medical trials, sales orgainsation and so on. All that is sought to be recovered because of the sources work that and the expense have been incurred in respect of the whole thing. If you look at the result of our own industries like CIPLA, Hindustan Antibiotics, and so on, you will find that the amount of basic material that they use in the finished product is comparatively small. The

profit of these industries comes from the packaged product and not from its bulk as such.

If you look at countries which have abrogated their patents, and the progress of development, there, their quality of research is poor. I speak with some knowledge on this point because I am one of the directors of the Indian Drugs and Phamaceuticals, Ltd., which is a Government of India undertaking. The know how that has been given by the Russians both to the Antibiotic Factory and also to the chemical plant at Hyderabad is of a poor order, and I would say that our own national laboratories can give better knowhow to these factories. But we do not want to; would not like these Russians to have it now, and once we finish with the Russian, we should bring in our own knowhow into the factory. I am sure we can do much better than what we are doing with the technical knowhow that the Russians have given us. This applies both to the antibiotic factory in Hardwar and the synthetic chemical factory in Hyderabad.

SHRI C. C. DESAI: Mr. Doshi said that patents are necessary to compensate the research workers and reimburse the cost of research. It is perfectly understandable, but when we examine the correct position, we find that the research worker is generally a paid employees of the company, and the benefit of research goes not go to him—I am talking in general terms but it goes to the company and the cost of research is practically paid by the Government because of the tax concessions, etc. So, this consideration that the research worker must be compensated for the cost of research does not apply with equal force as you seem to indicate, if I may put in very mildly.

SHRI DOSHI: I do not think it is a very correct situation because the research worker is compensated when the patent becomes successful commercially either by way of percentage of royalty or when there is no question of percentage of royalty, by way of a prize or a higher remuneration. In the case of our national laboratories they do get a certain percentage of the royalty which the laboratories earn. Therefore, it is not true that the workers are not compensated. Also, the company itself which is spending money and devoting its energy on this, needs to be compensated....

SHRI C. C. DESAI: It is compensated by tax compensation.

SHRI DOSHI: We get 35 per cent more on it. This proves that there is more and more effort in this direction. But if you dilute the Patent Act too much, I think it will hit our research.

SHRI NARIELWALA: Today research all over the world, whether it is in India or anywhere else, is really not the work of any one single individual. It has now become a cooperative endeavour. If you want to do research on drug or pharmaceutical, it is not one particular chemist who is involved in it. It is a team work and that team may consist not five, but 25 or 50 persons.

SHRI C. C. DESAI: What is the concrete benefit which that team gets?

SHRI NARIELWALA: That is a matter between the research group in a company and the owner of the company and that means the shareholders. In most cases, both here and abroad, the companies have an agreement that if a particular research is developed and that has been successfully exploited, then the royalty or some part of the profit has to be shared between the research workers and the company concerned. In the case of our own national laboratories, the National Research Development Corporation which is a 100 per cent Government of India undertaking collect the royalty and on a patented product of our national laboratories out of

that royalty 75 per cent or 70 per cent is being distributed to the laboratories where the research is done.

SHRI C. C. DESAI: That happens in the CSIR, not in private laboratories.

SHRI DOSHI: Even in the private sector it is done. Only recently I gave a prize of Rs. 10,000 to one of our chemists for evolving a certain process which has proved economical to the company. I cannot see any point in saying that the company is not rewarding its employees for doing meritorious work.

SHRI C. C. DESAI: It has been represented to us that Indian research workers would like to have complete freedom of research in the sense that they do not want to be shackled by patents at least for the next 20 years so that they can blossom into better research workers. What is the attitude of the Indian Merchant Chamber to this particular proposition?

SHRI DOSHI: We thing that 10 years period is not too long and maybe in deserving cases it can be extended by four years. This is the general concensus of all our members.

SHRI C. C. DESAI: Including the members of IDMA and CIPLA?

SHRI DOSHI: I said 'general concensus'. It is not unanimous.

SHRI C. C. DESAI: Ten years from the date of filing complete specification or from the date of sealing?

SHRI DOSHI: From the date of sealing.

SHRI C. C. DESAI: If there is considerable time taken between filing and sealing, the research will be known to other people.

SHRI DOSHI: There are many cases of patents being by-passed without violating the law.

SHRI NARIELWALA: In the Bill there is a provision that the Controller of Patents must give his decision within 2 years of the filing of the application.

SHRI C. C. DESAI: Filing of the complete specification and therefore two years is not an absolute period. It can be said that the specification is not complete.

SHRI NARIELWALA: It may be even longer. This comes within ten years. Thereafter, you have to develop the pilot plant and conduct trials and all these may take two to three years. I know that in our own case it took six years to process it before putting it to commercial use.

DR. SUSHILA NAYAR: You have been laying great emphasis on research. May I know what percentage of your turnover you are spending on research?

SHRI DOSHI: I am spending 3 per cent of my turnover. But that may not be the case with others. This will be the maximum because I could not say that anybody in India is spending more than 3 or 4 per centage on research. Some may not spending anything at all.

DR. SUSHILA NAYAR: Quite a number of patents Indians have taken from abroad. The research has been carried out outside. There is hardly any research carried out in India. What is your view as to the situation wherein a patent registered abroad is taken in India? In the first instance, they import. They want to test the market and start the production later. Do you think that there should be timelimit for this or do you think that they can take any number of years they want in so far as testing of market is concerned and have monopoly rights to import from outside and sell it at any price in the country?

SHRI DOSHI: We have suggested that if they do not start manufacturing that within three years, anybody can ask for a compulsory licensing of rights.

DR. SUSHILA NAYAR: Why can't you think that during that period if they do not produce that in India, anybody else can also import from outside and if they find that there is market anybody either A, B or C can also do the same thing.

SHRI DOSHI: Provided, of course, these are found from other sources. Generally patentable products. Others cannot get them.

DR. SUSHILA NAYAR: The whole point is that there should be no protection till they produce that within our country. If they don't produce that then they have to import it. I think Shri Narielwala may not have a patent. He is still to import a product. But, the moment you begin to produce that, Government will give protection and you will not have to import it.

SHRI NARIELWALA: No Madam. I must tell you that this is a matter connected with a product which has to be clinically proved. A product which might have been clinically tried abroad might not entirely be suitable for Indian conditions. They might not also be suitable for the Indian ways of living.

DR. SUSHILA NAYAR: Please forgive me to say that I know better than you as a professional person. The products that are tried clinically and proved also outside are in fact clinically tried in India with the new products.

SHRI NARIELWALA: I can give you an example. We have tried a product like the contraceptive pills. I am told that in England after they are being used for a number of years the doctors say that these might have adverse effects on the health of the women who take them. They are likely to get into some heart ailment.

DR. SUSHILA NAYAR: I may tell you that some doctors have all along been telling that they are harmful. In fact cases of bad effects are mounting up. Nowadays more and more voices of the people are heard about the harmful effects of these pills. So it is not that this was discovered now.

SHRI NARIELWALA: You are only supporting my view that it is desirable to have that clinically tested before it is used here.

DR. SUSHILA NAYAR: I am not saying that clinical trials be carried out only if A imports that. Whether it is A, B or C or whoever imports it may carry out clinical trials.

SHRI NARIELWALA: Take for instance the case of A who is a representative of a firm. He may get a product at cheaper rate. B may get it from the market at a high price. At least the price at which B gets from the market will be competitive because A being a representative gets certain facilities in prices which B cannot get. So, nobody an prevent it.

DR. SUSHILA NAYAR: Anyway you have conceded that nobody can prevent him.

SHRI DOSHI: I think, in my opinion, this is an academic question. And nobody else would be able to get this.

DR. SUSHILA NAYAR: This is not an academical question, but it is a real question.

SHRI DOSHI: If they can obtain it I do not see any harm in anybody else importing it as long as it is not manufactured in India.

MR. CHAIRMAN: Without manufacturing it why should they get it from outside?

SHRI DOSHI: I only say that you must give them time to set up a plant and then produce a thing. Three years' period is nothing in our country. After filing of an application we do not go into production for five years. You know the proverbial delay in Delhi.

DR. SUSHILA NAYAR: My other question is this. Do you believe that

only the processes should be patented and products should not be patented here?

SHRI DOSHI: Yes, Sir. I agree with this.

DR. SUSHILA NAYAR: I want to know this. When a process is patented, you know that as things stand, people generally will take all possible combinations and take patents.

SHRI DOSHI: I mentioned this earlier before your arrival.

DR. SUSHILA NAYAR: Do you think that the patent has to be abrogated if they do not exploit it for a certain number of years? You know this is done only to block the way of others and to get a royalty for doing nothing else except some calculations that are made on papers.

SHRI DOSHI: We have not recommended abrogation of it. We have only said that the compulsory licensing of right may be done after three years.

DR. SUSHILA NAYAR: Suppose A has got a patent and wants someone else to pay a royalty while he himself has not exploited it. Why should he be paid a royalty at all when someone else exploits that? By mere filing of specifications he gets the patent and does not exploit it. When others exploit it why should he be paid royalty?

SHRI DOSHI: If he has simply made some calculations and if there is no research work involved in it, you can pay 1|10th of the royalty to him which means nothing.

DR. SUSHILA NAYAR: Why should it be paid at all?

SHRI DOSHI: In fact we have to see the research work done on that.

DR. SUSHILA NAYAR: My point is this. Why should we allow the clause to be used for blocking the other research workers. If a particular process is exploited two or three years or whatever may be the period and if someone else completes that and starts production on it can this not be allowed?

SHRI DOSHI: That was the situation we also were faced with. I think the Bill has provided enough safeguards to prevent that sort of a situation of blocking others from completing the work.

SHRI NARIELWALA: What you said is correct.

DR. SUSHILA NAYAR: You know during our recent visit we saw a number of research workers sitting in the laboratory and doing research on a number of processes. A number of processes is patented on the basis of their work.

SHRI NARIELWALA: If an entrepreneur or anyone wants to exploit a particular patent which a patentee has not done, he would certainly take care to find out whether that process has been used anywhere else in the world. If he finds that it is not used anywhere else in the world he would try it out by a number of tests to his satisfaction. I won't buy a patent unless I am satisfied with the patent by testing it. If the process is taken up, I shall try to go ahead with it.

DR. SUSHILA NAYAR: I am not talking of buying a patent. Suppose A has worked out half a dozen processes for producing a particular product. He just makes certain calculations in the laboratory. Your research workers in India are blocked from exploiting the process. The patentee does not exploit it but expects to have a royalty from a person who will exploit it simply on the plea that he has just gone and filed his invention with complete specifications. Is that a reasonable proposition?

SHRI DOSHI: In my opinion if it is only on paper, and as simple as you described the research worker is

cleverer enough to know how to bypass it. I can tell you my experience. I filed a patent. It clashed with one that ran up to 1969. I started work on it since 1960. I started producing from 1965. They filed a case against me. They also filed some patents. But they were defeated because, on one ground, they had started with all intermediates and a mass of basic chemicals; I had started with finished dyes. Our Registrar said that "the basis is totally different; your objection is ruled out". I made a lot of money on it.

SHRI ARJUN ARORA: Don't you think that only those processes should be patented which the patentee actually uses or intends to use? What happens is that as Dr. Nayar pointed out, a patentee may apply for all possible processes. Why should he get advantage of arithmetical calculations? And why should not the patent be limited to the processes which he actually uses or intends to use?

SHRI DOSHI: At the research stage it is difficult to know as to which one will work and which one will not work, and everybody rushes in to file an application in good time.

SHRI ARJUN ARORA: Patent is filed after the research is completed.

SHRI DOSHI: We ourselves go on filing the application month after month, year after year if and when we see the slight possibility of getting something out of it...

SHRI ARJUN ARORA: If that is the case, do you advocate that the Controller of Patents should have the right of summary rejection of frivolous applications?

SHRI DOSHI: If he is a superman, he will know which is frivolous. Normally, a man would not know.

SHRI ARJUN ARORA: At the moment, only a man with money is a superman.

SHRI DOSHI: What I wanted to convey is that at that stage it is very difficult to know what is genuine and what is frivolous. You can know it over a period of time.

SHRI ARJUN ARORA: You seem to agree that even after the patent is granted and the patentee has begun production, the patent should be limited only to the process which he actually uses, and not all the processes which he has calculated?

SHRI DOSHI: That safeguard is provided sufficiently.

SHRI ARJUN ARORA: You agree to this?

SHRI DOSHI: Yes.

SHRI ARJUN ARORA: What particular achievements have been made in the field of drugs and pharmaceuticals during the last 20 years to justify your conclusion that a holiday on patents for the next 20 years would not be helpful?

SHRI DOSHI: It is simple enough. I think we have proved it. It is too risky now. We are spending 60 crores of rupees—recurring expenditure—on our own research. We have already invested crores of rupees on our laboratories. The industries are becoming research conscious and are establishing research institutions, either individually or on a co-operative basis. Now it is too late in the day to have all that, in my opinion. This is a matter of opinion.

SHRI ARJUN ARORA: But the fact is that in the country today the scientists and research workers are in favour of a patent holiday for the next 20 years. It is the commercial people who are in favour of continuing it.

SHRI NARIELWALA: Some scientists might have appeared before you and advocated that. In fact, they always said that this protects the rights of the scientific workers in this

matter. But it is a difficult question as to who is a scientific worker.

SHRI ARJUN ARORA: You take it from me. Mr. Narielwala, that they have told us that they are against it.

SHRI NARIELWALA: I am not denying it. Let me say that there are many products for which patents have expired but our scientists are not developing them and giving us the processes. There are hundreds of thousands of drugs for which patents have expired...

SHRI ARJUN ARORA: Are you in favour of a Tribunal or High Court in cases of dispute?

SHRI NARIELWALA: If it is matter of law, then it should be the High Court. Otherwise, it would be easier to settle it at the Tribunal level. It is, however, necessary that the Chairman of the Tribunal should be a retired judge of the Supreme Court or a High Court. Reference of every question to the court would delay matters and add to the burden of our courts.

SHRI ARJUN ARORA: How many members of the OPPI are there?

SHRI DOSHI: A few. Membership may always be overlapping.

SHRI ARJUN ARORA: You can send it later on. I want to know because OPPI has put forward one view and you have another view in the matter.

SHRI DOSHI: We have taken a balanced view. We think that this Bill is in the interest of the country. I think we can trust your wisdom to come to right conclusions.

SHRI S. K. VAISHAMPAYAN: In your memorandum you have said that there should be a self-contained definition of the term 'food and drugs' and it should also be precise. Have you come across any difficulties in the working of the present definition and if so, could you give us specific instances?

SHRI DOSHI: What we have said is what the Joint Committee had also recommended, namely that the definition of the term 'food' for the purposes of the Act should be self-contained and that in respect of drugs and medicines should be more precise. We have merely quoted the opinion of the Joint Committee. We have just reiterated it.

SHRI S. K. VAISHAMPAYAN: You have merely reiterated it. So, you support it. Have you some suggestions in this regard?

SHRI DOSHI: I do not think that we have given much thought to it.

SHRI S. K. VAISHAMPAYAN: Under clause 2, you have suggested that universities, the CSIR and the national laboratories etc. should be excluded from the purview of the provisions. I can understand about universities. I think that that is a suggestion which we should consider and that is also my opinion. But why do you want to exclude the others?

SHRI DOSHI: They are autonomous bodies. I think Government means Government Departments or Government. It does not mean institutions like the IDPL. It is a company and it is an autonomous body. Such organisations should be treated just like any other commercial organisation.

SHRI NARIELWALA: May I submit that we are not opposed to use for two purposes, viz. for research in universities and for use in the event of an emergency, in which case it could always be utilised, and thirdly for defence purposes, where if Government need it very urgently certainly they would have the right to import? But our main objection is his

If you put in the term 'Government', by definition a Government undertaking becomes Government. There is no provision in law which says that Government undertaking is not Government, because it is controlled entirely by Government in all its policies and in all its working and in other respects. The CSIR and other national laboratories make some products in small quantities for sale to the public because the quantities are needed in small quantities and no commercial venture is prepared to take up their manufacture. It is a service which the national laboratories are doing. But these are all commercial operations of the CSIR. When they are commercial operations, of a Government body they should not get the benefit of this. That is all that we are saying.

SHRI S. K. VAISHAMPAYAN: What is your assessment of the work done by the Haffkine institute in the field of research as well as production?

SHRI NARIELAWALA: The Haffkine institute has two wings, a research wing and a commercial production wing. It produces cholera vaccine and vaccine for rabies and many other things. They spend on research from the profits that they make from the commercial operations.

MR. CHAIRMAN: If I understand you aright, I think your case is that once they take to commercial production they should not take advantage of the law.

SHRI S. K. VAISHAMPAYAN: That is a different point. If they undertake some sort of production that is a different point. But I want to know whether they have found commercial production by such undertakings and whether they face any competition.

SHRI NARIELAWALA: Not at all. Perhaps, you are not aware that the National Glass Laboratory in Calcutta produces optical glass in this country almost exclusively on a commercial basis. As a matter of fact, they have a virtual monopoly because they are not giving the right to others to exploit their process. They say that if there is greater demand for optical glass they will increase their production and meet the demand. I am not at all objecting to that.

SHRI S. K. VAISHAMPAYAN: Under clause 48 you have said that if it is at all felt that these provisions are necessary then they should apply only so long as the patents are not worked, but once the patent is put to use, such imports, use or manufacture by or on behalf of Government should not be allowed. Could you go through the sub-clauses (a), (b), (c) and (d) and explain the reason? You have objected to sub-clause (b).....

SHRI DOSHI: We have objection to sub-clauses (a), (b) and (c).

SHRI S. K. VAISHAMPAYAN: I think the object behind the three sub-clauses is different. So, do you make no differentiation between them?

SHRI DOSHI: These three sub-clauses mean almost complete abrogation of the patent. We have objected to all the three.

SHRI S. K. VAISHAMPAYAN: But the object behind sub-clause (c) is different from those of sub-clauses (a) and (b). So, would you not make some differentiation between them?

SHRI DOSHI: Sub-clause (a) is not bad; sub-clause (b) is very bad, and sub-clause (c) is equally bad. So, we have said that these three sub-clauses require amendment or removal because they almost mean abrogation.

SHRI S. K. VAISHAMPAYAN: My question is whether you make any differentiation between them.

Is there not some difference between the three sub-clauses?

SHRI DOSHI: There is some difference.

SHRI S. K. VAISHAMPAYAN: So, how do you say that they amount to abrogation. In certain circumstances there should be provision for importation of the items.

SHRI DOSHI: Let us define the circumstances under which such import could be allowed. Suppose there is an emergency or there is need for defence purposes or there is an epidemic, or something like that, then it may be allowed. But let the circumstances be spelt out. The clause as it is worded means almost abrogation.

SHRI S. K. VAISHAMPAYAN: So, you recognise that there may be need to import it in certain circumstances.

SHRI DOSHI: If you say in an emergency it can be imported, then I have no objection.

SHRI S. K. VAISHAMPAYAN: Suppose Government would like to take up a crash programme and they want to import the drug because it is not possible for the patentee to produce it within the required time, then what is your objection to importing it?

SHRI NARIELWALA: Even today, if a product which is manufactured in the country is not sufficient to meet the demand, and there is not self-sufficiency then import is allowed. What we are saying is that Government should not import the product for their own use if the product is manufactured in the country and it could meet the demand. This is the distinction that has to be made. We want to industrialise the country and we want to set up industries, and when the industry is producing in sufficient quantities, then imports should not be allowed, and we say that even Government should pay for the product. If in a spcific situation, a product has to be imported, you do not stand for any compensation to be paid to the patentee.

SHRI DOSHI: If it is in an emergency or something like that, perhaps compensation may not be paid, but if on any ground, import could be made, it means abrogation of the patent

SHRI S. K. VAISHAMPAYAN: You want a specific criterion to be laid down.

Coming to the term of patent in clause 53, you are for extension of the period of 10 years by a further period.

SHRI DOSHI: In deserving cases.

SHRI S. K. VAISHAMPAYAN: You also want that the period should start from the date of sealing. So actually, it will mean 16 or 18 years. Why do you want such a long period?

SHRI DOSHI: The period between filing and sealing is of no use. The four year period is optional; it is not compulsory. We say in suitable or deserving cases, it should be extended. You should not calculate it as 16 or 18 years. It is up to you. We do not know what will be the situation after ten years. Perhaps Government may instruct the Registrar not to exercise the option.

SHRI VAISHAMPAYAN: Cl. 116. You want enlargement of the appeal provision. You want the decisions of the Central Government to be referred to some sort of an appellate board. Actually, instead of enlarging the scope, if you narrow it, it will minimise litigation. Can you think of

minimising it by excluding certain sections from the appeal provision?

SHRI NARIELWALA: Always some dispute may arise in regard to interpretation of a clause or of the patent rights of a person. It is like a dispute between two industrial houses. We strongly recommend that such cases should be settled by going to an arbitrator appointed by the Indian Arbitration Council or the Federation. Similarly, here also let the Controller's decision not be final in some of these matters. Where a party is aggrieved, he should have this remedy available. Where matters of law are concerned, of course, he should have the right to go to the court.

MR. CHAIRMAN: Are you advocating *ad hoc* appointment of a arbitrator or you want a permanent body?

SHRI NARIELWALA: A permanent body. It will try to understand the problems between parties and quickly dispose of disputes.

SHRI VAISHAMPAYAN: You want reference to the permanent body in respect of all the sections mentioned there?

SHRI NARIELWALA: Wherever such clauses are likely to lead to disputes and which are within the cognisance of the Controller—it should be reported to a tribunal. We do not suggest that everything should be submitted to it. It is an administrative convenience we are suggesting. It will help reduce the burden on the court.

SHRI KRISHNA KANT: The evidence given before us so far relate almost exclusively to pharmaceuticals and drugs, as if the whole Bill related only to them. Your Chamber represents other interests also. Have they anything to say about the various clauses?

SHRI DOSHI: We have said there should be no discrimination in respect of the ten year period.

SHRI KRISHNA KANT: Have your engineering unit members anything to say on the other clauses of the Bill?

SHRI NERIELWALA: We believe that the other clauses would promote the growth of industry and research in the country and therefore we are not opposed to the Bill. We are opposed only to such clauses which will come in the way of this. It so happens the clauses relating to drugs, pharmaceuticals and drugs come under this category.

SHRI KRISHNA KANT: All the evidence before us from the various bodies relate only to drugs and pharmaceuticals. That is why I asked this question.

SHRI DOSHI: It looks from the drafting of the Bill that it deals with drugs and pharmaceuticals, more than anything else.

SHRI KRISHNA KANT: In regard to the research aspect, I would like to quote to you what Dr. Dhar of the CDRI told us. He told us that he was in favour of abrogation of patents in so far as drugs were concerned, that at present about 90 per cent of the pharmaceutical industry was in the hands of foreigners and the patent law in India was a hindrance to the development of drugs. He added that Government should take over patents without payment of any compensation. Because India did not compare with any of the developed countries in the output of patents, the net result was that we were constantly at the buying end; the Patents tended to be all-inclusive.

Shri Aurora and myself had visited the NCI and we were told by the research workers that the patents rather than being an incentive for research constituted a hindrance. For the Indian research workers who are not aligned with any of the commercial concerns, their feeling is that this patent system is a hindrance.

SHRI NARIELWALA: I know Dr. Dhar and I did not know that he held this view. If these things are hindering the growth of research in the country, I would say that if our chemists are clever enough and ingenious enough, they can get over the patents. There is nothing to know that you cannot get over the patents. I know the work that is being done in the Drug Research Laboratory. I am sorry to say that at no stage did Dr. Dhar tell me that patents were coming in the way of research. I wish he had spoken to me if it was so. Next time I meet him, I will speak to him and ask him about it.

SHRI DOSHI: I would also touch on another point. About the research laboratory not being able to come in contact with industry, it has nothing to do with patents. I know about it. I have myself set up a liaison centre between the I CMA and the CSIR. We are trying to bring industry and the research laboratories together. They were living in an ivory tower. We are trying to use everything because it is the people's money which is being invested. It has nothing to do with the patents.

SHRI KRISHAN KANT: I now refer clause 27, wherein the Controller may refuse to grant the patent. Here, you want him to give a hearing. You please read it along with clouse 29. There is a provision at the end of clause of 27, which is a proviso, which reads:

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

Please read it along with clause 29.

SHRI NARIELWALA: In clause 29, there is no such suggestion anywhere. What we are saying is that we give a chance to the applicant to appear before the Controller to plead his case.

SHRI KRISHAN KANT: He is given a chance to be heard.

SHRI NARIELWALA: It is a question that he might be asked, and he might be asked to make a submission. What we have stated is that the man should have an opportunity of appearing. in person .

SHRI KRISHAN KANT: It may be proved by writing or hearing. If you read clauses 27 and 29 together, your objection is met.

SHRI NARIELWALA: I am not sure whether the provision of clause 29(2) will hold good because the Controller may say, "Whatever submission you want to make, you may do so."

MR. CHAIRMAN: There is clause 80 which is a general provision. It gives the protection which Shri Narielwala wants.

SHRI NARIELWALA: If there is such a general clause, we would withdraw our point.

SHRI KRISHAN KANT: Clause 48. This clause consists of two parts: one is the question of importing and the other is the question of using by the Government. You can have a case that whenever Government uses it, compensation should be paid. That is all right. As regards import, I do not think you have a case. Import should be under two or three conditions: emergency, or the licensee is not manufacturing or he is not manufacturing the full quota or the prices are high.

SHRI DOSHI: He may import it from the same source. That is the point.

SHRI KRISHAN KANT: Then it is all right. In clause 99, you are suggesting that the "use of inventions should be confined only for the purposes of Government". You have not made it clear how the whole thing will be properly done.

SHRI DOSHI: We have only said that it should be restricted only to Government undertakings.

SHRI KRISHAN KANT: That is a matter of debate. Then, have you studied clearly the cost structure of production? If that is done, we may really judge whether or not an industry is making profit. We have a lot of reports on drug prices which are high in India. I want to know whether you or anybody else has really worked out a survey about the cost structure of production.

SHRI DOSHI: Unless you specify it, we cannot give an answer.

SHRI KRISHAN KANT: Has any case study been done in regard to the period taken, right from research and taking the product to the market? What everybody is telling us is all hypothetical.

SHRI DOSHI: What is the report of the Patent Office? Their experience should enlighten you.

SHRI KRISHAN KANT: I am asking you.

SHRI DOSHI: We have not made any such survey.

SHRI ACHUTHA MENON: I have only one question with regard to clauses 100. In your representation you have proceeded on the assumption that the Act does not have any provision for compensationin cases where an invention is used by Government. But according to me, in sub-clause (3) of clause 100, it has been provided. It reads thus:

> "If and so far as the invention has not been so recorded or tried or tested as aforesaid, any use of the invention made by the Central Government or any person authorised by it under sub-section (1), at any time after the acceptance of the complete specification in respect of the patent or in consequence of any such communication as aforesaid, shall be made upon terms as may be agreed upon either before or after the use. . . . "

So, it is provided for. Is it not? Except, of course, in one contingency which is stated in sub-clause (2).

SHRI DOSHI: We have objected to the wider definition.

SHRI ACHUTHA MENON: That is about clause 99. Clause 100 provides for compensation.

SHRI DOSHI: It does not provide as clearly as it is provided in the United Kingdom Act, and that is what we have suggested.

SHRI ACHUTHA MENON: My contention is it has been provided.

SHRI NARIELWALA: If you read sub-clause (2), you will find "Government" or "a Government undertaking."

SHRI ACHUTHA MENON: That exception should be there. But beyond that—

SHRI NARIELWALA: Between the two clauses, there is a difference. In sub-clause (2), there is "Government a Government undertaking." In sub-clause (3), it only deals with the Government.

SHRI ACHUTHA MENON: Any person authorised by the Government.

SHRI NARIELWALA: Which would include Government undertakings. That is what we are saying. While you are modifying an Act, let this be most specifically spelt out as it has been done in the United Kingdom Act, so that there will be no cause for dispute in future. After all, we are amending an Act, which was first passed in 1911, after about 60 years. Let us be clear so as to avoid disputes in future. We should not give the Government, because it is the Government, any higher right than is available to any other citizen in the country.

MR. CHAIRMAN: You kindly see Clause 103(1). Does this meet your objection? If the Government does not allow, the party concerned may refer it to the High Court.

SHRI DOSHI: If it is clear in the Bill itself, one does not like to go to the High Court for relief.

MR. CHAIRMAN: Does 103 meet your objection?

SHRI DOSHI: This gives some protection.

SHRI NARIELWALA: In this particular case, can we not make a provision "High Court or the Administrative Tribunal"? Then it is not necessary to go to the High Court.

MR. CHAIRMAN: On points of law you have to go to the High Court.

SHRI SRINIBAS MISHRA: You generaly agree with the object of the Bill. But you are objecting to clauses 99 and 100 on the ground that they give—except sub-clause (3) of 100—more power to the Central Government for making, using, exercising and vending. Do you object to the use of the word 'vended' in Cl. 99(1)? That is for commercial purpose.

SHRI DOSHI: We object to that word.

SHRI SRINIBAS MISHRA: If that is removed, you have no further objection?

SHRI DOSHI: We also object to 'Government undertakings'.

SHRI NARIELWALA: All that we are saying is that it should not be used for commercial purposes and 'vending' is commercial.

SHRI SRINIBAS MISHRA: In clause 100(1) also the word 'vend' occurs. If these two terms are removed, I think you will have no objection to the use made by the Government.

SHRI DOSHI: That is right.

SHRI SRINIBAS MISHRA: Now I come to the definition of the word 'food'. In clause 2(g) 'food' means any substance intended for the use of babies, invalids or convalescents as an article of food or drink. Don't you think that the definition is tautologous or circuitous?

SHRI DOSHI: Our suggestion is that it should be properly defined.

SHRI SRINIBAS MISHRA: Have you any clear definition in view?

SHRI DOSHI: We have nothing to offer you. We may consider this and write to you.

SHRI SRINIBAS MISHRA: If you find out any alternative definition, you kindly write to the Committee.

SHRI NARIELWALA: Will a chocolate be considered as food? That is my difficulty.

SHRI SRINIBAS MISHRA: Your objection to CSIR and Government undertakings appears to be a little misconceived, if I could use that word. Use by Government undertakings may also stimulate research.

SHRI NARIELWALA: To that we have no objection. If it is for purposes of research, we have no objection.

SHRI SRINIBAS MISHRA: I think you will agree in general that clause 48 should be used when the invention is not being worked in the country.

SHRI DOSHI: After three years.

SHRI SRINIBAS MISHRA: During the period of three years, I think you will agree that the Government should be permitted to import.

SHRI DOSHI: Yes, in an emergency or for defence purposes, but not for sale or supply to hospitals.

SHRI SRINIBAS MISHRA: For these three years, the country should go without the use of such things?

SHRI DOSHI: Let the patent-holder import or let it be imported through him. Government should not import and enforce certain price. Government will not be able to get it also for three years unless that party is willing to supply.

SHRI SRINIBAS MISHRA: On page 5 of your memorandum you say: If it is at all felt that these provisions are necessary, my Committee would suggest that they should apply only so long as the patents are not worked". During the three-year period, clause 48 will be enforced and rightly so.

SHRI DOSHI: We do not mean that there will be no imports during the three-year period.

SHRI SRINIBAS MISHRA: Cl. 48 (a) says: "the importation by or on behalf of the Government of any patented machine, apparatus or article for the purpose merely of its own use".

SHRI NARIELWALA: It is those words that I object to. There is a wide definition for 'Government' and 'Government use' may include commercial uses also. That is why we say that if it is non-commercial purpose, we have no objection.

SHRI SRINIBAS MISHRA: Let us take a concrete case. You have applied for a patent of certain machine and you have filed complete specification. The patent has been granted. You have not been able to work it for three years. During this period do you want to grab all the powers of the Government authorising the parties to import?

SHRI DOSHI: Not at all. Government import or sanction import to other importers but that should be done from the patent-holders.

SHRI SRINIBAS MISHRA: You are not manufacturing it. How can you sell that to anybody?

SHRI NARIELWALA: Suppose somebody else copies it.

SHRI DOSHI: Then the patent-holders will have a right to take action. You cannot stop that. He has got the right for three years.

SHRI SRINIBAS MISHRA: I think it is not intelligible to me—perhaps I do not know much about it. Suppose a machine is patented here but you are not manufacturing it.

SHRI DOSHI: Quite right.

SHRI SRINIBAS MISHRA: If that is available outside, can this be imported.

SHRI DOSHI: You may import it from anywhere.

MR. CHAIRMAN: The very fact of granting him a patent gives him an exclusive right on that. His objection is as to why should the Government infringe his exclusive right?

SHRI SRINIBAS MISHRA: Are you going to concede that right? Even without manufacturing it you want to get a profit.

SHRI DOSHI: You must give him three years' time at least.

SHRI SRINIBAS MISHRA: Suppose a company has got a patent for a machine here. And suppose we get a similar machine from outside this country. That may be because the Indian manufacturers are not manufacturing it within India for some time.

SHRI DOSHI: If they have got the patent and if the machine is not manufactured, then what can we do?

SHRI SRINIBAS MISHRA: If he is not manufacturing it the Government can authorise someone else to do it.

SHRI DOSHI: In that case he will have a right to file a suit for infringement of his patent.

MR. CHAIRMAN: They say that you can import it only under certain circumstances and not under all circumstances.

SHRI DOSHI: I say that for three years we will have the right to file a

suit against those who are infringing the patent right.

SHRI SRINIBAS MISHRA: In such a case the Government will have the power to import.

SHRI DOSHI: We have no objection if the import is done with the consent of patent-holders.

SHRI SRINIBAS MISHRA: If they are not manufacturing it?

SHRI NARIELWALA: Let me now take up a typical case. I have got a patent for a machine. I have to set up an industry to manufacture it. My submission is this. If you are to bring in a similar product from abroad that will first of all hamper my development and secondly I may not be in a position to do that under the conditions prevailing in this country and I may not also be in a position to compete with anyone else for quite a number of years because of the small size of my plant. The Government under the Bill can go on importing the machines for their own use irrespective of the fact that I hold a patent for that machine and I can produce it in the country. This is what we object to . I am entitled to some protection if Government is to infringe my patent and import the machine from abroad. Of course government can do it on the plea that they want it very badly. We only feel that you are abrogating my right as a patentee.

SHRI SRINIBAS MISHRA: Don't you think that your demand is unreasonable?

SHRI NARIELWALA: No, Sir. I can also give you instances after instances. Before we start manufacturing a particular product in this country, the same product has been imported into the country on a large scale making it difficult for the new industry to market its product. This has happened even to Government undertakings like the Indian Drugs and Pharmaceuticals Ltd.

MR. CHAIRMAN: The whole point arises from the fact that when some people are importing that, why can't indigenous industry too import the same from abroad? That is their argument basically.

SHRI DOSHI: Don't you think that he is also entitled to some compensation?

SHRI SRINIBAS MISHRA: Let me now take clause 87(1)(a)(iii) 'the methods or processes for the manufacture or production of chemical substances (including alloys, optical glass, semi-conductors and intermetallic compounds)'. Can you give us an example as to how semi-conductors and inter-metallic compounds can come under foodstuffs being endorsed on the licence of right? Let me make it clear. To my mind it is intelligible that the foodstuffs should be made available to the people freely. But why should the optical glasses, semi-conductors etc. be classified as foodstuff?

SHRI DOSHI: We ourselves are wondering about it. We are in the same situation as you are now.

SHRI SRINIBAS MISHRA: So, you are also sailing in the same boat.

SHRI NARIELWALA: We have always felt that alloys cannot be considered as a chemical product. Chemists consider them as a metallurgical product.

SHRI DOSHI: Perhaps drafters, in their wisdom, might have felt so.

SHRI SRINIBAS MISHRA: Are you objecting to the 4 per cent limit as mentioned in clause 88, sub-clause (5)? Will it satisfy you if 86 only is retained and the food, chemical and alloys are all combined in clause 86 and clause 87 is deleted?

SHRI DOSHI: We have suggested the deletion of it.

SHRI SRINIBAS MISHRA: Should they be covered by clause 86?

SHRI DOSHI: Yes, Sir. That will satisfy us. First of all we do not

know why these are included. Whether they are included or not included in 86, it does not bother us at all.

SHRI SRINIBAS MISHRA: Can you give me any instance that anything which is not food is capable of being used as such?

MR. CHAIRMAN: There are so many.

SHRI SRINIBAS MISHRA: Can a hide be capable of being used as food?

MR. CHAIRMAN: Here the drafting is unhappy. We also discussed about this yesterday. We made a note of it. Te draftsman is also trying to re-draft it.

SHRI NARIELWALA: Sometimes a thing which is considered poison is administered with some drugs in a very small dosage. Having taken that as a medicine would you consider on arsenic compound as food? Some doctors have said that it is so.

SHRI SRINIBAS MISHRA: In clause 88, the maximum limit of royalty has been fixed at 4 per cent. what machinery do you suggest in the alternative to determine the royalty?

SHRI DOSHI: We have suggested for setting up a tribunal. We have also said that there should be no fixed percentage.

SHRI SRINIBAS MISHRA: What machinery would you suggest?

SHRI DOSHI: It should be agreed between the parties concerned. But if they cannot come to an agreement, there should be a tribunal or a body with some experts on it who may decide about it. Even then this four per cent does not mean anything. Maybe, it may be considered to be negligible for some patents. If it is considered too low a higher percentage may be considered depending on the value of it and the country's economy. If they cannot come to an agreement, some sort of an independent body should be there to decide about. Let a tribual be there with some experts on it.

SHRI SRINIBAS MISHRA: Did the Indian Merchants' Chamber appear before the Iyengar Commission?

SHRI NARIELWALA: No. I don't think it took any evidence.

SHRI SRINIBAS MISHRA: Did you appear before the last Committee?

SHRI DOSHI: Yes. We have said the same thing.

SHRI SRINIBAS MISHRA: On page 14 you have said that "thus a discriminatio is being sought to be made between patents and designs by providing that while designs will be binding on Government, patents will not be."

SHRI NARIELWALA: After the Chairman gave the clarification about Clause 156, we have withdrawn this contention.

MR. CHAIRMAN: I said that Clause 156 is another version of Section 21 of the existing Act and it is binding on the Government.

SHRI DAHYABHAI V. PATEL: From the point of view of Indian industry, in your opinion do you think that the Patent Bill is weak or strong and whether it is in conformity with what is happening all over the world?

SHRI DOSHI: In the context of the present Indian economy, with certain amendments this is a good Bill. Every country is in a different condition. The United States is in a different situation. England is in a different situation. Japan is in a different situation. Ghana may be in a different situation completely. Keeping in view the level at which we are situated industrially as well as researchwise, we think it is a happy compromise. We have suggested certain amendments.

SHRI DAHYABHAI V. PATEL: Do you think that India should join and

become a member of the Paris Convention?

SHRI DOSHI: The Bill should first be passed and then its effect for the next 2, 3 years watched. After that, we should consider whether it is in our interest to join the Paris Convention. I would not rush into it.

MR. CHAIRMAN: There has been a subtle fear that the foreign interests in the drug industry will be gradually having a stranglehold in the Indian economy. Whether the Patent Bill is weak or strong, the foreign interests are going to have a wide market in India, especially Indian drug market. As Mr. C. C. Desai has been repeatedly saying, the Indian drug market is very good and with patents or without patents they will be selling their goods. We are so much after the trade mark like Glaxo, Pfizer and all that. Are the foreign industrialists going to be frightened away if we make the Patent law strong and it will increase the efficiency of our research and industry?

SHRI DOSHI: May I be permitted to digress a little? Apart from the Bill, are we not responsible for licensing of these foreign companies in the last 15 years? We have a strong industrial licensing system. With open eyes, we have licensed these foreign companies. Apart from the pharmaceutical industry, take the pesticide industry or the petro-chemical industry. If a foreigner with a big name comes here, the D.G.T.D. will recommend their case first and not recommend my case. Du Pont, Monsonto, Allied Chemicals, American Cynamide, and people with such big names will be able to get licences quickly, but not Amar Dyechem. They will strongly recommend their application and reject our application. With open eyes, we have invited them and we have asked them to put up our factories. In majority of cases, we have given them 100 per cent interests. After doing that, we are now feeling that they are having stranglehold in our economy and in our pharmaceuticals and by abrogating the licences we feel we will be able to correct everything. I don't think it is the right way of doing. It is not mature consideration. Let us learn something from what has happened in the past. We have to try to take a balanced view and licence Indian industries, more than foreign industries. Let us change the entire policy. Even the high cost of things is due to our industrial licensing policy. I have recently returned from a tour of Latin American countries as a member of the F.I.C.C. Delegation. They don't have licensing system; they don't have strict import licensing policy. Though they have inflation, it is free economy there. They have high rate of interest and they compel others to deposit large sums of money. Let us search our own mind in broader perspective and examine this problem.

MR. CHAIRMAN: Thank you very much. We are very glad that you have taken so much trouble and time to give your point of view. Thank you once again.

(*The witness then withdrew*).

(*The Committee then adjourned*).

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967.

Wednesday, the 16th July, 1969 from 10.00 to 12.40 hrs. and again from 15.00 to 16.10 hrs.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Hari Krishna
5. Shri Amiya Kumar Kisku
6. Shri K. Ananda Nambiar
7. Dr. Sushila Nayar
8. Shri T. Ram
9. Shri Ramesh Chandra Vyas
10. Shri Kanwar Lal Gupta.

Rajya Sabha

11. Shri R. P. Khaitan
12. Shri Arjun Arora
13. Shri T. V. Anandan
14. Shri K. V. Raghunatha Reddy
15. Shri Pitamber Das
16. Shri Dahyabhai V. Patel.

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri Sastri, *Additional Legislative Counsel, Legislative Department, Ministry of Law.*

2. Shri S. Ramaiah, *Deputy Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT, INTERNAL TRADE AND COMPANY AFFAIRS

1. Shri K. I. Vidyasagar, *Joint Secretary.*

2. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks, Trade Marks Registry.*

3. Shri Hargundas, *Under Secretary.*

4. Shri R. V. Pai, *Joint Controller of Patents, Designs and Trade Marks.*

5. Dr. B. Shah, *Industrial Adviser (Drugs), Directorate General of Technical Development.*

6. Dr. P. R. Gupta, *Development Officer (Drugs), Directorate General of Technical Development.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

I. *Indian Drugs and Pharmaceuticals Ltd., New Delhi*

Spokesmen:

1. Shri R. K. Chandrasekharan, *Managing Director.*

2. Shri S. K. Borkar, *Adviser.*

II. 1. Dr. B. Shah, *Industrial Adviser (Drugs), Directorate General of Technical Development, Ministry of Industrial Development, Internal Trade and Company Affairs.*

2. Dr. P. R. Gupta, *Development Officer (Drugs), Directorate General of Technical Development, Ministry of Industrial Development, Internal Trade and Company Affairs.*

III. *Haffkine Institute, Bombay:—*

Spokesmen:

Dr. N. K. Dutta, *Director, Haffkine Institute.*

Dr. C. V. Deliwala, *Assistant Director-in-charge, Department of Chemotherapy, Haffkine Institute.*

I. Indian Drugs and Pharmaceuticals Ltd. New Delhi.

Spokesmen

1. Shri R. K. Chandra Sekharan, *Managing Director.*

2. Shri S. K. Borkar, *Adviser.*

(*The witnesses were called in and they took their seats*).

MR. CHAIRMAN: We shall be very pleased to have your evidence but please note that whatever you say is likely to be made public. Even if you want any portion of your evidence to be treated as confidential, it is liable to be made available to Members of Parliament.

SHRI S. K. BORKAR: We are most grateful to the Committee for giving us this opportunity to present our views before the Committee on the Patent Bill which has been under consideration of the Committee for a long time.

Going through the statement of objects and reasons of the Bill I must welcome the motive behind bringing forward this piece of legislation before Parliament. In the statement of objects and reasons it is enunciated:—

> "The need for a comprehensive law so as to ensure more effectively that patent rights are not worked to the detriment of the consumer or to the prejudice of the trade or the industrial development of the country was felt as early as 1948".

and so on. The whole object of this is to see that our industrial development is not in any way marred. We have to examine the provisions of this Bill in the context of that objective.

The Bill is really a successor to the Patent Act of 1911. Although Government had moved for the amendment of this law as early as

1948 it was not possible to give effect to this.

Before I go into the provisions of the present Bill I would like to make a reference to the existing Act, that is, the Patent Act of 1911, and give in brief a resume of those provisions in the present Bill which I feel are more restrictive than the provisions contained in the Act of 1911. The provisions of the Act of 1911 are in some respects more liberal than the provisions in the present Bill and I will explain how it is so.

The Act of 1911 was amended in 1952 and the most important provision therein is section 23CC which gives the Controller of Patents the right to licence any party for the manufacture, use, vend etc. of drugs and medicines, foods, and, what is more, insecticides, pesticides and germicides. The definition which is given in clause 2, sub-clause 1(1) of the present Bill specifically excludes insecticides, germicides and fungicides or any other substance intended to be used for the protection and preservation of plants. In the context of the agricultural revolution that we are aiming at I feel that the exclusion of insecticides, germicides and fungicides from the purview of the definition of drugs and medicine is, to say the least, more restrictive. I, therefore, suggest that as in the case of section 23CC of the Act of 1911, germicides, fungicides and insecticides and all other substances intended to be used for the protection and preservation of plants should also form part of the definition.

Then I refer to the definition of "food" which is given in sub-clause 1(g) of clause 2 of the Bill. Here again the definition is very restrictive; it restricts "food" to only those substances which are used for babies, invalids and convalescents. As the Committee is aware, today we are faced with a situation where protein deficiency in the country is very marked and there are technologies being developed elsewhere in the world to make these protein foods from crude oil and petroleum by fermentation. Unless we make some provision in the Bill so as to enable us to get the benefit of these developments, the restrictive meaning of "food" will come in the way of our development of technology.

MR. CHAIRMAN: What do you propose should be the definition?

SHRI BORKAR: "Food" should mean anything which is an article of nourishment. I do not have the exact definition now but if the Committee wishes, I can give a definition.

MR. CHAIRMAN: Please do.

SHRI S. K. BORKAR: Another aspect that I would like to pose before the Committee is this. New foods are being developed which can keep for a longer duration or may have a slow release action. In the context of many of our troops being in the higher regions—NEFA and other regions—it is very necessary that they should be provided with such foods. For this reason also apart from the other which I mentioned earlier, I feel that the restrictive meaning of food should be removed and all foods, except natural foods, should get the same concessions as are sought to be given to drugs and medicines.

MR. CHAIRMAN: What was the definition in the original Act?

SHRI S. K. BORKAR: There was no definition; it was left for interpretation as meaning anything taken as food maybe the dictionary meaning.

I then come to the provision in sub-clause 1(1) of clause 2 defining medicine or durg. There is a sub-clause (iv) defining medicine or drug as follows:—

> "all chemical substances which are ordinarily used as intermediates in the preparation or manufacture of any of the medicines or substances above referred to".

Opinions have been voiced from various platforms in the country that

this clause will erode the rights of all those people who are making them only for use as chemicals. For example, if there is an intermediate which is used in the manufacture of plastics or fertilisers, with this definition of a drug or medicine in this subclause, the rights of people who are making them only as chemicals will be eroded. There is a point in what they say and I would submit that the words, "all chemical substances which are ordinarily used" etc. may, if the Committee agrees, be amended to read as, "all chemical substances which are capable of being used as intermediates in the manufacture of medicines and substances referred to above and to the extent they are so used".

I will illustrate this by an example. There is an intermediate product acrylonitrile which is largely used in the plastic industry and is not ordinarily used in the drug industry although it is used there to a small extent. It is a very important intermediate in the process of manufacture of vitamin B1. As you are aware, we are manufacturing vitamin B1 and we should not like to have any impediments in the way of making on using acrylonitrile for our manufacture. Although acrylonitrile is an intermediate, it is not ordinarily used in the manufacture of medicines. Still we want to have Acrylonitrile exempted from restrictions which are applicable to other chemicals That is why I make myself bold to suggest that sub-clause (iv) of clause (b) may be amended as I have suggested, that is, "all substances which are capable of being used as intermediates in the manufacture of medicine or substances referred to above and to the extent they are so used."

I want to limit the use of this only to the extent it is used in the manufacture of a drug. So long as Acrylonitrile is used in the manufacture of Vit. B, to that extent only I want protection. I do not want anybody to draw me in a court of law for infringing the patent of Acrylonitrile. So, I suggest that the definitions of the term 'drug or medicine' should include "all chemical substances which are capable of being used as intermediates in the manufacture of medicine or substances referred to above and to the extent they are used." "Perhaps, the Law Ministry will vet it and they will frame it properly.

SHRI CHANDRASEKHARAN: We are vitally interested in this clause as manufacturers. In the synthetic drugs, there is a lot of flexibility. Intermediates from 60 per cent of production. We do not want to take away flexibility by restricting their uses.

MR. CHAIRMAN: This phraseology is going to make it more restrictive than what it was before.

SHRI S. K. BORKAR: The term 'intermediate' has been introduced for the first time.

SHRI CHANDRASEKHARAN: And probably it is manufactured largely by us for the first time in the country.

SHRI S. K. BORKAR: Then, I come to clause 5 which is the pivotal clause so far as drugs and medicines are concerned. We are quite satisfied, as this is an improvement on the present situation in so far as only process-cum-product is patentable. In respect of drugs, we would have very much liked if patents had a holiday for a period of 10 years. That, in our opinion, would have given quite a breathing time to the entrepreneurs in this country to advance technology. But the provisions which are presented here are a sort of compromise between the extreme view of abrogation of patents and the other view which has been expressed that the life of patents should be extended even beyond 16 years. But we welcome this process-cum-product provision with only one suggestion, namely, that the process should be one process only. It should not be a multitude of processes. The patentees, particularly,

the foreign patentees, being experts at handling molecular substances create a molecular cordone round our research workers to such an extent that it is very very difficult for our research workers to breakthrough.

Take the recent example of Tolbutamide which has been developed by the Haffkine Institute. The process which was developed by the Haffkine institute already infringed the patented process. The patented process was included in hundered and one different manipulations which could arrive at the product. I may tell you one of the chemists, much before the case was fought in the High Court, told me informally that the Haffbine's methods was the one method only which did not infringe the patentee's process. infact, when the patentee's come to know about it, they hurried to have this particular process patented in Japan.

I am just trying to submit that the process in regard to patents relating to drugs should be definite and specific. The processes should not be a multitude of various types of combinations and all that. Subject to that, we welcome clause 5.

MR. CHAIRMAN: How do you want to put the phraseology?

SHRI S. K. BORKAR: I would suggest, a product produced by such a specific method or process.

MR. CHAIRMAN: All may be specific.

SHRI S. K. BORKAR: We say, a specific process—it is singular. Let them have different patents for different processes.

SHRI CHANDRASEKHARAN: The patents are so drawn out that even within one process product, a lot of definitions are brought in, all chemistry is brought in. Any developmental research is not possible. We have special difficulty in this. When the I.D.D.P.L. was set up, the patent responsibility was taken by the Government. In Russia, there is no patent. They have given certain processes. We have found by experience that the process and technology do yield high cost. We have to cut down on process and technology. If there are patents which cover the whole game of chemistry, no further research can be done in our laboratories. We want to have the clause as it is. It should be process-cum-product. Anything in the name of process should not come in. When we difine a patent, you bring in such a definition of the patent that all the processes are covered. Instead of that, it should be a single process and a single product so that all comprehensive definitions do not enter into the patent literature and prevent us from doing further research in our laboratories.

MR. CHAIRMAN: You want one process leading to one product; second process leading the second product.

SHRI S. K. BORKAR: Yes.

SHRI CHANDRASEKHARAN: We want to change Vit. B. technology. We find it very difficult to make new inroads. Even ordinary chemistry is being patented in the name of processes.

MR. CHAIRMAN: You want one process leading to one product.

SHRI S. K. BORKAR: If we develop a new process, it should not be prohibited by the patent law or anybody's patent.

MR. CHAIRMAN: You may kindly prepara a small note only with reference to this and let us have it.

SHRI S. K. BORKAR: Yes. I next come to the term of patents. I have made some calculations. I do not know whether the Committee will be interested in going through all these claulations. My purpose in going through the exercise was to assess the various periods which are allotted

from the date of application: there is the period which is given to the examiner to examine the application; then the period given to the patentee to reply to the objections then the controller accepts the final specifications and any party interested can file an opposition. The period that is given for opposition is 5 months. After the filling of the opposition, if no proceedings are taken in the court of law for any infringemnt, then the patentee has to make an application to the Controller for t he sealing of patent. All these periods cumulatively, from the date of application to the date of sealing of the patent, can come to 4 to 5 years.

It has been suggested that the term of the patent which is ten years from the date of filing of complete specifications is too short a period. It has also been centended that clause 87 provides a patent to be endorsed with the words 'licence of right' from the date of sealing of the patent. So, the date of filing of complete specifications and the date of sealing of the patent become very important to us. If the term of the patent is construed as from the date of filing complete specifications, then the total period that the patentee gets is 10 years plus 15 months because 15 months is the period that is given to them to file complete specifications. So, in reality, he gets 11 years and 3 months as the life of the patent. A question may be raised that his rights accrue only from the date of acceptance of complete specifications. From the date of filing the application to the date of acceptance of complete specifications, it comes to 51 months—15 months for filing of complete specifications, 18 months for examination, and 15 months for putting the application in order which may be extended by another three months. Although in law the right to a patentee accrues from the date of acceptance of complete specifications, in practice the market is so controlled that the applicant for a patent really enjoys the right from the date of application. I can sub-stantiate it by quoting from the Kefauver Committee's report. I am quoting from page 150:

> "Although a marked difference would appear to exist between a patent application and an issued patent, the drug companies on occasion seem to regard this as a distinction without a difference. In a number of instances examined by the Sub-Committee, the structure of market control was built up not on the patent itself but on the patent application."

He then quotes the example of a drug called Prednisone which was developed by Schering. Schering applied for a patent in the year 1955. The patent was granted in 1961. In law the patent rights should have accured to the applicant only with effect from 1961. But what happened between 1955 and 1961? Merck, Parke Davis and CIBA entered into an agreement in 1957 with Schering who were the applicants. When Mr. John Connor, the then President of Merck, was asked why they had entered into that agreement when they did not have the patent rights, he said, 'If I had not entered into that agreement then, the terms of licensing would have been much stiffer'. In fact, what happens is that the rights of the applicant really accrue from the date of application and not from the date of acceptance of complete specifications or from the date of sealing of the patent. In that context, the term of the patent that has been given as ten years is, I submit, more than enough. In fact, it is quite incompatible with the state of affairs in the country where they enjoy monopoly for more than what is warranted. I would submit that if the patents cannot be abrogated, they should be reduced to 7 years.

SHRI CHANDRASEKHARAN: As a late-comer, we are interested in a shorter period for the simple reason that obsolescence is more in the drug industry and we have been loaded with products which will become obsolete in three or four years and we

have to go in for replacement in the case of foreign countries which are advanced, the returns have been obtained on processes and products; the period does not matter to them at all. But in a developing country like ours, the returns must come for patent holders. The lesser the period, the better would be the efforts of our technologists and we could bring new products.

SHRI S. K. BORKAR: I now come to the subject relating to opposition to the grant of patent. There is no time limit here for coming to any conclusion on the opposition petitions. There is no indication in the Act about the time limit within which the opposition petitions should be decided.

So, I submit that there should be a limit. That is the first point.

Then, in Clause 9 there is a slight mistake, if I can put it that way. In sub-clause (3) of clause 9 and sub-clause (4) reference is made to acceptance of the application. The wording should be 'before acceptance of the complete specifications'. It is for the Law Ministry and the Controller to look into. This is only by the way.

Then, with regard to sec. 53 I consider that term of patent in excess of 7 yrs. would not be warranted by the conditions existing in India. It is said, there should be no discrimination against drugs, as against other things. Drugs occupy very important place in society. Therefore special treatment is given to drugs. It is not the drug alone, but every patentee gives a brand name to it. Although patents may expire, brand name does not. So, the patentee continues to get advantage of the patent notwithstanding that the patent has expired. He should not grudge a smaller period for a patent than 10 years. It is stated that the rate of obsolescence in the case of drugs is very high. I quite agree with that view. So, also, risks involved are high. If drugs go obsolete in 3 or 4 years there is no justification for giving a period longer than 4 yrs. for the patentee to recover all those costs. If they recover their costs they will have done so within that short period otherwise they won't do it. There is another point which I have already mentioned. It is regarding structure of market control. It is built up not on patent itself but on patent application. Rights of the patentee start from date of application. Therefore for these 3 reasons I plead, the term of the patent should not exceed 7 yrs. from date of filing complete specifications.

Then I come to Cl. 84 and 87. I would like to add here that one of the reasons for granting compulsory licence should be that the requirements of export are not met. That point is not brought out in clause 84 which was incorporated in earlier Act. If the export requirements are not met. that should be a cause for granting a compulsory license.

About Cl. 87, I have no objection. I agree in toto. The sting of Clause 87 is in its tail, clause 88. Clause 88 governs clause 87. It also govern cl. 86. According to the letter Government has got the right to apply to the Controller for endorsing any patent irrespective for whether it relates drug or otherwise with the word "Licence of right" Cl. 87 provides for such endorsement in the case of patents relating to drugs and medicines. A distinction is made between drugs and other substances. I can do no better than quote Mr. Justice Rajagopala Ayyangar on whose recommendation this clause has been drafted. This clause is just a modification of existing clause 23 cc of the Act of 1911. There is one condition in the latter clause which has come in the way of Controller granting a licence. He may grant license under this section on such terms as he thinks fit unless it appears to him that there are good reasons for refusing the application and it is this last sentence which has been assailed in the courts. That detracts from the power of controller to use his own discretion in the matter of giving license. This motivated Justice Raja-

gopala Ayyangar to make a suggestion. While clause 86 is motivated by a desire to prevent abuse of monopoly, clause 87 is motivated by public interest. The objective behind cl. 87 and cl. 86 are quite different. Cl. 86 is based on different objective. That is, to prevent abuse of monopoly Cl. 87 is based on entirely different principles. This clause 87 is based on the fact that this involves public interest. This was the objective behind that clause. If that is so, then clause 88 which is an operative clause for clauses 86 and 87 ought to be changed so as to fit that into that objective.

On going through clause 88; I find that restrictions which are imposed in clause 88 are common both to drugs and medicines as also to other substances. And clauses as is common both to clauses 86 and 87. Clause 88 should, therefore, be split up or a new clause should be added whereby the patents which have been endorsed with the words 'licence of right' relating to drugs and medicines should be treated slightly differently from other patents.

My submission now is that nothing should be contained in the law which will prevent an entrepreneur who is competent to come and undertake manufacture. Justice Rajagopala Ayyangar has brought this out very clearly when he say that anybody wanting to use the licence of right should be allowed to do provided he fulfils certain conditions. He has recommended that any person, being a person approved by the Central Government, may require the patentee to give the licence. He has also laid down general guide lines for this purpose. If that recommendation is incorporated we can take care to see that licence of right will be exercised only by such persons as are competent to do so. We have got several enactments before us which are intended to control an industry. Take for example Industries Development Regulation Act and the Drugs Act. This is meant to control the industry and to maintain standards and all that. It can be left to Government to decided whether the person is competent and whether he has got the necessary finances for this purpose.

MR. CHAIRMAN: Is it your case that the licences of right should not be freely given to anybody.

SHRI BORKAR: That is what I want to submit. We can follow Justice Ayyangar's bill. There is one clause in compulsory licence which gives the Controller the right to use his discretion I want that the Central Government should exercise it under clause 88. Under Sec. 84 the decision relating compulsory licence is justiciable at present. What I want to suggest is that the decision the Controller in respect of certain aspects of clause 88—should be appealable only to Central Government and not to High Court. By this you will be taking away by one hand what you want to give by the other, if all these decisions of the Controller are subjected to the High Court's decision.

In the case of royalty, it has been again suggsted that 4 per cent is not an adequate royalty because the money that goes into the research is very colossal.

MR. CHAIRMAN. Their argument is that it may be 1 per cent or 15 per cent. So, why should it be fixed at 4 per cent or 5 per cent.

SHRI BORKAR: They want to recover the cost of research also. I will make bold to say by quoting an expression used by the then Governor General of the East India Company, 1841 Act. His Majasty had referred the Patent Bill 1841 to be made applicable to India and the applicability of royalties provided therein, that were to be concomitantly paid to the patentee namely the British Agent. This is what the then Government General had said in 1841. I quote:—

"I would not enter into a nice discussion on protection to an inventor in England. It has been the theory of patents that such a person is to make

a disclosure of the process of his invention and that the Sovereign is to secure to him exclusively any compensation, the profits to be derived from it for a term of years. It may perhaps be argued that England, Ireland, and Scotland have the exclusive right to manufacture within their limits. That would imply compensation for such disclosure and that more of injustice than of justice would accrue if the millions of India only within the limits of British Domination have to be taxed and harrassed.. etc.. etc."

This was said in 1841. To-day our *per capita* income is about Rs. 300|- and we are as far backwards today in relation to the advanced countries as we were in 1841. I make bold to say that as against about Rs. 8,900 *per capita* income in 1967 in U.S.A. our *per capita* income is negligible. That very argument will hold good even today. The royalty, therefore, should not be increased beyond what is provided now.

MR. CHAIRMAN: 4 per cent ceiling is enough. Is that what you mean?

SHRI BORKAR: It may even be scaled down. We should not go beyond 4 per cent.

MR. CHAIRMAN: You mean that 4 per cent ceiling should be there.

SHRI BORKAR: This is the figure arrived at now.

MR. CHAIRMAN: Now have you finished?

SHRI BORKAR: I have two or three more points and I shall finish.

MR. CHAIRMAN: Members want to take advantage of putting to you some questions.

SHRI BORKAR: I shall be very brief.

MR. CHAIRMAN: In that case our examination will be very short.

SHRI BORKAR: Chapter 17 relates to the purposes of Government. Clause 100(3) has a provision whereby the terms of agreement should be settled between the patentee and the Government undertaking. My only submission is that pending the high court's decision the use of patent by Government undertaking should not be barred. It should be allowed to use that patent if it wants to manufacture. In clause 99, purposes of Government has been defined. I want that the use by a Government Undertaking of any patent to be considered as for purposes of the Government. I now come to clause 107, sub-clause (2) which I consider as very discriminatory against drugs. I shall read out that clause:

"In a suit for infringement of a patent granted in respect of method or process of manufacture of a substance referred to in sub-section (3) or any substance of the same chemical composition or constitution as a first mentioned substance shall be presumed, unless the contrary is proved, to have been made by the aforesaid patented method of process."

This clause is against the principles of justice; that only drugs have been discriminated against, under the Act. The proof of a guilt of a person should lie with the prosecutor.

MR. CHAIRMAN: I personally feel that this is not good.

SHRI BORKAR: That is my submission. Lastly I turn to clause 114 which is again a reference to the remarks which I gave under clause (5). Although some provision has been made here to declare any patent as void if the claim is not justified, I would say if there are any claims, of course, the Controller will see to it that no perverse claims are accepted. If by chance there is a claim which has been deliberately, fraudulently made, then the entire patent should be subjected to revocation. That would be a deterrent against utilising the patent law for their advantage.

In clause 114 there is a provision that if, say, among 10 claims which are made for a patent one claim is found to be void, then it is left to the court to consider the other claims as valid. If such a claim which has been declared void is a fraudulent type of claim, then I submit that the entire claims should be penalised for the fraudulent claim. That will serve as a deterrent.

SHRIMATI SUSHILA NAYAR: The last point which you made can you illustrate a little bit?

SHRI BORKAR: I apply for a patent. I make 8 or 9 different claims.

SHRIMATI SUSHILA NAYAR: What type of claim?

SHRI BORKAR: Claim for a substance, claim for a process. If in the course of the examination it was found that one of the claims is a fraudulent type of claim.

SHRI DAHYABHAI PATEL: How do you mean 'fraudulent'

SHRI BORKAR: It may not be proved in a laboratory. It can only be a theoretical claim. After all the court can decide, if power is given to it, whether a claim is valid or not.

MR. CHAIRMAN: You want to knock out all?

SHRI BORKAR: That is my submission.

SHRIMATI SUSHILA NAYAR: A man files an application for complete specification for a patent and then he does not manufacture that for 3 or 4 or 5 years. His object is merely to lie low. Even if you give a licence of right to somebodyelse this man will get a certain percentage of that man's profits without making any effort to production. Do you think this is a right position, justifiable position? Would you say that if a man does not manufacture for 2 years or 4 years, then the licence should be cancelled? Would you like to put a limit on the time?

SHRI BORKAR: Clause 99 to-day provides for the revocation of patent. After having a compulsory licence granted to a party and if that party does not utilise that licence, there is a provision for revocation. There is no provision here to-day for revoking a licence for non-working by the patentee. The only provision is in clause 6 where the Government has the right for a public purpose to revoke a licence but it will not happen automatically. If that provision can be extended enabling the Controller to revoke a licence for non-working of the patent by the patentee. I for one would welcome it.

SHRIMATI SUSHILA NAYAR: You said pesticide is left out from here. Have you any idea why it is governed by a different Act?

SHRI BOKAR: I have quoted only the existing Act 1911 which makes a provision for a licence of right, gives the controller a right to licence anybody not only in respect of drugs and medicines but also in respect of insecticides and fungicides. That right is carried away by the omission of insecticides from the term 'Medicines'.

SHRIMATI SUSHILA NAYAR: So far as insecticides and pesticides are concerned, the patent law does not apply to them?

SHRI BORKAR: It is subject to the general provisions of the patent law and not to the specific provisions as are applicable to drug or medicine.

SHRI NAMBIAR: You want these insecticides and pesticides to be brought in so that the licence of right can be given by the controller?

SHRI BORKAR: That is exactly my submission.

MR. CHAIRMAN: For all intents and purposes it should be included in the drug terminology.

Do you mean to say that by omission it has been left out in the present Bill?

SHRI BORKAR: On the contrary this has been deliberately omitted from the definition. That is why in the beginning I said that this Bill has more restrictions than the present Act so far as this particular item is concerned.

SHRI NAMBIAR: What may be the reason for that? If there not any big interest involved in this?

SHRI BORKAR: The position is this. These insecticides, fungicides, etc. can be manufactured with the same machinery which manufacture drugs. If I can make insecticide. I would like to make use of that capacity for making essential insecticides for agriculture.

SHRI PITAMBER DAS: Towards the end of your evidence you suggested that certain appeals should lie to the Central Government. What are those appeals?

SHRI BORKAR: This is regarding clause 88. Clause 88 is designed to enable an entrepreneur to manufacture drugs and medicines in this country without any delay. He has a right to get a licence of right. The right that is thus given to him is removed by the protracted dealing which he will have to go through by negotiating terms with the patentee. What is more if the patentee chooses to go to the High Court? That is why I wanted that the right of appeal should vest with the Central Government and not with the High Court.

SHRI PITAMBER DAS: What you suggest is that the appeal should be administratively decided as non-judicial. I think that is what you mean to suggest.

SHRI BORKAR: It will come to that.

DR. SUSHILA NAYAR: Mr. Borkar, you stated that the Government of India should decide as to who should get the compulsory licence or the licence of right. Do you think that the Government of India has the machinery to determine all these things? On whom will the Government of India depend? It will be either the Patents Controller or perhaps the Drugs Controller.

SHRI BORKAR: There are two acts which regulate the manufacture of drugs. One is the Industries Development Regulation Act and the other is the Drugs Act. The Drugs Controller at the Centre and also the Controllers in the States are conversant with the capacity of a particular mannfacturer and other relevant issues. Under the Industries Development Act, the Industrial Adviser is also conversent with these things. A Committee can be constituted by the Government comprising of representatives from these two Departments who will be able to give their opinion. The guidelines can clearly be laid down.

DR. SUSHILA NAYAR: Will not this kind of restriction likely to lead corruption or charges of corruption? Would it not be better to say that whoever has asked for the licence they should be issued the licence and if they are capable they will thrive; otherwise they will lose their money. What is the advantage in restricting this?

SHRI BORKAR: I am looking from the point of view of investment made in the I. D. P. L. and the machinery that we have there. We have invested so much capital and we have huge capacity for manufacturing these drugs. As against this, if anyone even sponsored by the patentee can get the licence of right, there will be mushroom growth of people coming in. The Controller will be inundated with applications. There should be some sort of screening.

MR. CHAIRMAN: Even the Banks advansing money do have some kind of screening.

SHRI BORKAR: It all depends how the laws are implemented.

SHRI ARJUN ARORA: We were told that the absence of a strong patent law or a patent holiday like the one which you have advocated may encourage the production of spurious drugs. What is your opinion?

SHRI BORKAR: The question of manufacture of spurious drugs does not arise, whether there is patent law or no patent law. Under the Drugs Act, the Drug Controller ensures that only standardised drugs are produced. This is quite independent of patent law. Let there be no mistaken impression in any quarter that by abrogating the patents the country will be flooded with spurious drugs.

MR. CHAIRMAN: You mean that it all depends upon the Drugs Controller.

SHRI BORKAR: If there are any failings in the machinery, they are remediable. The law provides for standard drugs and the Drugs Controller is there to ensure it.

SHRI ARJUN ARORA: We were told that Italy, which has no patent act, was developed with drugs of doubtful value. Is that correct?

SHRI BORKAR: My information was that it was not correct. Italian drugs flooded the United Kingdom and the United States. They alleged that the drugs were spurious. One need not go to Italy. I will give an illustration in our country itself. I am telling the Committee the experience that I had as the Drugs Controller. When the foreign exchange situation started worsening, we started exploring the possibility of importing medicines from rupee currency areas. One of the items was chloramphenicol and there was a furore in the meeting convened for this purpose on the ground that this drug from the rupee payment countries would be useless. I told them that as the Drugs Controller I would see that it conforms to statutory standards. When they found later on that the exchange regulations were to be tightened further, they agreed to the import of drugs from the rupee currency areas, from Bulgaria, Hungary, etc. They wanted, in the first instance, to get this from their principals. In England, an investigation was made by the United Kingdom Government on the quality of drugs imported from Italy and they did not find any substandard drugs. The Veterans Administration of the U.S.A. did import these drugs from Italy and they were not found to be sub-standard. When one tries to prevent certain people doing some things, it is used to propogate against quality.

SHRI C. C. DESAI: I have not followed Mr. Borkar in his argument about the term and life of patent. We take now a specific case. An application is filed on 1st January 60. The full specifications have got to be filed within 15 months. Supposing he does that on 1st April 61, the last day, then the patent is examined and sealed. The final act of sealing the patent takes place four years after this, i.e. on 1st April, 65.

SHRI BORKAR: 4 years after filing of complete specifications is not an unusual period.

SHRI C. C. DESAI: Then, within three years, he has to obtain the approval of the Drugs Controller. He has got to obtain the sanction of the Price Approval Committee of the Petroleum and Chemicals Ministry. Then, he has to manufacture and market it.

SHRI BORKAR: The applicant need not wait till his patent is sealed. There is nothing to prevent him from undertaking the manufacture of drugs and selling it. Nobody prevents him from doing that. If anybody is prevented it will be only the other scientists who are developing new processes for making a drug.

SHRI C. C. DESAI: Mr. Borkar, are you aware that in the Western countries. There is now a move to increase the life of patents even beyond 16 years?"

SHRI S. K. BORKAR: Sir, I am aware of the trends in this respect in

the Western Countries. If we were at the same stage of technological development and research, I, too, would favour a longer period for patents then is contemplated in the present Bill.

SHRI C. C. DESAI: Can he manufacture the drug . . .

SHRI BORKAR: Nothing prevents him from manufacturing that drug for which he has applied for a patent, right from the day he makes that applicantion, if he has got other clearances. I mentioned about clinical trials. This process can take even about four years. The maximum time that is taken for clinical trial does not exceed three years. It is only in rare cases that this happens. We have not come to that stage of development where chemical trials will exceed this period. Tranquillizers have not been discovered here. There is really no impediment in the way of an applicant to utilize his would be patent right from the date of his application.

MR. CHAIRMAN: Can that be done without going through the clinical trial?

SHRI BORKAR: No, Sir. That has to be tried whether the drug is efficacious and safe.

DR. SUSHILA NAYAR: They have to have the trial before the patent is given.

SHRI BORKAR: In fact, they do all these things. This process is simultaneous. One does not wait for the other.

SHRI C. C. DESAI: Has the IDPL done any research to that limit?

SHRI BORKAR: Not yet, Sir. But we are just developing our technology.

SHRI C. C. DESAI: Are we, in 1969, in the same position as we were in 1947? Has there been no development of the pharmaceutical industry in this country?

SHRI BORKAR: I will tell you. There is development of pharmaceutical industry but it is mostly on formulations. I may explain in brief. The Government has been trying to persuade the enterpreneurs to become more and more basic, but without much success. The process is very, very slow. You have seen the machinery, the pilot plant at Hyderabad and how we are now poised to do the work. What is happening in this country? We have got two Vitamin-A plants in this country; one is Glaxo and the other Roche's. I should say these are closed plants and a closed technology. On the contrary, if you go to Hyderabad and if you ask our boys whether they are able to have another plant for making, say Avalgin, they would say with confidence, "Not only this type but we will put up a better plant". That is the advantage of the development of our technology. We are interested in sulpha drugs. Our capacity is 510 tonnes. The total capacity for sulpha drugs in this country is 1091 tonnes. But I make bold to say that those people having the extra capacity have not brought basic technology to the country.

SHRI C. C. DESAI: Who are those people who have not given us technology?

SHRI BORKAR: The foreign collaborators licensed to make sulpha drugs, Dr. Shah will bear me out that out of 1091 tonnes, we can make 500 tonnes right from the basic stage. The other people who have been licenced ever since 1954 have been making these drugs starting from high intermediates.

We should not put impediments in the way. We have to copy this technology. I am not ashamed to copy this technology. We have to copy this technology.

SHRI C. C. DESAI: Are you satisfied with the research facilities in the IDPL?

SHRI BORKAR: Not at all.

SHRI CHANDRASEKHAR: We started only a year back. It is too early to say whether we are satisfied or not.

SHRI KHAITAN: Is this advantageous to both the manufacturers as well as to the research workers?

Shri BORKAR: Yes. The advantage will be both to manufacturers and research works, because the research workers will get the advantage of a break through and the manufacturers will get the advantage of making the drugs in this country. So the advantage will be for both.

SHRI KHAITAN: Is it necessary to have patents?

SHRI BORKAR: I have mentioned earlier about abrogating it. But life is a series of compromises. And in that spirit we have to go. We cannot drift ourselves away, which would be very unusal. We want others to understand our problems and help us.

SHRI KHAITAN: We do not drive any benefit from this patent law?

SHRI BORKAR: All the foreigners derive the benefit. We do not derive any benefit under the existing patent law. When I refer to scientists, I mean technologists in this country and not individual scientist. Sir, the research that is carried out in this country is mostly under the auspices of the Government. Out of 46 crores that is spent on research, over 40 crores is spent by the Government. As research workers they do get compensation. But today there is no research in Private Sector except one—Cibas. We are supporting the British and the American inventors and not the Indian inventor.

SHRI NAMBIAR: I feel, the person who applies for Patent production gets coverage from the date of application.

SHRI BORKAR: He is protected from the date his specifications are accepted.

SHRI NAMBIAR: He need not wait for four or five years for production. So, any person who is sincere about production will not get any obstruction due to the delay taken in the grant of patent permission.

SHRI BORKAR: That is exactly what I wanted to convey. If I was the applicant and if I was sure of my processes, I would not wait even till the time the Controller accepts my specification. If I am sure of my process, I will start right from the day I make my application and there is nothing to prevent me from puting drugs in the market.

SHRI NAMBIAR: Suppose I am thinking of developing a particular item. My scientist gave me inkling of something and I apply to drag on the whole thing because I get coverage.

SHRI BORKAR: That is what happens.

SHRI NAMBIAR: About the technology of IDPL, it appeared as if the collaboraters did not help us in passing on the know-how to us. What I thought Mr. Borkar was mentioning partners from many other countries are not doing as they are worried about the profit. But so far as IDBL collaboration is concerned, are we getting the full know-how for the money that we pay and collaboration that we make?

SHRI BORKAR: We had no difficulty.

MR. CHAIRMAN: How much money we have put in IDBL—*i.e.* investment?

SHRI CHANDRASEKHARAN: Rs. 54 crores.

MR. CHAIRMAN: How much salary we paid last year.

SHRI CHANDRASEKHARAN: About Rs. 1 crore.

In 1971-72 we shall be able to sell worth 30 crores.

DR. SUSHILA NAYAR: How do you compare with the market price?

SHRI CHANDRASEKHARAN: We are selling at competitive prices but incurring loss. When we

start producing we do not produce the entire capacity. It takes three years to reach the full capacity. In 1970-71 we may break even.

DR. SUSHILA NAYAR: To what percentage it is higher than the market price?

SHRI CHANDRASEKHARAN: It is about ¼ of cost in some products.

MR. CHAIRMAN: Thank you Mr. Borkar and Chandrasekharan for the elaborate evidence that you have given and we hope the Committee will take advantage of what you have said. Thank you once again.

DR. SUSHILA NAYAR: Could you give us a note on the points you have made?

MR. CHAIRMAN: Please be precise while giving a note.

(The witnesses then withdrew.)

II

1. Dr. B. B. Shah, Industrial Adviser (Drugs), Ministry of Industrial Development, Internal Trade and Company Affairs.
2. Dr. P. R. Gupta, Development officer (Drugs) Directorate General of Technical Development, Ministry of Industrial Development, Internal Trade and Company Affairs.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Thank you Mr. Shah I request you to give a resume' of what you want to speak before the Committee about the Patent Bill and comments thereon.

DR. SHAH: Dr. Gupta, Development Officer, Drugs, will assist me. I would like to mention that I cannot and will not comment on any provision of the Bill. I shall supply any technical information or factual information that you may need. I will tell you Pharmaceutical Industry in India started as a processing industry, as it does in any developing industry. In all other developing industries it continues to be so, but due to wise policy of the Government we have switched back to the basic manufacture. The position in India was quite different when we did undertake this difficult task. Our chemical industry had not developed to the extent—specially the organic industry—to provide raw material. The position in USA and Europe was quite different. They had very well organised Chemical industry who could supply raw material for the pharmaceutical industry. Here, the pharmaceutical industry had to do further exercise and start producing a number of intermediates and chemicals required by the pharmaceutical industry itself, in its own premises which is not usual in other countries. This did mean higher cost because our operations were of smaller scale and also it needed capital investment. Government wisely took a decision to encourage it despite higher cost in the basic manufacture. I can say in most of the drugs we have brought down the foreign exchange expenditure to a level of about 10 per cent of the c.i.f. cost of durgs which continue to be imported in the country. We have about 100 units in the organised sector which is registered with the D.G.TD. with capital investment of 150 crores. In 1968 we have produced 200 crores worth of drugs, out of which 27 or 28 crores is value of basic drugs and 6 or 7 crores is value of drugs imported for formulation to supplement the basic production in the country. Government have also encouraged the import of technology into our country wherever it was for the ultimate benefit of our country in the sense that it would lead to manufacture of the drugs from chemicals and intermediates that would ultimately become available or have already become available.

This has proved very useful because just now our chemical industry is coming up, especially the petrochemical and the organic chemical

industry. The petro-chemical industry has started supplying a large number of raw materials which used to be imported so for. We have most solvents like methonal, isopropyl alchohol, MIBK and so on which were imported for a long time. That has further cut down our imports of raw materials into this country. Roughly out of about Rs. 10 to 11 crores of raw materials that we continue to import, about Rs. 3 to 4 crores still represents the intermediates and chemicals and about Rs. 7 crores basic drugs.

MR. CHAIRMAN: How much do we import even now?

DR. SHAH: About Rs. 11 crores worth of raw materials for a production of Rs. 200 crores, and a basis production of about Rs. 27 to 30 crores of drugs.

DR. SUSHILA NAYAR: By basic production, you mean drugs apart from formulations?

DR. SHAH: I would like to mention here that we have a production of about Rs. 27 to 30 crores of bulk drugs made from chemical intermediates and organic chemicals, both locally available and imported. In addition, we supplement this with about Rs. 7 crores worth of drugs in bulk and the total together is being formulated in this country.

DR. SUSHILA NAYAR: So that out of Rs. 200 crores worth of manufacture, Rs. 160 crores represents formulations?

DR. SHAH: These Rs. 37 crores go to supply raw materials for the Rs. 200 crores worth of formulations.

DR. SUSHILA NAYAR: That was what I was saying. With about Rs. 7 crores import and about Rs. 30 crores of basic manufacture, the rest of the Rs. 160 crores that we make are not basic drugs but formulations of drugs.

DR. SHAH: It is the same value, but it is marked up. With about Rs. 40 crores worth of bulk drugs, we can make formulations worth about Rs. 200 crores. For, a drug cannot be used as such as a bulk drug. It has to be converted into a dosage form. You are aware that it needs a number of operations. For instance, take the case of a vial of penicillin. A vial of 5 lakhs units costs about 70 paise; it hardly contains 5 paise worth c. i. f. of penicillin in it; the rest is the cost of the vial, the rubber burg, the aluminium seal and so on. So, there is a mark up. So, the drug has to be processed into vial form if it has to be injected into somebody. It has to be vialled under proper conditions with filling lines which themselves cost lakhs of rupees, and so many other precautions have to be taken at the time of filling operations. This bulk material after process comes to a total value of Rs. 200 crores; there is no such thing as Rs. 160 crores being added by way of other formulations. It represents the marked up value.

DR. SUSHILA NAYAR: I did not say that it represented other formulations; I said exactly what you were saying just now.

SHRI NAMBIAR: We are doing the basic production.

DR. SHAH: In the case of injectible preparations, the marking up would be of the ratio of 1 : 10: in the case of tablets for instance it may be just 1:2 or 1:1½. It depends on the type of formulation, the nature of the excipients, the additives and preservatives that have to be added and so on. This activity of the Industry is equally important.

Mr. CHAIRMAN: With regard to the basic chemicals how much is produced by the public sector and how much by the private sector?

DR. SHAH: THE IDPL is one of the biggest producers. They have yet to produce to their full capacity. They only produced about Rs. 2 crores last year. But the next biggest producer is the Hindustan Antibiotics.

They are producing only about Rs. 5 out of Rs. 30 crores of basic drugs. But when once the IDPL plant goes into full production they will be able to produce about Rs. 30 crores.

SHRI C. C. DESAI: That will be basic chemicals?

SHRI NAMBIAR: The IDPL does only basic things. Only a few days back I was there. They are mainly doing the basic things.

MR. CHAIRMAN: What amount of basic material is being produced by the public sector and what amount by the private sector out of Rs. 37 crores?

DR. SHAH: Every year it is changing, because the IDPL units are just getting into production. We shall work out the 1968 figures and supply them to you.

DR. SUSHILA NAYAR: You mentioned that 5 paise worth of pencillin will go into the vial and 65 paise will be the cost of other things. This 5 paise is the total cost of production or the basic cost of production?

DR. SHAH: Up to the basic stage only, but not beyond the basic stage. The cost of indigenous pencillin is however higher.

DR. SUSHILA NAYAR: Do you mean to say that the cost of formulation is so high? Is it 14 times higher than the basic cost?

DR. SHAH: It happens in the case of certain injectible preparations. Otherwise, it will kill the patient instead of curing him. You know the enormous precautions that have to be taken in the case of injectible preparations.

DR. SUSHILA NAYAR: That has to be done even at the basic stage; it has to be sterile, it must be pure and so on.

DR. SHAH: It has also to be converted to dosage form and be transported and given to the patient at the right time in the right quality. So, it has to go through all these stages.

DR. SUSHILA NAYAR: Penicillin is just in the form of a powder and it has to be mixed with water at the time of injection. I am really amazed. I did not realise that the cost of the formulation would be so high. Is it really so high or is it profitability which makes it so high?

DR. SHAH: This is the bare cost; even if you take the cost of the vial, the rubber bung, the aluminium seal and the carton, and the operations of vial-filling etc., all that will add up to this cost. These are necessary things, because if it has to be in an injectible form then it must be done in an entirely sterile and asepetic conditions.

DR. SUSHILA NAYAR: If that is only the cost of making the formulations, then the profit has to be added and it will go beyond 70 Paise.

DR. SHAH: Probably it includes a little amount of sales and distribution costs and profit.

SHRI NAMBIAR: 24 per cent is on account of distribution and advertisement.

MR. CHAIRMAN: Sometimes, it is 30 per cent.

DR. SHAH: In this particular case, there is hardly any advertisement for these medicines, because these are ethical products and they are not advertised direct to the public.

DR. SUSHILA NAYAR: The Hindustan Antibiotics are making good profits and they have told us that the money for expansion came out of their own profits. How much out of 70 paise would be on account of profit and how much on account of formulations?

DR. SHAH: The profit cannot be worked out separately for basic and formulations, because part of the profit goes into the basic manufacture and part into the formulations. But if you see some of their balance-sheets you could get some idea about how much they earn on basic manufacture and how much on formulations. I do not think they are earning much on formulations at all. the earnings are mostly on basic products because they also market bulk penicillin, streptomycin etc. and distribute to other viallers, who vial them in turn and there is an agreement among the viallers to sell it at the same price so that there is uniformity in the prices. Most of the vialed products, especially penicillin and streptomycin etc. are practically sold at a minimum price, because there is a large outturn of these products and the return that they take is comparatively much less.

DR. SUSHILA NAYAR: How much short are we of our basic need of antibiotics now?

DR. SHAH: As regards pencillin, we are practically surplus now because we are producing more than our requirements. When the IDPL goes into full production we would have even to export. Actually, the IDPL have an arrangement to export pencillin to Yugoslavia.

The demand for streptomycin is going up very fast due to various anti-T.B. programmes and so on, and so we have fixed a target of nearly 300 tonnes for the fourth plan, 1973-74, and our production in 1968 was only 132 tonnes. So, we are short to a great extent, but this will be made up once the IDPL plant at Rishikesh goes into production. Production will be nearly 2|3 in the public sector and 1/3 in private sector after the IDPL plant goes into production. Today it is almost equal because Hindustan Antibiotics produce about 80 tonnes and the private sector about 62.

DR. SUSHILA NAYAR: What about penicillin and other semi-synthetic penicillins like Bycillin?

DR. SHAH: In Penicillin even now Pimpri is the highest in production in the public sector the production is 90 M.M.U. and 40 M.M.U. in the private sector.

About the semi-synthetic penicillins still we do not have the know-how. We are negotiating to get it for ampycillin manufacture. Certain negotiations are going on between Hindustan Antibiotics and Beechams for bycillin we have the know-how, and it is being produced in collaboration with Wyeth.

DR. SUSHILA NAYAR: I am asking about formulations because some of the people who gave evidence told us that there is a 500 per cent profit in certain formulations.

DR. SHAH: There is the Price Control Order for which you yourself were responsible.

DR. SUSHILA NAYAR: That is only for keeping it at a certain level.

DR. SHAH: There are certain norms under which the prices have to be fixed. They are applied and prices are brought down whenever an opportunity arises. But there are, I agree certain specialities on which prices are higher, and I think that is so in every country because there are certain specialities on which the whole cream of the pharmaceutical industry depends. There are other lines on which he makes a bare minimum, and he balances it by the selling of these speciality preparations. In fact, it helps that way to bring down the prices of some life-saving drugs, because there are always people who are prepared to buy speciality preparations because they have the money to do so.

SHRI NAMBIAR: With production going up in our public sector undertakings in pharmaceuticals, are we in the take-off position with regard to basic chemicals?

DR. SHAH: Today technology is developing very fast. I do not think that any country, even Germany, can say that they can cut off all flow of technology into their country. Yes, we are self-sufficient so far as simple drugs are concerned.

I would like to mention here that the pharmaceutical industry is a chemical-based industry. The processes have all Common application and they are common to the entire chemical industry. So, by bringing newer technology, we not only help in the development of drugs, but in the deveopment of the whole chemical industry in general. We have, for example, a new process like high pressure reactions that was brought in for making Picolines which is really something novel for this country, of which nobody had any experience at all, but that sort of thing, when it comes, does not merely help the pharmaceutical industry. We should ensure that we get the latest and up-to-date technology into the country, and we should also ensure that, when there is an outflow of technology which must also develop, and we get a reasonable return for the technology that we send out, because in most countries they are balanced, there is a two-way traffic of technology. Most of our difficulties have arisen because it is one-way traffic, but we should be able to do it with the development of technology in various fields which are coming in in different forms, which is the application from one branch of the chemical industry to another. Even most of the processes can be applied in plastics or dyes or *vice versa*. So, with the development of technology, we should be able to develop modifications and changes as Japan has done, and also develop the outflow of technology and see that whenever we have a Patent Act both of them are safeguarded, that there is an inflow of the most modern and up-to-date technology and that when we export technology from this country we get an adequate return to pay for what we are getting by inflow of technology. This has to develop, and it can develop only if there is a free flow of technology and encouragement to development modifications. We should not isolate ourselves from the rest of the world on some emotional and other grounds.

SHRI NAMBIAR: I was told when I visited IDPL that we have improved our technology very much with regard to the production of Phenacetin. We were told that we should have 267 mg. purity according to the Indian pharmacopoeia. We had only 500 capacity, but our boys reduced it to 267 and brought it to world standards.

DR. SHAH: Once there is a basic plant and there is a basic unit which can manufacture, we can certainly make modifications and develop technology, but again this was modification of the imported technology. It was Russian technology that was brought into the country where they had a different specification which allowed a certain higher content of chlorides etc. So, a modification could be done. Our scientists and technicians are getting experienced in the pharmaceutical industry. Nearly 100 technicians go abroad every year and undergo training in various laboratories and factories and come back with new ideas and of new developments taking place in the chemical engineering field, because there are tremendous developments taking place and many waste products are being re-utilised for supplying either energy or improving the yields and so on. So, that sort of exchange of information is possible now. It does not come in patent literature, it is not given in treatises or textbooks, but it can be had only by contact with laboratories and factories outside. That is the most important aspect.

SHRI NAMBIAR: In the drug industry we find that all the foreigners who come before us are making a hue and cry against this patent production being reduced a little. Apart from the interest of profitability what else could it be, because we

are finding it difficult to judge from the evidence which the foreigners give which is a little coloured in our opinion. Can you enlighten us on that point a bit?

DR. SUSHILA NAYAR: Only the drug people are coming and raising objections. The patent law covers so many things, but there is hardly anybody else who has appeared before us. Can you throw some light on this?

DR. SHAH: There are two aspects: in this law, there is a little discrimination in respect of the pharmaceutical industry. That is what they feel. The other aspect is this. This is the only developing country which is making fast progress in chemical technology in the field of drugs. Whatever we do will be copied by all the other developing countries sooner or later.

SHRI C. C. DESAI: You said that out of the total sale value of Rs. 200 or so crores of pharmaceutical products, we are importing something like Rs. 10 crores or Rs. 11 crores. That alone will increase the production of drugs and pharmaceuticals in the country. The bulk of the pharmaceutical industry is owned by foreign interests. Up to that extent, the outgo of foreign exchange must have increased. Have you any idea of the effects of the outgo of foreign exchange as a result of the increased production of pharmaceuticals in the country?

DR. SHAH: I do not think it is correct to say that out of the total of Rs. 150 crores of capital, the bulk of the capital is held by foreigners. Even among the foreign companies in many the ratio is 40 Indian and 60 foreign. Some have not yet reached that particular level, and the Ministry is telling them of the necessity to reach the level of 40—60, whenever they come up for any expansion.

SHRI C. C. DESAI: Are you following the rule that whenever they ask for expansion of capital or for production of any additional item, you should insist on a proportionate reduction of foreign capital?

DR. SHAH: Yes; Sandoz and Pfizer, for instance have reduced Glaxo had recently published their prospectus for taking men Index capital.

SHRI C. C. DESAI: I think it is only occasionally that they are asked to reduce it, and not everytime when a new licence is itemised.

DR. SHAH: When there is a sizeable additional capital required. If they want to have some additional products using the existing equipment, if there is no capital involved, we cannot insist. Whenever they come up with a big programme of expansion, we do.

SHRI C. C. DESAI: Only when there is a proposal for capital expansion that you come in and ask for further reduction. But within the same capital, you do not ask.

DR. SHAH: That would mean repatriation of foreign capital.

SHRI C. C. DESAI: Even within the same capital, if they increase the production, they have increased profits and increased dividends and to that extent there is increase in the foreign exchange outgo. So, while keeping within the original capital structure, when they add to their activity, why don't you ask them to reduce the foreign exchange outgo?

SHRI SHAH: That is exactly what we are doing when they want to expand and when they invest more rupee capital.

SHRI C. C. DESAI: If they keep within the same capital structure, and if they add one more item of medicine, it brings in an additional market to the extent of Rs. 1 crore, a profit of Rs. 10 lakhs and a foreign exchange outgo of Rs. 5 lakhs. Still, they are allowed to make that medi-

cine without any requirement on the part of the Government to reduce their foreign capital.

DR. SHAH: There are two ways of doing this. Either you allow them to repatriate their capital to bring down the equity; or to allow taking in of more Indian capital. It is examined by the Finance Ministry.

SHRI C. C. DESAI: There are several things which we discovered when we visited Glaxo; unfortunately, you were not there. We asked the Chairman whether they would be prepared to accept the condition by the Government that they will export sufficient drugs made by them in India to pay off the foreign personnel, expansion and every thing that they have in other words, it was a question of matching the foreign exchange out go. He said he must have time.

DR. SHAH: Some firms like Mercke, Sharp and Dhom have already exported sizable quantities. It depends on the markets. In 1968, they have already done Rs. 40 lakhs; and hope to make a crore of rupees of export this year. It is not in the case of every firm that it is so. It all depends on the line they are in.

SHRI C. C. DESAI: What about foreign participation? You will find that within five years they will export or make equal amount of goods available to the STC, but they will match their foreign exchange out go.

DR. SHAH: Priority is given to schemes where there is a large, sizeable export.

SHRI C. C. DESAI: About streptomycine, you said that there is a deficit of 170. When we visited Pimpri and again when we visited Baroda, in these places, the General Manager or whoever was in charge told us that they were in a position to produce more, but that they are not allowed to produce more simply because they are waiting for the production of IDPL. If today they are in a position to produce, why should you import? If on a particular day, they are able to produce in India, whether it is the private or the public sector, why should they import?

DR. SHAH: There is no bar on production.

SHRI C. C. DESAI: Mr. Subramaniam himself told us and he asked us for permission to produce; he said he was not permitted.

DR. SHAH: I will check up. Actually their production has been less than the licensed capacity in 1968 and they have given reasons that it was due to the defects in the plant and so on. The capacity in the sense of some calculation based on size of the equipment may be there, but their actual production—

SHRI C. C. DESAI: There is the 25 per cent diversification clause.

DR. SHAH: They can produce up to 25 per cent without asking for permission.

SHRI C. C. DESAI: I wrote a letter to him and he wrote back to me. His complaint was that they are in a position to produce but that till the Rishikesh plant produces they cannot produce more, and the Government in the meanwhile will import streptomycine.

DR. SHAH: Most of the expansion has been given and even in the case of Sarabhai—the Baroda plant—they have regularised at their capacity and expansion up to 8 tonnes is under consideration.

SHRI NAMBIAR: The same complaint came from the IDPL. The IDPL products could not be sold because of the import. Everywhere this is the position. There is something wrong in the import policy.

DR. SHAH: There is nothing wrong. When they go into production and ask for putting a ban on import, the ban has been imposed but if there has been some previous licence and

the imports are made under that licence, probably they have got a legal right for it, and nobody can prevent it.

SHRI NAMBIAR: When we are producing, we must balance it and do whatever is necessary. If we have issued a licence earlier, is it to stand for all time?

SHRI C. C. DESAI: They are producing for the first time, and yet they are storing it and knocking at the door of every consumer for sale. I mean a particular firm.

DR. SHAH: I will explain this. Most of the manufacturers carry large inventories; when it is an imported item, they carry at least six to 12 months' inventories. For these imported items, they are not sure when the shipment will be made. There may be a dock strike at the place where the goods are being loaded or disembarked. When they find that the raw material has become indigenous, they bring down their inventory stock because they do not want to block their capital. For instance if somebody has got eight months' stock, and the item has become indigenous he feels naturally he should now reduce his own stock to two months or less when it is freely available locally. Most of the raw material manufacturers get into this difficulty. It is something which cannot be avoided.

DR. SUSHILA NAYAR: You said something about capital being sent out of the country if we do not allow expansion etc. As we went round some of these manufacturing houses we found that the capital that came from outside the country in most cases was very little, a few lakhs or something like that. The capital has over the years increased from the profits made here, from the bonus shares, from the reserve fund and all that type of thing. Do you mean to say that they are entitled to take that capital, which has increased from profits made here, outside the country?

DR. SHAH: These are certain assurances given to foreign capital investment in the country. This is a question which concerns the Finance Ministry.

SHRI ANANDAN: Will the objective of free inflow and equitable export from our country be achieved if the period of patent is restricted as envisaged in clause 53?

MR. CHAIRMAN: He is not prepared to answer those things; he will give only factual information.

DR. SHAH: That I leave to your wise judgment.

MR. CHAIRMAN: I have not been able to understand one thing. In regard to streptomycin we are in short supply and short production. The Hindustan Antibiotics are in a position to expand it, as Shri Desai put it, but you granted the licence to the Hardwar Public Sector undertaking (IDPL) but not to this Antibiotics concern. The reason you gave was that they do not fulfil the condition. We find they are already producing this and yet you did not grant the licence to them which has prevented them from going forward and which has resulted in our losing foreign exchange.

DR. SHAH: Their expansion proposal came much later and Government said that instead of investing more money here let us get return from what we have already invested. They cannot expand without getting the necessary equipment. Unfortunately there has been delay in the Rishikesh project due to various reasons. Nobody anticipated that there would be this delay. I think it will be covered up. Today Hindustan Antibiotics are producing to the maximum capacity.

MR. CHAIRMAN: Therefore they have a better case for getting the licence.

With regard to production of penicillin you said that our production is much more than what we actually need. Why should it be so? Are you

getting proper market to sell our production?

DR. SHAH: Yes. What is happening today is, the demand for oral penicillin is going up because preparation like ampicillin have less allergic reaction. There is a great demand for pottasium penicillin for conversion to ampicillin. When we produce ampicillin we expect that the demand will go up and we will utilise our full capacity.

SHRI ARJUN ARORA: We were told by the Chairman of the Glaxo Laboratories that they pay their parent organisation a small sum of Rs. 50 lakhs per year for giving us all the benefits of research done by the Glaxo Organisation the world over. They consider it a small sum but to me it appears to be a huge sum. Do you know of any other instance where foreign dominated companies in this country are paying similar fixed sums to their parent organisations for making them available the benefits of their world-wide research? If you do not have the information now you may find it out and send the same to the Chairman.

DR. SHAH: I will collect the information and send you.

MR. CHAIRMAN: That is all I think. Thank you, Dr. Shah, for your valuable evidence. We shall take advantage of what you have said.

(The witnesses then withdrew.)

The Committee then adjourned till 15.00 *hours.*

III

Haffkine Institute, Bombay

Spokesmen:

Dr. N. K. Dutta, Director,

Dr. C. V. Deliwala, Asstt. Director

(The Committee reassembled after lunch).

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: I have to inform you that the evidence that you tender before the Committee is liable to be made public. Even if you want any portion of it to be treated as confidential, it will be circulated to Members of Parliament. We have received your memorandum. If you want to emphasize any particular point, or add any new point, you may do so. After that members will ask questions.

DR. C. V. DELIWALA: Our memorandum is a brief one. I will read it fast so that you will get an idea of our thinking on this Bill.

Haffkine Institute, administered by the Government of Maharashtra, is one of the oldest medical research Institutes in India. It was founded in 1896 for the combating of plague epidemic that was then raging in Bombay. It has been constantly engaged in epidemiological, prophylactic, curative, diagnostic and allied medical fields not only by its fundamental researches but in the practical applications in the form of making available vaccines, sera to the public, diagnostic aids for medical profession and in teaching of medical sciences.

During the last 30 years it has also carried out researches in synthetic drugs and has acquired a good experience in the matter of patent system in India as it existed during the British Rule and the modifications made just prior to and after independence. The Institute has taken a number of patents, gone through the processes of patent litigations, and attempted to get compulsory licences to meet the needs of our country in the matter of life saving drugs. In view of this, Haffkine Institute is in a unique position to relate its experiences in the working of patent system in our country, its shortcomings, and the steps necessary to make it work in the interest of a developing country like ours.

We have gone through the proposed patent Bill 1967 and beg to offer some suggestions to make the Bill more effective.

We sincerely believe that in the matter of saving life by rescuing from the jaws of hunger, disease, pestilence and death, it is the humanitarian task that should rule supreme. There should be no scope of making undue profits in matters concerning life and death. In developing countries, including ours majority of the population is not even having sufficient means to purchase their bare minimum requirements of food to ward off hunger and diseases. To sell to such a population drugs or medicines or food at prices, which are exhorbitant, and what is worse, much higher compared to the ruling prices for the same drugs in developed and prosperous countries is most unfair. In our country thousands of people die, not because they are attacked by maladies against which no effective drugs are known. They die or remain helpless victims of the disease simply because the drugs are so costly that they are beyond the purchasing power of these poor victims or even beyond the limited budgetary provisions of the Government hospitals or public health Institutions.

With modern medicines, surgery etc. millions of victims of dreaded diseases like tuberculosis, leprosy etc. are being now saved from death. Against these diseases only a few decades back there was no hope of survival. These are the results of selfless and devoted research workers, clinicians, surjeons, pharmacologists and others belonging to widely different branches of science, who have shared, shared freely their findings, results of experiments, new discoveries and made them known by publising all the details, the know-how, without waiting for taking out patents, without expecting monetary gains.

I may add here that our country was extremely fortunate that anti-tubercular and anti-leprosy drugs did not happen to be patented and monopolised by these people; otherwise, we can well imagine the plight of our people who had to buy these drugs.

A study of the patent system in India upto now shows that more than 90 per cent of patents taken out in this country are by foreign firms for the inventions carried out abroad. It is seen that no advantage, whatsoever, has been gained by the existing patent system in our country. The highest possible prices have been charged by utilizing the monopoly.

Here I would like to point out that even in the case of those 10 per cent Indian patents, if we go through the Patent Gazette we realise that 90 per cent of those 10 per cent patents taken out are for inconsequential items. The real test of our inventions is not this insufficient number of Indian patents. but how many of our patents have been patented in other countries then only we could say how far our technology has developed.

Even the efforts of the Government in trying to meet the urgent life-saving requirements of drugs and medicines by taking up the manufacture in the country have been obstructed and delayed by the foreign patentees utilizing the existing Patent Act.

The provisions of the compulsory licence and other measures introduced after independence to make the Patent Act work in the interest of our country have been found quite inadequate in granting the compulsory licences expeditiously.

We have a bitter experience about the patent laws in our country as it existed before Independence. The little modifications introduced post-independence particularly the Clause 23 CC relating to drugs or medicines or foods, did not substantially improve the position.

The following instances of our experiences will convince the Honourable Members of this Committee, the need for approving the draft Patent Bill, 1967 with the necessary modifications as suggested by us further on relating to Clauses 5 and 88.

One instance is of the pre-independence period, about the time when we were trying to take out the compulsory licence. Another instance relates to the post-independence period when section 23CC was introduced. The third is about our having the patent but our not being able to operate on the patent.

As early as in 1940, while synthesising and testing newer organic substances against Plague, one of the compounds now known as Sulphathiazole —was found to be highly effective against experimental plague infection of Laboratory animals, whereas previous to this there was no drug available for the treatment of plague. Sufficient quantities of this drug were prepared in the Institute for clinical field trials in the plague epidemic areas. The actual trials on Bubonic Plague patients showed that this drug could save 80 per cent of the plague victims.

As plague epidemics were raging in different parts of India, it was necessary to make this drug available urgently. This product was not available in the country, although we were informed that a Patent application was pending covering a large number of compounds in which this substance was also included. The patentee had not carried out any work on the suitability or efficacy of the patented products on plague. Since this drug was not available in the country, attempts were made to get a compulsory licence for the use of Government according to the provisions of the Patent Act then exiting. The Patentee frustrated the attempts at manufacture in the country on the grounds that Haffkine Institute was not capable of manufacturing the drug due to lack of adequate facilities. This shows how the efforts to save the helpless victims of plague by taking up the manufacture at a critical time were brought to naught. The drug was later imported from U.K. and made available in the country in limited quantities at a price of about Rs. 250/- per lb.,by the foreign patentee. Our cost of manufacture on a very modest scale, which is normally much more costlier than the large scale production, was found to be about Rs. 20/- per lb. The same drug could have been imported from U.S.A. at that time at a landed cost of Rs. 39/- per lb. because in U.S.A., there were several patented processes for the manufacture of this product and in the absence of monopoly, the drug was available at a reasonable price. Unfortunately, this drug could not be imported from U.S.A. because the Patentees under the Indian Patents Act had the exclusive monopoly of import, sale, etc. So it happened that Indians for years went on paying an exorbitant price charged by the Patentee for Sulphathiazole.

In U.K. later on, this Patentee was challenged in the court for having claimed too much territory, which was the ground sufficient to revoke a patent. The patent was revoked. As a result, the prices of this drug in U.K. came tumbling down to a small fraction of the original high price.

In order to eradicate malaria, the Government was in need of large quantities of an antimalarial drug Proguanil that had a prophylactic action. A number of patents covering various processes for the manufacture of this drug were taken out in this country by one U.K. firm. Even at the concessional price of Rs. 95/- per lb., offered by this firm to the government, it was beyond the means of the Government to purchase enough quantities for its requirements. The Institute worked out the know-how, technology, etc. to produce this item indigenously at a cost of around Rs. 30/- per lb. An application for the grant of compulsory licence was made to the Controller of Patent as per amendment introduced in the Patent Act after independence. In response to the notice served on Patentee, this firm suggested that they were willing to give licence voluntarily by negotiations. The negotiations lasted several years in the matter of fixation of ro-

yalties to be paid, by which time there was no larger need for this drug.

The negotiations began with 25 per cent royalty which they wanted. It went on for 4 1/2 years. That was brought down to 10 per cent but the Reserve Bank said that they would not allow more than 5 per cent royalty on any of the drugs. By that time we had lost interest in this drug.

It is well known that Diabetes is a condition in which the medicine has to be taken day in and day out throughout the life time of a diabetic patient. Because of this continuous requirement of drug, the cost of treatment is very important. If the medicine is beyond the purchasing power of the patient, he faces the risk of complications leading to premature death.

Processes for this product were patented in this country by a foreign firm that was importing this drug at a very high cost. Later on, the said firm took upon itself to manufacture by importing the penultimate product and converting by a single step into the final product. However, the prices have been exorbitant.

These prices have been exorbitant. This drug is being sold at Rs. 1.95 for 10 tablets—there is another packet of 10 tablets of 250 mg which sells for Rs. 3.45. The total sale of this drug in this country is about 40 million tablets and the total cost of the drug comes to Rs. 78 lakhs a year.

Haffkine Institute also worked out an independent and much simpler process that could be worked in India from locally available raw-materials, equipment, etc. and took out patents. However, the foreign firm holding the earlier patents for this product which had not not opposed the sealing of Haffkine patent, now wrote to the Secretary, Indian Chemical Manufacturers' Association, asking them to inform the members of the Association that they alone were the sole propiertors of tolbutamide manufacture, import, etc., and anyone also manufacturing or selling would be treated as infringer and dealt with by law.

Threats and litigations held up the working of this process for eight years since it was patented. A person cannot start manufacture unless the case comes up before the court and is decided. Litigation goes on for 8 to 10 years. It is beyond the means of any Indian Industry to stand such long delays and heavy drain on its meagre resources.

The foreign firms can well afford to adopt these delaying techniques to such an extent that the Indian manufacturer could be held at bay almost for the entire period of patent protection which at present is 16 years.

It is interesting to know that the same patent for tolbutamide, taken out by the very firm in Canada was challenged and revoked both in Exchequer and Supreme Court of Canada. Yet, on this patent they have been selling this drug to the tune of Rs. 87 lakhs and charging exorbitant price.

The hon. Members of the Joint Committee which is charged with the heavy responsibility of improving the present Patent Act, may please give their thoughtful consideration to our suggestion before recommending for passing the patent Bill 1967.

We beg to submit the following for the honourable members' consideration.

No patent for product *per se* should be granted for any chemical invention whether it is for medicine or drug or food or for any other use.

(i) In Switzerland only *process patents* are allowed for medicines and chemical substances.

(ii) In West Germany also *product patents* are not allowed for chemical, pharmaceutical and medicines.

(iii) In U.K. between 1918 and 1949 there was no provision for *product patent*. The product patent was introduced only after its technological developments reached the level that of Germany and other continental countries.

Germany has not introduced product patent yet. Those interested in patenting antibiotics and want to form a cartel, are very much interested in product patent only for these reasons.

Kefauver Committee Report showed clearly how the prices of drugs are much higher in countries where product patents are allowed. The Kefauver report further recommended even for United States of America that pharmaceutical product patent should be abolished and process patent subject to compulsory licensing at a reasonable fee be introduced.

The hon. Members are aware of the big cartel formed by these three pharmaceutical concerns in connection with tetracyceine and how they had to refund all the money they had charged extra.

We, therefore, submit that in our country no product *per se* be allowed for any chemical substances, food, medicine or drugs. Hence, Clause 5 may be modified by deleting the last part of the sentence *viz.*, "and respect of claims for the substances when produced by such methods or process" and we submit that the same be replaced by the following:

"and no claim for the product *per se* shall be granted" so that Clause 5 should read as follows:

"The patent shall be granted only in respect of claims for the method or process of manufacture and no claim for the product *per se* shall be granted".

I have tried to make it a little clear. The first part is, "The patent shall be granted only in respect of claims for the method or process of manufacture." The second part is a little controversial, that is, "and in respect of claims for the substances when produced by such methods or process". Sometimes that is misinterpreted. We can delete the last sentence *viz.* "and in respect of claims for the substances when produced by such methods or process". We may add, "and no claim for the product *per se* shall be granted."

This (Clause 5) is likely to create some misunderstanding. As I have understood the present Patents Act no product patents are granted. In regard to some of the patents applications which have actually been translated from the specifications of some countries where the product patent is allowed, the applications come here directly. They are actually taken up by the Controller of Patents, they are filed and they are accepted. That is why some misunderstading has been created.

We fully support the draft Bill Clause 53 which says that the terms of Patent Right for inventions, which can be used as food, medicine or drug, shall be ten years from the date of patent and no extension shall be granted to such inventions.

It is argued by the opponents of this clause that there is a considerable gap of time between the date of application in India for the grant of a patent and the introduction of a product in Indian market. This delay is explained by them as due to extensive clinical trials in India demanded by the Central Drug Control Administration to determine its efficacy, utility and adverse effects, if any. Moreover the Ministry of Health of most countries have laid down detailed procedures which take pretty long time.

In our opinion this delay has not increased compared to olden times, formerly, considerable time used to elapse between the laboratory discovery and the product development and its marketing. This delay has now

been drastically cut down due to modern methods of technology and means of mass communications. This, more than compensates any delay associated with the tests and clinicals trials needed to satisfy the various Government Health or Drug Control authorities to permit the use of the new product.

Even then, the patentee will have adequate period for the patent monopoly in order to make reasonable profits on the invention. A margin of profit kept for new drug is so high that all the developmental expenditure plus profits are harvested within the first few years. When it is seen that the average life of the new drug is 5 years (Kefauver Report), the ten years term for patent proposed in the Bill is more than adequate.

Moreover, the monopoly based on the patent does not lapse with the end of protection after expiry of the patent, but continues in the form of Trade-mark. The patent and the trade-mark are so intimately associated during the life of the patent that they are almost synonymous in the mind of the consumers.

The very principle of the patent system is that an inventor is given a monopoly for a limited period so that after that period the public can get the benefit of practising freely the invention by virtue of its becoming public knowledge. There is difference between secret invention and public invention. But these days there is no difference because some day somebody will know about the secret invention. If this is so, then, the invention must be valid and useful for a period much longer than the period during which the inventor enjoys a monopoly. In the field of drugs, it is now known that the average life of a drug is very short, so, in such cases while the inventor gets the monopoly and collects the maximum possible profit, nothing remains for the public to practice because before the end of patent term, the drug becomes obsolete and the country gets nothing in exchange for the monopoly granted.

It is pleaded by the opponents of the Bill that term of patent should be counted from the date of sealing instead of the date of patent, dated of filing complete specification. Normally it takes 2-3 years for sealing of a patent. This date is vague and widely variable and can be deliberately extended or delayed by the interested parties. Hence, it is not advisable to resort to the date of sealing in any case. Also since the provisional protection commences with the date of filing the patent application, the proper date for counting the term of patent is the date of patent as provided for in the draft Patent Bill.

We also fully support the provisions regarding the Licences of Right, clause No. 88 of draft Bill. The somewhat similar provisions introduced after independence as clause 23 CC for a compulsory licence been found in our experience to be very delaying, time consuming and not workable as explained earlier.

The purpose of the bill has been discussed in Chapter XVI at Clause 83(a) as follows:

> "Patents are granted to encourage invention 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.*"

If this is so and if the drugs should be available at the most reasonable prices, these products being essential to safeguard the health of the community, the entire procedure of licensing of "Licences of Right" should be simplified and made expeditious. Also, licences should be granted to more than one person so that the competition element will keep the prices under check.

The procedure of granting licences can be simplified by introducing the following provisions in the "Patent Bill".

Anyone desirous of operating or using a Patent marked or deemed to be "Licence of Right" can apply to the Controller of Patents along with the remittance of a prescribed fee. If the applicant further agrees to deposit with the controller a sum equivalent to 4 per cent of the net ex-factory sale price (maximum royalty) pending the negotiations with the patentee or the final award of the Controller of Patents when the patentee and the licensee are unable to reach an agreement, then, the Controller of Patents may permit him to start the manufacture.

The delays due to procedural technicalities, objections from patentees, discretionary powers of Controller of Patents in the matter of financial ability, technical competency, doubting about the quality of product etc. of the applicant should be eliminated. The financial ability, technical competency and quality of the product (Drugs) are being looked after by other Government agencies already existing.

We are confident that the Honourable Members of this August Parliamentary Committee will be fully convinced from our memorandum the need for enacting the Patent Bill 1967 with the few amendments suggested by us so that the nation can take rapid strides in the technological and scientific advancements coupled with simultaneous benefit to the society and catch up with the advanced nations at the earliest.

DR. SUSHILA NAYAR: You have stated that so much of royalty should be deposited for the total possible production. You know that in the first year production may be very little and production may increase year by year. Would it not be an excessive burden on the entrepreneur to have to find 4 per cent royalty when he may be struggling to find the finances for setting up his industry? Why do you want him to deposit this money right in the beginning?

DR. DELIWALA: That is the only way of shortening the delay. If a party wants to manufacture, he will have to put some money.

DR. SUSHILA NAYAR: There are two points of view. One is that we should test and see that the man has the ability, the financial resources, the organisation, etc., to make use of the rights that will be given to him under licence of right. The second view is that this may lead to delay and corruption or, at any rate, to charges of corruption if it is not given and, therefore, any one who asks for licence of right may be given the licence. Which view would you support?

DR. N. K. DUTTA: Our basic attitude in this respect is that the licence should be obtained quickly.

DR. SUSHILA NAYAR: Would you agree that any one who asks for the licence should be given the licence without testing his ability in any way or would you say that his ability to make use of this right should be tested?

DR. DELIWALA: Regarding the ability to manufacture. I think, the DGTD have been judging the ability and going the licence.

DR. SUSHILA NAYAR: Therefore, any one who asks for it should be given and we may have some safeguards that this is not held up indenitely at the D.G.T.D.

DR. N. K. DUTTA: Yes. It is the same thing whether the Drug Controller does it or the DGTD does it.

DR. SHSHILA NAYAR: In other words, the present rules and regulations are quite enough to take care of it—the Drug Control Organisation on the one side and the DGTD on the other side. Therefore, any one who asks for a licence of right should be entitled to have the licence of right immediately without any delay.

DR. DELIWALA: Yes.

DR. SUSHILA NAYAR: You have said something about the process and the product patent. I agree with you that we should have only the process, and not the product, patent. Product made by any other process should be free. But you will realise that, very often, these parties are in the habit of filling all possible combinations so that our scientists will find it difficult to take break through it. What is your suggestion to break through this kind of thing? One suggestion is that any patent which is not operated or worked within a specified time, say three years , should be revoked.

DR. DELIWALA: The foreign patentees have taken 60 or 70 patents on Sulphonylureas: they are blocking one process. If they do not work the patents; while they work on only others in the country, I think, there should be a provision to disqualify these patents.

DR. SUSHILA NAYAR: One other thing was put before us. When people take patent, in the initial stages, they import the product from outside. They say that when there is a market, they will start. During the period that they are testing the market, should they enjoy the monopoly to import? Should other parties not have equal rights to import from other sources? When they begin to manufacture within our country, then we may, by all means. give them the protection and give them the monopoly so to say. What would you say to this?

DR. N. K. DUTTA: I think, we have under the Bill, the right to have the compulsory licence.

DR. SUSHILA NAYAR: That is for manufacture. This is premanufacture period.

DR. DELIWALA: This will be very much in the interest of our country. But those people will not like it. We have to give them at least two or three years. In these three years they import such a large quantity that it will last for six years. This is what is happening. The drug prices of new drugs are not known. Under that pretext of paying the high price for the drug, they send fabulous amount to that country.

DR. SUSHILA NAYAR: I was talking about allowing the others also. Do you think that that will be in the interest of the country?

DR. DELIWALA: Yes.

MR. CHAIRMAN: From other sources?

DR. DELIWALA: If they import from other sources, they would be getting it cheaper. For instance, in the case of Sulphathiazole, if we could import from USA the price was only Rs. 39 per pound while the U.K. Company was selling at Rs. 250 per pound.

DR. SUSHILA NAYAR: Patent protection starts when they start manufacture and not during testing of market and importing from outside. Do you feel that will be in the interest of the country though these parties may not like?

DR. DELIWALA: Yes. If we allow the other party to import during the 2 or 3 years, it has a greater influence on price law itself. Because, that is a patented article. If other parties are also allowed for 2 years or 3 years are we prepared to give any compensation for that?

DR. SUSHILA NAYAR: Why should we? He is importing from outside. He is not doing anything. We are not giving monopoly of imports but we give them monopoly of production and sale when they produce within the country. This was made very forecefully by Dr. Hameed of the CIPLA. With regard to patents, do you think we should put a limit that we will register 4 or 5 and not 60 or 70?

DR. DUTTA: Different types of processes?

DR. SUSHILA NAYAR: Yes.

DR. DUTTA: If one has to take the patents, there are different processes which are to be registered.

DR. SUSHILA NAYAR: Should we allow any party to block free play and blocking other possible methods by other scientists? Can we say, now you can register 2 processes or 3 processes? But, you will not be given 60 processes. They block others. This blocking hampers development. What remedy do you suggest?

DR. DELIWALA: If they don't work that process for 3 years patent should be cancelled. They have taken out 12 processess in one patent only. For particular compound different methods are known for making the compound. All the processes are covered in one patent. They are working only by one process.

DR. SUSHILA NAYAR: Should we allow that?

DR. DELIWALA: In the world it is being done. I don't know how we will be able to check on these minute details and it is very difficult.

DR. DUTTA: If we think we should restrict patents we can give a limited period of 3 years and after that other processes will automatically lapse.

DR. SUSHILA NAYAR: So long as it encourages development and encourages production it is all right. But it should not block development and block the efforts of our research workers.

MR. CHAIRMAN: 3 years, he is suggesting.

DR. SUSHILA NAYAR: For 3 years he wants to give in any case.

DR. DELIWALA: If there is one patent covering 12 processes, out of which they are working on one process, 11 processes covered by same patent are not being worked.

DR. SUSHILA NAYAR: Should one patent cover one process or should one patent cover dozen processes?

DR. DELIWALA: In other countries they have master patent and patent of additions. By patent of additions they cover more and more processes. In Canada they have 11; in Japan 11. While in our country they have applied for one, master patent only for Sulphomylureas. They pay for one patent & get protection for all the processes. It becomes difficult.

MR. CHAIRMAN: Unless they work out all the processes..

DR. DELIWALA: The patent should be invalidated.

DR. SUSHILA NAYAR: Not 12 processes under the same patent.

DR. DELIWALA: Patent should be given for one process only. They should have additional patents if they want to. These can be invalidated after 3 years if they are not working on that.

DR. SUSHILA NAYAR: About fee for renewal, they may not like that..

MR. CHAIRMAN: You said it is independent of that: it is additional patent. You can apply the axe.

DR. SUSHILA NAYAR: You said 10 years being adequate time. About the period of patents we had certain witnesses who said the period should not be more than 7 years.

DR. DUTTA: We say, from the date of filling patents. Our view is that 10 years is a right period.

DR. SUSHILA NAYAR: They said 10 years is too long. It has been stated that the life of drug in modern times is 5 years. Why should we give for 10 years? They asked like that.

DR. DUTTA: We have our views, that is, for 10 years.

DR. DELIWALA: Maximum period of 10 years from the date of filing the specification.

SHRI ARJUN ARORA: The Hover Committee said that the life of a drug in modern society is only 5 years.

DR. DELIWALA: Maximum 10 years. There is opposition by lot of other people. Maximum will be 10 years.

DR. SUSHILA NAYAR: You can import as UK is importing for National Health Service. Suggestions have been made that only Govt. but also public sector should be allowed to do that. Further, Government may also allow the import to charitable institutions. Otherwise, certain parties who have a monopoly may raise the cost so much that it will not be in the interests of the people. So, in the interest of the people they should be allowed to import from other sources where the price is lower. What will you say to this?

DR. DUTTA: We agree that if the Government feels that it should be imported there is no objection.

DR. SUSHILA NAYAR: Do you think that it this is enough to cover all the contigencies that I have mentioned?

DR. DUTTA: What I feel is that if the Government thinks it necessary to import I think they are free to do that.

SHRI ARJUN ARORA: You have given us the price that the foreign patentees are charging for talbutomide. What should have been the price that the consumers would have to pay if you were not fettered by this kind of threats or litigations? If the process evolved by you was going to cover the schedule, what would be the price for that?

DR. DELIWALA: When we are talking about the price I would like to quote one example. Yesterday I went to the market to purchase one drug known as Sayontiu which is useful for the treatment of heart disease. You know how much price was charged by the foreign patentee for the Segontin? They were charging Rs. 12.30 for, 10 tablets.

MR. CHAIRMAN: It it a patented drug?

DR. DELIWALA: Yes, Sir. Segontin tablets should be taken at the rate of three to four a day by a patient continuously to prevent any further heart attack. A patient has to take three tablets a day minimum. I started calculating the price of this drug. It is a very simple drug. Its cost will not be more than Rs. 250 per k.g. When I started calculating the price for 60 mg. per tablet. one kilo of the tablets will cost Rs. 10,000. If 16,000 tablets are sold at this rate that will cost Rs. 20,000. So one kilo of this drug costing Rs. 250 can fetch them Rs. 20,000. When I went to the shop and when I was standing near the shop I saw a number of people asking for the Segontin tablets. If anybody is given a licence of right do you know at what rate they will be able to sell this drug? They will be able to sell it at the most at one-tenth of the price. If you compare the price with the price of gold, that would come to Rs. 18,000.

MR. CHAIRMAN: So, what should be the price for it?

DR. DELIWALA: It should be Rs. 250 per kilo.

MR. CHAIRMAN: Roughly what should be the price given to this? We do not want all the details of it.

SHRI ARJUN ARORA: Details are very important. Let them at least go into the records. I am also taking these tablets.

MR. CHAIRMAN: So, what should be the price of these tablets?

DR. DELIWALA: Anybody can sell it at 1|4th or 1|5th of the price.

MR. CHAIRMAN: Will it come to Rs. 3 per 10 tablets?

DR. DELIWALA: It may be even less than that.

MR. CHAIRMAN: Instead of Rs. 3 you are buying that at Rs. 12.30 for 10 tablets.

DR. DELIWALA: Normally it is said that a drug which costs about Rs. 100 in the Indian Market, they sell it at after tabletting at Rs. 300 which covers all the expenditure incurred on its process etc. This cost Rs. 350 or 400 (cost of drug Sagontin Power) when converted into tablets can be converted into Rs. 750 or Rs. 1000 or could be sold at Rs. 100—1600. If you can put it that way. Anybody can take out a licence to make this if he pays the royalty, he would be able to sell it at 1|4th or 1|5th of its present price even if he were to pay the royalty.

MR. CHAIRMAN: Now the hon. Minister wants to ask a question.

SHRI RAGHUNATHA REDDY: Suppose we give you a licence. Are you in a position to manufacture this drug without any technical know-how being borrowed?

DR. DELIWALA: This is a simple drug. Anybody would be able to do that.

SHRI RAGHUNATHA REDDY: Have you made out an application to this effect?

DR. DELIWALA: Nobody has made any application for that.

SHRI RAGHUNATHA REDDY: Has Haffkine Institute made any application for this purpose?

DR. DELIWALA we have not made any application for it.

MR. CHAIRMAN: The Minister wants to know whether Haffkine Institute would be in a position to manufacture if its licence is given to them. And whether they have applied for such a licence at all is his question.

DR. DUTTA: We have not applied for it. But we are in a position to manufacture it.

DR. DELIWALA: Our Institute does not take up the manufacture on a large scale.

SHRI RAGHUNATHA REDDY: In case any institution is proposing to manufacture this drug are you in a position to give them the technical knowhow?

DR. DELIWALA: Centainly.

DR. SUSHILA NAYAR: May I now ask you as to what should be the cost of raw materials; they can easily a strip-packing?

DR. DELIWALA: If Rs. 100 is the cost of raw materials; they can easily sell them at Rs. 350 or 400.

DR. SUSHILA NAYAR: So, this Rs. 350 will come to Rs. 1,000. They are selling that at Rs. 20,000. The profit is 20 times its cost.

DR. DELIWALA: If it is multiplied by 20, that will give you the entent of profit.

MR. CHAIRMAN: Now I want a clarification from you. We have got a provision of compulsory licence as well as licence of right. With regard to licence of right it is automatic. One view is that if we are to make it automatic, then the research that is done by an organization or a person who has got the patent will cease to have any interests at all in research. As soon as he obtains a patent, he has the right of licence. What is the

necessity of spending so much of money on research?

DR. DELIWALA: Firstly they have the whole world market and secondly they are going to get 4 per cent royalty.

MR. CHAIRMAN: I am not concerned with the royalty but with research only.

DR. DELIWALA: They will be able to get royalty at 40 per cent continuously.

MR. CHAIRMAN: Would this 4 per cent suffice?

DR. DELIWALA: It is sufficient.

MR. CHAIRMAN: Give us your practical and objective view. If we give them a compulsory licence of right I don't think they will do the research in a way they ought to do.

DR. DELIWALA: They will do that.

MR. CHAIRMAN: Do you think that automatic licence of right is not going to retard the activities of the research in this country?

DR. DELIWALA: Yes, Sir. I would give you one instance. A second man gets a licence, that there is going to be a competition between the two parties—licensee and the patentee. I have got the case of M.S.D. in mind. They are making B12 powder which they were selling at Rs. 270 per gramme. Themis (another Indian firm) got a licence after a lot of trouble, for manufacturing the same product B12.

DR. DELIWALA: They were selling it at Rs. 95 per gram. When it was Rs. 270 per gram in 1967 by MSD. M.S.D. brought down their price to Rs. 160 in 3 months. Then they were trying to maintain it at Rs. 160 thinking that the Indian concern will not be able to proceed further. After 3 months when they knew that it Themis is selling at Rs. 95 they also brought it down to Rs. 95.

Another one is about Inferon. This was sold to the Government agencies at Rs. 140 per 100 ampules. Recently another similar product came into the market and they have brought down the price from Rs. 160 to Rs. 75 per 100 ampules.

MR. CHAIRMAN: Any more example like this?

DR. DELIWALA: There may be.

SHRI ARJUN ARORA: We should ask him to send us the examples.

MR. CHAIRMAN: This is the thing which is agitating our mind also.

DR. SUSHILA NAYAR: We would like him to send us a note.

MR. CHAIRMAN: Thank you very much.

(The Witness then withdrew)

(The Committee then adjourned).

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967

Thursday the 17th July, 1969 from 10.30 to 12.15 hours and again from 15.00 to 16.35 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Hari Krishna
5. Shri Amiya Kumar Kisku
6. Shri Jugal Mondal
7. Shri K. Ananda Nambiar
8. Dr. Sushila Nayar
9. Shri Sarjoo Pandey
10. Shri T. Ram
11. Shri Ramesh Chandra Vyas
12. Shri Kanwar Lal Gupta.

Rajya Sabha

13. Shri Krishan Kant
14. Shri R. P. Khaitan
15. Shri Arjun Arora
16. Shri Om Mehta
17. Shri K. V. Raghunatha Reddy
18. Shri Pitamber Das
19. Shri Dahyabhai V. Patel.

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri Sastri, *Additional Legislative Counsel, Legilative Department, Ministry of Law.*
2. Shri S. Ramaiah, *Deputy Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT, INTERNAL TRADE AND COMPANY AFFAIRS

1. Shri K. I. Vidyasagar, *Joint Secretary.*

2. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks, Trade Marks Registry.*

3. Shri Hargundas, *Under Secretary.*

4. Shri R. V. Pai, *Joint Controller of Patents, Designs and Trade Marks.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS EXAMINED

I. *National Chemical Laboratory, Poona*

Spokesman:

Dr. B. D. Tilak, *Director.*

II. *Regional Research Laboratory, Jammu Tawi*

Spokesman:

Dr. K. Ganapathi, *Director, Regional Research Laboratory, Jammu Tawi.*

III. *Hindustan Antibiotics Ltd., Pimpri, Poona:*

Spokesmen:

1. Shri C. A. Subrahmanyam, *Managing Director.*

2. Dr. M. J. Thirumalachar, *Superintendent Research.*

I. *National Chemical Laboratory, Poona*

Spokesman:

Dr. B. D. Tilak, *Director.*

(*The witness was called in and he took his seat*).

MR. CHAIRMAN: Dr. Tilak, we would like to hear your views on the Patents Bill. Please spell it out in brief and thereafter Members will put questions and you may answer. Please note that your evidence shall not be kept confidential and is likely to be made available to Members of Parliament.

DR. TILAK: Sir, I am grateful to you giving me this opportunity for expressing my views. I can express my views not as a legal 'pandit' but as a scientist working towards the development of science and its application towards the economic benefit of the country, which is the objective of the Laboratory which I represent. From this point of view, I am making some submissions in relation to some of the provisions as contained in this document which I have received.

The first one which I would like to refer to is regarding clause 3, item (d) on page 735. It states: "the mere discovery of any new property or new use for a known substance or of the mere new use of a known process, machine or apparatus" shall not be patentable. This history of chemistry and medicine is replete with examples that novel and new uses have been found by scientists who are approaching the subject from a new angle. I would therefore respectfully and humbly submit that this clause may not be so sweeping and that it

should be a novel or a new use of a known substance to be covered by a patent provided such new cases advance science or medicine. To cite an example, a chemical which was known for a long time *viz.* dimethyl sulphoxide has been found to have novel uses in medicine. We have also found that one well known chemical has interesting properties from the point of view of treatment of cancer. This new use was discovered as a result of our working on a project from a basic fundamental angle. I submit that inventions of this type may form a subject-matter for patents. This is the first submission I would like to make, *viz.* provided there is enough novelty in a new use discovered and provided it really contributes to the advancement of science and|or it is of interest to humanity as such uses may be permitted to be patented.

MR. CHAIRMAN: How do you want the phraseology to be put or you want the whole thing to be taken down?

DR. TILAK: The discovery of a new property or new use of known substance unless it makes a substantial advance in our knowledge or it is in the interest of medicine or the country, should not be patentable.

Now I wish to deal with Clause 5 on page 736 pertaining to inventions regarding substances which are intended for use or capable of being used as food or as medicine or drugs and (b) the clause which follows. It has been stated that 'the patent shall be granted only in respect of claim for the method or process of manufacture and in respect of claims for substances when produced by such methods.' I, Sir, would by and large agree with the provisions of the patent in relation to these two items which have been mentioned. I do hold that in relation to foods and medicines or drugs there should be no patent permissible for the product itself but only for the process. That is first.

Now, I would like to comment on clause 53, page 763. Term of the Patent which is related to the above subject. It has been stated that so far as patents relating to food, medicines or drugs are concerned, the life of the patent should be 10 years from the date of the patent. There is also a provision in relation to compulsory licensing of products or patents relating to processes on foods, medicines or drugs. I may be corrected if I do not understand correctly the legal aspects regarding this matter as it is somewhat confusing to me. I understand from reading of this draft that in such cases there will be licence of right for this patent. I do not know, if it is correct.

MR. CHAIRMAN: Yes, this patent will be liable with a licence of right so far as drugs, medicines and food are concerned.

DR. TILAK: If this is the position then this provision does give sufficient protection to the interest of the country from the point of view of indigenous development. From what little experience that I have, in relation to getting writ from the Patent Officer for compulsory licensing the invoking of clause related to the exploitation of Patent regarding above substance may also be involved. This licence of right would apply after three years. Is that correct?

MR. CHAIRMAN: No time is given here.

DR. TILAK: May I ask for some clarification?

MR. CHAIRMAN: Yes.

DR. TILAK: In the case of licence of right, a person who wants to produce that particular producet any time from the date....

MR. CHAIRMAN: There is no time.

DR. TILAK: But has he not to apply to the Patent Controller and

get his permission for compulsory licensing regarding processes on foods, medicines and drugs.

MR. CHAIRMAN: Provided other clarifications provided by the industrial licence and Drug Control Act satisfy the conditions of those things.

DR. TILAK: The patent holder could still contest the claim of compulsory licensing?

MR. CHAIRMAN: He cannot.

DR. TILAK: In that case I have no submission to make. I think this gives sufficient protection to our interest, regarding indigenous developments of foods, drugs and medicines.

I would like to make one more submission in this connection not regarding products which are not related to food, drugs and medicines. In these cases is a provision for compulsory licensing after 3 years. In these cases one has to make a submission that in the interest of the country for a variety of reasons indicated in draft bill, one may be given a compulsory licence to produce the product after three years. But the procedure of getting a compulsory licence under this provision today is slow. In this connection I know of a party which appealed for such a licence after a period of 5 years from the date a patent was filed. This case went on with the Patent Controller for 3 years. When the verdict was given in the favour of the applicant the patent holder went to the Court of Law a recourse which is always permissible. To get a verdict from the court then took a large number of years. I was therefore wondering whether it may not simplify matters. If there is stipulation that in relation to all products other than foods, drugs and medicines the procedure for getting a compulsory licence would be limited to a period of 7 or 10 years from the date of filing the patent and thereafter the licence to exploit the patent could be automatically claimed by any *bona-fide* party as defined in the draft Bill? After this period the party should not be required to satisfy a court of law as it now required under the provision of this draft Bill.

Issue of a compulsory licence after this statutory period should not be a subject or argument or controversy. The actual period is something which should be looked into—whether it should be 7 years or 10 years after the patent is filed. As things stand at present during the process of argument and litigation it is quite conceivable for patent holders to ask for postponement and keep on arguing so that the provision of providing a compulsory licence is in fact negatived by the delays involved in setting such matters through courts. Meanwhile the patent holder would be in a position to embark on production if he senses that he may loose the case. In the latter event the party who intends to develop its own know how based on the patent would be at a very great disadvantage as the patent holder would have the advantage of having established his business and production in the meantime. The advantage which is implied in the compulsory licensing clause is therefore negatived by the provisions outlined by the draft bill and their practical implementation according to prevailing practices which are time consuming. Secondly, apart from the fact that the procedures for gettting a compulsory licence are protracted. They are also a very great disincentive for applied science to develop. Thus commercial parties are normally disinclined to take up developmental work patented processes because of the delays in involving the compulsory licencing clause and the expenses and risks that are involved in exploiting patented processes. The entrepreneurs by and large are therefore unwilling to exploit patented processes. This has been my experience in the number of cases which I have dealt with and the parties concerned say that they would rather wait until the life of the patent is over. In practice, therefore, the com-

pulsory licencing clause of 3 years is of doubtful advantage. I do not know of parties who have really taken advantage of this compulsory licensing clause. With this background of experience in India regarding involving of compulsory licensing clause of 3 years, I would like to suggest that even for products which are not related to one should be able to exploit patents without any hindrance after a definite period of 7 years or may be 10 years after filing of patents. Such a proposal will not take away the right of patent holder from benefits because the patent holder will still desire benefits by way of royalty as determined by the Patent Controller which have been provided for in the draft bill. I am therefore not suggesting that the patent holder will not get the benefits...

MR. CHAIRMAN: You are suggesting a longer period provided the intermediate proceedings could be got rid of?

DR. TILAK: It could even be five years, but within that period the whole procedure for getting a compulsory licence should be over. It is not suggested that the patent rights are to be terminated; the patent holder would still get benefits. A party wanting to involve the compulsory licence clause will still have to apply to the Patent Controller and he will still have to negotiate so on but there will be a time-limit for these proceedings. Procedures outlined in the draft bill regarding this matter are all right, that is, after three years, the party will have to apply for compulsory licence, it will still have to go to Government and convince the Government that he is a genuine party and so on, but there should be a moratorium on this discussion of 7 years or 10 years from the date of filing the patent or whatever it is, so that the parties who want to utilise patented processes in India would then be assured that after 7 years or 10 years all patents would be exploitable by a provision of licence of right and that there would be no litigation. A patent is not know-how; the patent know-how has still to be developed even if one has the right to exploit a patent. There should therefore be an incentive to develop know-how, to derive practical benefits from patents. Patents are usually sufficiently vaguely worded for anybody just to pick up a patent and start production. One would have to develop a lot of know-how. But as things are, the incentive for developing the know-how is not much due to the threat of litigation is there. I, therefore, suggest that this point should be considered.

My last point is in regard to clause 145. It has been stated that the controller shall issue a periodical publication of patents, inventions etc. This is being done, but it is very unsatisfactory as things are in India. In other countries, when patents are sealed and accepted, they are published in two or three weeks. But in India this peridd is often one year or even longer. I, therefore, would suggest that it should be made obligatory for the patent office to publish all patents which have been sealed within the time-limit of one month from the time the patents are sealed. By and large these are the points that I wanted to make.

SHRI OM MEHTA: What should be the life of a patent?

DR. TILAK: In this document it has been suggested that for products relating to medicines, foods and drugs it should be ten years and for other products it should be 14 years.

SHRI OM MEHTA: What are your reasons?

DR. TILAK: I am agreeable to both these things. So far as drugs are concerned, the life of the patent should be ten years. It seems to be a reasonable compromise between the interests of the country as such and

the people who have developed processes for these drugs who are assured gains for a reasonable period of time, the provision gives a certain amount of protection to the parties who have developed the drug and expended a lot of money, because research on drugs is an expensive business. From the time the patent is sealed till the time it is exploited, there is a time-lag. Even taking into account this time-lag, the party would have still the benefit of utilisation of the fruits of the patent for about five years. I think the ten-year period for processes on foods, drugs and medicines is a good compromise, and it also does not come in our way of developing these drugs in India. The pharmaceutical industry in India has not progressed with Indian authorship because of the restriction enforced by foreign patents. We ourselves in our laboratory from time to time thought of developing the know-how for drugs, but there were no takers because of the patent protections. Therefore, I feel that the ten year period for validity of patents related to foods, drugs and medicines is a good compromise.

SHRI OM MEHTA: What are your reasons for the difference in the two periods?

DR. TILAK: I thought that the whole idea was this. In the case of foods, drugs and medicines, the interests of the country from the health point of view should be the overriding consideration. I do not know whether other considerations are also important in this respect. I think the health point of view has probably weighed most with Government in making this recommendation. Today, the pharmaceutical industry is almost entirely dominated by foreign interests and that situation is likely to change. I do not know what the thoughts of Government are. But this is my understanding of it as a layman.

As regards other products like products not covered by drugs, foods and medicines, the life of the patent is now recommended as 14 years. I understand it was 16 years before but now it has been reduced to 14 years as suggested in this Bill. There, I really cannot give you a very sound answer why it should not be reduced; if it could be reduced, it will not be against the interests of the country. But after all one must also remember that in due course of time India will also be developing science and technology; we shall not always be thinking in terms of importing technology. A time will come when our scientists will develop our own technology. Knowing the work that some of us are doing in nil and others in India I think it is definitely possible in the foreseeable future for India to export technology also. If that be the case, I think we should also keep in mind. The patent procedures prevailing in other countries. We should not be isolated and have a patent law which is very much at variance with that in other countries. It will be in the interests of our scientists if not now at least in the years to come if patent protection is given for 14 years for products referred to above.

DR. SUSHILA NAYAR: You said that a new use of an old product, if it was useful in medicine, should be patented. Why? If it is useful in medicine, then that is all the more the reason why it should not be patented. It should be available to everybody for as wide a use as possible.

MR. CHAIRMAN: Useful for discovery.

DR. SUSHILA NAYAR: The product is known already.

DR. TILAK: I said for 'new use'. I would like to repeat it. Any new use which is an advance in knowledge or a break-through in knowledge or science, which was not conceived of earlier, could be the subject-matter of patent...

DR. SUSHILA NAYAR: How do you reconcile the two views? You

have stated before that there should be only process patents. How can you then bring in new use for a fresh patent?

MR. CHAIRMAN: He wants sub-clause (d) to be redrafted for the purpose of exclusion of new items which might lead to the discovery of new knowledge.

DR. SUSHILA NAYAR: You cannot take the position that process should be patented and then come up and say that new use should be patented?

DR. TILAK: I see the Hon. Member's point of view. These two positions seem to be contradictory. I accept that. But do you not think at the same time that this will be a disincentive for a scientist to explore new uses?

DR. SUSHILA NAYAR: Are you so much in despair about our scientists being motivated only by monetary benefits? A scientist cares much more for the honour and the recognition than for money. Generally, do you think that money goes to the scientist? It is the man who produces and manufactures it who takes the lion's share.

DR. TILAK: Yes. But at the same time, I think the whole idea of taking a patent, irrespective of whether the discover man is in India or abroad, is that there will be a monetary incentive. It is conceded that the scientist does not work only for money, but money is not unwelcome. If the monetary incentive is not there for a scientist, then why have patents at all for that matter? Patent protection is sought because it is desired for scientific effort as well as for ensuring returns on inputs of money in research by private individuals or by organisations.

DR. SUSHILA NAYAR: I only say that you cannot take these two positions at the same time.

DR. TILAK: I agree. I think there is an inherent contradiction, because if use is to be patented then it is equivalent to saying that product patents could be taken.

MR. CHAIRMAN: Do you give a go-by to what you had said at the beginning?

DR. TILAK: I still would like to keep it. But I do not know how these two positions could be reconciled. My own idea is that there would be cases where an entirely novel use by scientific reasoning could be thought of, which is an advance in science, and I do not see why the person who makes the discovery should not get the fruits of this discovery. But I do not see how legally these could be reconciled. I see your point of view.

MR. CHAIRMAN: What is your view on pesticides and insecticides? Should it be the subject-matter of a special provision in regard to the life of the patent?

DR. TILAK: I would consider that if the rationale which governs the limitation of the period of patents for medicines, drugs and foods is followed, then I do not see how the pesticides, insecticides and so on, which are equally important from the point of view of the humanity and our country's progress in agriculture could be differentiated.

I would therefore say that the above items should also be placed in the same category as medicines, foods and drugs.

MR. CHAIRMAN: We are grateful to you for the evidence that you have given, and we shall see what we can do.

(The witness then withdrew)

11. *Regional Research Laboratory, Jammu Tawi*

[illegible]

GANAPATHI, *Director.*

(The witness was called in and he took his seat).

MR. CHAIRMAN: We welcome you, Dr. Ganapati, and we would like to have your views on the Patents Bill, and I hope you will spell out in a nutshell what you think about it.

DR. GANAPATHI: I am grateful to you for having asked me to put forth my views. But I feel a bit guilty because I feel I ought to have prepared much more to face this committee. Anyhow, with your permission, in a few sentences, I would like to give the background.

We were working in the Haffkine Institute on the sulpha drugs when we discovered sulphathiazole, which was a very good cure for plague. Then, we started manufacturing it on a bigger scale, and we applied for a patent, but we were told—it was during the years of the war and information was cut off and we could not know what was going on—that there was already a patent by one British firm on that. Then we applied for compulsory licence and we went to the High Court. There we came to know how very difficult it was to get a licence. Then we also realised some of the troubles in the Patent Act. As scientists we thought that everything was very straightforward, but then we learnt for the first time how things meant entirely differently in an Act than what we find in scientific literature. That was how we got ourselves thrown into the patent business. In 1948, the director of the Institute wrote to Government about the trouble that we were facing and then Government appointed the Patents Enquiry Committee in October, 1948. In 1949 they submitted their report, and in 1950, that is, within about a year, the Government amended sections 22 and 23 to the new sections as suggested by the committee as an interim measure. Then it went on and on, and the Ayyangar Committee was appointed and they submitted their report.

MR. CHAIRMAN: We know all those things. We would only like to have your suggestions and views.

DR. GANAPATHI: I am pointing this out that it is more than ten years now. We have been in this patent business for over a quarter of a century, and I am just pointing out what should be done quickly in our interest.

MR. CHAIRMAN: That is the objective. We want your suggestions.

DR. SUSHILA NAYAR: Please do not speak so fast because to you things may be very familiar but to us, it may not be so familiar. You had stated that sections 22 and 23 had been amended to provide for compulsory licence. But you know that compulsory licence has been a dead letter. As you go on pointing out the amendments, if you could give your experience of the amended sections also, it would be very helpful, so that we may be careful in regard to the future.

DR. GANAPATHI: The amended sections 22 and 23 were on the lines suggested by that committee. We would have to take an overall view of the Patent Act. The whole thing has to be viewed in the light of the basic attitude in regard to the Patent Act. I feel that the Act should be in the interests of the public or the society the country as a whole. In case there is a clash between the State or the society and the inventor, I shall vote for the benefit of the society. This is the basic thing that I feel strongly about I may be right or wrong.

The next point is, what is the right that the inventor gets by discovering a new process? I do not think it is a right like the fundamental right or inalienable right simply because I have discovered something. I will not be able to enforce a monopoly unless the State gives protection.

The theory of patents is this. I discover something. I undertake to dis-

close to the society what I have done. Then I ask it to give me a monopoly right for a limited period and in return for that, I disclose it to them. You make it and benefit by it. I benefit by it, and the society takes the benefit of it after a certain number of years. That means the advantages of the patent law is not only in the article that has come in but it gives an opportunity to anybody interested to make the same article after the expiry of the patent.

Now, about the term of the patent. Supposing there is a new thing discovered; and its life is only for 10 years; and it has a monopoly for 10 years. After that, the patent expires. What is it that anybody is going to make? There is nothing to make and sell. The obsolescence of patents and the processes is growing very fast. Rarely do you find now a patent holding on for years. The old concept of a thing article being in the market for 30 years is no longer there. Many of them go away in 10 years. So, in the 'term' of patents, should be must there must be time given for the public so that it could be usable alter the expiry of the patent.

In general, people claim many advantages for the Act. They say that it stimulates invention and is a guarantee for the capital. Those arguments do not apply today. Suppose I make a discovery and invest a lot of capital in working it, there is no reason why somebody should not discover something better the next day. People buy those things. A monopoly is created and then people have a cartel. That is what is going on. If I have a patent, I go on looking into all the alternatives which I could derive from it.

There are two things in the Patent Act now. It enables me the inventor to do a certain thing and it prevents somebody else from doing it. The abuse of the Act lies in the fact, to my mind, that you the patentee wants me to do a thing and at the same time you do not want somebody else to do it. The abuse is coming like that. The patentees want a monopoly so that there is no competition.

If the Patent Act is to work well in a country, there is no use comparing that aspect, or comparing our country, with America or Britain. They are all advanced countries where the rate of research and development in it and the investment in these are very fast and large. We are growing and we may come to that stage one day. But now we are developing, and we are underdeveloped. It has been established that this law has been working to our disadvantage, because most of the patents in our country are foreign patents. If you look into the patents which are of Indian origin, and really useful you will find that they are just a handful. They are practically insignificant.

Now, about protection given by the patents. Protection is given for the foreign patentees; they have a monopoly, and they do not work the patents in this country at all. It is a big story. But it is a fact. You have to push them on to work the patents. The patent is given for working on an invention in the country. Instead they have a monopoly, and they do not manufacture the article. Unless they are forced to do, they do not work it. There are a good number of dollars. You can write a whole book on that.

DR. SUSHILA NAYAR: The book is overdue.

DR. GANAPATHI: You can almost bring out a library of books for and against it. One can write a whole book on that.

SHRI NAMBIAR: In her opinion, a book from you is long overdue.

DR. GANAPATHI: If I have the time, I shall definitely do it. I am not a legal pandit. I am only a scientific man. Now, in the Patents Bill there are some words used repeatedly; for example, "reasonably practicable", "unreasonable" "undue delay" and so on. The invention has not been work-

ed to the extent "reasonably practicable." You have the cleverest lawyers in the country. I had been to the high court twice, and I have given evidence. It is impossible to explain "done to a reasonable extent" or "due to undue delay" and so on. I do not know. Unfortunately, we have not probably got better words. These are examples to show that it will lead you to trouble. These words will create trouble. But if you want me to suggest a better word, I am sorry I cannot do that.

Coming now to drugs and medicines, with which I have been concerned for the last 30 years of my life. I started my career in Haffekine Institute. I was in Hindustan Antibiotics for sometime, and I have been always connected with drugs, food and medicine. Now, I want to submit one thing. Drugs are required by the poorest people also; in a large measure, they are required by the poor. But I know of cases where the people could not buy a drug; a man earning a salary of Rs. 110 a month cannot go and buy a drug costing Rs. 100. And in the case of a drug, the man who prescribes does not buy it, and the man who has to buy it has no choice. When he goes to the doctor and when the doctor prescribes the medicine, he has to buy it. If I go to a vendor and I want a cheaper one from him, it cannot be done. This is one of the difficulties.

As far as food is concerned, I am a bit worried about the present proposed Act. We have gone back from the old exiting Act. In the old Act, section 23 says that insecticides, germicides and pesticides should be included in the definition of a drug or medicine. Pesticides and germicides are so important for the production of food-crops, and are connected with sanitation and public health of the people. I do not know why it was left out now. I feel this is a retrograde step. It is a defect in drafting the Bill. There is no doubt about it. When you want to do social reform, how are you going to do it with such definitions which omit these items?

Regarding the definition of food, it is very difficult to define what is a drug in relation to food. If I go to a doctor for treatment of malnutrition, he may give me B-1, and sometimes he may inject me with it. You may ask whether it is a food or medicine. This is given to babies, invalids and convalescents. If I am not able to work properly, I take something. Do you call it a food or medicine? The doctor prescribes a tonic. Is it food or medicine?

DR. SUSHILA NAYAR: Say, Protinex for protein malnutrition.

DR. GANAPATHI: As far as I know, for working at high altitudes, as a NEFA or Ladhak, certain stamina is required. That is a different matter. You want special foods. You are not able to breathe freely beyond a certain altitude. Though the person concerned is not an invalid, he is not a baby, he has to take certain nourishments. The question is, how are you going to do it, classify such food. It is in the interests of the people that the definition of food must include such items.

DR. SUSHILA NAYAR: You will say that all processed foods should be covered in this definition.

DR. GANAPATHI: Yes, About how it is to be drafted. I do not say. The Act says. "Food intended for babies, invalids and others." I say, food is also something which enables a man to keep fit to discharge his normal duties and functions. That should be provided for in this definition.

DR. SUSHILA NAYAR: You are not going to patent the ordinary *dal rott* that you cook in the house.

DR. GANAPATHI: Now I will say something about the abuse of the Patent Act. As regards Section 5 you have done well in saying—I personally agree with it—that patents should be for the process and not the product. Under the present Act the Controller of Patents gives patents for pro-

cesses and also products. In the case of Paludrine there are 40 patents, many patents are given for processes and some for products. I consider it to be a slip.

Regarding the period of ten years there is a lot of controversy. I do not want to take the extreme position that there should be no patents at all for drugs. It depends upon the attitude you adopt. I have got 15 patents taken. I personally feel that scientists who have research work as their job have no business to have the patent. The question put to me is, don't you think that in such a case all research work will stop? I do not hold the view that with science I am going to make money. If I do research there are people who would put forth the money required for it. If there are no patents research work is not going to be stopped. It is not going to stop private people from doing research. Today the inventor is nobody except one purchased by somebody else. I feel 15 years is too much. I would support a period of seven years. In seven years one must be able to get a reasonable return for the capital invested by him.

SHRI NAMBIAR: Are you for a complete 'patent holiday' for our country?

DR. GANAPATHI: I personally feel it will do a lot of good for our drug industry. In the first instance let it be for ten years with a proviso to review it at the end of ten years.

There are only two more sections I want to deal with. Previously Government had the power to grant licences or to make things on their own. The original Act was defective in the sense that it only said "Government organisation". There was an agrument whether public undertakings fall under "Government organisation". Fortunately the present Act has made it quite clear. Under Section 95 in case it is found necessary the Controller of Patents at any time can authorise any licensee to import the drug. Some say this is something very revolutionary. I do not think it is revolutionary. This already exists in the American Act. According to this the Central Government may if found necessary in public interest direct the Controller any time to authorise any licensee to import the drug. This is very very essential. This is one of the ways in which you can check racketeering in drugs. This section is extremely important and it should be there. It is not revolutionary at all because it is there in the American Act.

It is better to have a tribunal instead of a High Court because we get into practical difficulties establishing technical facts.

DR. SUSHILA NAYAR: Where a process patent is given and we find that the party concerned registers not only one process but a dozen processes—not that they are working all of them, but merely to obstruct other people—would you favour that any process which is not worked for a specified period, two years or three years, should be revoked?

DR. GANAPATHI: I favour that. The case which we fought covered not one, but about 400 million compounds by permutation and combination. Unfortunately, the present Act does not restrict that.

DR. SUSHILA NAYAR: When you take a patent, you go through a dozen or hundred processes to get at one product. You are going to use one of these processes, not all of them, but you register all of them with a view to obstruct other scientists from using them. In such circumstances, if the party taking the patent has to pay a registration fee on each of the processes, that will be a disincentive, and he may not like to register the processes that he is not using. What do you say to that?

DR. GANAPATHI: That means one patent for one process. The Act at the moment is like that. Strictly

speaking, one natent is supposed to be for one process, but then the definition of process comes in. Process means linking compound X with compound Y, but X can be one of 20 and Y can be one of 18 and by permutation and combination they will run into millions.

MR. CHAIRMAN: In brief, your opinion is that it should be restricted to one of the processes. How we do it is a different matter.

DR. GANAPATHI: Yes, but there is a technical difficulty. At the moment we find that X works better, but after some time we may find that Y works better. For instance, for chloremphenical three companies work three processes. So, it is very difficult to say which process is better at which time. But the process which is not actually worked, should not be there.

MR. CHAIRMAN: That is we must try to minimise it.

SHRI JUGAL MONDAL: I could not follow your definition of process. Suppose there are three steps for arriving at a product, will you call that one process or three processes?

DR. GANAPATHI: The Queen's Counsel argued this point for 45 minutes. A process is supposed to be only one step strictly speaking, but the law as it is, is very equivocal. There is no patent now which consists of only one step.

DR. SUSHILA NAYAR: Do I take it that all the steps that lead to a product from beginning to end, ending in the product is one process?

DR. GANAPATHI: Suppose I have to go through eight new steps for getting a product, strictly speaking I must take eight patents.

DR. SUSHILA NAYAR: Suppose out of the eight steps, six are known and two are unknown, and you have patented the two processes, X and Y. There may be another person who has a different method for these two steps, and you yourself may think of half a dozen ways in which these last two steps may be taken. These half a dozen steps should not be covered by one patent.

DR. GANAPATHI: I think under the present Act you should not do it. According to my understanding, one process means one step now.

MR. CHAIRMAN: Supposing I take 12 patents for processes, and I do not work eight of them for a certain period, the patent for these eight should be revoked.

DR. GANAPATHI: What will you gain by it?

MR. CHAIRMAN: I will not block others.

DR. GANAPATHI: Any good process is always used. As far as I know, 80 to 90 per cent of the patents granted are not used. If it is no good, even if it is revoked, what is the use? If it is good, somebody is going to work it.

DR. SUSHILA NAYAR: But why should you obtain half a dozen or a dozen patents and work only one of them. You are working one, and taking the others in order to prevent other people from working them. If you are using only one process and blocked others, you have not used the others for two or three years, they should be revoked and anybody should be able to use them.

SHRI JUGAL MONDAL: In that case, anybody could bypass one process to another. That means there will be no patent at all. That is abrogation in another form.

DR. GANAPATHI: Bypassing is not so easy in every case. Suppose a process costs me Rs. 10 and because of monopoly I sell it at Rs. 100, then another process which costs Rs. 30 will be worthwhile working. That way it is going to be useful. If you throw open those processes, at least this monopoly will stop.

SHRI NAMBIAR: Some of the witnesses, who appeared before us,

to'd us that we should not leave the matter to be decided by the court but by the Central Government because they have the full picture of the whole state of affairs. If there is a tribunal, it means again having some retired judges or serving judges but your one objection was that these people do not understand the technicalities. Therefore do you mean to say that the tribunal shou'd compose of persons who understand the subject?

DR. GANAPATHI: There may be a judge or a legal man but a technical man must be there on the tribunal. In the Irish court of law when a patent case comes up, according to their Act, they have a scientist or a specialist. Then I do not at all like the law of evidence. It is very difficult to establish what is fact in a court of law.

SHRI NAMBIAR: So, there should not be an appeal to the Supreme Court against the tribunal's award.

DR. GANAPATHI: No.

SHRI NAMBIAR: A lot of foreigners who appeared before us have said that these proposals will stifle scientific thinking in this country and know-how from abroad will not come to this country. We are a country just developing and we must have both an inflow and an outflow of scientific thinking; therefore, they said, we should not have a patent law which is absolutely different from that of the developed countries and we must have this period of 12 or 14 years. How will you meet that argument and argue against it?

DR. GANAPATHI: If you permit me to be frank enough, I will say that a sound base for the pharmaceutical industry in India has been laid in the antibiotics plant at both Pimpri and Rishikesh and at IDPL because everything is open; we know what is happening there. If you go to a factory put up with foreign collaboration, you would not know what is happening. I know what is happening there because I happen to be one of the assessees of the Tariff Board but I do not think anyone knows what is happening inside those factories. Even if such industry (foreign collaboration) is going to exist how it is going to benefit the country, I do not know. So, this way it will not promote healthy growth of industry. The only activity all manufacturers are interested in is formulations from the basic drugs. Our base still exists with what we started and foreign firms have not come except for a few things. Therefore, though we do the basic work the formulators take away the bulk of the money. Our total bill of drugs will be Rs. 178 crores or Rs. 180 crores and the basic drug comes to Rs. 30 crores to Rs. 40 crores. That means, the cream is theirs (formulation) and technologically it is one of the easiest things to do.

DR. SUSHILA NAYAR: I think, there is a lot in what you say because formulations form the bulk; the basic things are only about Rs. 20 crores or Rs. 30 crores and the rest is all formulations. As you are talking of formulations, can you give me an idea of the proportion between the cost of the basic drug and that of the formulation?

DR. GANAPATHI We worked on it for 1½ years and we found it very difficult, because it varies from product to product, to get at it but generally it comes to 1:8 or 1:9. While doing this we came across one very interesting thing and that is that the cost of formulation is about 23 per cent, of sales 30 to 35 per cent and of management 30 to 35 per cent; that is, the cost of manufacture works out roughly to one-third and one-third of the sale price goes to the management. The scientists who make them get a fraction of what those who manage get.

DR. SUSHILA NAYAR: If the cost of production is 5 paise, the sale price, including management and various things may be 50 paise.

DR. GANAPATHI: In the case of penicillin, a vial of penicillin costs you 14 annas but I do not think that the cost of the drug is even worth the cost of the vial or packing; it is almost negligible. You pay for the vial, packing and the carton and not for the drug.

DR. SUSHILA NAYAR: Is there no way of setting it right?

DR. GANAPATHI: I do not know. You have to do it; I cannot do anything, I can only talk about it.

DR. SUSHILA NAYAR: One of the witnesses told us yesterday that generally it comes to 1:4.

DR. GANAPATHI: It does not apply to everything. If we take sulpha drugs it may be so but if we go to proprietary preparations with a brand name it comes to 1:8.

DR. SUSHILA NAYAR: What figure can we take as the legitimate cost of production of the drug and of the product which is consumable?

DR. GANAPATHI: 1:3 or 1:4 on an average.

DR. SUSHILA NAYAR: Many parties that have appeared before us have said that the power to Government of taking over some of the inventions when necessary, without paying compensation, is unreasonable. They have said that under special conditions of stress, floods, epidemics, war or something it may be done but under normal circumstances if the Government takes over the invention, it should pay compensation or royalty. What is your view about it?

DR. GANAPATHI: I think, if the patentee concerned is not wilfully trying to do anything like that, you can pay him compensation. But if he is trying to wilfully upset something ....

MR. CHAIRMAN: Supposing in normal condition the Government wants to take the patent for development, in that case, would you like some sort of royalty to be paid to the patentee?

DR. GANAPATHI: I, personally, feel once you accept the grant of a patent to the inventor, you must give him royalty.

SHRI ARJUN ARORA: I want to know only one thing. The then Joint Committee on Patents visited your laboratory in 1966 and it was very much impressed by your achievement on the working of mint or something like that. What has been your achievement in that respect? Has there been any other achievement since then?

DR. GANAPATHI: We work on drugs from medicinal plants. Our laboratory consists of two parts, the Central Indian Medicinal Plant Organisation and the Regional Research Laboratory. One is in Jammu and another is in Srinagar. We propose to produce Belladona alkalrits to meet all demands.. Then, we produce Pyrethrum flowers. At the moment, we produce about 50 per cent of the demand of the country. We are increasing production further. We propose to produce enough to meet all the demand.

One of the other achievements of our laboratory is that we have introduced a plant called Mentha (Japanese mint) from which we get oil. It is grown all over the country. We want to produce 20 to 30 tonnes of Menthol. But enough land is not available. This plant grows best where wheat and rice grow. The problem is, whether you want to grow wheat and rice or Mentha plant. But there is one important thing. Pyrathrum grows only on slopes where land is generally not cultivated for agricultural purposes. We can grow medicinal plants there.

Then, we are working on an alternative source of the basic raw material for producing oral contraceptives. We produce diosgenin for the disco-

rea roots available locally. These are the achievements of our laboratory.

SHRI ARJUN ARORA: I think, the Members of this Joint Committee who did not visit their Laboratory last time should visit this Laboratory.

DR. GANAPATHI: You are all welcome. I find there has been some and rice or Menthal plant. But misunderstanding. I felt very aggrieved when there was probably misreporting in Parliament about our Laboratory because the facts given by one of the Members were not all correct.

DR. SUSHILA NAYAR: It has been said before the Committee that we should do away with 4 per cent royalty that we have laid down. There are two arguments. One is that there may be products for which higher royalty is justified and there may be others where it should be very low. Another argument is that we have not allowed more than 1 or 2 or 3 per cent. In any case, we are not likely to give more than 4 per cent. It is said that by putting it in the Act, the limit of 4 per cent, you create a psychological scare. Why have it there? Have you any comments on that?

DR. GANAPATHI: This is one of the issues which I discussed with Justice Ayyangar for two hours. It is pretty difficult to pin down any figure because the contribution of the patentee varies from case to case. We have to arrive at some figure. You have put at 4 per cent as a ceiling. But there is a fear also that the ceiling will always become a normal case. But there is no way out. Otherwise, the Controller may grant 10 or 12 per cent even. This is a lesser evil. You cannot work it out in every case. It will definitely vary from case to case. But there is no other way of doing it unless you allow the Controller to look into each case. If at all they allow him to find out what is the contribution and fix royalty.

DR. SUSHILA NAYAR: Which is better, putting a limit or not putting a limit?

DR. GANAPATHI: If you do not put a limit, it may be 10 or even 15 per cent. Sometimes they ask for a rupee for a rupee also, a very high royalty. I am told some are paying also. Here, at least you put a ceiling.

DR. SUSHILA NAYAR: You think it is quite reasonable.

DR. GANAPATHI: Yes.

DR. SUSHILA NAYAR: With regard to the licence of right, we have given the licence of right the day the patent is registered. Even the next day, anybody can come and ask for the licence or right. Now, some parties have put before us, " You must give us a reasonable time to work on our invention. If we do not work, then you may give it to somebody else. But you do not give it on the very first day it is registered." They further say, "You must find out whether the party has the capacity to exploit it or it is only to harass us that they are taking it." As against that, a view has been expressed, how can a party harass another party if they do not have the know-how and that it will be only waste of money. What are your comments on that?

DR. GANAPATHI: It is a difficult case. The Act says, "anyone interested". I may tell you in one of the cases which went to the High Court, we were producing the drug and we had the equipment etc. But we could not establish in a court of law that we are capable of producing it. We were producing the drug. They said, "This party is not capable of producing it." This is one of the difficulties. I personally feel, you give him the licence right away. If he is not capable, he loses the money. Of course, there is one trouble. There is likely to be a mischief also. The original patentee may instigate someone to have a bogus licence simply to harass a genuine licencee. I do not know whether our Patent law is adequate to deal with that. Supposing you give power to the Government, I do not

know whether you can check that. There also it is difficult.

DR. SUSHILA NAYAR: Now, you were on the Tariff Board also. You will remember that from the Government side we referred about 6 to 7 drugs to the Tariff Board to determine the prices of those drugs because they were high.

DR. GANAPATHI: I was one of the Assessors to investigate the causes of high price of drugs.

DR. SUSHILA NAYAR: But the price that these Tariff Board people gave was even higher than the prevailing prices, whereas everyone admitted that the prevailing prices were already high. How do the Tariff Board people assess the prices. Of course, we did not release those prices at all. As a matter of fact, even today I am being harassed by a number of parties asking what were those prices. I have not told them anything because you people came up with prices which were higher than even the prevailing prices.

DR. GANAPATHI: My job was to advise them. I may tell you I had a lot of uncomfortable time quarrelling with them because I did not agree in many cases. In one case, I may tell you a Company makes a drug from an imported intermediate and the cost of the intermediate is the cost of the final product. It did not happen in one case. It happened in three or four cases. A very established firm was importing a drug for Rs. 50 to 60 per kg. whereas it can be had for Rs. 20 kg. I had heated arguments with them. I could only advise. I wrote my note. I came away; I do not know what was the final report.

MR. CHAIRMAN: Dr. Ganapathi, coming back to the question of royalty again, I am told, as the present Act stands, there is no limit, there is no ceiling. During last 12 years in no case has controller given royalty more than 3½ per cent. 2 per cent or 1 per cent is normal. So, without putting a ceiling we could arrive at that. If we put ceiling at 4 per cent, that may become a normal thing.

DR. GANAPATHI: The only way is to reduce it. It is a very delicate thing.

MR. CHAIRMAN: Only in exceptional cases. Normally it is 1 or 1½ per cent, like that.

DR. GANAPATHI: The whole thing is about the discretion of the controller of patents.

MR. CHAIRMAN: When you put ceiling when even it is 1 per cent, it may go up to 3 per cent.

DR. GANAPATHI: We can argue at length. It is one of the very difficult cases. I don't really know what to do.

MR. CHAIRMAN: About patents period, it is said, obsolescence is very quick. Then why bother about the patent period?

DR. GANAPATHI: That is one argument. If patent is there and drug is there in the market for 10 years the public manufacture it for certain period and use it also.

MR. CHAIRMAN: The cycle of obsolescence is quick. Suppose drug A is made, it becomes obsolete in 3 years.

DR. GANAPATHI: In some cases.

MR. CHAIRMAN: He will not be interested in it.

DR. GANAPATHI: Quite a number of things have gone up in 1 or 2 years. It is very difficult to be specific. We have to take the overall picture.

MR. CHAIRMAN: Thank you very much for the evidence you have given. We meet ater lunch at 3 O'clock.

(The Committee then adjourned)

III. Hindustan Antibiotics Ltd. Pimpri, Poona

Spokesmen:

Shri C. A. Subramanyam,
Managin Director

2. Dr. M. J. Thirumalachar,
Superintendent Research

(The Committee reassembled after Lunch)

(The witnesses were called in and they took their seats).

MR. CHAIRMAN: Mr. Subramanyam, the Committee will very like to hear your evidence on the Patent Bill. We are happy that Dr. Thirumalachar is also here.

SHRI SUBRAMANYAM: We met your Working Group when they visited our Factory. We gave some information at that time and I was asked to send a note to the Secretariat. I presume that that note has been received.

MR. CHAIRMAN: It has also been circulated to the Members.

SHRI SUBRAMANYAM: Can we take that as a basis to start?

MR. CHAIRMAN: By all means.

SHRI SUBRAMANYAM: I will recapitulate the main points. I would like to mention here and establish the interest that the Hindustan Antibiotics has got in the matter as one of the public sector undertakings which has established a research organisation at considerable capital expense and on which regular revenue expenditure of a considerable amount is being spent every year. It is all based on the belief that in pharmaceutical industry, unless there is new discovery and new development, obsolescence will catch up very soon. It is a good practice to spend money on research, though we know the risk involved—even if we have 2000 compounds which can be synthesised or prepared, it may prove that not one of them is therapeutically efficient and even if it is therapeutically efficient not even one can catch the market. That risk is inherent in all pharmaceutical research. The only hope is that when a pharmaceutical company, a commercial oaganisation spends money on research, it is in a way an investment in the future and like all investments they hope there will be an adequate return at some time or other. One of the means by which a return on the investment can be expected is if they are allowed—I shall not say monopoly—a certain protection from competition for a certain period. In fact, that is the basis on which all patents were granted. An important point about patents is that but for the protection afforded by the patent there will be a tendency for the person who makes the discovery to keep it to himself and thus not contribute to the growth of knowledge, to the growth of technology. Therefore, we are very much interested in this matter. We have spent about Rs. 44 lakhs in capital expenditure in setting up the research organisation and we have about Rs. 16 lakhs of recurring expenditure including depreciation. Our recurring expenditure is somewhere about the ratio of three per cent to our gross turnover. The capital expenditure is about 6.8 per cent of the total fixed capital invested by the company.

Another thing that I would like to stress is that the drug industry is not like oher industries. It is controlled from the beginning to end. A man can make an engineering device and patent it. Then he can go into production with a fair amount of confidence that it will work and sell and so long as he can invest in jigs and tools he can go into production fairly rapidly. But in a new discovery in the drug field we have to cross several preliminary hurdles. First of all we have to have animal experiments to prove that the drug is effective for some kind of infection, that it does not have toxic side effects on the animals and so on. We have to collect all this information and submit

it to the drug control authorities who can ask for more tests and more trials to be run. Then only they give what is called an investigational licence. An investigational licence means that they have satisfied themselves that it is not too harmful but they want it to be tried under controlled conditions on patients in hospitals or under the control of certain personnel which are acceptable to them and large-scale trials for therapeutic efficacy have to be made and a statistically significant answer has to be provided. Such facts have to be listed. The main therapeutical test is to elicit the absence of toxicity and lately it has become necessary to prove that they call teratogenic safety, that is to say, when the drug is given to a preghant female it does not affect the foetus. That arose out of the thalidomide case. Now, in the case of every new drug, even those meant for external application, if they are likely to be absorbed by the body, they want this trial to be done. It has to be done on at least two species of animals for three generations. You give this medicine to a pregnant female. If the child is female, when it grows up mates and become pregnant, the same medicine is again given to that new female. The same test is conducted for another generation. The fourth generation must be free from any defect. To test such a medicine even in rats or mice for four generations will take some years. Therefore, it is only after all this is proved that the drug control authorities will permit you to manufacture the drug for sale and put it on the market. Then you have to capture the market.

MR. CHAIRMAN: How much time does all this take?

SHRI SUBRAMANYAM: In the case of our discovery, hamycin, patented in 1960-61 we got the licence for external application in 1963. Still, we have not got the sales licence for internal use, even after eight years, I may say that the average may be taken as six years. But it can go up to nine years. This is the view of the Task Force by the United States Deptt. of Health, Education & Welfare authorities.

Then I come to the period of protection afforded to a patent. I do not know why the period of patent for a drug should be less than that for other products; because, it takes much longer for a drug to be put on the market after its discovery, even after the grant of patent. If at all, there is a case, it is for a longer period of protection for drugs and not for a shorter one. This is one point on which we feel very strongly. We think it should be twelve years from the date of sealing or probably fifteen years from the date of filing. But I notice that in the draft Bill the provision in the existing Act that sealing shall not be more than 24 months after the publication of the accepted specification has been dropped. If you are going to count protection from the date of filing it is not fair because more time will be taken before it can be used. So, I would suggest to the Committee that they may consider that the period of protection must run from the date of sealing of the patent and not from the date of filing of the application. I think the present law states that the patent shall be sealed as soon as may be, but in no case later than 24 months after the publication of the accepted specification. If you so desire, you can make it 36 months but there must be some provision to that effect.

SHRI JUGAL MONDAL: So, whatever the Bill says will be advantageous to you?

SHRI SUBRAMANYAM: I am not asking for any advantage; I am asking for the removal of a disadvantage. Suppose this takes three years. My patent loses three years out of the total twelve years.

DR. SUSHILA NAYAR: Why do you say you are losing time? You get protection from that time and nobody can make it. We understand from

other witnesses that most people after failing do not wait for the sealing before they go into production. They produce. They even start their tests on animals..

SHRI SUBRAMANYAM: We do tests. But about production I would say this. After discovery in a laboratory, to design a plant, build it and produce the drug costs a lot of money. Unless we know that it is eventually going to be licensed for sale there is no point in any commercial organisation investing lakhs of rupees on a plant and producing something which may finally not be permitted to be sold.

DR. SUSHILA NAYAR: Once you have done your tests and trials you know whether it is a useful and worthwhile project. Those people who are also in the same line have assured us that they do not wait for the sealing because they get the protection from the earlier days. What is more with regard to the safety and various other things is that the patent sealing is not going to give you that clearance. That clearance you will get only from the health authorities.

SHRI SUBRAMANYAM: It is just getting a patent. I do not know how long the health authorities are going to take. Therefore, after I go into production and go in the market I want a certain minimum time by which I can recoup some of my investment made on research.

DR. SUSHILA NAYAR: At the moment I am arguing that the time between the filing and the sealing of a patent is just three or two years or whatever it may be. That is not a loss to you because you do use that period for the various tests that are to be conducted.

SHRI SUBRAMANYAM: I also mentioned in my note that there could be certain overlapping of this testing and designing and all that which really may not be significant in saving time because I really cannot get my directors to sanction me several lakhs of rupees in putting up a plant until they know that all these tests are finished or are reasonably finished.

The next point is about the licence or right. I am afraid any commercial research organization on drugs will not like that. They will oppose the licence of right. After all we have spent so much of money on research and on developing a thing by designing a plant and producing a thing and putting it in the market. If tomorrow a man who has spent not a pie on that job is going to get a licence of right, the net result would be that no commercial organisation would invest on research. I submit that in this country what we want is more and more research and more encouragement to research.

MR. CHAIRMAN: But you get the royalty for that.

SHRI SUBRAMANYAM: Where do we get royalty from?

DR. SUSHILA NAYAR: Those people who are going to set up the plant if they have the licence or right and if they produce they are going to pay you the royalty.

SHRI SUBRAMANYAM: But what is the royalty that we get as compared to expenditure that we would have incurred?

SHRI JUGAL MONDAL: What is the percentage of profit that you get so far for the investment made by Government? Can you give us an idea about that during the last five years?

SHRI SUBRAMANYAM: I have given that in my note. So, I suggest that the licence of right is unnecessary.

DR. SUSHILA NAYAR: How are you going to protect the country against those who have got the patent right and the not producing anything?

and have not producing anything.

MR. SUBRAMANYAM: The right of compulsory licence which has been provided for in the Act is by itself a very good instrument to ensure that the patent is worked for the benefit of the country.

As regards the execution of the provision for a compulsory licence, some kind of guidelines or conventions or whatever it may be, will have to be laid down on the exercise of such powers as that is a quasi-judicial function.

DR. SUSHILA NAYAR: The compulsory licence is there in the present Act but it is a dead letter.

SHRI SUBRAMANYAM: It is possible that you may use it. You have the right but if you do not use it, it is not the fault of the other fellow.

DR. SUSHILA NAYAR: But what about litigation?

SHRI SUBRAMANYAM: There is no litigation. You have got the right. For instance, in an emergency you acquire the land. You have laid down in the Land Aquisition Act certain guidelines under which this power is exercised. You have provided for a certain compensation and also the method as to how the compensation is to be assessed. Why should you not do the same thing with respect to the patent too? This is also a property like a copy right.

DR. SUSHILA NAYAR: But there is a slight difference between the two.

SHRI SUBRAMANYAM: It is also a property under the Copy Rights Act.

DR. SUSHILA NAYAR: You know how much of racketing is going on with regard to land acquisition.

SHRI SUBRAMANYAM: But that is not the fault of the Act.

As regards the royalty a ceiling may be good but 4 per cent is very low. But I think royalty should be assessed on the merits of each case depending upon the amount spent on research and the quality of research that goes into the discovery, importance of the material to the public health and various other considerations. I don't think we should immediately say that the ceiling shall be 4 per cent. For instance, royalty varies from country to country. I do not want to make this very public. But, of course, the Committee is entitled to know it. My licence to Shermans in USA for the use of my Hamycin. patent provides for 5 per cent free of tax, on the net sales value of the material. This is my royalty which, in fact, under the present rates of tax in the U.S.A. comes to about 8½ per cent. If I am allowed the grossing up for the tax; and if I have a ceiling of 4 per cent in this country, my licence will argue for a reduction on the ground that you can get only 4 per cent in your country. I cannot resist it.

SHRI JUGAL MONDAL: Is that 5 per cent on the total sales?

SHRI SUBRAMANYAM: It is on the net sales value.

SHRI JUGAL MONDAL: Is it free from income-tax?

SHRI SUBRAMANYAM: Yes, it is free from all taxes.

SHRI JUGAL MONDAL: Is that to be paid to the patentee?

SHRI SUBRAMANYAM: Yes, that is to be paid to me—I am the patentee.

SHRI NAMBIAR: Probably yours is a solitary patent in America. How can we compare our country with America and so on? If we get 4 per cent here we may either lose ultimately or we may be a gainer.

SHRI SUBRAMANYAM: In fact, for Hamycin, the licensee wanted to

put in a condition in the licence.. At that time our first Bill was under consideration. The condition in the licence he wanted was 'should at any time a ceiling on royalty be imposed in India, then the figure will be reduced to the same figure.'.

SHRI NAMBIAR: The loss may not be much as compared with many other losses we would incur taking the totality of the picture of India.

SHRI SUBRAMANYAM: I am talking here as to how it affects a pharmaceutical industry. We are not discussing here as to how it affects the totality of the Indian interests. At the moment, I am talking from the point of view of pharmaceutical industry.

SHRI NAMBIAR: We have to take the totality of picture of India.

SHRI SUBRAMANYAM: I am not saying here anything on how you should do that.

MR. CHAIRMAN: Is that all?

SHRI SUBRAMANYAM: These are the salient features that I wish to place before you. About revocation I should say that it is enough if the compulsory licence provission is made use of for the purpose instead of revocation of licence for non-use of the patent. After all you have got the right to say that if you are not producing this, then you should give a compulsory licence and give it to someone who is capable of producing it. But you should have a mechanism for that to decide as to who, among the various pharmaceutical industries, are entitled to or are capable of processing or working the inventions.

MR. CHAIRMAN: Dr. Thirumalachar, you are a very efficient scientist and you are the discoverer of Hamycin. Do you want to add anything to what Shri Subramaniam has already said?

DR. THIRUMALACHAR: Sir, our Managing Director has actually brought in most of the points. But, since you referred to the scientific aspect of the work, I shall say something in one or two words. Of course I may not add too much to what has already been stated. There are nearly 1300 anti-biotics of which only 10 or 15 are widely being used. There is no guarantee that for the next 15-20 years they will be used because any one of them may be replaced very soon by a new discovery at every stage. If I produce methicillin to-day there is not much market for it. I am speaking from the scientific point of view. The other thing is that the time that is taken for pharmacological tests and bringing as new products for clinical trial in India is much more than countries. We know that some of the anti-biotics which are useful for humans are not patented in India. Neomycin is a very useful anti-biotic. It is useful against cholera and trachoma. But there is no way of producing it in the country. He took us nearly 3 years to bring it to the stage of economic production. By merely compulsory licensing neomycin nobody can produce it. There is no organization to translate the know-how soon theoritical knowledge to practices results.

SHRI SUBRAMANYAM: The disclosure in the patent specification may enable a person who is reasonably skilled to make that thing. He will produce the substance but it will not be an economical production. There are so many trides of the trade which you do during the course of manufacture which makes all the difference between economic production and just production. We had to spend as Dr. Thirumalachar said about neomycin for the last 3 years. There is no patent. We have been trying in our pilot plant to produce neomycin in an economical way. We are getting neomycin every time, but the raw material consumption is not working out consistently. They are not working out economically. Yet we still hope we will be able to do it. Merely

getting a compulsory licence does not enable you to do it.

DR. SUSHILA NAYAR: Does not that very argument take away your objection to licence of right? You have to have know-how, skill and various other things before you produce.

I agree there may be somethings which are very simple, very easy to produce and the licence of right and compulsory licence will prevent exorbitant prices or monopolies leading to excessive prices for these products at least and so far as these difficult things are concerned even there the position may be there, as you have yourself said that the man will not be able to produce without the know-how.

SHRI SUBRAMANYAM: I would say that you have taken it a little out of context. I said it will not be easy for him without further expenditure of time and money by merely getting the compulsory licence. I never said it is impossible.

DR. SUSHILA NAYAR: You agree that it is not easy. Then if it is not easy everyone cannot produce it. It is only somebody with extra-ordinary resources who will be able to do it.

SHRI SUBRAMANYAM: Some body who has been doing that kind of things before will always find out the way A man who has never done a synthetic chemical will find it difficult.

DR. SUSHILA NAYAR: He says compulsory licence hedged in with all the conditions is obstructing research. They have told us in clear terms that these restrictions are putting obstacles in their way and restricting and obstructing research in India. The scientist says that he wants a holiday from patents for a minimum period of 10—15 years. You may have got one patent. You may get two tomorrow or 5 but still we are far behind and in order to enable us to catch up with the rest of the world please give us a holiday from patents for a minimum period so that we can catch up.

SHRI SUBRAMANYAM: I do not know what research people said it. It is not commercial research people.

DR. SUSHILA NAYAR: The research scientists are by and large paid by the Government. It is in the Government laboratories research is being carried out. They say that we will be able to give results far quicker than we are at present because we are hedged in by patents.

SHRI SUBRAMANYAM: The question is there have been cases where we have gone to scientific research laboratory. We have told them, 'These are the patent literature. We want to find out the know-how. Will you also assist us,' To this day we have not got the process. I do not know if even 20 years holiday will produce that.

DR. SUSHILA NAYAR: You have said that the life of the patent minimum should be 15 years.

SHRI SUBRAMANYAM: 12 years from sealing on and 15 from fling.

DR. SUSHILA NAYAR: There are others who appeared before us who said that the obsolescence is so frequent that the general life of a drug is not more than 5 years. In the circumstances they say that the period should be brought down from 10 years to 7 years—2 years for the earlier period and 5 years for expectation. And, therefore they think that the period of 9, 10 years is too long.

SHRI SUBRAMANYAM: There was a Task Force for prescription Drugs established by the U.S. Health Education and Welfare Department and in their final report on pages 12-13 it is stated: "It has been estimated that a company will recoup its research ex-

penses and developmental costs of a product within about 3 years *after it establishes the market.* It has been shown however that the requirements to establish safety and efficacy of a new drug may take many years of efforts, perhaps as many as 7 to 9 years. Where such testing continues after the patent is issued, the period of actual patent protection may be very much less than the statutory period provided." This is the view of the Department of Health Education and Welfare of the U.S. Government.

DR. SUSHILA NAYAR: They are selling patents all over the world and they want longer period. Whether we should ask for longer period or shorter period should be decided by us taking into account our interests.

SHRI JUGAL MONDAL: What I just heard I wish I heard from a private sector man instead of public sector man.

SHRI SUBRAMANYAM: I was not talking as State enterprise or any other enterprise. I am told that I must run my undertaking in a commercial manner and I am working in competition with others including the Private sector. I am told that I must produce results and I am endeavouring in that direction.

DR. SUSHILA NAYAR: We compliment you on that.

SHRI JUGAL MONDAL: The intention behind this Patent Bill is to bring down the prices of drugs so that they will be available to the poorest of the poor in the country. We have no other intention than this. The fall of price we have seen on account of this, in 100 per cent or 200 per cent.

SHRI SUBRAMANYAM: I don't know. It may be that in some particular case it might have happened.

SHRI JUGAL MONDAL: You sell bulk products at a price to the formulators and that is more than the selling price of finished product of yours.

SHRI SUBRAMANYAM: No. Certainly not. In fact, I sell my streptomycin below cost. You please ask Dey's, whom you mentioned to produce a voucher for their sale of vialled penicillins and I will produce my voucher for the sale of the bulk to them. You can find out.

SHRI JUGAL MONDAL: No, You are against compulsory licence.

SHRI SUBRAMANYAM: I say that compulsory licence is useful. I am against the licence of right. You keep compulsory licence and you use it with discretion and justification. On the other hand, anyone can have a lincence of right.

MR. CHAIRMAN: How many patents you have got?

SHRI SUBRAMANYAM: We have 11 patents in India—they are for different things. We have two or three patents in 11 foreign countries, but not all for different things.

SHRI C. C. DESAI: For different processes or for the same product?

SHRI SUBRAMANAYAM: One process to one product. It is possible to have two patents for the same product by different processes.

SHRI NAMBIAR: What will be the number of patents given to drugs both by process and by product?

THE CONTROLLER OF PATENTS: For the last 7 years everything has been kept in cold storage. Earlier, I think we sealed 6000 patents...

SHRI SUBRAMANAYAM: I think it is more than 6000. I myself have got a dozen applications pending with you.

SHRI NAMBIAR: The application for patent for drugs is more from the collaborators with foreign countries and their interest is more at stake if the patent law is made more stringent.

SHRI SUBRAMANYAM: It may be that we are letting ourselves to be influenced by the present conditions, when the new discoveries patented by Indians in India are much less than the new discoveries patented in Convention countries or other countries. How are we going to correct this imbalance? We have to correct it by encouraging indigenous Indian research and one of the means in my opinion is to encourage the industrial concerns in India to invest large sums of money in India in research. They will be encouraged to do this if they are given the patent protection. Otherwise, they will think—why should I waste money? I pay 5 per cent royalty to Merck, Pfizer, etc. and I get everything. Unless there is a good patent law, there will be no incentive for research in India.

SHRI NAMBIAR: Let us take this particular case.

SHRI SUBRAMANYAM: I would place this point of view for your consideration.

SHRI NAMBIAR: First let us take the case of Neomycin—I am sorry I am not an expert in this, please excuse me for spelling it incorrectly. This is the one which our Chief Scientist had the honour to invent. Now we are all proud of him. Even though you have a pilot project in your big factory you are unable to get it at economically stabilised price though you can produce that. Of course money should be made available. If you do not get the know-how from abroad you have to do it by yourselves. In such a case is it possible for any private entrepreneur here to come forward to produce this thing? Here comes the question of money. The foreigner will not give you that much money. We can produce this. This can be worked only when an industry is backed up by the State. Do you think that the private entrepreneur will come forward? Patent protection is only in paper and every patent protection is for two or three years. So, do you think that the person will come over here to do this?

SHRI SUBRAMANYAM: That is how all the other countries have developed their industrial research. You want to equal them or catch them up. For that we cannot cut our nose to spite our face.

SHRI NAMBIAR: If they were the competitors will our public sector not take up the challenge and do that by themselves?

SHRI SUBRAMANYAM: That we are doing.

SHRI NAMBIAR: There comes patent protection.

SHRI SUBRAMANYAM: I want protection for that.

SHRI NAMBIAR: Patent protection is required for 15 or 20 years so that their benefit may be less. Why do you want to increase this period? That means the other countries get that advantage when you are in a disadvantageous position.

SHRI SUBRAMANYAM: I do not see how it follows.

SHRI NAMBIAR: We have got only a very small sector whereas the private collaborators abroad have got a big sector. They are mopping up all the money and compete with others. But at the same time you must see that you give incentives to our indigenous manufacture.

SHRI SUBRAMANYAM: Here we are getting little mixed up.

SHRI NAMBIAR: Suppose you say that patent protection period should be for 10 or 15 years. After five years or so you discover something. You cannot get the benefit of it because someone else will be holding the patent for that.

SHRI SUBRAMANYAM: No, Sir. There is a way of getting a patent. For that the process may be modi-

fied or varied and for the new process I can get a new patent.

SHRI NAMBIAR: In that case you will have to play a trick.

SHRI SUBRAMANYAM: There is no trick at all.

SHRI C. C. DESAI: It is a skill.

SHRI SUBRAMANYAM: It is a trick in the sense of exercising of a skill and not cheating.

SHRI NAMBIAR: Then you are up against the competition with big people in technologically far advanced countries being backed up with money. When you need a little protection you get yourself involved against that sort of people. Is it not to our advantage?

SHRI SUBRAMANYAM: But still I do not see how lessening this period is going to give us protection?

SHRI NAMBIAR: You see an American who is producing that will finally come forward and produce that. But he is given 25 years of protection for his patent. He is bringing in his medicine from America for that purpose. This you yourself can do but you cannot produce that yourself.

SHRI SUBRAMANYAM: What I am trying to say is this. You are going to produce it by a different process as a modification of the process for which I can get a patent.

SHRI NAMBIAR: That is the point.

SHRI SUBRAMANYAN: I can get a patent for the modified process.

SHRI NAMBIAR: This is a sublety. Let us leave it at that. Now you are producing penicillin the cost of which may be 15 paise per vial where as you are selling that at 70 paise per vial.

SHRI SUBRAMANYAM: Who told you?

SHRI NAMBIAR: What is the production cost of penicillin?

SHRI SUBRAMANYAM: I would not like to publish my cost of production. But, I am prepared to give it for your information. I am competing with the private people.

SHRI NAMBIAR: My point is that the ratio between your production and the formulation and final selling to the consumer is too much. I am the consumer and I must get that benefit. This sort of overhead charges that are being added is with a view to getting profits.

SHRI SUBRAMANYAM: We are getting mixed up with various things. I am not squezer of the market in order to make profits.

SHRI NAMBIAR: Then why do you sell it at Re. 0.65 per vial?

SHRI SUBRAMANYAM: You have got plenty of powers under the Essential Commodities Act and the Drug Price (Control and Display) Order. Pharmaceutical prices are all controlled under these. I think the Controller of Drugs exercises his powers under that Act. I don't think the Patent Bill should be an instrument for that.

SHRI NAMBIAR: Whenever the question of incentive comes in the question of profits also comes in. We are against the patent's period being extended. What is your answer to that? The answer given is this. If you do not give a longer period there will be no incentive because they do not get the necessary return for the money invested. There the money comes in. You cannot separate this—the price of the goods and the profit to the producer. You cannot diverse it from the main fact and say that the patent has nothing to do with the money. Everything is mixed up here.

SHRI SUBRAMANYAM: The point here is this. There are already other measures and ways of controlling the price. They meet that consideration.

MR. CHAIRMAN: So far as penicillin is concerned, it has nothing to

do with the patent system—we may charge more or less for that.

SHRI NAMBIAR: When a patent is got then price considerations come in. That is a basic thing for you to arrive at a conclusion. These are connected things. He says that he must have patent protection for a long period because this return from America may be less.

SHRI SUBRAMANYAM: I did not say it that way. I only brought this point to say as to how it will effect me if there is a ceiling on royalty.

SHRI C. C. DESAI: I take it that Mr. Subramanyam's views are really not his personal views but the views as a Managing Director of the Hindustan Anti-biotics Ltd.

MR. CHAIRMAN: He has not got the split personality.

SHRI SUBRAMANYAM: I have got the split personality because I have not got a mandate from the Board of Directors for what I am going to say here. I have told them as to what I am going to say here. They had no comments to offer.

SHRI C. C. DESAI: So, your views are based on your experience as Managing Director of the Hindustan Antibiotics and are not based on the study of the Patent Law. What have you to say to this in the light of your experience as a Managing Director of the Hindustan Antibiotics Ltd.?

SHRI SUBRAMANYAM: My views are not based on the study of the Patent Law but are based on my experience as a Managing Director of Hindustan Antibiotics Ltd.

SHRI C. C. DESAI: These views differ in many respects radically from the views expressed only yesterday I believe by the representatives of IDPL, and those are public sector projects, one successful, the other an example of unsuccessful working and that is why I want to know the difference between the two because those views were not merely of the Managing Director, but were also endorsed by Mr. Borkar, in fact mainly propounded by Mr. Borkar.

You have not put Hamycin on the market yet. Why?

SHRI SUBRAMANYAM: We have put two external application preparation. One is a glycerine suspension, and the other is a tablet or vaginal pessary.

SHRI C. C. DESAI: How do you find the sales of these?

SHRI SUBRAMANYAM: They are going very slowly at the moment, but after the clinical trials of oral Hamycin are successful, I expect there will be a very good market because it has got certain other side effects which are desirable. It has got an effect on cholestoral in the blood. Nowadays when everybody is talking about blood pressure and arteriosclerosis, I think this is a very promising field.

SHRI C. C. DESAI: Has it been marketed in any other country?

SHRI SUBRAMANYAM: It is sold in Mexico, Venezuela, South Africa and Peru. The final application for USA is with the FDA now and I suppose they will release it in due course. Then there will be very good sales. It is in the course of clinical trials that we found this side effect on cholesterol and also a reduction of the enlarged prostate in old people. We are now concentrating on proving them as regular effects.

SHRI C. C. DESAI: Now it becomes a multi-purpose drug.

SHRI SUBRAMANYAM: That is the funny part about it. You start doing these extensive clinical trials, you get something entirely different. For instance we had an anti-amoebial drug, but now trials are going on in Rajasthan with it against guinea worm which is a very painful

affliction. These are the things that come out in clinical trials.

SHRI NAMBIAR: Suppose they reveal some toxic effect later on which is harmful.

SHRI SUBRAMANYAM: We would not be allowed to sell it unless we satisfy the Drug Controller by statistics. We have to do chronic toxicits studies by giving animals or persons a very heavy dose for 6 to 9 months at a time. Until we prove that, he would not allow us to sell.

SHRI C. C. DESAI: You said in the course of your statement that the life of a patent should in your judgement be from 12 to 15 years. With effect from what date?

SHRI SUBRAMANYAM: 12 years from sealing or 15 years from filing. "Filing" is filing of complete specifications. When we refer to filing, we always refer to the date of filing of the complete specification.

SHRI C. C. DESAI: One of the arguments was that as soon as you file, you are free to produce and sell in the market subject, of course, to permission being given by the Drugs Controller, that your protection has already begun from the date of filing.

SHRI SUBRAMANYAM: That is only theoretical because it takes six years to get the Drug Controller's permission.

SHRI C. C. DESAI: Are there any cases in which people have put a drug on the market even before the patent has been sealed?

SHRI SUBRAMANYAM: It is purely theoretical.

SHRI C. C. DESAI: Any specific case in which such a thing has been done?

SHRI SUBRAMANYAM: I am not aware of any such case.

MR. CHAIRMAN: This is what we got from some of the important witnesses.

SHRI SUBRAMANYAM: Did you ask them which drug it was?

SHRI C. C. DESAI: What they say is that it is possible. They do not say that in a particular drug it has been done.

SHRI SUBRAMANYAM: Theoretically anything is possible. On the question of filing a patent and putting it on the market the day after tomorrow, theoretically I suppose there is nothing to prevent it, if you can get your clinical trials done in two days.

SHRI C. C. DESAI: The most important consideration in patent law is what effect it will have on Indian research and development. I want to know from Dr. Thirumalachar what he thinks is in the best interests of encouragement of Indian research and development which is what we want in considering whether we want any patent law, with what modifications, because we consider that he has perhaps more experience of Indian research than many other persons in the country.

DR. THIRUMALACHAR: Scientists who were working with me, who have left me and joined the private sector in very high jobs, are no longer scientists in a sense because they might be doing a lot of work, but nothing is known outside, because no publication comes out. One real thing which is making us stay in the public sector and work is that you are satisfied with your work, you have done some thing and you have the pleasure of keeping the thing open in the senese that you still continue to be a scientist and production man, both, whereas my collegues who have left me, who were really good scientists, are lost to science because nothing has been published of their work.

SHRI C. C. DESAI: That has nothing to do with the patent law.

SHRI NAMBIAR: Your question was about research development.

DR. THIRUMALACHAR: So, today we have to think of research in this sense. When you say scientific research, it should be available to everybody, it should be discussed. Many of the foreign visitors and professors who come to our factory say that they see an antibiotic plant in India and not in their own country. If you want a furthering of research in the country, the person who is working should have full confidence that his research is going to be recognised and whatever he finds is going to be useful for the country. If it is merely a question of getting know-how from abroad and our just adopting it here, there is no chance of any further development in our laboratories. That we can have only when there is a safeguarding of the research that we do, only when we know that there is a patent and that it is going to be protected. The incentive would not be there unless these facilities are assured.

SHRI C. C. DESAI: Even if scientific research is recognised, the benefit of it goes to the company which employes the scientist and not to the scientist whose brain has produced the result. For example, X, a scientist, employed by, say, Alembics or Sarabhai Chemicals has discovered something but the patent is taken out by Alembics or Sarabhai Chemicals and they get the royalty; the scientist gets Rs. 1,000, Rs. 1,500 or whatever his salary may be whether his research results in a discovery or not. Where is the incentive to the scientist in that case? We should devise a system which gives incentive to scientists.

SHRI SUBRAMANYAM: There is a contractual arrangement between the scientist and the company when he becomes their research man to assign the discovery to the company. The assignment is made for consideration in cash. A very considerable amount of cash has been given to some discoveries for assigning their discoveries to the company. I am not saying that I gave cash to Dr. Thirumalachar when he assigned his discovery to my company; but there have been cases where it has been done.

SHRI NAMBIAR: When I visited IDPL I found that phenacetin of 500 mg impurity—please excuse me for the terminology because I am not a scientist—was not accepted by Indian pharmacology; they said that it must be 257 mg. Our scientists in that factory brought it down to that standard. So, I put a question to the Managing Director as to what incentive or additional remuneration was given to the scientists who did it. The Managing Director told me that they had not yet started earning and make a profit; so, the question of any incentive is not there now. In such a case what is the incentive for the scientist to do something better in future?

SHRI SUBRAMANYAM: It is a matter of contractual arrangement between the scientist and the employing company. We can say and I would agree and emphasize that it is desirable that some tangible reward should be given to the scientist who makes the discovery irrespective of whatever his salary or terms may be. But I do not know how that is relevant to this particular issue of the patent period.

SHRI NAMBIAR: With incentive, production will increase.

SHRI C. C. DESAI: The object of the patent law is to compsnsate research. The compensation goes to A and the research is done by B. It is like robbing Peter to pay Paul.

SHRI SUBRAMANYAM: Are you suggesting that there should be a provision in the patent law that the assignment shall be for a consideration?

SHRI C. C. DESAI: There must be some sharing of the compensation.

SHRI SUBRAMANYAM: It is open to you to say here that when the patent is assigned by the inventor to the company which employs him the

assignment must be for valid consideration otherwise it would not be recognised. I would not mind it; I would not oppose it.

SHRI NAMBIAR: We are not dealing with Indian companies only. Foreign companies are also involved. The whole ambit of patents cannot be restricted to giving incentive to scientists. The law is supposed to do some other things also.

SHRI SUBRAMANYAM: You suggested it and I followed it up.

SHRI NAMBIAR: That is just an element of it.

SHRI SUBRAMANYAM: Incentive is necessary and off-hand, not being a lawyer, I suggested a way of forcing the assignee to give incentive to the assignor.

SHRI C. C. DESAI: The other day we gathered from Dr. B. Shah of the DG TD that you are free to produce streptomycin in any quantity you liked but during our visit to Pimpri we gathered from you that you were not free to produce more even though it is being imported from abroad.

SHRI SUBRAMANYAM: I am producing it to the extent of my capacity. I have got the knowledge, the designs and everything to double the capacity but I will require some foreign exchange for buying stainless steel and explosion proof power motors etc.

SHRI C. C. DESAI: Stainless steel is available in India.

SHRI SUBRAMANYAM: No; they are importing stainless steel and are fabricating the things here.

SHRI C. C. DESAI: What would be the cost of import of stainless steel?

SHRI SUBRAMANYAM: Rs. 30 lakhs to Rs. 33 lakhs, I should think.

SHRI C. C. DESAI: We are importing something like 60 to 70 tonnes of streptomycin. What would be the value of that?

SHRI SUBRAMANYAM: It is S 26 per kilogram.

SHRI C. C. DESAI: I want to know how does it compare? The import of stainless steel will give you permanent capacity. The import of 16 lakhs worth of stainless steel is objected to by the Government while, at the same time, you are importing 60 tonnes of streptomycin per year.

MR. CHAIRMAN: They may not be able to produce 60 tonnes.

SHRI C. C. DESAI: They can double the capacity.

SHRI SUBRAMANYAM: I can double the capacity if I can get stainless steel etc.

SHRI RAGHUNATH REDDY: For how much quantity is your licence?

SHRI SUBRAMANYAM: 80 tonnes.

SHRI RAGHUNATH REDDY: Did you apply for expansion?

SHRI SUBRAMANYAM: Yes; I applied for expansion. They said that the total demand of the country will have to be assessed and all that.

SHRI C. C. DESAI: The I.D.P.L. had been licensed for the production of streptomycin in 1961. Because that had been licensed, this is blocked. I do not know what is the value of 60 tonnes of streptomycin. We go on importing for the last so many years.

SHRI SUBRAMANYAM: My own forecast is that by the time the I.D.P.L. comes into production, there will be increased demand and we can both live together. But at that time there was a lot of uncertainty. The Government informally told me that they would like to watch how the I.D.P.L. takes the market before they could give expansion capacity to anybody.

SHRI C. C. DESAI: The Government should do something. It looks

absurd that they go on importing 60 tonnes of streptomycin every year. How much does it come to in value?

SHRI SUBRAMANYAM: It comes to Rs. 210 lakhs.

SHRI C. C. DESAI: It comes to so much!

SHRI RAGHUNATH REDDY: If we give permission for expansion, how much time you will take?

SHRI SUBRAMANYAM: I will take about 1½ to 2 years.

SHRI RAGHUNATH REDDY: When did you apply for licence?

SHRI SUBRAMANYAM: In 1966. In 1966, we worked out our projects for the next five years and all that sort of thing. We had a lot of possibilities of improvements. We said, "We want licence for this and this and that. We can have further capacity of 80 tonnes of streptomycin per annum for which we will find the resources and the rupee equivalent provided you give a licence and release the foreign exchange." At that time, they said, "Let us see how the I.D.P.L. shapes."

SHRI KANWAR LAL GUPTA: You want foreign exchange for importing stainless steel only or you want some other things also.

SHRI SUBRAMANYAM: Mainly stainless steel.

SHRI KANWAR LAL GUPTA: What will be the total amount?

SHRI SUBRAMANYAM: I cannot tell off-hand. It may be roughly about Rs. 33 lakhs.

SHRI DAHYABHAI PATEL: We visited your Pimpri factory sometime ago. I still remember you gave us a sample of Hamycin which is a new product. You were saying that it will be in the market. Why you have not been able to market it?

SHRI SUBRAMANYAM: I have not received the drug licence yet.

SHRI DAHYABHAI PATEL: How is it? Some samples were shown to us, saying this is what we have produced. That is for external use.

SHRI B. D. DESHMUKH: Have you been able to sell any items abroad?

SHRI SUBRAMANYAM: We have licensed an American Company to produce Hamycin formulations. I get 5 per cent net royalty free of tax.

SHRI B. D. DESHMUKH: How many items you have been able to sell abroad?

SHRI SUBRAMANYAM: Only two; Hamycin and Dermostatin.

SHRI B. D. DESHMUKH: Do you think clause 48 of the present Patent Bill is necessary?

SHRI SUBRAMANYAM: I have already said, it is not neeessary so long as you have a compulsory licence system. You can produce guide-lines as you have done for land acqisition. You can acquire for this also, on the same basis that you give proper compensation as in the case of land acquisition.

MR. CHAIRMAN: Thank you, Mr. Subramanyam, for the evidence that you have given before the Committee and helped the Committee. The Committee will take due note of what you have said in regard to the Patents Bill.

SHRI SUBRAMANYAM: Thank you, very much.

(The Committee than adjourned).

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967.

Friday, the 18th July, 1969 from 10.00 to 11.35 hours and again from 15.00 to 16.45 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Knawar Lal Gupta
5. Shri Hari Krishna
6. Shri G. S. Mishra
7. Shri Jugal Mondal
8. Shri K. Ananda Nambiar
9. Dr. Sushila Nayar
10. Shri Sarjoo Pandey
11. Shri P. Parthasarathy
12. Shri T. Ram
13. Shri Diwan Chand Sharma
14. Shri Ramesh Chandra Vyas.

Rajya Sabha

15. Shri Krishan Kant
16. Shri R. P. Khaitan
17. Shri Arjun Arora
18. Shri Om Mehta
19. Shri K. V. Raghunatha Reddy
20. Shri Pitamber Das
21. Shri Dahyabhai V. Patel
22. Shri Godey Murahari.

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri Sastri, *Additional Legislative Counsel, Legislative Department, Ministry of Law.*
2. Shri S. Ramaiah, *Deputy Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT, INTERNAL TRADE AND COMPANY AFFAIRS

1. Shri K. I. Vidyasagar, *Joint Secretary.*
2. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks, Trade Marks Registry.*
3. Shri Hargundas, *Under Secretary.*
4. Shri R. V. Pai, *Joint Controller of Patents, Designs and Trade Marks.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Council of Scientific and Industrial Research*

Spokesmen:

1. Dr. Atma Ram, *Director General, Council of Scientific and Industrial Research, New Delhi.*
2. Shri Baldev Singh, *I.L.O. & E.O., Council of Scientific and Industrial Research, New Delhi.*
3. Shri R. B. Pai, *Patents Officer, Council of Scientific and Industrial Research, New Delhi.*

II. *Dr. S. L. Mukherjee, C/o. Sarabhai Research Centre, Baroda.*

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1. *Council of Scientific and Industrial Research*

Spokesmen:

1. Dr. Atma Ram, *Director General.*
2. Shri Baldev Singh, *I.L. & E.O.*
3. Shri R. B. Pai, *Patents Officer.*

(*The witnesses were called in and they took their seats*).

MR. CHAIRMAN: Now I call the meeting to order.

Mr. Atma Ram, we are grateful for your coming over here. Please give us views about the patent Bill in particular and in short. The Members will put questions to you. Please note that whatever you speak here is liable to be made public under the rules.

SHRI ATMA RAM: I would like to thank you at the outset as also the Members of the Committee for giving me this opportunity for expressing my views on the Patent Bill. I should like to say, with your permission, that the views that I express are in my personal capacity as a Scientist and not the official views of the CSIR. Sir, you have asked my views about the Patent Bill. I think there are two aspects—scientific and technical aspect and social aspect. I am inclined to express the view that as a Scientist I am not opposed to taking patents. I think disclosure of scientific knowledge which is the purpose of the Patent, helps in the growth of science. Otherwise, if a person does not disclose what he has observed or has invented (other scientists may be doing the very same thing) and it may retard the progress of Science, what possibly is to be discouraged and I believe that every-

thing that can be done to discourage, to stop the misuse of a Patent of a knowledge should be done. This, in short, is my approach to the Patent.

MR. CHAIRMAN: Would you express views about different Sections of the Bill or particular provision of the Bill which you feel important?

SHRI ATMA RAM: Sir, there is one provision which is given in the Bill for the right to use Patents—whether processes or product—under certain conditions. I think it will be better whenever such patents are taken over whether under an emergency or for any reason some compensation or some consideration should be given to the person who holds patent, because after all when you are giving the protection to the patentee and when that protection is being taken away, some consideration should be given. It should not be that the patent is just taken over. This is wholly feel. I think this is given in Clause 48.

MR. CHAIRMAN: Will you say something about licence of right as per Section 86 and 88?

SHRI ATMA RAM: About Licence of Right, I think the provision is important. There can be cases and particular reference has been made in the Bill to cases of drugs, food and things of that type. I think there should be some right if somebody is misusing a patent on keeping and sitting over it and not allowing its utilisation whether it is a process or a product. There should be some mechanism by which the Patentee would be made to disclose or give rights for utilisation. But I think that there should not be any right that the patent can be used by anybody and everybody. There should be a Machinery for negotiating the Patent, the Controller Genl. of Patent or some other authority could be designated by the Government to fix the terms under which that right should be given.

MR. CHAIRMAN: Will any one of you add to it?

SHRI ATMA RAM: Sir, there is one view-point and that is it relates to the very system of examining the patent. In some countries there is what is known as the deferred examination system of patent. It serves, I think very useful purpose and in some countries it has been adopted. Some countries are considering the adoption of this particular system. In the patent system an inventor takes a patent, see whether there is any novelty in it, one has to see whether the novelty has already been disclosed or not, whether it is public knowledge and things of that sort. It puts lot of burden on the patent examination system which we have. By deferred examination system a person gets priority and the moment he files his invention with the patent office. The patent office only examines just the ordinary requirements of the patent and they do not go through all the intricacies of the examination. After that it is kept open for 5-7 years. During that time the patentee can examine the utilisation angle and workability of the patent. He can have a second look at the patent say if it should be examined. The patent is published. It is open to the public to examine it. Even others can approach the patent office. Say they would like the patent to be examined. They have to deposit certain fees, Rs. 400 or Rs. 500 in our currency. That could be done. That will take away a lot of infructuous work in the patent office. At the same time the patentee will be safeguarded. Those who want to see the patent will have all the facility provided in the patent system. I can give you a list of the countries in which it is in vogue, if you like.

MR. CHAIRMAN: About period. what is your opinion, with regard to drugs and other things?

DR. ATMA RAM: 10 year period is given for drug and food and things of

this type, and 14 for others. This is a matter of opinion; of statistics also. We have now fixed 14. One might fix 10 for something. One might fix 20 or something like that...

DR. SUSHILA NAYAR: Or less.

DR. ATMA RAM: It may be less also. This just becomes a matter of opinion. My own feeling is this. 10 year period in fields in which there is very strong pressure of competition there is fairly high utilisation factor, I think, sould be good enough. But one might ask for more 12 years or 14 years or 15 years or for others. I don't hold any particular opinion in the matter. 10 year period should be enough, should encourage people to take steps quickly and expeditiously.

MR. CHAIRMAN: You said automatic licence or right will be negation of granting patents and I want to know whether you have got anything to say about research activities because of the automatic license of right.

DR. ATMA RAM: What I feel is that there should be a machinery for negotiating. i.e. between the patentee and the persons wanting to use it. There should be a machinery to help in this. We should make a provision that all such negotiation should be completed within a certain period. The Committee can fix any reasonable period so that negotiation is not endlessly prolonged. Another thing is this: Why should the patentee also get right of import? Patent is given for protection of knowledge. If along with that, the right of import is given, I think, that is where the difficulty has arisen.

DR. SUSHILA NAYAR: Before they start production within the country the patentee may import; somebody else may import.

DR. ATMA RAM: Supposing we do not have the import restriction, and supposing for the sake of argument, we do not have any import rules. Person can bring or import the material—not necessarily that material—and there are drugs, compounds and other things which may be very much allied, may be slightly different. What possibly comes in the way is that along with the patent there is also confirmed a right to import. I think this should be looked into. If this is looked into I think many of the difficulties can be solved. That is what I feel.

DR. SUSHILA NAYAR: The second point is this. A number of scientists from various organisations appeared before us. By and large they were of the opinion—I think practically everyone of them was of the opinion that to-day the Patents Law operates as an obstacle in their way and so they want a holiday from patent for 15 or 20 years so that they can develop all the various patents and the knowledge that is already there. They can experiment them and they can perhaps improve them in some ways. But today that is being thwarted at every stage because of the patent's rights. They are now treading on someone's toes. They are of the view that they can develop sufficiently well after ten or fifteen years, when we may have by all means Patent Law. After so many years they say they will be fairly on a strong footing. To-day that advantage is by and large with the other countries which have developed much more than we have. After we have developed sufficiently it would be all right to have Patents Law. To-day it is not all right and it is not in the interest of the country. What have you to say to this?

DR. ATMA RAM: I may be permitted to have a slightly different view on this question. I won't say that giving a patent as such stands in the way of scientific progress. I would not accept it. The, persons having the knowledge can say, "all right, we will also not disclose our knowledge". I think that it will be a sort of a set-back to the advance of

scientific knowledge. Therefore, we should make more concentrated efforts to advance our own knowledge, our own technology etc rather than to protect ourselves by this sort of patent a holiday. If we are protected, the tendency is to work on an invention rather leisurely. I think the pressure of competition is one of the things which should be welcomed.

DR. SUSHILA NAYAR: It is in this pressure of competition that we have thought about the compulsory licensing of right to see that monopoly is not there.

MR. CHAIRMAN: Your question is about the abolition of the Patent Law.

DR. SUSHILA NAYAR: So far as this is concerned this is what I have understood him to say.

SHRI DAHYABHAI V. PATEL: But he has to file before the Patent Office the know-how to obtain a patent. That is in order to avoid making commercial use of that by any other person. But, if a person who files his application for a patent only for writing purposes, that is not covered I suppose.

DR. SUSHILA NAYAR: As a scientist will you say that the knowledge that is given or the information that is given in the application for a patent is enough for anyone else to copy? We went to a number of places and we were told that that was not enough. But something more was necessary. In a number of places it was said that when you pay royalty, they should give up the know-how also. Obviously the know-how is not given in that application. What would you comment on that?

DR. ATMA RAM: Madam, I would like to split this up in two parts if you will permit me to do so. The patent as it is provides—this is what I have seen; my knowledge of course is limited—certain information. But the patent is not a complete recipe to put that into use. It gives that there is a certain process and certain method to heat this, to filter this and to polish this or to mix this and so on and so forth. That information is an indication that a product or a process to be evolved in this manner while the know how gives the information that it can be done this way. That is how you will establish it, you will erect your machinery and you will do this that or the other. This knowledge is only to make a thing or a part of it in actual practice.

DR. SUSHILA NAYAR: In other words the knowledge that is given in the application is not complete but it is only a partial knowledge. *Ipso facto* it does not enable any pers to produce that.

DR. ATMA RAM: The patent has described the inventive part of a product or a process. For instance I say that I filter this mixture or add these ingredients. Much will depend upon the operations in the factory that I want to establish. A patent will say that I filter this or I grind this or I heat this and so on. Whether I heat it in a stainless steel or in a vessel of a circular dimension, is slightly different.

MR. CHAIRMAN: To what extent it is going to disseminate the knowledge for our own use.

DR. ATMA RAM: The patent does disclose some knowledge. Otherwise there is no need for a patent. And I don't think that it is anybody thesis that at a man with a patent may disclose all and everything about a know-how.

DR. SUSHILA NAYAR: All right. Now, with regard to royalty, there have been two viewpoints placed before us—one is that the ceiling of 4 per cent that we have fixed is necessary. Otherwise they may ask for 10 or 12 or there may be cases when they may ask for 25 per cent. the

other viewpoint placed before us is that even in the last several years we have not given more than 2.55 per cent or 3 per cent ceiling. When you put a ceilihg, it has a tendency to become a norm. So, instead of 1 per cent or 2 per cent everybody may be getting 4 per cent or nearabout 4 per cent. It will be detrimental to the interest of others. And it may cause a psychological scare in the minds of the people coming from some other countries. So if we are putting a ceiling for the patent, you may ask more or less. So, do you think that the ceiling of 4 per cent is quite justified or do you think that this is unnecessary to fix a ceiling?

DR. ATMA RAM: In my view the ceiling that is put is good. But it might be used as a normal thing. A smaller percentage might be operative at present in many cases. Also there is a possibility that for some of the patents or processes that we have to bring for use in our country this might create a sort a psychological scare. So, my own view would be that we can postpone the question of a celling percentage. After all this 4 per cent also has been derived after going through statistics which are available. Would it be possible to have a machinery to fix this? Of course at present we have a licensing committee and a Foreign Investment Board in which some of these things could be discussed. When we allow this royalty or that royalty, the examination of these things should be made more strict because at some places there might arise a situation when we might have to bring in a process and we might make an attempt to avoid this 4 per cent. The expenditure may continue to be incurred. That might only be on paper. Perhaps it may be a better idea not to lay down or fix a ceiling of 4 per cent, 5 per cent, 6 per cent or 1 per cent. It is better that this is left free subject to acceptance. After all, we have the licensing and other committees wherein these things are brought. So, subject to the acceptance by this committee this can be done.

DR. SUSHILA NAYAR: Dr. Saheb. you have spoken about the competition. You said that it would do good. But, in the given circumstances, in India, we have got no developed industry for drugs, particularly, in food processing and so on. Foreigners have got a better knowledge and having advanced too far, they are having a lot of patents here in India and we are coming in the picture. So, in this competition, don't you think that we have a very serious and unequalled competition from which we all suffer? Don't you think that we are far behind them?

DR. ATMA RAM: I should think that if we bring in the question of licence of rights and also the controlling of the import of patent rights—these are the two backgrounds—there should be no need for stopping the patents completely.

SHRI NAMBIAR: I suppose this won't do any harm.

DR. ATMA RAM: As I said, we must give thought to import rights of the person who takes patents. This should be looked into. The other point is about the system of giving right of licence. If these things are looked into, I don't think we will have any difficulty.

SHRI NAMBIAR: The industry also must be encouraged to produce the items in India rather than to import them from abroad.

SHRI JUGAL MONDAL: Do you think that the present Bill does not give you that much guarantee and so you would like to say that a little improvement is to be made therein?

DR. ATMA RAM: I very much think so.

SHRI NAMBIAR: Another point is this. Some of the witnesses who came here said that in the current Patent

Law that we have pesticides, germicides etc. also have been included. Now we are excluding them from the operation of the Bill. The witnesses felt that pesticides, germicides etc. are a part of the chemical industry and so these are very much necessary. With the return which we are anticipating they felt that these items also should be included. What is your opinion on this?

DR. SUSHILA NAYAR: They also said that we are making too many restrictions because we have excluded pesticides etc. from the definition of the drugs.

DR. ATMA RAM: I would again come back to the same thing. We should make a provision that whatever patent is taken for drugs, for pesticides etc., we should make a very clear provision in our Patent Bill that the moment a patent is taken there should be a time limit for its utilisation. If we allow the period of 10 or 15 years I think it will be too long a period. We should fix the time limit that if a patent is not used within such and such a period it automatically lapses.

DR. SUSHILA NAYAR: Would you say that if the patentee does not exploit a particular process that he has patented within a specific period of say three years or whatever may be the period, then that patent should automatically be revoked or treated as lapsed?

DR. ATMA RAM: Yes, I said that.

SHRI NAMBIAR: It becomes frivolous if one comes forward with a licence of right etc. We should abrogate this *suo motu*.

DR. ATMA RAM: There should not be any exception in that.

SHRI NAMBIAR: That means we must improve the Bill a little bit.

SHRI PITAMBER DAS: About the protection of scientific knowledge you said something. I would like to know whether you advocate for that protection to the extent of creating property rights in that invention or say monopolistic rights in that?

DR. ATMA RAM I should like to make it clear that I do not advocate any protection to scientific knowledge as it is science. What protection does a patent give to an invention or a discovery? There is a novelty and there is a prospect of its being put to use. I certainly am opposed to any monopolistic rights being given .

SHRI PITAMBER DAS: The potentiality for acquiring scientific knowledge is god given. Potentiality is there by birth, and the knowledge can only then be acquired. Do you believe in that?

DR. ATMA RAM: When a patentee has disclosed knowledge, after all this can be used by everybody who reads it. We can take advantage of it. I shall give you an instance. Suppose somebody has patented a drug I use this, I put this and I do this. This is after all knowledge. Everybody is free, on the basis of that knowledge, to make further improvements. Now the person who has got a certain protection under the Patent Law also would like to see, with this knowledge, that further improvements are made in that. What I mean by that is that when the knowledge is disclosed, it helps others to improve on that knowledge and advance further.

SHRI PITAMBER DAS: That is all right. I want to know whether that knowledge alone makes one fit to make further discovery or further invention. The potentiality for acquiring and making use of that knowledge is God given. For instance, you have a certain knowledge but I have no potentiality to improve upon or to acquire that knowledge. Potentiality for acquiring knowledge is God given and

as such the person who comes to acquire that knowledge holds it as a trustee for the society. Do you believe in that?

DR. ATMA RAM: Yes, Sir. As far as potentiality is concerned, I think that we are in the field of potentiality and not actuality.

SHRI PITAMBER DAS: I am talking about the potentiality for acquiring that particular knowledge. I have got a potentiality for particular knowledge—not of Science but of Law. Here I am talking about the potentiality for acquiring the knowledge on Science—necessary for the invention and discovery. Broadly speaking everybody has got some potentiality; even a thief has got it.

SHRI GAUDE MURAHARI: I would like to have your views on this. Today, most of our patents are for manufactured goods. Therefore, this scientific knowledge is being patented. In my opinion nobody can patent a fundamental scientific knowledge. Fundamental research does go on in spite of patents and othur things, So, in the world of manufactured goods, as we stand to-day, is it not to our advantage not to have any Patent Law for a few years so that our entrepreneurs might develop whatever the knowledge or break-up of manufactured goods that are already being done in other countries, and make an advance on them. To-day patent would stand as a kind of an impediment on our breaking into the sphere of manufactured goods. So, I would like to have your views on this whether you would not prefer the idea of having a complete holiday so far as Patents Law is concerned in this country for a period of say five or six or ten years so that within that period we can think of the Patent Law as we are contemplating now?

DR. ATMA RAM: If I have understood you correctly, some patents have been taken by people of other countries. They keep them sealed. Only the papers can say that such and such a patent is there. The only difference in the holiday is that that patent would not be taken in India. There can be a patent taken in Germany, England, America and other places. That will mean that that patent should not be taken in India. Therefore, to say that taking a patent in India will stand in the way of knowledge, this or that will not be very correct to say. What I have been saying is that we should better say that we grant this but we should insist that it should be utilised within a certain period. After all, we are living in this world and there are different laws; we have our own relations and understandings—international or otherwise. We should rather insist that the patent, once it is taken, should be utilised within a certain period and if it is not put into use, it automatically lapses.

SHRI GAUDE MURAHARI: Then what period would you suggest for that?

DR. ATMA RAM: It would be difficult for me to suggest. I think this should be done according to the experience. After all some patents have been taken. I do not know exactly how many of them have been taken.

DR. ATMA RAM: I understand about a lakh of patents have been taken so far. The earliest patents might have also lapsed. If a patent is not utilised within specified period it automatically lapses; it gives no further rights.

श्री सरजू पाण्डेय : आप के ख्याल में प्रासेस को भी पेटेंट देना जरूरी है या कि प्रोडक्ट को ही पेटेंट देने से काम चल सकता है ?

डा० आत्माराम : अगर किसी प्रासेस से कोई प्रोडक्ट बनाया जाय तो प्रासेस को पेटेंट देने से आप ने प्रोडक्ट को भी कवर कर लिया लेकिन केवल प्रोडक्ट को पेटेंट देना ठीक नहीं होगा ।

श्री सरजू पाण्डेय : बहुत से लोगों का ख्याल है कि प्रासेस को पेटेंट करने से दूसरे लोगों को प्रोग्रेस में बाधा उत्पन्न होती है । इस के बारे में आप का क्या ख्याल है ?

डा० आत्मा राम : फिर तो पेटेंट होना ही नहीं चाहिये । इस में बाधा का क्या ख्याल है ?

श्री सरजू पाण्डेय : अगर आप प्रासेस को पेटेंट न देते तो शायद दूसरे लोग उस से भी अच्छा बना सकते । लेकिन इस तरह से तो आप रास्ता ही ब्लाक कर देंगे दूसरे लोगों का ।

डा० आत्मा राम : अगर कोई दूसरे तरीके से कोई चीज बनाना चाहता है तो आप उस प्रासेस को पेटेंट दे सकते हैं फिर तीसरे को दे सकते हैं । लेकिन यह कहना कि आप प्रासेस को पेटेंट न दें सिर्फ प्रोडक्ट को ही दें इस से तो बेहतर यही है कि पेटेंट हो ही नहीं ।

SHRI C. C. DESAI: What should be the life or term of the patent?

DR. ATMA RAM: Formerly it was 16 years. In some cases it is proposed now to be 10 years. These are statistical things. Some people may say that it should be more, and some others less.

SHRI C. C. DESAI: As the Director-General of C.S.I.R., what is your view?

DR. ATMA RAM: I am expressing my views as Atma Ram and not as the Director General.

MR. CHAIRMAN: The point is whether you agree to the proposal of 10 years and 14 years, which is now made.

DR. ATMA RAM: My own feeling is that shorter period will make the people more and more aware of using it as quickly as possible. 10 years seems to be quite reasonable.

SHRI C. C. DESAI: With effect from what date?

DR. ATMA RAM: It should count from the date of ceiling of patent. In our system it take several years for a final decision whether a patent should be given .

SHRI C. C. DESAI: When the licence of right is given, a patent is entitled to a certain amount of royalty. The Bill provides the maximum ceiling of 4%.

DR. ATMA RAM: When you put a ceiling of 4%, the tendency might be that that becomes the normal. My own feeling is that this should be left either to the Licensing Committee or the Investment Board.

SHRI C. C. DESAI: There is such a Committee in the Ministry.

DR. ATMA RAM: In my view, it may be better not to fix it through a statute. You may have another Committee.

SHRI C. C. DESAI: How much are you charging for your patents?

SHRI BALDEV SINGH: The maximum we have charged is 5½% and the minimum is 1%.

SHRI C. C. DESAI: Have you not charged 8% any time?

SHRI BALDEV SINGH: I don't think so.

MR. CHAIRMAN: This is after deduction of all taxes.

SHRI BALDEV SINGH: Taxes are not paid by the C.S.I.R. . . .

SHRI C. C. DESAI: The N.R.D.C. utilises the discoveries and inventions made by the C.S.I. R. Are they not asking for 5%?

SHRI BALDEV SINGH: There should be a rare case of 5%. Generally, we are between 2½% and 3%.

SHRI C. C. DESAI: Have you licenced any foreign party in respect of your patents?

SHRI BALDEV SINGH: No. But, recently, we have negotiated with an Indian party which has probably foreign holding.

DR. ATMA RAM: I think in one case there is a negotiation going on with a foreign—party.

SHRI C. C. DESAI: What is the period for which you would like to as for royalty?

DR. ATMA RAM: It should be the life of the patent.

SHRI C. C. DESAI: Have you asked for royalty upto 14 years also?

SHRI BALDEV SINGH: Yes.

श्री खेतान : आप ने बतलाया कि साइंटिस्टस की राय है कि पेटेंट होना चाहिये । लेकिन हम लोग जब लखनऊ में थे तब डा० धर और जितने दूसरे साइंटिस्ट्स थे उनकी राय थी कि पेटेंट नहीं होना चाहिये । पेटेंट होने के कारण से उन के काम के प्रासेस में बाधा पड़नी है । क्या कभी आप ने उन लोगों की राय जानने की चेष्टा की ?

डा० आत्मा राम : साइंटिस्ट्स की अपनी राय बहुत से साइंटिफिक मेटर्स में मुख्तलिफ हो सकती है । कोई जरूरी नहीं है कि सब की राय एक सी हो ।

श्री खेतान : वह खाली डा० धर की राय नहीं थी । सब की थी ।

डा० आत्मा राम : हो सकती है ।

श्री खेतान : आप ने कहा कि साइंटिस्ट्स की राय है ।

डा० आत्मा राम : मैंने यह नहीं कहा । मेरी अपनी राय यह है । मैं नहीं कहता कि सब की है ।

श्री खेतान : आज साइंटिस्ट्स अलग अलग अपना काम करते हैं इसलिये कि वह अपनी नालेज दूसरों को नहीं देना चाहते हैं । अगर उन को कोई आनर दी जाय उन के काम के लिये तो वह देश के लिये काम कर सकेंगे या नहीं ?

डा० आत्मा राम : यह कहना जरा मुश्किल है कि उनको पेटेंट न दिया जाय और उन से कहा जाय कि वह जो कुछ करें उस को छाप दें । मान लीजिये कि आप ने उन को पेटेंट नहीं दिया और उन्होंने सब कुछ छाप दिया तो उस का फायदा दूसरे लोग भी उठा सकते हैं । लेकिन अगर आप ने उस को पेटेंट दे दिया तो आप को राइट होगा सारी नालेज आपको मिले । बाहर के एक मुल्क के बारे में मुझे मालूम है कि किसी चीज को वहां पर पेटेंट नहीं किया गया लेकिन यहां पर उस को पेटेंट दिया गया । जब उस को इस्तेमाल करने का सवाल उठा तो उन से पूछा गया ? बाहर के लोग उस को सीक्रेटली इस्तेमाल करते थे । उन्होंने कहा कि इंडियन पेटेंट से जिस प्रासेस को कवर किया गया है वह उन के सीक्रेट प्रासेस से मिलता जुलता है बगैर यहां के लोगों की इजाजत के हम उस का इस्तेमाल नहीं कर सकते ।

श्री खेतान : पेटेंट होने की वजा से साइंटिस्ट्स को ज्यादा लाभ होता है यह या जो मैनुफैक्चरिंग इंटरेस्ट्स हैं उन को होता है ? आप को शायद इस का अनुभव ज्यादा हो इसलिये आप से पूछ रहा हूं ।

डा० आत्मा राम : यह कहना जरा मुश्किल है । पहले हम को लाभ का स्तर देखना होगा । कोई किसी चीज में लाभ समझता है कोई किसी चीज में । हो सकता है कुछ डिस-कवरीज ऐसी हों जिन को लोग नहीं चाहते हैं कि उन को पेटेंट किया जाय । उन को फ्रीली चलने दिया जाय । जैसे कि पैंसल्यूर की । यह इतनी बड़ी डिस्कवरी थी कि इस को पेटेंट देना शायद क्या देगा वह तो मैनकाइंड के लिये थी ।

श्री देशमुख : क्लाज 48 जो रखा गया है उस के बारे में आप की राय है? यह जैसे वैसे ही रहना चाहिये ।

डा० आत्मा राम : मेरा ख्याल तो यह है कि अगर किसी की भी चीज इस्तेमाल के लिये ली जाये तो उस का कंसिडरेशन जरूर होना चाहिये ।

श्री देशमुख : खास हालात में पब्लिक इंटरेस्ट को देखते हुए गवर्नमेंट पावर रखती है जैसे कि आज कल हिन्दुस्तान के अन्दर दूसरी प्रापर्टीज के बारे में गवर्नमेंट ने अपनी पालिसी रखी है । इस से पेटेंट्स के मामले में क्या बाधा आयेगी ?

डा० आत्मा राम : अगर किसी आदमी को मालूम है कि कभी भी उस के पेटेंट को मफ्त ही किसी इस्तेमाल के लिये लिया जा सकता है तो हो सकता है कि वह पेटेंट कराये ही नहीं ।

श्री देशमुख : वहां तो रेस्ट्रिक्शन है ।

डा० आत्मा राम : मैं समझता हूं कि कुछ कम्पेन्सेशन जरूर मिलना चाहिये चाहे वह गवर्नमेंट के इस्तेमाल के लिये हो या किसी और के इस्तेमाल के लिये हो ।

श्री देशमुख : पेटेंट के ऐब्रोगेशन के बारे में जिस हालिडे की बात कही जाती रही है उस के बारे में साइंटिस्ट्स और रिसर्च करने वालों की क्या राय होगी जैसे कि अभी सवाल उठा कि दस साल के लिये या पांच साल के लिये इस को रहने दिया जाये ?

डा० आत्मा राम : जहां तक मेरी व्यक्तिगत राय का सम्बन्ध है अगर अभी दस साल के लिये हालिडे कर दी जायेगी तो फिर बाद में कहा जायेगा कि बीस साल के लिये होना चाहिये फिर शायद कहा जायेगा कि और उस को बढ़ाना चाहिये । यह बात जरा मुश्किल ही होगी ।

श्री देशमुख : आज जो स्थिति है जो एकानमी है उस पर विचार करते हुए अगर पांच साल के लिये हम हालिडे डिक्लेएर करें तो क्या बाधा पड़ेगी ?

डा० आत्मा राम : जहां तक मेरा अपना ख्याल है अभी मैंने आप से कहा था कि मैं इस किस्म की हालिडे के पक्ष में नहीं हूं । मेरा तो यह मत है कि अगर कोई पेटेंट लेता है तो हम उस के यूटिलाइजेशन पर ज्यादा जोर दें । अगर पेटेंट होगा तो हम कोशिश करेंगे कि किस प्रकार से उस को इम्प्रूव करें किस प्रकार से उस को बेहतर बनायें बजाय इस के कि हम बिल्कुल हालिडे कर दें ।

श्री देशमुख : रायल्टी के बारे में जो सीलिंग रखी गई है 4 प्रतिशत की उस के बारे में आप की क्या राय है ?

डा० आत्मा राम : जब रायल्टी 4 परसेंट फिक्स हो जायेगी तो वह सीलिंग नहीं रहेगी नार्मल हो जायेगी ऐसा मुमकिन है । इस में तो और भी नुक्सान है । इस के लिये कमेटी कोई मशीनरी पेश करे जो नेगोशिएट करे । ऐसी स्थिति में अगर कोई दो चार लोग हों एक ही चीज बनाने के लिये और आप रायल्टी को नेगोशिएट करें तो शायद वह कम रायल्टी भी ले लें । अगर 4 परसेंट रखी जायेगी तो हर एक यही समझेगा कि 4 परसेंट तो है ही ज्यादा क्यों न ले ली जाय । इस सिलसिले में अगर कहीं जरूरत हो और एक्सेप्शन करना हो तो किया जा सकता है लेकिन इस को ओपना रखना चाहिये ।

श्री देशमुख : लेकिन यह तो मक्सिमम लिमिट रखी गई है ।

MR. CHAIRMAN: At present you have no ceiling. They pay only 1 per cent.

डा० आत्मा राम : हम इस से भी कम दें तो ज्यादा अच्छा है ।

MR. CHAIRMAN: Now it is open. But they don't pay more.

SHRI DAHYABHAI PATEL: To keep open is better. When you have the ceiling, the tendency is to go up.

DR. SUSHILA NAYAR: We have taken certain right to produce certain drugs for charitable purposes. That includes import of drugs. This is being done in England and America. But there is a hue and cry against the policy of the Govt. in India. Will you comment on that?

DR. ATMA RAM: There are certain special circumstances, there is some emergency or so. I do not think there should be any difficulty for taking recourse to in emergency, for instance. Government takes powers. So, I do not think, there should be any bar to that.

DR. SUSHILA NAYAR: In Britain they import from Italy for the National Health Service. Drug from Italy would be cheaper than in Britain. They can do it. We in India cannot do it. We are bound by patent law.

DR. ATMA RAM: In Britain also they have patent law.

DR. SUSHILA NAYAR: They have made a loophole for themselves. We could not do it.

DR. ATMA RAM: We can make it bigger.

MR. CHAIRMAN: They want compensation to be paid.

DR. SUSHILA NAYAR: They should be given full compensation.

MR. CHAIRMAN: The extent of compensation should be determined by the Government. It may be some token. The moment we give right to the Government to fix a token, I might fix it very negligent; very very small, just a token.

DR. SUSHILA NAYAR: When there are disputes, we have provided for appeal to the High Court. Nobody could interfere with the process of Judiciary. It is a very long-drawn out process. Secondly, some of the scientists have told us that whenever they try to explain these things in the court, the judge says that he does not understand as to what they are talking. So, they suggested that it would be better if there is a tribunal assisted by someone who understands scientific language. Others say how can we do away with the jurisdiction of the Court. That is the right of everybody to go to a high court or to the supreme court. Would you comment on that?

DR. ATMA RAM: I think there is a case for having a scientist as a judge of the court.

DR. SUSHILA NAYAR: So the idea of having a tribunal appeals to you.

DR. ATMA RAM: I personally do not have much of the experience to appear before a high court or a tribunal. But I would say that any process or any machinery which can lead to an expeditious disposal of the cases my listening to both the parties and coming to a decision quickly should be provided for. If the high court can do it it is good. At present the Controller does it. He listens to the appeal. After that perhaps the Government appoints a Committee which finally listens to the appeal.

DR. SUSHILA NAYAR: But there is no provision for a tribunal.

DR. ATMA RAM: Government has the authority to listen to appeal.

DR. SUSHILA NAYAR: But the appeal lies with the Central Government at present.

DR. ATMA RAM: But the Central Government can appoint a Committee or whatever they like.

DR. JUGAL MONDAL: You just now said that we must give royalty to the patentee. The Government should have the power to import medicines whenever they think it

necessary. You said that they can do so in case of an emergency. Do you think that by paying the royalty the import price would be much cheaper than the manufactured price here?

I am of opinion that the Government might be tempted in doing this whereby the actual producer will suffer or the growth of the Indian pharmaceutical industry will suffer. For instance caffeine does not require to be imported in case of emergency. Still a lot of synthetic caffeine was imported whereby the genuine caffeine manufacturing concerns had to be stopped for years together.

DR. ATMA RAM: These will come under tariff protection—what is the price at which a certain material is being imported and at what price it is being produced here.

DR. JUGAL MONDAL: As regards the international price for any drug if you compare our price with any other country, it is much higher even after paying relief to the patentee. It will be definitely cheaper if the Government is given an open hand to import as and when they like. Don't you think that the growth of the Indian industry will suffer?

DR. ATMA RAM: We should stop import of anything for which there is already production in the country. I think that a better thing would be to determine the reasonable cost of a certain product that is being produced in the country which you wish to import.

DR. JUGAL MONDAL: Suppose that is produced here but still it is imported.

DR. ATMA RAM: That would be a different question altogether. If it is a question of importing a product which is already being produced in this country then it will be a question of giving protection.

DR. SUSHILA NAYAR: That has happened after the devaluation when some liberalisation of imports was done. That came as a temporary phase.

MR. CHAIRMAN: Thank you Dr Atma Ram. We are very grateful to you for your evidence and we hope that the Committee would be benefited by your evidence and we shall see that due care is taken of this.

(*The witnesses withdrew*)

(The Committee then adjourned).

(The Committee re-assembled after lunch.)

II

Dr. S. L. Mukerjee, Director, Sarabhai Research Centre, Baroda.

(*The witness was called in and he took his seat*)

MR. CHAIRMAN: Mr. Mukherjee. we would very much like to have your views on the Patent Bill. We have just now received some sort of a memorandum from you. I hope that before you answer to our questions you will please give us a brief resume of what you want to say and also introduce yourself.

Please note that whatever evidence you give here is liable to be made public.

SHRI S. L. MUKHERJEE: Mr. Chairman, hon Members of the Committee. I am extremely grateful to you in giving me this opportunity to appear before you in person to clarify any issues that may have arisen out of the memorandum that I have submitted to you. It is not my intention to waste your time to go through the memorandum all over again but I will take certain salient features You may have kindly noticed that I have reviewed the Patents Bill from the angle of an inventor *vis-a-vis* an investor.

MR. CHAIRMAN: Please give us a small introduction of what you want to say.

SHRI S. L. MUKHERJEE: I have given it in my memorandum. I have come here in my personal capacity.

I am an M.Sc. of Calcutta University, Ph.D of London university and a Fellow of the Institution of Chemists (India). I am a Government nominated member of Indian Pharmacopoeia Sub Committee on pharmaceutical chemistry section and a panel member of Technical Committee, CDC 4 on Fine Chemicals of Indian Standards Institution. I have carried out extensive research investigations in basic and applied sciences, particularly in pharmaceutical and microbiological chemistry, both in India and abroad and part of my scientific work has been the subject matter of text-book references. I have been intimately connected with pharmaceutical industries in India for more than 25 years. I was a Director of M|s Albert David Ltd., Calcutta, in charge of research and production for 18 years and for the last 10 years I am serving M|s Sarabhai Chemicals as Director of Research and Development.

I am a co-patentee with Albert David Lt., of about 24 Indian patents, which deal with development of new process or process improvements of some important drugs like 'Enterovioform' (Anti-amoebic), I.N.H., PAS, Thiosemicarbazene (Antitubercular), Lignocaine (Local anaesthetic), phenyl butazone (antirheumatic), Camequin (antimalarial), Telbutamide, chloropropamide, DBI (oral antidiabetic) etc. and also one of the true inventers of over 40 patents assigned to K. P. P. Ltd., dealing with process or process improvements of pharmaceuticals, chemicals and potential new drugs. I am also an author of about 50 scientific papers published in India and abroad. I am making this submission in deference to the wishes of some members who visited Baroda two months ago. I am making this submission in my private capacity.

This is the background which I have given in my memorandum. As I was telling you, I have reviewed this Patent Bill from the angle of an inventor particularly an Indian inventor *vis-a-vis* an Indian investor. You all have seen many of the pharmaceutical operations in India and I think you will share my view when I say that the Indian pharmaceutical industry to-day has come to a stage where very generous spending in research by investors and a true, devoted, sustained and continued research activity is necessary to lift the present state of the pharmaceutical industry, from the second position to the primary position so that it can take its rightful place in line with other international pharmaceutical firms.

We, Indian scientists, have too much to do in India. We have very vast resources of natural products, Indian medicinal plants on the one side and we have sufficient expertise who could undertake synthetic drug projects. These two basic factors we have to-day with us. What we need to-day is the creation of a very strong research-base within the industry. I specially emphasize that this research base should be within the industry. If such research base is created, if all the pharmaceutical entrepreneure are providing money for creation of such research to us, we, the Indian scientists, feel sure we will be able to play our rightful role in that. I am rather constrained to remark that the present Bill is not likely to induce either the Indian or the foreign entrepreneur to invest in our own pharmaceutical research in India. On a reading of the Bill any one interested in pharmaceutical research would find that a rather stepmotherly and a very unsympathetic attitude has been shown towards pharmaceutical patents in particular. By imposing very serious restrictions on pharmaceutical patents, the terms of the patents have been shortened. Automatic endorsement of licence of right is given. Compulsory licence is granted. I shall deal with this a little later. These are the restrictive measures which are imposed. I am not aware as to what are the considerations the framers of the Bill took into account for imposing the

severe restrictions. I am of the opinion that if you all have noticed any malpractice within the pharmaceutical industry, I submit, Sir, that measures to cure this would be by other legislative measure or the Government control but not by substantially weakening of the patent. As a scientist engaged in pharmaceutical research, I feel if there is any case where you should show some sympathetic consideration it is the pharmaceutical drug discovery where you should show such things and not to other chemicals because research leading to the discovery of new drugs is not only capital intensive, speculative and very long time consuming process but is also associated with risk and responsibility on the part of the drug discoverer to ensure that no public health hazard is committed by putting a drug in the market. Please take a long term objective. Please make a very positive approach to the Bill and do not start with a bias so that the pharmaceutical industry may grow in its full and complete aspects, so that the investor and the inventor can play their rightful role.

The point that I want to make is that unless at this stage—take off stage —the pharmaceutical industry, you do not adequately protect and safeguard with patents, I am afraid there will be no money forthcoming for pharmaceutical research and we shall be in the same stage as we are today, depending entirely on foreign sources, to give us a new drug, to give us a sophisticated process. I am not an expert on the patent law, neither do I possess any expertise in running our pharmaceutical business. I am essentially a scientist and I shall be happy to answer any questions that you may ask in relation to the research and the growth of the pharmaceutical industry.

Before I conclude, I shall very broadly take up a few of the clauses that, in my opinion, require very serious consideration at your hands and, if I may be permitted to say so, rather revision.

The clause that I am particularly bringing to your notice is the term of the patent. You have seen some of the research laboratories doing the new drug discoveries and I have indicated in my memorandum on page 8 the various steps that go in the discovery of a new drug. These are the 11 steps. There is no short-cut. If anyone has to introduce a new drug, he should go through these rigours steps.

Between Rs. 2 to 5 crores has been the estimate of expenditure for discovering and developing a new drug and it takes anywhere between 5-6 years—sometimes even more—to develop a new drug from its preliminary stage of synthesis to the final stage of marketability, the stages being—(1) Chemical synthesis of a large number of probe compounds of different chemical structures ; (2) Elaborate pharmacological screening to obtain preliminary data of their areas of activities; (3) Once pharmacological activity is spotted, large number of related compounds are synthesised to find out the most effective compound in the series; (4) detailed acute sub-acute and chronic toxicity and teratogenic tests on various types of animal species to determine therapeutic index and safety factors; (5) Matabolism and biochemical studies to obtain data on the mode of action of the drug, its degradation products and also evolving procedures for estimation of drug in blood, serum, biological tissues, urine and faeces, etc; (6) Laboratory production to find out economical process of preparation and product evaluation; (7) Development work and pilot plant production to study commercial feasibility and to make sufficient quantities of drugs for clinical evaluation, drawing out analytical specifications of final product and raw materials required for production; (8) Extensive clinical trials in human to determine dosage

schedules, efficacy, safety margin, untoward reaction, if any, and finally to obtain necessary data for registration under Drugs Act, (9) Formulation study to find out the best way of presentation of the drug and stability data; (10) Setting up of actual large-scale production facilities for manufacture; and (11) Sales promotion, technical literature compilation and marketing.

I can very definitely say that these steps will take not less than five-six years. Five or six years go away and only four or five years are left for recovering the research investment. I do not think any investor will willingly spend on research. This is the point which I would very much like you to take into consideration.

Secondly, the new Patent Bill does not provide for any time-limit for acceptance of a patent by the Controller as provided in sub-section 2 of section (10)—"A period of 24 months from the date of application". It is desirable that some time limit should be fixed for acceptance as otherwise undue delay may occur. In view of the contemplated drastic reduction of the terms of patents, particularly for drugs patents, fixing a time limit is considered very essential.

Search for anticipation by previous publication is limited in the existing Act to literature as available in India. Sub-clause (2) of Clause 13 of the Patents Bill, 1967, contemplates also search for anticipation not only in publications as available in India but also as available elsewhere in any document. This is, no doubt, a move in the right direction, but unless the number of examiners in the patent office are cnosiderably increased and the patent office is equipped with better library facilities, undue delay is likely to happen in case of acceptance of the patent. Necessary directions may be given to remedy the situation.

It has been pointed out sometimes that due to quick obsolescence of drugs what is the use of giving a longer time. I totally disagree on this point because if you kindly see the drugs I have enumerated in my memorandum, you will find that the drugs that we use today are more than 16|17 years old and I would like to know from someone, a dozens very important drugs which have gone into obsolescence is five years or so. I could not find out of any important drugs, in this plea of obsolescence, I could not find any justification. Are you contemplating, Sir, about 10 years from the complete specification? In this connection I would like to make an amendment to my Memorandum. I have made a typographical error on page 12, Para 3 Clause 53—filing of the application. It should read 'from the date of filing of the complete specification as it is contemplated for chemicals. I had clearly indicated as is contemplated for chemicals. So, my submission in this respect, Sir, is that you kindly make no differentiation between Chemical Patent and Pharmaceutical Patent and it should be at least 14 years from the filing of the complete specification. If you make a distinction, you isolate pharmaceuticals separately and you restrict others for doing research also in that direction. The second point I would like to make is clause 87—endorsement of automatic licensing right. It is very difficult to conceive how a patent could be endorsed as an automatic licence of right. It goes against the philosophy and concept of patent. What is patent? I need not elaborate but I disclose certain invention fully and completely to you and you give me certain exclusive period of working. This is patent. You to-day say that as soon as my patent is sealed, it is everybody's property. Where is the concept of patent? Why do you give a patent? If you say that I have given the patent, I demand that you give me a right for exclusive working for what-

ever minimum time possible. So, this automatic endorsement of licence of right is wholly against, totally against the concept of granting of the Patent. In this connection I will also point out in as simple way as I possibly can is this. I being a patent holder, I having invested my money in doing research, you equate me to the same position as one who have not done any research and you only give me certain minimum royalty. Apart from royalty to scientists, something else is necessary.

DR. SUSHILA NAYAR: We want to know 'something else', because the whole emphasis is on money.

SHRI MUKHERJEE: If this is the case, I would naturally ask myself why shall I invest in Pharmaceuticals, if it is going to be everybody's property. If I invest 2 crores of rupees to discover the new drug and if it becomes automatically workable proposition to somebody, why should I invest in pharmaceuticals. I better close my pharmaceutical research and start chemical or other research. As an investor the question come up. I have to invest two crores of rupees. I have to ask, would you do under this clause. At least I would not do this because it takes away my right as soon as I file a patent. What I have suggested that this is going to definitely deter pharmaceutical research in India.

Compulsory licensing provision is there which is not working satisfactorily. My submission to that is as far as I have seen this, studied this, pretty long time is required for granting of a compulsory licence. I find lot of time is lost—5 or 6 years. You set the time limit i.e. to 2 years asking for granting compulsory licence —yes or no must be there within the time-limit. If you do this it remedies. You need not have this automatic endorsement.

Another "licence of right" position is that Government should, after certain period, come and can ask for it. If these are not satisfactory my submission to you, is that, give the patentee after grant of a patent some minimum period like five years. I have suggested that if the patentee is given 5 years time to work his invention to recover some amount of money, then let the patent be automatically endorsed as "Licence of right. I think that is my suggestion. I have given on page 14.

No application is necessary after five years. As you might have envisaged in this clause now, nobody should bother. If you give a patent, give an exclusive period of 5 years to work his invention. If he does not work, provision of compulsory licence should come in. If he is working, give him a chance to recover.

Second thing I want to stress is that I being a patentee, I being a discoverer of drugs, I having spent two crores of rupees or one crore of rupees, you want to put him in a disadvantage than somebody, who has not spent anything. I have spent. I have to sell my product as a patentee, as an investor at a higher price than him. This is the situation. I do not know how could a patentee, having discovered a drug, having spent money would be decidedly at a disadvantageous position than anyone who has not spent anything. He pays me 4 per cent royalty. For a small investor this is very bad. Of course I quite agree with you that a small inventor cannot discover any drug but he certainly can make a lot of processing improvement in pharmaceuticals. As a small inventor, he exercises his knowledge and works on that. He gets satisfaction by working on that invention. I am looking into the aspects of a small mushroom inventor. This clause only enables a multi-millionaire to give him a kick

and takes it away from him and make use of it.

DR. SUSHILA NAYAR: But you are already in the hands of a multi-millionaire. And all patents are worked by him and not by you.

SHRI MUKHERJEE: I am doing that today. I do not know what a scientist would be doing some ten years hence.

DR. SUSHILA NAYAR: Scientists are not working their own inventions but some multi-millionaire does them.

SHRI MUKHERJEE: It may be so. The whole idea is like this. I am an Indian, you are an Indian and everybody here is Indian. Unless the inventive spirit is inculcated in the life of everybody, India will never be in good shape for any time to come. The spirit of invention must be from the life of a man. He must be of enquiring mind. Unless that spirit is inculcated, I am doubtful about the future outcome of India. I would not say anything about that. If this becomes a corollary to a question I do not want to go into this. But my submission is this. Please take away the provision of automatic endorsement of the licence of right and give the patentee some period whichever you feel reasonable to recover his expenses partly if not wholly. Don't put him at a disadvantageous position by virute of his invention.

DR. SUSHILA NAYAR: Every drug that is invented went to a multi-millionaire who makes 20 times more profits which any drug industry would have made. So what are you talking of partial recovery of expenses—everyone of them is working for earning a lot of money.

SHRI MUKHERJEE: I think you have not understood me or I have not made myself clear to you. If an invention is worked successfully for a certain period the inventor would be able to recover whatever amount he has invested. The multi-millionaire also may be able to recover his investment from the invention that I have made for him. My submission is this—give him a chance to partly recover his investment by giving a few years of exclusive working.

MR. CHAIRMAN: He has answered your question Dr. Nayar.

DR. SUSHILA NAYAR: We have received your note and you have said all these things therein.

SHRI DAHYABHAI V. PATEL: There is a method of asking questions. The questions may be asked But he should not be interrupted like this. Otherwise his thoughts may be broken.

SHRI MUKHERJEE: I have said this with your permission.

MR. CHAIRMAN: Please go on.

SHRI MUKHERJEE: I have already dealt with automatic endorsement on the licence of right. The other point is about a ceiling of royalty on pharmaceutical patents. My submission about this is this. This will cause a psychological barrier for investment by the pharmaceutical industry on research. I have been very intimately connected with the commercial firms who have been investing money on research. Research job is done by a scientist. His job is to get the investor interested in expending money. In the national laboratories and other Government laboratories money is spent on research irrespective of whether or not it is recovered. We have to recover the money spent on any commercial research. It is a very pragmatic approach. If somebody spends crores of rupees he has to recover that money. For that I must work out a formula—It is a different matter whether it is right or wrong. I may go wrong. But the basis is correct.

If you start with a fixed basis you give him a little shock to say why should he be paid only 4 per cent. If you leave it open; it is well and good. I personally find that this royalty is more or less 4 or 5 or 6 per cent or some thing like that. It will automatically take its shape. If you leave it free, the parties are satisfied that there is no restriction. They will willingly submit to the restriction. That is my contention. To-day what we need in India is research. I am very sorry to say that there is no research in India—there is no pharmaceutical research worth the name. In America a lot of money is spent on research. If you want to encourage indigenous research by the commercial men, something must be done. To-day you give a very good relief on the whole capital investment. That is you give tax free relief for research.

SHRI NAMBIAR: You have got patents protection already. Why is it that we could not do all these years anything worth the name? How many hundred years more we shall have to wait for our country to develop. You please enlighten us on this point.

SHRI MUKHERJEE: I am prepare to face any question. What we have done is this. If you read my preamble you will find that I have prescribed, how the foundation of the Pharmaceutical Industry in India is laid. We have started with a borrowed technology. Then we started developing that technology very quickly.

DR. SUSHILA NAYAR: There were other reasons also. The absence of patent protection or adequate return or the facilities that you are asking for were all there all these years. Yet no Indian had come forward to do that.

SHRI MUKHERJEE: Please bear with me for a while. I have done many things in our laboratory and so many researches have been established not for the new drug discoveries but for the developement of processes formulation development. I have already described as to what are the requirements of new drugs that have been discovered. On these at least Rs. 70 to 80 lakhs of capital must have to be invested. I have also said that with the minimum operations of the drug discovery, our requirement is about Rs. 40 lakhs annually. This is the recurring expenditure that is incurred. You have also visited my laboratory. You would have found that a small beginning had been made. I have calculated that with the sales of over Rs. 10 crores it is only posible to go into Drug research by pharmaceutical industry. Some have tried to reach this Rs. 10 crores level and I think that within the next ten years if you give them sufficient encouragement, they will do it. Please therefore give them the maximum encouragement. Don't take away everything by your hands immediately. Give them time and wait for ten years.

DR. SUSHILA NAYAR: Should we keep this Bill in a cold-storage for ten years?

SHRI MUKHERJEE: That is not the point.

SHRI C. C. DESAI: Keeping the Bill in a cold-storage would mean discouragement also.

SHRI MUKHERJEE: I would very much like to suggest that you give a chance to the present Act for ten years at least.

DR. SUSHILA NAYAR: He wants a chance not to have any amendments to the Act for another ten years. He wants us to keep the present Act as it is for another ten years.

SHRI MUKHERJEE: That was because you wanted me to say so I did it.

DR. SUSHILA NAYAR: Shall we keep this Bill in cold-storage? And would you like the present Act to be continued?

SHRI MUKHERJEE: Another point which I have just for-

gotten to emphasise is the impact shortening the term of the patent on price. To me it appears that it is a simple mathematics. I do not know whether you have overlooked a simple mathematics in curtailing the period. Shortening the period to 10 years from complete specification tantamounts to 4 or 5 years effective working of the patent whereas under the present exist. Act 10 years of the effective working life of the patent to me it is a simple mathematics. Under the shortened period you have to pay nearly double for any new drug discovered. Without cutting the period say for any drug you have set a price of X, I recover cost by price and within 10 years, within 5 years I have to make it 2X. I must say I am not holding brief for anybody. I have in my memorandum said that I come here as a private person interested in seeing and in at least pointing out what are my difficulties in getting Indian financiers involved in pharmaceutical research. If this is done I see no hope for this country so far as drugs researches are concerned. 48 is a clause where you do not pay anything for Government purpose. It appears that Government must make use of it. I am absolutely clear cut on this that there is need that the Government should use a patent but the country should provide a certain amount of royalty whatever you feel. I have suggested the maximum ceiling of royalty as under 88(5). You clearly define these are the things where the Government use 48. If you clearly define like war, emergency, epidemic, flood havoc no confusion will occur when these are clear-cut and defined and, as another example, I am telling you this. Suppose I am an electronic engineer. In this electronic field a small inventor can give a substantial help to the Government. When supposing I find a small equipment which alters the course of the projectile to a different direction that is possible in a small new gadget where does he stand. I say unless this inventive spirit is inculcated from the school boys to the college boys this country is in trouble. Take away from the small man who has invented for the Government, something useful to the Government. You won't give him any money. 48 does not provide for that.

MR. CHAIRMAN: There should be a provision for some payment.

SHRI MUKHERJEE: There should be some provision. Nobody should object to it. Then revocation of patents—clause 89—by the Controller for non-working. On the one hand you make it automatic endorsement of licence of right. That means that when I am granted a patent you are making it automatic endorsement of right. I can ask. I can demand, 'You give me licence on that very day'. when your patent is granted. You may give me the licence immediately or may postpone it for two months but you have to give me the licence and then within two years you revoke the original patent. 2 years is not enough for the patentee to work under the existing conditions in India. For the Chemicals patent it should be at least 5 years after the licence has been given.

MR. CHAIRMAN: 5 years you do not work your patent.

SHRI S. L. MUKHERJEE: After three years you apply compulsory licence.

SHRI NAMBIAR: Compulsory licence comes when you do not work. Suppose I take a patent. I do not work it. I prevent you, such an eminent man from doing it. So the Government steps in.

SHRI S. L. MUKHERJEE: Certain conditions have been given for compulsory licence. It does not work, I take recourse to it and I demand that the licence be granted. I very much suggest that you fix a time limit. Today's failure of compulsory licence working is due to the fact that it takes 5 years or 6 years. I have given it a thought. It will work much better than to put in pressure and undue pressure on a pharmaceutical research worker and pharmaceutical research investor. My personal submission is

2 years is absolutely insufficient. Even if I have the honest desire to start Vitamin C production, it takes 5 years with a borrowed technology, a technology which we have borrowed from Germany. It takes 5 years or 6 years to establish a factory. I am fully aware that a bias has been created. I am also fully aware that Indian scientists are not going to take it so bluntly.

DR. SUSHILA NAYAR: Have you met any Indian scientist? We have had scientist after scientist come to tell us that patents at present are an obstacle in the way of development of pharmaceutical industry.

SHRI S. L. MUKHERJEE: My feeling is that they do not want to work. Who can say this? Either a very small research man who does not have the depth and conviction of drug research. The other is who does not want to invest money. An investor also can say 'I do not want to do any research'. Today every one says 'I will buy the technology. I shall not invest in research. When I can buy the technology, why do you want me to invest.'. Indian scientists will be perpetually under this handicap. Under Clause 89, 2 years is quite insufficient to start manufacturing operations after the grant of patent. I have suggested 5 years. I have not been able to understand clause 93(3)(b). I would like to be enlightened on this clause. If anyone can have the compulsory licence, the Controller can take away my right without assigning any reason and make my patent invalidated. I have suggested that the work 'not' should be put before to read "shall not operater". I think there is some typographical error. I don't know what it is, but it seems to be an absolutely impossible situation that by virute of granting compulsory licence, I lose the right over my patent.

DR. VEDARAMAN: We have taken this provision from the existing U.K. law.

SHRI MUKHERJEE: I am aware of the United Kingdom provision of this nature. There is some missing link here. You please kindly look into this. There are certain conditions precedent for operation of that. Kindly take cognisance of this and try to rectify this.

Under Clause 2(1)(1)(iv), you have included under medicine or drug all chemical substances or intermediates that can be used for making of the drugs. My submission is that it is wholly impracticable. It is impossible to differentiate that whether a compound which I make is a chemical substance only and not for manufacturing any drugs. For example, Hydrazine could be used for making the anti-tubarcular drug and it is also a rocket fuel and a blowing agent.

MR. CHAIRMAN: You mean to say that it will create confusion if distinction is made between chemical substance and drug substance. It will create administrative difficulty also.

SHRI MUKHERJEE: You cannot make any distinction between the two. Today's chemical substance can become tomorrow's drug substance. This clause has to be deleted. Today you have given me 16 years for a chemical and tomorrow you will take it away and give me 10 years. because it can be used in drugs.

SHRI NAMBIAR: When new elements are coming, you will have to do this. Elements you grant 16 years and the drugs 10 years.

MR. CHAIRMAN: He says that it will create administrative difficulty.

SHRI NAMBIAR: Dr. Mukherjee is an eminent person. Some of us are laymen. We don't know much about the drugs, etc. I would like to put one or two questions.

SHRI MUKHERJEE: With respect to drug prices and other things, I am to totally incompetent to answer.

SHRI NAMBIAR: You said that we have not done much in the field of basic research in this country and this is being dealt with by the foreigners because they are advanceed. But ever since our Independence, during the last 20 years or so, we are having this patent protection already. Then, why is it that our basic research did not flourish?

SHRI MUKHERJEE: I fully appreciate your remarks, Sir. But I have something to say in this matter. If you have read first part of my papers, you will find that in the pharmaceutical industry during the last decade and a half, we have taken the shortest course of action that is open to us for the development of this industry. The shortest course is borrowing somebody's technology. Now, when we have come to a level I have said that pharmaceutical industry today is coming to a stage when research consciousness is there something has got to be done. It should have been done before. Perhaps five years hence there will be research in the pharmaceutical industry, which is likely to give impetus to the pharmaceutical industry. Some people are now selling 18 crores, 17 crores or 16 crores. Without that amount of sale, the conception of basic research is impossible.

SHRI NAMBIAR: That is exactly, as you said, five years hence some momentum will come.

DR. MUKHERJEE: There are two ways in pharmaceutical industry. There are two ways of economic development: one, short-term and another long-term. Research comes in between. for long term development.

SHRI NAMBIAR: May I know what is the annual turn-out of Sarabhai Chemical industry *vis-a-vis* drugs, and the money spent on research?

DR. MUKHERJEE: I do not know exactly. Some hon. members must have got this information.

SHRI NAMBIAR: Sarabhai is such a famous and the top most chemical industry in India. It spends only Rs. 25 lakhs on research, whereas its annual turnover comes to several crores—Rs. 250 crores?

DR. MUKHERJEE: No, Sir. It is not that. The whole pharmaceutical industry's sale is below Rs. 270 crores. As far as I know, we are one at the top and we cover about 8 per cent of whole India's market. In this, I may perhaps be wrong in my statistics; but I won't be very far wrong.

SHRI NAMBIAR: This is about Rs. 25 lakhs?

DR. MUKHERJEE: I perfectly agree. Of course, with 50 lakhs I could show batter results. I have been with them for ten years now. But you should think very seriously into this aspect of the matter.

SHRI NAMBIAR: You were telling us just now that by shortening the period, the prices will go up?

DR. MUKHERJEE: Of new drugs, not the old drugs.

SHRI NAMBIAR: You gave us a formula. It means the patent period has got a bearing on the prices?

DR. MUKHERJEE: That is right.

SHRI NAMBIAR: Several drugs which we are importing, or which have got the patent, are being sold at fantastic price—some times @ 400 or Rs. 500. It has a bearing on the capacity to pay and for the people who use it and the Government is here who looks after price and drug control.

SHRI MUKHERJEE: I suggest that you do not mix up patent. I am

only technically competent to say on the patent or research aspect. But I am not competent to say on price. I can produce a graph today with the fact that on shortening of period what is the impact? I can tell you that after 12 years the graph comes parallel to horizental axis line. If you extend beyond 12 years, there is no price reduction possible. On 12 years effective working, the line comes to the horizontal position in the graph but on shortening the period by one year the price will incrase by so much percent of soon. Beyond 12 years the decrease is negligible. I can prove that by shortening effective period by 5 years, the price will double really.

SHRI ANANDA NAMBIAR: Do you know that the patents given to foreigners are not many and not being worked in India and the production is made outside? Is it to continue in our national interest?

SHRI MUKERJEE: Emphatic 'no'. If they do not work here, you have the provision to revoke.

SHRI ANANDA NAMBIAR: Suppose they do here formulations. They do the basic chemical work and they bring in here and formulate it.

SHRI MUKERJEE: Sir, the patent is not formulation. The patent is for working the thing. If they bring it out, you fire them. You revoke it, if necessary.

SHRI ANANDA NAMBIAR: We are speaking about experience. Why cannot you restrict it?

SHRI MUKERJEE: The patents are the outcome of research. Though research, discovery is possible. We have not done the research in new drug. Neither we have done very much in the process part of it.

I can tell you from my own experience. I was not with Sarabhai 10 years ago. I was with Albert David Ltd. I was responsible for circumventing Geigy's Butazolidine. I was responsible for circumventing, an oral antidiabetic which Hoescht who claim to be the only people. It was within the ingenuity, within the skill of a scientist to do such a thing. To-day I am very happy that you have adopted the process patent. You have adopted the process by-product patent and I do not think, the scientist will be failing in their exercise to circumvent. I have said in the circumvention art sometimes more skill is shown than the patent. Circumvention induces competition. I am trying to tell you that cloropromazine is Rhone-Poulene patent of France. When that was known hundreds tried to modify the molecule. They put cf3. Rhone Polene gave others to improve upon the product by doing a little structural modification. So, it is very good basis for work.

SHRI ANANDA NAMBIAR: Are you a Member of OPPI? What are the functions of OPPI? Does it stand in the national interest to develop its own basic chemical industry as well as pharmaceutical industry?

SHRI MUKERJEE: I am not in a position to say.

SHRI D. C. SHARMA: Pharmaceutical work is most paying in this country and that is evident by one thing only. You must have seen the sajesmen of the drugs. They throw over the drugs in any way they like. They give them to their friends, etc. You cannot do so unless you are fabulous.

Pharmaceuticals have elminiated the medicine doctor from the field. I do not talk of surgery doctor. People say give us Novelgin or give us something else. They already know what they want and therefore this has done a lot of harm to India. Surgery is progressing in India. The medicine is going down and down.

We want medicine for the rich as well as for the poor. There are more poor in this country than the rich and I think this pharmaceutical industry has made rich man comfortable and poor man feel very very

uncomfortable. We belong to the Central Health Scheme or some such other scheme. We have not to pay for them. But take the case of some poor man in the village. He has to pay for his medicine. Therefore, I think, sir, that this pharmaceutical industry should be taken over by the Government. The whole of it should be taken over by the Government.

SHRI S. L. MUKHERJEE: This is in your hands to decide.

MR. CHAIRMAN: He says, this is in your hands and I have no answer.

SHRI ARJUN ARORA: Would the real scientist get the reward or benefit out of the patents? What is your experience? What percentage of profits made by Albert Davies Ltd. as a result of those patents have come to you?

SHRI S. L. MUKHERJEE: In Albart Davies was getting one per cent on the sales of all the patents that were marketed by the company. I am a joint patent-holder.

SHRI ARJUN ARORA: When you left Albert Davies Limited did you continue to exploit your patents?

SHRI S. L. MUKHERJEE: I left them under terms of the agreement that I shall also be free to exploit those patents if I manufacture those drugs.

SHRI ARJUN ARORA: You don't have the resources and Albert Davies Ltd. continue to pay you that 1% after you left them.

SHRI S. L. MUKHERJEE: Under terms of the agreement.

SHRI ARJUN ARORA: Dont' tell me the effect, please tell me the cause

MR. CHAIRMAN: He says, under terms of the agreement, I do not get it.

SHRI S. L. MUKHERJEE: Under terms of the agreement I would be free to work that. My present employer is not interested.

SHRI ARJUN ARORA: Do you have financial resources to work it?

SHRI S. L. MUKHERJEE: No.

SHRI ARJUN ARORA: Do the ordinary scientists have the financial resources to work the patent on their own? You are old scientists, you should know.

SHRI S. L. MUKHERJEE: I am not born with silver-spoon in my mouth.

I have to work hard for my livelihood. I do not have the resources. Generally scientists must go to some commercial establishments to show their merit. That is my feeling. They can't independently do it.

SHRI ARJUN ARORA: The real profits go t othe commercial firms| manufacturers. Only a nominal portion, if any, comes to the scientists. Is it so?

SHRI S. L. MUKHERJEE: In some cases they get very high salaries and work for their employers. In some cases the employee is rewarded by some special promotion, by giving equipment facilities, and greater facilities for scientific work and that constitutes satisfaction to the scientist.

SHRI ARJUN ARORA: You got 1 per cent from Albert Davies. Apart from you, is there any other scientist who drew more than 1 per cent or is 1 per cent the general rule?

SHRI S. L. MUKHERJEE: I am not aware of the conditions prevailing in other laboratories. I am very sorry I cannot answer that question properly.

SHRI ARJUN ARORA: Do you know of any invention, of new methods by surgeons, in the field of surgery for instance? Do you know that they invented some new methods?

SHRI S. L. MUKHERJEE: No.

SHRI NAMBIAR: New skill, he means. They don't patent it.

SHRI S. L. MUKHERJEE: I don't know.

SHRI ARJUN ARORA: Are you aware of patent of new skill by any surgeon?

SHRI S. L. MUKHERJEE: I am not aware.

SHRI ARJUN ARORA: Will you please try to find out and write to us about this?

SHRI S. L MUKHERJEE: I will try.

SHRI ARJUN ARORA: You are in favour of revocation of patent in case the patentee does not put into commercial use in this country.

SHRI S. L. MUKHERJEE: Within a certain reasonable time.

SHRI ARJUN ARORA: What is reasonable time?

SHRI S. L. MUKHERJEE: 5 years.

SHRI ARJUN ARORA: In respect of Sarabhai Chemicals, do they manufacture any pharmaceutical product without foreign collaboration? When I visited them in 1966 I found even detergents like tinopal were manufactured with foreign collaboration...

SHRI S. L. MUKHERJEE: You mean, optical bleach, which is under collaboration. I have joined them about 10 years back and we had, not research, but a development section and out of that development section, various products were developed which went to commercial production.

SHRI ARJUN ARORA: The PAS was not invented in India. The person who invented it did not take any patent. But you took the patent.

SHRI S. L. MUKHERJEE: It is not a product patent. It is a special process. PAS is usually made under high pressure or under liquid, phase. My process of manufacture is under ordinary pressure in solid phase.

SHRI ARJUN ARORA: The original inventor did not seek patent. He thouht, for the sake of humanity, there should be no patent. I want to know about that inventor.

SHRI S. L. MUKHERJEE: He was a University professor, Prof. Lehmar in Sweden. He first found PAS is anti-tubercular. Patent was not possible then. He disclosed the property and there are a lot of patents on the manufacture process of making PAS.

SHRI ARJUN ARORA: Did the original inventor of PAS take a patent or not?

DR. MUKHERJEE: I would submit to you that he is not the inventor of PAS. I would say that the properties of PAS were found by a Professor in Sweden and he did not claim any product patent. But for making PAS there have been numerous processes and patents.

SHRI ARJUN ARORA: When you applied for a patent of particular process of manufacturing PAS, did not your conscience prick you at that time? The original inventor did not get a patent because he thought the drug should be made available to humanity at large and you were taking a patent of a particular process to manufacture the same drug. Didn't your conscience prick?

DR. MUKHERJEE: Not at all, Sir, if you permit me to say so. I got the greatest kick in my life to find out a new and novel process to manufacture PAS under atmospheric pressure, which was not known.

SHRI ARJUN ARORA: Then, coming to talbutamide, what is your process? Is that process different from the process of Hafkin's Institute?

DR. MUKHERJEE: Very much so.

SHRI ARJUN ARORA: Is it different from the process of the Hoescht?

DR. MUKHERJEE: It is very much so.

SHRI ARJUN ARORA: I am very sorry that the Indians did not put it to commercial use.

DR. MUKHERJEE: We first manufacture Tobulamide in Albert David Hoechest delayed as Scientific know-how had to be imported from Germany.

MR. CHAIRMAN: Dr. Mukherjee, thank you for your evidence.

DR. MUKHERJEE: I thank you for your patience. If you want from me anything more, I am at your disposal for all time to come.

MR. CHAIRMAN: Thank you.

(The witness withdrew).

(The Committee then adjourned)

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967.

Saturday the 19th July, 1969 from 09.30 to 12.55 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Hari Krishna
5. Shri M. R. Masani
6. Shri G. S. Mishra
7. Shri Jugal Mondal
8. Shri K. Ananda Nambiar
9. Dr. Sushila Nayar
10. Shri Sarjoo Pandey
11. Shri P. Parthasarathy
12. Shri T. Ram
13. Shri Era Sezhiyan
14. Shri Ramesh Chandra Vyas
15. Shri Fakhruddin Ali Ahmed.

Rajya Sabha

16. Shri Krishan Kant
17. Shri R. P. Khaitan
18. Shri Arjun Arora
19. Shri Om Mehta
20. Shri K. V. Raghunatha Reddy
21. Shri Pitamber Das
22. Shri Dahyabhai V. Patel.

LEGISLATIVE COUNSEL

Shri R. V. S. Peri-Sastri, *Additional Legislative Counsel, Legislative Department, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT, INTERNAL TRADE AND COMPANY AFFAIRS

1. Shri K. I. Vidyasagar, *Joint Secretary.*
2. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks,*
3. Shri Hargundas, *Under Secretary.*
4. Shri R. V. Pai, *Joint Controller of Patents, Designs and Trade Marks.*
5. Dr. B. Shah, *Industrial Adviser (Drugs).*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

Organisation of Pharmaceutical Producers of India, Bombay

Spokesmen:

1. Mr. Keith C. Roy, *President.*
2. Mr. S. V. Divecha, *Member.*
3. Mr. A. V. Mody, *Member.*
4. Mr. L. J. Wyman, *Member.*
5. Mr. J. N. Chaudhry—*Executive Director, (Administration).*

(*The witnesses were called in and they took their seats*).

MR. CHAIRMAN: We begin now. Mr. Keith Roy, we are beginning evidence on the Patent Bill. Please remember whatever you speak is liable to be made public. Please give a short resume of what you want to say. Thereafter the Hon'ble Members will put questions.

SHRI KEITH ROY: Thank you Mr. Chairman. We are appearing on behalf of OPPI which you know, Sir, is an organisation which represents something like 80 per cent of the total production of drugs and pharmaceutical products in India. There are many things which I wish to bring to the notice of the hon. Members of this Committee. I hope you will pardon me if I take a little longer time this morning because the issues are in this Bill are of vital importance to use in the pharmaceutical industry. I think that from what you have seen during the course of your tours to the plants, you will realise what is at stake in so far as we are concerned. We would take a little longer time this morning for which I crave your indulgence. We have already submitted three memoranda to the Committee and I do not wish to go into details of what is stated therein. We have also submitted to the Secretariat for circulation to Committee a number of charts which I hope will indicate the salient features of the industry's performance.

I would like to emphasise here if I may that from the pharmaceutical industry's point of view we are concerned with this Bill because it should be so framed as being an instrument which will stimulate and encourage Indian inventiveness and Indian research in all aspects.

In our submission, the Bill discriminates against the pharmaceutical industry without sufficient reason. There are a number of clauses in the Bill which will vitally affect the whole field of industrial development in India. In this sense I ask the hon. Members to accept the criticisms which we make of this Bill which will weaken the patent system and the effects that such weaking will have on research development in India as a whole.

Clause 5 seems to us to be totally wrong at a time when India is just entering upon a vast programme of development in the petro-chemical industries. In fact, Sir, the concept of process patent as against of product patent is entirely out of date in the technological world to-day. We submit for the consideration of the hon. Members of this Cammittee that India, at its present stage of development should not embark upon a patent system which covers only process patents and not the product

patents. In our submission, Sir, this is a retrograde step and it would make India a Second-class country in the technological field.

Clauses 47, 48, 53, 87, 88, 93(3) and 95 adversely affect in our submission the total field of inventiveness in India and not merely the pharmaceutical industry. There is another aspect to which I wish to draw the attention of the hon. Members. That is in the Bill as drafted the Government is giving up a number of discretionary powers which it has in the 1911 Act and which we believe should still be retained by Government in order that the Government might use discretion in deserving cases. For instance, under the existing Act, the discretion lies with the Government to extend the period of a patent in certain circumstances. That discretionary power is now entirely taken away by the present Act.

Similarly, Sir, in clause 88(5), there is no discretion now left with the Government in respect of the amount of royalty which can be granted in a particular case. Take for example food, drug and medicines. Under the present Act, the discretion rests with the Controller to assess the amount of compensation to be paid keeping in view the nature of the patent, the amount of money that has been spent on the invention and the good which that invention does to the people. Again, this discretionary power has been taken away from Government and we respectfully submit that a great deal might be lost by giving up this discretionary power. There are also a number of issues of procedure to which we attach very vital importance. As the hon. Members will realise, if these matters of procedure are not put right in the Bill, they cannot be done in the Rules that are to be made. As the hon. Members know, the Rules cannot transgress the general framework of the Act itself.

There are a number of specific points which we would like to touch upon and on which we believe that we have not been able to make ourselves clear. They are under three or four heads. I would like to make a general statement if I may. It is stated in the Statement of Objects and Reasons amended to this Bill among other things that the Bill is based mainly on the recommendations of Mr. Justice Ayyangar.

I regret to say that in our submission this is not a correct statement of the position. Clause 48 says that Government may make use of a patent without compensation. There is no such provision in Mr. Justice Ayyangar's Report. There is no such clause in Mr. Justice Ayyangar's Report as clause 53. There are no such concepts in his Bill as those in clauses 87 and 88--licences of right and the ceiling on royalty. Therefore, we submit respectfully that the statement that this Bill is based mainly on the recommendations of Mr. Justice Ayyangar is not a correct statement of the position. We, Sir, would be happy to accept the Bill as drafted by Mr. Justice Ayyangar but we cannot accept this Bill with the provisions of these four particular clauses as they stand at the moment.

May I try to deal first of all with one fundamental point? I trust the hon. Members will bear with me.

SHRI F. A. AHMED: May I just point out that it is very unfortunate that you have made this statement. It is not said anywhere that we have accepted all the recommendations of Mr. Justice Ayyangar. It may be that certain recommendations may have been accepted and certain others may not have been accepted. Therefore for you to say that there is an incorrect statement made in this Bill is not correct.

SHRI KEITH C. ROY: I have not said that.

SHRI F. A. AHMED: We have not accepted all the recommendations of Mr. Justice Ayyangar. Many of them have been accepted and others may not have been accepted.

SHRI KEITH C. ROY: I have said that several clauses—48,53,86 and 87—do not find a place in Mr. Justice Ayyangar's report.

SHRI F. A. AHMED: You said that this is an incorrect statement made. This is what I am objecting to. You may say that such and such a provision is not there. That is altogether a different thing.

SHRI M. R. MASANI: I am afraid what the witness has said is right and the Minister is wrong when he said that the Bill is based mainly on the recommendations of Mr. Justice Ayyangar's report because there are several recommendations which do not find a place in the Bill. So, the witness is perfectly justified in saying so.

SHRI F. A. AHMED: We have not said that we have accepted all the recommendations. He said that this is an incorrect statement. Some may have been accepted and some may not have been accepted.

SHRI M. R. MASANI: The statement made in the Statement of Objects and Reasons that the Bill is based mainly on the recommendations of Mr. Justice Ayyangars' report is not correct. This is only a distortion of the report.

MR. CHAIRMAN: Let us leave it at that.

SHRI M. R. MASANI: I see no reason for the Minister to pull up the witness.

SHRI KEITH C. ROY: I was going to request that I might make a point which we believe is fundamental to the whole concept of patents. Inventions which result in a patent are the result of intellectual effort and the result of those efforts belong solely to the inventor. This intellectual effort belongs solely to the inventor and not to the community or the State and nobody can force an inventor to disclose his invention. The issue of a patent is only a legal device to enable an inventor to disclose the results of his intellectual effort through which wealth may be added to the community. Through this legal device the State does not confer a gift on the inventor. It does not grant him a privilege. All that it is doing is that in making available his invention to the community, the State gives him some compensation. The inventor pays the price of his disclosure through the compensation which he is granted. In other words the grant of a patent does not deprive the community of something which it had before. It adds to the community's store-house of knowledge. It is because of this basic concept that a patent becomes property. The State in return for the disclosure which the inventor makes gives him compensation, the compensation being the right to work the invention for a limited period of time. Therefore our whole approach to the Patents Bill is whether the provisions of the Patents Bill provide adequate compensation for encouraging Indian inventors to disclose their noval ideas for the benefit of the community. If the incentive, if the compensation, if the reward given by the Bill is not sufficient, then we would suggest that we examine mainly from this angle and see if there is sufficient incentive in the Bill to Indian scientists to disclose their novel ideas for the benefit of the community. It is our submission that the Bill as drafted removes to a very great extent this incentive to discover new things because there is not sufficient reaward in the Bill. It is, therefore, in our submission a totally negative Bill. It is not a positive Bill which gives encouragement to inventiveness and new ideas. Why should an Indian scientist spend his intellectual effort and his money in bringing forth new ideas and making these available to the community if under clause 48 Government is going to take away his patent right without granting him any compensation, without even granting

him a right to a Court of Appeal. The same is the position in regard to clauses 87 & 88. Why should an Indian inventor make available his invention for the benefit of the community if, as soon as the patent is sealed it is automatically and immediately stamped with the words 'Licence of right' which in effect, effectively undermines his right to the patent in that any person, irrespective of that person's capabality, has an automatic right to use the patent? The same is the case with regard to clause 88(5). Why should an Indian inventor who has spent lakhs of rupees on a new idea make that new idea available to the community for a paltry compensation of 4 per cent? I respectfully submit that these three clauses 48, 47 and 88 undermine any incentive that an Indian inventor may have to disclose his novel ideas for the benefit of the community. That is our basic submission.

We believe that it is wrong that the Bill should have retrospective effect. There are a number of clauses in the Bill which have retrospective effect. In other words, patents granted under the 1911 Act will have their rights curtailed. We respectfully submit that a measure of this nature should not have retrospective effect.

We do not wish to base our case on narrow legal issues. We do submit that in this Bill there are very very important matters in the constitutional sphere which are involved. We believe that at least in so far as existing patents are concerned and also in so far as patents that may be granted the new Act, it is unconstitutional to take away idustrial property without compensation as is contemplated under clause 48. We believe that the ceiling on royalty in clause 88(5) also violates the Constitution in that it lays down a ceiling on the royalty to be granted to an inventor in the sphere of food, drug, medicine, irrespective of the nature of the invention. We do not wish to press our case solely on narrow legal issues; but we are advised that there are certain clauses of this Bill which are *ultra vires* of the Constitution, viz., clauses 48 and 87 & 88 and the retrepective effect in the Bill is also *ultra vires* the Constitution. It is clause 48 which gives us the greatest concern. I would like to have the indulgence of the Committee for a few minutes. In the socialist countries of the Eastern Europe, the capitalist countries of the West, in no country of the world is there any such provision as is contained in clause 48. We have discussed this matter in the greatest detail. We are told that Government use under this clause will only be for charitable purposes. If this is the position, we suggest respectfully that the terms and conditions under which use may be made of clause 48 should be spelt out in the clause itself. Government have alreadyy ample powers under clauses 99 & 100 to use a patent. Even if the Government is going to use the powers under 48 for charitable purposes only, we submit that the patent holder is entitled to compensation. If one takes the analogy of Land Acquisition Act if my house is taken under the Land Acquisition Act for a charitable purpose I am entitled to compensation.

SHRI KEITH C. ROY: We can see no reason Mr. Chairman, why, when our property is taken under Clause 48 for Government's use even if it be for charitable purposes, there should not be compensation. We respectfully request the Committee to consider the fundamental principle involved in this clause.

We have made a detailed statement on Clause 53, which deals with the period of patent. We see no reason why there should be discrimination in the period of patent in respect of food, drug and medicine. We have examined the patent laws of 81 countries of the world and only in two of these is there any discrimination against food, drug and medicine in respect of the period of the patent and that is in the U.A.R., and Libya.

In none of the countries of the Eastern European Block, even in Russia, is there any discrimination in the period of patents in respect of food, chemicals and drugs.

The next two clauses which cause us great concern are clauses 87 and 88. Looking at the other provisions of the Bill which give the Government ample right to ensure the proper working of patents in India, there is no need for the concept of Licences of Right. It is true that there is a concept of Licences of Right in the existing law. But that concept is totally different from that which is being embodied in Clause 87. What in effect is the result of Clause 87? It is this. Immediately after the Controller of Patents grants me with his right hand a patent, with his left he puts on a seal of "licence of right". Automatically and immediately, any person, irrespective of his qualifications, irrespective of his capabilities to work the patent in India, has the right to use the patent. We feel that this is an extremely dangerous provision, particularly in the field of food, medicine and drug. The Government are interested in ensuring that spurious drugs are not produced. It is our submision that the inclusion of such a clause will immediately open the field for the production of spurious drugs. The reason for including Clause 87 is stated to be to ensure proper development of the industry. I do not know how there can be orderly development of the industry through this clause. If any man, irrespective of the capabilities, technical or otherwise, is entitled to set up a pharmaceutical factory under this clause, we do not feel that this will lead to the orderly development of the industry. The other point is, with reference to the consequences which flow from this principle, namely an arbitrary ceiling on the amount of compensation which the man can obtain is placed under clause 88(5). We feel that it is completely wrong for the Government to give up the power which it has under the existing Act to exercise discretion as to the amount of compensation that should be granted, after taking into account the nature of the invention, the amount of money which the inventor has spent and the contribution which that invention has made to the public good. Clause 93 (3), in our submission, is far too drastic, for it takes away not only the right of the patent holder, the entire patent right, but also deprives him of his own invention. We do not see any reason for this very drastic clause. It is being stated that this clause is based on the coresponding provisions of the U.K. Act. We have very carefuly examined the U.K. Act and we are advised that this is not so. We request very careful consideration by Government on this point.

There is another clause to which I would direct your attention and this is clause 95(3), which enables the Government to import a patented article. We understand that this is based on the belief that often a patent holder, although he has been granted a patent in India, continues to import patented product from abroad and does not establish manufacturing facilities in India and it is for these resasons that the Government feel that they must have the power to import the patented product. This assumption is not wholly true. A new drug cannot be introduced in India until it has undergone extensive clinical trials in India. These trial take some time—three years or so. During this period, the point holder has no option but to import the product; other wise, the clinical trials cannot be carried out.

Let us assume that any of the patent holder wishes to introduce a medicine in to the Indian market. The patent holder then has to apply for a licence under the Industrial Development & Regulation Act. He must build a plant. This process may take 4—5 years. Therefore, Sir, when a patentholder introduces a new drug into the Indian market, he is faced

with the position that will not go into commercial production for some 8-9 years. It is during this period that he must continue to import the product from abroad, and in our submission there is nothing wrong in that. It has been stated that it is during this period that the foreign patent holder imports his finished product at a very high price. This is not possible because the Import Trade Control authorities write into the import licence the price at which a drug can be imported. Secondly, he cannot import it at any price he likes because of the foreign exchange situation. Therefore, Sir, we respectfully submit that the reasons why this drastic provision for import has been included in 95(3) are not, in fact, based on sound considerations.

I do not wish to go into details of the procedural points which we have made. I would only request Sir, that carfeul consideration be given to these points now because, as I have said, unleass they are put right now, they cannot be put right at a later stage.

On of the points is that has been made that the majority of the patents in India are held by foreigners. It may, be therefore, considered that the present Patents Act has worked to the detriment of India. We submit respectfully that this position that the majority of the patents in India are held by foreigners is not peculiar to India and that it obtains throughout the world. Indeed, in many of the developd countries of the West the percentage held by foreigners is far greater than the percentage of patents hed in India. In the U.K., 80% of the patents are held by foreigners; in France 71 p.c. of the patents are held by foreigners; in Norway, 80% of teh patents are held by foreigners. And we suggest that the fact that the greater percentage of patents are held by foreigners—far from indicating that the patent system has prevented the development of the economy— indicates that the patent system is encouraging the development of the country and indicates an active and vigorous developing economy. We do respectfully draw attention of the hon. Members to this factual position that, in most countries of the world the majority of patents are held by foreigners.

Certain beliefs, I understand, Sir, have been expressed here that Germany and Japan at some stage in their development have abolished the patent system and, in order to arrive at their present high level of economic development, have used the patents of other countries without paying for them. In fact, Sir, it has been suggested that their economic development has reached the present stage largely because at a certain stage they stole—if I may use the word—the patents of others without paying any compensation. This, Sir, is not a correct statement of the case. At no stage in the history of either Germany or Japan has the patent system been abolished. In fact, there have been many, many amendments to the patent system in Japan and Germany and all these have been for the purpose of strengthening the patent system and not for weakening it.

Another point to which I would like to devote a little attention is that it has been stated that a foreigner takes out a large number of patents; he works one or two patents, and because he holds the patents of the others, he blocks other scientists, particularly Indian scientists, in their research work. This, again, requires a little examination. Sir, the research work in the chemical field is forced to take out a large number of patents because India grants only process protection, and not product protection. But, Sir, the fact that he is forced to take out a large number of patents in the initial stages of his work does not mean that he keeps all those patents alive during the period of the patent. Statistics show that roughly 60 per cent of the patents in the pharmaceu-

tical field lapse after five years, and that another 20 per cent are abandoned after a further two or three years. The Deputy Controller of Patents has drawn particular attention to this point in an Article which he wrote in the 'Statemesman' early this year. He said: "The real test of the number of patents is how many patens were retained after the initial period of four years when no fees are required".

I shall, with your permission, take a few minutes on the question of know-how.

MR. CHAIRMAN: I hope you will be brief.

SHRI KEITH C. ROY: Yes. Know-how is very important, specially in so far as patents are concerned.

It has sometimes been suggested that perhaps know-how should be brought within the purview of the Patents Bill and that somehow a person in possession of know-how should be forced to part with his know-how just as in the case of patents he discloses the patent in exchange for the privileges which he is granted.

Know-how, just as is the case of a patent, is property—knowledge and experience which a person accumulates over a long period of time. Nobody can force him to disclose his know-how. Therefore, we respectfully submit that if you weaken the patent system, you will automatically be weaking the incentive to make available the know-how which is absolutely essential if a patent is to be worked economically. In essence, there is no connection between a patent and technical know-how. A patent can exist without the know-how, but the person will not make available the latest know-how without the protection of a strong patent law. And when we agree, Sir, that India will continue to need for many, many years flow of top-level, first-rate know-how, then, Sir, we submit that unless there is a strong patent law, that know-how will not be available.

You have indicated that time is short, and I wish to make no more submissions, Sir, and shall be happy if we can answer any questions which the Hon. Members may wish to raise.

SHRI P. PARATHASARATHY: How much of foreign exchange is involved by way of remittances abroad in the form of royalty or dividend or for payment of technical know-how we have been importing with regard to the patents? Have you got any idea?

SHRI KEITH C. ROY: Yes Sir. The Reserve Bank of India has issued an extremely informative study of this whole matter, Sir, the figures which are available from the Reserve Bank of India study indicate the following payments. In 1960-61, remittances on behalf of royalties as distinct from remittance for technical know-how were Rs. 7 lakhs; in 1964-65 the remittances were 12 lakhs of rupees; in 1966-67 the remittances were Rs. 21 lakhs. In respect of technical know-how, in 1960-61, the amounts paid were Rs. 19 lakhs; in 1964-65, 15 lakhs; in 1966-67 18 lakhs. Now, if one tries to express these figures in relation to the value of the output of the industry, the figure for royalty payments in 1967 represents 0.12 per cent of the total output of the industry. In the same year the payment of Rs. 18 lakhs for technical fees represents again 0.1 per cent of the total value of the output of the industry.

SHRI P. PARATHASARATHY: The question is: Are you organising an independent research to benefit this industry? Or, are you doing it in collaboration with any others? If you are doing an independent research, how much money is involved, or what percentage of your gross profits are you spending or investing?

SHRI KEITH C. ROY: Some of the hon. Members who have visited the plants will have seen the kind of operations that we have established in India. A very large number of members of our organisation, have already established considerable fundamental research operations in India. We have made a survey and we have come to a figure of somewhere between 2 to 2.5 per cent of the total turnover of the industry as the amount being spent on research efforts. To establish a minimal research unit in India, the capital expenditure is approximately Rs. 3 crores. And somewhere between Rs. 50 lakhs to Rs. 70 lakhs per year are required to maintain it.

SHRI P. PARATHASARATHY: Are you giving any attention to do research on Indian herbs and plants for curing cancer?

SHRI WYMAN: My own company is doing research, and I know of at least four others which are similarly engaged. This is perhaps the most fruitful field for fundamental research and we are devoting a good deal of attention to it.

SHRI DESHMUKH: As you have stated, we have proposed a ceiling of 4% on royalty? Do you think it is not proper to have a ceiling for royalty; or do you want to keep it free for the arbitrator to fix the roaytly in every individual case?

SHRI KEITH C. ROY: Our submission is that it would be wrong to fix an arbitrary ceiling for royalty payments. Sir, the present Act contains a provision and lays down the guidelines for consideration of the any quantum of royalty which is to be granted in any particular case. We believe, Sir, that the inventor should be given compensation, keeping in mind the amount of money which he has spent on his invention, the amount of time which he has devoted to it and the value of that invention to the community. But we respectfully submit that it is wrong to put a ceiling on it. I would only say, Sir, that Mr. Justice Ayyangar considered this point extremely carefully and has clearly stated that in his view it would be improper and not feasible to arrive at a uniform rate of royalty.

SHRI DESHMUKH: You are totally opposed to Clause 48?

SHRI KEITH C. ROY: No. Sir.

SHRI DESHMUKH: What amendments do you suggest in the clause?

SHRI KEITH C. ROY: We are not totally opposed to Clause 48. We fully recognize that in emergencies, in natural calamities, etc., Government must have some powers to use property, whether the property is in the form of patents or whether the property is in the form of houses. We fully recognize that any Government in any part of the world must have these rights. But the circumstances in which Government will use these powers should be spelt out. Secondly, as the hon. Member will know in all countries of the world, even when these emergency powers are used, compensation is given for the use of property. These are our two fundamental submissions.

SHRI DESHMUKH: Will you agree to a nominal compensation?

SHRI KEITH C. ROY: In emergencies, I can say with respect and with modesty, that the pharmaceutical industry has never failed to come to the help of the country, and if such a situation should arise, I think I can say on behalf of the industry that we would accept minimum compensation. We request that the principle of compensation be embodied in Clause 48.

SHRI DESHMUKH: You say it is nominal.

SHRI KEITH C. ROY: Yes, it could be nominal.

MR. CHAIRMAN: Suppose the Bill is passed as it is. What will be the impact it will make on foreign collaboration?

SHRI KEITH C. ROY: May I ask my colleague Shri Wyman to deal with this?

SHRI WYMAN: Sir, one of my duties is to endeavour to negotiate agreements with the owners of patents and know-how who represent foreign firms. I can tell you that if any figure of 4 per cent is mentioned it is received with a Horselaugh, I have to make negotiations to arrive at an agreed figure considering general royalty rates for this industry, for the whole world if this is fixed at 4% it is only a derisory figure. My company may be asked to pay more than 10 or 15%. If we endeavour to impose on the industry in this country a ceiling of 4% we shall in fact be cut off from the flood of technological advances that are taking place at the moment in other countries. Sir, the foreign owners of patents cannot be compelled to divulge what they know or what is available with them. The nature of the industry is such that know-how can only be transmitted effectively if there is goodwill between the participating parties. These persons enter into negotiations which may lead to a successful outcome. The provisions in the Bill are seeking to limit the ceiling of royalty to 4%. The Bill also seeks to take a licence of right on invention as obligatory. These have some understandable motives behind them. In fact I am quite convinced after a very wide experience in this industry that they will operate to the detriment of the industry.

SHRI C. C. DESAI: You argue the case for strengthening the law on the ground that the intellectual invention is the property of an individual and therefore it should be protected. So, if that is taken over or is transferred to some other people, then adequate compensation should be paid. On that fundamental principle you argue your case. In that case do you require the protection of the State also or would you depend upon the natural law for the protection of your patents?

In other words, if there is no patent law at all, to protect your patents or your property, would you require the Government's help? Here the government means the community. The Government may then impose conditions which are necessary in the interests of the community. You cannot have it bothways that you should have complete protection but at the same time you will not accept the government's protecting the interests of the community.

SHRI KEITH C. ROY: If I have understood your point correctly, I submit respectfully that the Patent Act as it is in force to-day is, in fact a reciprocal measure. As you have rightly stated, the State grants me a certain protection for the disclosure of my invention. But it is not an absolute protection, as it does not disregard the welfare of the State.

SHRI C. C. DESAI: You need not disclose the invention or the discovery. You can keep the process to yourself. You must depend upon yourself for protection and not get protection.

SHRI KEITH C. ROY: Well, Sir, this in fact was the position before the first Patent Law came into force. That was somewhere in the 15th century. What happened prior to the first Patent Law was that the people worked their new ideas—novel ideas—for their own benefit and not for the benefit of the community.

DR. SUSHILA NAYAR: When did the Patent Law come into being in Republic of Tunisia? I think it came into being in 1906.

SHRI KEITH C. ROY: In the Republic of Venice the law was enacted in 1309. Before the Patent Law was brought in, people who had new ideas operated them for their own personal benefit and not for the benefit of the community and they sought no protection from the State.

SHRI C. C. DESAI: Do you require a regular protection of the State.

SHRI KEITH C. ROY: Yes, protection of the State is required if I am going to make available my novel ideas for the benefit of the State,

SHRI C. C. DESAI: If you have invented something, you can work it to your benefit as also for the benefit of the community without disclosing to the State. But if you disclose that to the State and seek the protection of the State then you have to accept the conditions of the State.

MR. CHAIRMAN: He is talking about the benefit of the State which employs him.

SHRI C. C. DESAI: Why do you require protection of the State when you are visualising the situation in which you will be left with your own resources? I presume that you require the help of the State for protection of the invention rights.

SHRI KEITH C. ROY: Yes, I require protection, if I may say so, as long as there is reasonable protection.

SHRI C. C. DESAI: It is reasonable in every sense of the word. It is reasonable to the inventor, reasonable to the community and reasonable to Government. These are the three important parties to the protection. If any protection is to be given by Government it has to go through the legislature. The legislature will see to it that the conditions are such that the protection is reasonable and is in the interest of the community. I suppose you will not object to this.

SHRI KEITH C. ROY: I follow your argument.

SHRI C. C. DESAI: Now you see the compensation should be such as would pay for the expenditure incurred. As you know very well, the current expenditure involved is already regarded as a deductible item of expenditure for the purpose of computation of income-tax. So far as the capital expenditure is concerned, that expenditure plus 25 per cent under the recent regulations is also subject to exemption from tax.

In other words, the compensation for research is already paid in the first instance by government. Would you accept this thesis or not?

SHRI KEITH C. ROY: I respectfully submit that it is not the whole picture. May I put it this way? My 4 per cent royalty is subject to tax and leaves me only some 1 per cent.

MR. CHAIRMAN: Do you get any benefit by way of exemption from income-tax?

SHRI C. C. DESAI: Do you agree that the current expenditure as well as the capital expenditure, regardless of the results, are subject to exemption from income-tax?

SHRI KEITH C. ROY: Yes.

SHRI C. C. DESAI: In other words, that community is already paying for the research. By way of tax exemption—through the process of tax exemption—Government is paying compensation. An inventor or the company pays to the extent of the government tax. It is exempted from what is already paid for. Would you accept this?

SHRI KEITH C. ROY: Yes.

MR. CHAIRMAN: That way this 4 per cent ceiling is raised.

SHRI KEITH C. ROY: First of all the company must be able to earn the money which was spent on the research before that it get the tax relief.

SHRI C. C. DESAI: You spent the money and so you get the relief. Suppose a pharmaceutical industry is claiming that to-day it is not earning. It is not even able to spend money initially. I say that that is not the case with the O. P. P. I. It may be that it does not get the tax exemption. And yet the industry will be able to

spend any amount on research and development. I presume that that would be the case with the O.P.P.I.

MR. CHAIRMAN: In other words, the tax exemption is in addition to the 4 per cent. So, it is not just 4 per cent but it is something more than that.

SHRI C. C. DESAI: It is in the interest of the community also.

SHRI KEITH C. ROY: Very well.

SHRI WYMAN: There is one point which I would like to mention and it is this. In large companies the rate of tax paid is something between 60 to 70 per cent. Suppose they spend a crore on research it is perfectly true that something like 2|3 is retrieved. From money which would otherwise be paid in tax. But the remaining 1|3 comes out of profits after tax. It is a very substantial contribution by the individual companies towards the effort involved.

SHRI C. C. DESAI: 30 per cent comes out of the profit of the company.

SHRI WYMAN: The very favourable climate created by the 1967 Finance Act has led to a great stimulation of research effort in India. Lot of companies which did not formerly think it worthwhile are now putting up very big research units.

SHRI C. C. DESAI: It is said that the inventor is one, but the payment of compensation goes to another. The scientist or technologist is a paid employee of the company. Ho makes the research or invention or discovery. The patent is taken by the company whose employee he is. The royalty or whatever compensation he gets is obtained by the company. Is there any way by which you can directly encourage research by payment of compensation to the research worker rather than to the company?

SHRI WYMAN: Under that a few people would get very rich and many scientists would starve. The present system enables a lot of scientists to take part. The scientist may spend his whole life-time on research and contribute nothing. That also is a possibility.

SHRI C. C. DESAI: The employee of the company will get the regular remuneration. Those whose efforts have led to research and development of a new invention will have to be compensated. It is natural that those who have led to discovery of a certain thing should be compensated but the other will not be the poorer, they will still continue.

SHRI WYMAN: They are promoted and they ultimately become Directors.

SHRI C. C. DESAI: With effect from what date would you say that the period of patent should count? Is it to count from date of application, date of filing complete specifications, or date of sealing of the patent? These are various factors which have been suggested by a number of witnesses.

SHRI KEITH C. ROY: In the present Act of 1911 and in the Bill the period of the patent, as hon. Members are aware, runs from the date of the filing of the complete specification. The point is this. In the present Act there is a time limit. In the present Bill there is a time limit within which a patent must be sealed. That provision has been removed from the present Bill and there is no time limit within which patent should be sealed. We think that this is a defect in the present drafting of the Bill. The grant of a patent could now, under the Bill as it stands, take up to 5 or 6 years which in effect eats into the effective life of the patent and in this respect we respectfully submit that the period of the patent should run from the date of sealing and not from the date of the submission of the complete specification.

SHRI C. C. DESAI: What will be the effect of prices of drugs due to a

strong patent law or a weak patent law? The community is only interested in the prices which the poor patents are required to pay when they are not up to the mark.

SHRI KEITH C. ROY: There are so many factors. Prices are affected by so many factors. Patent may be one of them. Even if you allow 10 per cent royalty on the patent and that is, on the bulk chemical.

SHRI C. C. DESAI: It is not royalty aspect, it is monopoly aspect. The patentee has the monopoly.

SHRI MODY: Our Organisation has accepted compulsory liecnces under certain condition. What we have objection to is when you provide, that anybody can do use them. In Italy where there are no patents drugs are costlier than in many other countries. So that alone will not definitely lower prices.

SHRI C. C. DESAI: That is, it is an illusion to connect prices with patents.

SHRI MODY: There are a number of products that are made in India and that too by Government sector where prices are more than double of the duty paid prices when imported, and for which there is no patent. There are a number of factors there. It is not only the patent which affects prices. It may be one factor; I would not say, no. But it is one of the many, many factors and I cannot mark any product without getting the approval of the Government. The Government have got lot of procedures available to control the prices. Our effort should not be to block the technological flow. For preventing anybody from taking undue advantage, the Government has got ample powers already with it.

श्री खेतान : अभी आपने कहा कि पेटेंट के ऊपर प्राइस का असर नहीं पड़ता उसके कारण से नहीं होता जब पेटेन्ट के कारण से नहीं होता तो फिर पेटेन्ट रखने की जरूरत क्या है ? अगर रीजनेबिल प्राइस रहेगी तो कोई भी बनाने के लिए तयार नहीं होगा अगर रीजनेबिल प्राइस नहीं है प्राफिट ज्यादा है तभी लोग बिजनेस में जायेंगे इसके सम्बन्ध में आपकी क्या राय है ?

SHRI MODY: Many people hesitate to invest a lot of money if the return is not adequate. We found an effective drug for Cholera. We worked on it for 5 years. Within six months of the product coming out in the market, many firms, nearly 8 to 10 firms have come out with their product. I cannot patent it. It is the firm which has to invest a lot of money on research. For preventing profiteering the Government has every right to control that. They have enough powers with them. If there is no incentive, it will not help. In Eastern Europe for instance they have come back to allowing reasonable incentives.

MR. CHAIRMAN: Some foreign companies are making exhorbitant profits. They are put up somewhere outside India.

SHRI KEITH C. ROY: It may be that one company may be making greater profits than another company. May I just look at the picture of the profitability of the industry as a whole? We may not be able to say that a particular company is making, a particular rate of profit. I place before the hon. Committee the picture of the profitability of the industry as a whole. That would help.

SHRI ARJUN ARORA: You claim that your organization represents members embracing some 80 per cent of the pharmaceutical profession. May I know how many of your members are also members of the all India Manufacturers Organization and the other organization of Indian Chemical Manufacturers?

SHRI KEITH C. ROY: I do not have that information immediately. I will get it, with pleasure. I can only say for the record that we wish very closely and together with the ICMA and IDMA which is the other organization of industry and the AIMO

which is another all embracing organization. I do not have the details immediately which the Hon. Member asks. I will certainly find it out and submit it to the Secretariat.

SHRI ARJUN ARORA: It is important because these organizations help industrial organizations. Some of your organizations are members of those organizations.

SHRI KEITH C. ROY: The production of drugs in India to-day is something of the order of Rs. 200 crores a year. Now 72 Members produce about Rs. 150 crores of that Rs. 200 crores. The views which I submit before this Committee are the views of those members producing some 75 per cent of the total production of drugs in India.

SHRI ARJUN ARORA: What is the extent of research in India by your members?

SHRI KEITH C. ROY: We have made a survey among our members. It indicates what it is relative to our coment turnover of about Rs. 200 crores. For the first time we made our survey when the turnover of the industry was Rs. 175 crores. The actual figure which came out of the survey, the figure which was certified by our auditors was 2.8 per cent of our turnover.

SHRI ARJUN ARORA: It includes quality control. How much is for quality control and how much is for basic research and development?

SHRI KEITH C. ROY: We have tried to find out the figure. The expenditure on fundamental research as distinct from other expenditure is of the order of 2 per cent.

SHRI ARJUN ARORA: Could you tell us if your members have done research in India.

SHRI KEITH C. ROY: Yes.

SHRI ARJUN ARORA: How many? Can you give some details?

SHRI KEITH C. ROY: I can give you the case of Hindustan Antibiotics which has, I believe, 13 patents for original work done in their own laboratory at Pimpri.

SHRI ARJUN ARORA: Any others?

SHRI KEITH C. ROY: We know Ciba have taken out 28 patents for work done in India. I do not have any further details than these two.

SHRI ARJUN ARORA: Can you conveniently club them and send them to us?

SHRI KEITH C. ROY: With pleasure.

SHRI ARJUN ARORA: In reply to one of the questions you gave the figure of your members for import of technical know-how. Could you repeat that figure? I could not get it

SHRI KEITH C. ROY: The Reserve Bank in its study on foreign collaboration divides the remittances under two heads. The first head is "royalty" and the other head is "technical fees remittances."

Taking the royalty remittance first in 1960-61 the remittances were 7 lakhs of rupees. In the year 1964-65 there they were Rs. 12 lakhs. In 1966-67 they were 21 lakhs of rupees. These are the royalty remittances. On the technical fee side they were:

1964-65	Rs. 15 lakhs
1965-66	Rs. 26 lakhs
1966-67	Rs. 18 lakhs

SHRI ARJUN ARORA: We were told by Mr. Mckinon of the Glaxo Laboratory that the firm pays Rs. 50 lakhs per year for getting all the benefits of their worldwide research, development and know-how. I want to know whether other members have similar agreements with the parent organizations abroad for these payments.

SHRI WYMAN: I would like to put the record straight. Mr. Mckinon made this statement, I think, during the visit you and other members made to our factory. What he said was that under the recently concluded collaboration between our company and the British company it is

estimated that has taken Rs. 50 lakhs in the current year is payable before tax. After tax, the figure was considerably less. The remittance will not be 50 lakhs; it will be something like 20 lakhs.

SHRI ARJUN ARORA: I want to know whether other concerns, who are members of the O. P. P. I have similar agreements. Either Mr. Meckinnon was correct or you are correct or both of you are correct. Are there similar agreements?

SHRI KEITH C. ROY: As the hon. Members will recognise, no agreement which involves a remittance abroad can be made without the prior approval of Government and the sanction of the Reserve Bank. Over the years, the industrial policy of Government has changed from time to time. In the past, the Government was willing to sanction a number of agreements, both royalty agreements and technical know-how agreements which involved remittances at various levels. In the case of my own company, Merck Sharp and Dohme, we have free access to all research carried out by our parent company in the U. S. A. We have full use of their patents and all their trade marks without payment of any kind at all. I know there are many other companies situated in a similar way. Mr. Divecha tells me that Hoechst makes no royalty and know-how payments of any kind to Hoechst in Germany.

SHRI ARJUN ARORA: I am interested in companies which have agreements involving payment. I am not interested in good companies like yours which have no such agreements. Could you collect information relating to your members who make the payment and the rest, we presume, do not have to make payments.

SHRI KEITH C. ROY: I will certainly endeavour to collect the information. I am sure that this information is available with the Ministry of Industrial Development.

SHRI ARJUN ARORA: It is more difficult to get information from the Government than from witnesses.

SHRI KEITH C. ROY: I will undertake to get from our Members, the information which the hon. Member has asked for.

SHRI ARJUN ARORA: Can you give us an idea of the sharing of gains or benefits of inventions between the scientist and the manufacturer? Are certain precentages of profits reserved for the scientists or do they merely get their fat salaries?

SHRI KEITH C. ROY: I think it would be correct to say that there is no uniform policy in this matter. In my own company, I know that it is a matter of good personnel administration—a person who makes a significant contribution to a new drug will receive a considerable lumpsum payment in addition to his normal salary. Mr. Wyman has greater knowledge of what takes place in other research units.

SHRI L. J. WYMAN: I would think that the companies which make large cash payments to successful scientists are in the majority. But, in any case, the substantial reward that a successful scientist gets is that he prospers in his career.

SHRI ARJUN ARORA: May I take it that there are two types of companies—one which pay a lumpsum to the scientist and the other a percentage of benefit to the scientist. The bad ones pay nothing, apart from the salary. Is this categorisation correct?

SHRI L. J. WYMAN: I don't agree with you in the designation of bad ones.

SHRI ARJUN ARORA: You can say that the third category payes nothing apart from the salary.

SHRI L. J. WYMAN: Unless the whole picture is presented, it is difficult to form a judgment. Some companies may pay low salaries and large rewards for a successful invention.

Others may pay high salaries and no rewards for any successful invention.

SHRI ARJUN ARORA: Do you know any companies, minus your Members, which pay a percentage of the gains of a discovery to the scientist?

SHRI KEITH C. ROY: I have no knowledge of that. Research today, particularly in our industry, is an extremely expensive process and is clearly beyond the financial resources of any single person. The best reward a scientific worker can expect is to work in a research atmosphere without having to worry from where his next month's salary is to come, in an atmosphere where the latest techniques are available to him and in which all the latest requirements of instrumentation etc. are available. I think that it would be correct to say that the average research worker does not look for his reward purely in monetary form.

DR. SUSHILA NAYAR: I am very happy to hear this from you.

SHRI KEITH C. ROY: It is a fact that out of the profits of the industry something of the order of 65 per cent goes by way of taxation and with the balance of 35 per cent the industry has to pay some return to those who have invested in it. On an average over the last 7 years, the rate of return which the investor has reecived on his money is of the order of 3.8 per cent. The company can give rewards only after meeting all its dues.

SHRI ARJUN ARORA: You have found 4 per cent royalty to be inadequate. What in your opinion is a fair percentage of royalty?

SHRI KEITH C. ROY: The quantum of royalty to be given in any particular case should be judged on the basis of certain critria, as laid down in the 1911 Act. It is not proper to fix any statutory ceiling. A statutory ceiling can never be equitable.

SHRI ARJUN ARORA: Your case that it should be negotiated between the parties.

SHRI KEITH C. ROY: In the first instance, the parties should be left to negotiate between themselves. If they fail, there should be a provision for the case going to the Controller. If the decision of the Controller is not acceptable to either party, we suggest that there should be an appeal to an independent judicial tribunal.

SHRI ARJUN ARORA: Will you suggest any legal time limit within which the negotiations should be completed and if that is not possible within that time limit, the Government may intervene and fix the royalty?

SHRI KEITH C. ROY: We are entirely in favour of such a time limit being fixed. I would wish to point out to the hon. Member that in the Bill as it is drafted and in the law as it stands at the moment, if there is any dispute between the parties as to the rate of royalty this does not prevent the other party immediately taking over the patent and working the patent. So if the fear of the hon. Member is that there might be disputes between two parties and such disputes might interfere with the working of the patent in India, provision is already there in the Act and in the Bill to overcome the difficulty.

SHRI ARJUN ARORA: You told us a moment back that the present rate of return in your industry to the shareholder is only 3.8 per cent and here the very generous Government is offering the industry 4 per cent. That is better than your prosperous industry is able to give the shareholders. What do you say to that? This is a return to the patentee involving no investment, no maintenance of plant, no expenditure whatsoever to do a research, get a patent and get 4 per cent more.

SHRI ROY: No, Sir 4 per cent is subject to tax . . .

SHRI ARJUN ARORA: Divident to the shareholder is also subject to taxation. It is.

SHRI ROY: Yes, but after the company provides the taxation. The return to the inventor is something a little bit more than 1 per cent.

SHRI ARJUN ARORA: I am sure you are aware of the order of per capita income of Indian people. Keeping that in view, don't you feel that the products of your members are generally out of reach of the bulk of the population in this country?

SHRI ROY: Sir, we in the industry are indeed aware of the fact to which you have referred. May I say that I don't think it is correct to look at this problem solely from the point of view of the costs of medicines. The thing which we first keep in mind is, in our submission, that medical care . . .

SHRI ARJUN ARORA: Medical care is not your responsibility, but it is the responsibilty of the Health Minister. Your responsibilty is the products, the medicines. Why not concentrate on their price and their availability to the common man? '

SHRI ROY: I would wish to place this proposition before the hon. Members. The cost of drugs in the cost of total medical care. And we respect fully submit that the end aim is total medical care, because without the other elements that go into total medical care, drugs cannot be administered. The cost of drugs in the cost of total medical care throughout the world is somewhere between 10 to 12 per cent. So, Sir, when you are looking at medical care you have 88 per cent of other costs than the cost of drugs. We, Sir, in the industry respectfully submit that the best way to deal with the problem to which the hon. Member has referred, is to allow the industry to expand as rapidly as possible so that it can take advantage of the economics of size and then, Sir, we submit that the other 88 per cent of cost should be taken care of by Government.

SHRI ARJUN ARORA: That 88 per cent is out of the jurisdiction of the industry and this committee. Let us concentrate on the 12 per cent and bring it down. You please reply to my question: ' whether, in view of the *per capita* income of the Indian people, you will concede that most of the products of your members are at the moment out of reach of the people.

SHRI ROY: Sir, I cannot deny the statistical fact. The fact is that in many countries of the world the costs of drugs are outside the capabilities of a large number of people. Sir, we play our part in making drugs available at reasonable cost, but the industry today is hampered by Government rules and regulations; we are not just permitted to do what we want to do. The price of each drug is subject to control by Government. We are not free to fix the prices of our drugs in any way we want.

SHRI ARJUN ARORA: You have said that your members are manufacturing bulk drugs, intermediates and pharmaceutical preparations. Could you give us a break-up of your production under these three Heads which you have mentioned?

SHRI ROY: Sir, I cannot give you the exact break-up of the members of our organization. I can put it in this way, Sir, the total output of the industry is of the order of Rs. 200 crores per year. Out of that Rs. 200 crores,—I think I am correct in saying—the output of bulk drugs is of the order of Rs. 25 crores.

SHRI ARJUN ARORA: Is it correct to say that most of your members are spending most of their energy in importing the intermediate, the penultimate product?

SHRI ROY: I would say with respect that that is a totally incorrect statement.

SHRI ARJUN ARORA: Could you give us the figures of import of basic drugs, the intermediates and the penultimate products of your members?

SHRI ROY: I can only say this: The total imports of the industry, to sustain an output of approximately 200 crores of rupees per year, in the post-devaluation terms, of rupees today, is of the order of Rs. 17 crores.

MR. CHAIRMAN: What is the percentage?

SHRI ROY: About 9 per cent.

Ten years ago the import requirements of the industry represented about 19% of its total production. Over a period of some ten years basic manufacture has been established in the country, which has enabled imports of finished pharmaceuticals to be reduced from 19% to about 9%. Within the Rs. 17 crores which I have stated, there are, I believe, something of the order of Rs. 5 crores worth of finished specialities which are not made in India. The balance of Rs. 12 crores of imports represents essentially basic and intermediate products which are still not made in India.

SHRI ARJUN ARORA: We have been told that 90% of the Patents in this country are owned by the foreigners.

श्री सरजू पा० डेय : इस बात को देखते हुए कि ड्रग इंडस्ट्री में टेकनिकल नो हाउ की कमी है बहुत से लोगों का ख्याल है कि पेटेंट ला की जरूरत हमारे यहां नहीं है, इस बारे में आप का क्या ख्याल है ?

SHRI KEITH ROY: If I have understood the Hon'ble Member's question correctly, I may say that we can not do without a Patent Law for only thereby will the pharmaceutical industry progress and it will also be able to become possessed of the necessary know-how. We have already explained the relation between patents and know-how. It is a fact, Sir, that if there is no Patent law, there will be no know-how. Now, Sir, in the pharmaceutical industry, know-how is important because, Sir, although you can take the active chemicals compound you have to do many things with this. - There are some 32 particular processes which are not patentable, which are not patents and which constitute the know-how which enable the chemical compound to be put into a form to make it into an acceptable drug. Therefore, my answer is this without patents there will be no know-how and, without know-how, the industry will die.

SHRI MASANI: Since 1965 no pharmaceutical patents have been sealed. Could they tell us about the number of applications and what is the effect of this back-log that has collected?

SHRI KEITH ROY:

Since 1963—patents have not been granted or sealed. Sir, there are products which have been patented abroad and which we would like to bring to India. Many of us have plans to bring new products, new drugs, new medicines to India, but this could not be done because there is no patent protection. We have made a study in our industry which clearly indicates that there has been a very very serious drop or decrease in the number of new drugs that have been introduced into the Indian market since this position was created in 1963.

The matter which should cause concern to India is that, since 1963, the number of patent applications that are being made in India has been on the decrease. This is an indication of the world's concern in regard to the position which is obtaining in India. They will not bring new processes because there is no patent protection.

SHRI MASANI: You have stressed the importance of know-how. Can you suggest any methods by which the process is patented along with know-how which enable the process to be worked?

MR. CHAIRMAN: Is know-how patented along with the process?

SHRI WYMAN: Know-how is a very complex thing which spreads over a number of technologies engineering, physics, chemistry and a very large accumulation of knowledge which has been built up over a long time. To attempt to patent each an individual snippect would be very expensive and no Company can afford to do it unless such a comprehensive system is devised to cover the entire know-how that is involved. I think it would not be possible.

DR. SUSHILA NAYAR: In most of the count where there are patents, they do not give product patent but they give process patents.

SHRI KEITH ROY: The general movement in patent system to-day is to move from process patent to product patent. Germany, Switzerland and Japan are product patents. The general tendency in the world to-day is to move from process patent to product patent.

MR. CHAIRMAN: I think Japan had, till very late, process patent.

SHRI DIVECHA: Recently, even in West Germany they have introduced product patent. There are 40 countries to-day having product patent for pharmaceuticals.

DR. SUSHILA NAYAR: When these countries have developed their industry to a large extent, they want their monopoly to be so complete that they do not want any other research worker to come up and say that they have the product patent. But you will agree that it is not in the interest of the developing countries to have product patents.

SHRI DIVECHA: On Appendix 'A' you will find so many underdeveloped countries like Ceylon who have product protection.

SHRI ARJUN ARORA: When was Patent Law enacted in Ceylon?

SHRI DIVECHA: I will find out.

DR. SUSHILA NAYAR: Scientists in any country want to have their research. They want to discover new things for their own country and if you have a product patent you close all the doors for them. The scientists have in fact complained that the process patent also has put a lot of obstacles in the way because patentee very often obtains all the possible combinations and permutations and obstructs them. He does not use all those products. He does not use all those processes. But he obtains them in order to obstruct the path of the other research workers who may discover a different process.

SHRI KEITH C. ROY: May I just make one point? We respectfully submit that the hon. Member's basic presumption is incorrect because the whole purpose of a patent is to ensure disclosure and the disclosure in a patent specification, be it a product patent or a process patent, makes available to scientific workers througout the world the knowledge that has become available to the particular worker thereby enabling other scientific workers to think and develop new ways and methods of approach to a particular problem. In fact the whole basis of a patent is disclosure and stimulation of further research.

DR. SUSHILA NAYAR: You have made it clear. At the same time you have told us that there is a free know-how that a patentee has disclosed in a patent. But, that does not enable the other scientists to make use of their product. There are certain things which are not

disclosed or which will not be disclosed unless that be a product patent which the person wants to keep to himself. Would you agree?

SHRI WYMAN: A product patent is an alternative to a process patent. Very often in the discovery or invention of a new drug, it is the drug itself which is the invention. Take for instance the discovery of Isoniazid. This is active against T. B. disease. This was an invention. This was discovered as a result of a long screening in a process of the research. But, at the end of the process what can the inventors can do? They can scarcely take out a patent for the process. For manufacturing Isoniazed, a well known method was used. The fact that this compound is a very valuable T. B. drug goes to show that for this particular purpose a Producer patent would have been of some value. The process patent would not be useful at all. Criticism has been levelled here and elsewhere about the proliferation of patents. An inventor endeavours to cover several known routes possible for leading to the end-product. If there was a patent system for an end product, they would not have to resort to this type of subterfuge. Of course there is a great deal of wasted effort in research laboratories. And everybody is in favour of a product patent to avoid the waste.

DR. SUSHILA NAYAR: You have more or less confirmed that many of these process patents are taken not for the promotion of science or for the promotion of knowledge or development but to protect the interests of the inventor. I understand that. So far as I.N.H. case is concerned, don't you agree that fortunately the process of INH production was known. This drug is for T.B. treatment. Today it is very cheap and is available for a mass treatment to any agency—governmental or non-governmental. This was not so with regard to the product patent. That would not help us. It would be as expensive as streptomycin or P.A.S. Some of these things are far more expensive. Would you agree with that?

SHRI WYMAN: It so happens that we are talking of a very simple compound. INH is a chemical with a simple molecule. Comparing it with streptomycin which is a very complex molecule made by a Costly process of fementation & extraction is not a valid comparison. It is also true that streptomycin is now very cheap. It was expensive when it was first discovered.

DR. SUSHILA NAYAR: Mr. Roy, you said something about spurious drugs. Don't you think that the drugs act is there to take care of the spurious drugs? The patent act is not to ensure safety against spurious drugs. It is entirely to protect the interests of the patentee and perhaps for disclosure of knowledge as you yourself have said.

SHRI KEITH C. ROY: I think there is an answer to the hon. Member's proposition. There are something of the order of 2,300 units licenced in India under the Drugs Act to manufacture drugs. We know from our experience how the Drugs Act is enforced throughout India. It is, I think, an admitted fact that in most States the Drugs Act is not being enforced because there is no adequate personnel. In the States of Maharashtra and Gujarat, we have, if I may say so, a highly efficient and highly competent drugs administration. I think that is one of the reasons for the flourishing state of the drug industry in these two States. But we do not believe, Mr. Chairman, that the Drugs Act *per se* operates to ensure that no spurious drugs will be produced in those units which are licensed under the Drugs Act.

DR. SUSHILA NAYAR: I would not join issue with you on the efficacy or good implementation of the Drugs Act in all the States. But I agree with you that it is not very well enforced in all the States. But, where the major drug industry is

located—Maharashtra and Gujarat and I think to a lesser extent in Bengal too—relatively speaking the Drugs Act is better enforced. Here by all means they should be made to enforce the Drugs Act better and more efficiently. You will agree with me that you cannot have safeguards against spurious drugs through the Patent Law.

SHRI KEITH C. ROY: The Patents Law, I am of view, cannot prevent these.

DR. SUSHILA NAYAR: Another thing that you have stated is that this ceiling of 4% is arbitrary. I was told by a number of people that during the last so many years, royalty allowed by Government has not been more than 3.5% even though at present there is no ceiling imposed. Is that statement correct?

SHRI KEITH C. ROY: The position, Mr. Chairman, as we understand it is this. Over the years, administrative measures have been taken to bring down or to curtail the rates of royalty. As Mr. Venkatachalam, the then Joint Secretary of the Ministry of Industrial Development stated at the meeting of the first Select Committee, it is a fact that over the years the rate of royalty has been brought down to about 5%. That is correct.

DR. SUSHILA NAYAR: Your objection is more from the point of view of its causing psychological scare or something of that type. Is it so?

SHRI ROY: If I knew that I could come to you and argue with you about the return which you would give me for something which I am giving, I would come and neggotiate with you most willingly. But if, prior to my opening negotiations I knew that whatever we may agree upon, I could not have more than 4% I would come most unwillingly to negotiate with you.

DR. SUSHILA NAYAR: 4% is the ceiling. Your objection is more from the psychological aspect. There may be objection if you put that at 4% it may become normal thing instead of coming down to 2 or 1 per cent.

SHRI WYMAN: Most of the negotiations take place between foreign owners of patents and know-how and Indian manufacturers. The matter is not entirely in the hands of anyone in this country. It is necessary to negotiate. We can't compel a foreigner to tell us what he knows or make available what he knows. If you say under no circumstances shall it exceed 4% the freedom which at present exists for Government Ministries to fix the figure that appears to be reasonable is gone for ever. It is far better to leave that figure to be decided by the very able and competent bodies that already exist which will very carefully vet a foreign agreement in this behalf.

DR. SUSHILA NAYAR: You said about 8 to 9 years being taken before drug is produced in India. And, during that period, it is the import that has to continue. The import is for testing the market, to see whether it is acceptable to Indian conditions.

SHRI ROY: Clinical trials must take place under the directions from the Drug controller. So, limited quantities are permitted to be imported. These limited quantities are made available to clinicians specified by the Drugs Controller of India and human trials are carried out and the details submitted to the Drugs Controller. With the very limited availability for clinical trials in India, it takes about 3 years.

DR. SUSHILA NAYAR: You can have no objection to anybody importing during that 3 years. Others can help you in carrying out test, and testing the market. There is no need to restrict right of import.

SHRI ROY: We do not restrict the right. It is the Government

which restricts the right. We have no say in the matter.

DR. SUSHILA NAYAR: Anybody can import; you have no objection.

MR. CHAIRMAN: Do you want the sole import or others may come in the field during the specified period?

SHRI ROY: It is not we who decide it.

MR. CHAIRMAN: Suppose we decide 'Let anybody import along with the patentee.' Have you any objection?

SHRI ROY: As long as it is not an infringement of my patent.

MR. CHAIRMAN: Suppose it is not an infringement of your patent, have you any objection?

SHRI ROY: I am not quite clear that it would, in fact, be possible to get these specialised products from other sources. They would not be available form other sources.

DR. SUSHILA NAYAR: You are testing the market. Why do you want protection when you are not producing it here?

SHRI DIVECHA: From the date of manufacture we could have no objection.

DR. SUSHILA NAYAR: Others can import and help you.

SHRI DIVECHA: He gets a period of exclusivity subject to certain reasonable restrictions. There are enough provisions, Cl. 68 relates to revocation under certain circumstances. Cl. 89 to 90 relate to revocation for non-working under certain circumstances. The patent is worked within a reasonable time by the person to whom it is granted. If it is not worked within that reasonable time there are ample measures to revoke it. The point is adequately met. You must give him reasonable opportunity to make the invention in India.

DR. SUSHILA NAYAR: I have been mentioning about monopoly right. Anyway one other question.

MR. CHAIRMAN: Why should you import before working it? Do you not have an exclusive right to do it?

SHRI DIVECHA: If I have to work an invention in India I have to get the clearance from Drugs authorities. They will insist on clinical trial being done. If I am not manufacturing I must prove that the drug is safe for administering to Indians. So I am compelled to import. It is only after drugs controller has cleared me that I would go into the question whether I should or should not set up a manufacturing unit. How can I do it before that?

DR. SUSHILA NAYAR: You do clinical trials in 4 hospitals. Somebody else has imports and does the trial in another 4 hospitals. Procedure will be quicker. We shall know whether it is safe quickly. Drugs controller will give clearance early. You could test market quicker. Once you produce nobody can import.

SHRI DIVECHA: In my opinion if one person is given the right to import, it means the quantity allowed to be imported and allowed to be distributed for clinical trials.

DR. SUSHILA NAYAR: You said something about the expenditure on research being 2.8% inclusive of quality control. I rather doubt if your quality control effort is. 8%. What I would like to know from you is: as against this 2.8% which represents research as well as quality control, what is your expenditure on promotion, development and so on.

SHRI MODY: I think the percentage which has been calculated is round about 8—10 per cent.

DR. SUSHILA NAYAR: You are doing better than some of

the other countries. As I remember reading from the reports in other countries it is something like 20—25% on promotion.

SHRI MODY: The prices in India are very much lower than the prices in other countries.

DR. SUSHILA NAYAR: He says it is in inverse proportion. I remember when last time I compared the figures India is one of the highest priced countries. From the statistics even when compared with Pakistan it is the highest priced country.

I want to understand one thing. You said that research initial expenditure is something like Rs. 3 crores, recurring expenditure Rs. 50—60 lakhs. As we have found from your various units, we found most of you are doing a certain amount of research, some spending Rs. 10 lakhs or Rs. 15 lakhs. Do you mean to say setting up such a research unit like Ciba?

SHRI WYMAN: The answer is: the figure given Rs. 3 crores is to set up a general research unit on a broad base for a full range of fundamental research and putting up the Comprehensive toxicolity and testing agencies that are necessary for new drugs. Smaller figures which are common place in India relate to specialised research in a very restricted field with particular interest to the company concerned. I think it is a very good way to start because such a unit can be broadened, increased in size as the prosperity and resources of the company increase.

DR. SUSHILA NAYAR: Do you think in terms of several of you getting together to have some common facilities?

SHRI WYMAN: The idea of collaborative research has been mooted and often it does take place to a limited extent and in certain restricted specialised areas. More than anything else the research team needs motivation. For that motivation it needs an element of competition.

DR. SUSHILA NAYAR: You said something about the period of ten years not being enough. We were told by several people who appeared before us that obsolescence in drugs is so frequent that generally there is not more than a five year period against drugs after that something new comes. Why do you think that ten year period is not enough. In fact they suggested that it should be lowered to 7.

SHRI WYMAN: Te idea of obsolescence will not stand up to examination. If a drug becomes obsolete, it is no longer of any use and whether or not it is patented. In point of fact major drugs do have a useful life span of more than 5 years. Such drugs as Penicillin, Streptomycin, sulpha drugs, etc. These have been in vogue for about 20 years. I do not think the idea of really important major drugs becoming obsolete in 5 years is true.

DR. SUSHILA NAYAR: Recently you said there have been very many drugs that have come into the Indian market. There have been so many world-shaking discoveries in the field of drugs in the last few years. Are you in a position to tell us if there are some very outstanding wonderful drugs that have not come into the Indian market?

SHRI WYMAN: I can think of Ampicilin which is not made in India.

DR. SUSHILA NAYAR: I think it is on the verge of being produced in India.

You said something like Rs. 200 crores of rupees worth of drugs are being produced in India out of which about Rs. 30 crores are basic drugs and the rest are formulations. Would you like to comment on that? That shows that if you just make any formulation, the drug is not different.

SHRI WYMAN: I think it is very easy to get some very confusing and conclusive figures. You cannot really put a value of Rs. 200 crores. In fact Rs. 200 crores value of intermediates is anybody's guess.

DR. SUSHILA NAYAR: Experts tell us that Rs. 30 crores worth of basic drugs are produced.

SHRI WYMAN: It is very difficult to put a meaningful value on these things.

DR. SUSHILA NAYAR: The total value of drugs produced in India comes to Rs. 200 crores and we are told that the basic drugs produced are only worth Rs. 30 crores or a little less; the rest of 170 crores are all formulations, syrups, etc. Therefore, the competition is more in the area of different formulations rather than drugs for sale.

SHRI WYMAN: We are getting into a confusion in regard to these figures. For example, the cost of bulk penicillin in India is something like 50 paise per mega unit and when it is marketed what is the value given to it? The amount of Rs. 35 crores of bulk drugs may become 200 crores of formulations.

SHRI M. R. MASANI: Whenever a prominent politician is ill, like Dr. Lohia or Mr. Annadurai, we have to get the necessary drugs from other countries. Why it is not available here and what is the reason for this?

SHRI KEITH C. ROY: I think this is the result of the Government's industrial policy.

SHRI M. R. MASANI: Would you explain?

SHRI KEITH C. ROY: The hon. Members know that no unit can set up a pharmaceutical manufacturing plant without the previous permission from the Ministry of Industrial Development. The Ministry in consultation with other Ministries and the Planning Commission have fixed the targets for the pharmaceutical industry and the production of certain basic drugs is also included within the targets. If the production of any type does not fall within the target, they are not allowed to be produced. We all know that certain areas of operation are being reserved for, if I may say so, the public sector undertakings and the private sector is not permitted to enter into those areas. It is said that, in due course, the drugs will become available from the public sector undertakings. As a matter of experience we all know, there are certain areas in which we in the private sector would like to expand our operations—like basic manufacture, etc. But, so far, we have not been permitted to do that. There may be other reasons also. It may well be that a drug would be so little used in India that its manufacture in India would be just not be economic. It may also be that it may be an emergency drug.

DR. SUSHILA NAYAR: There are also drugs in the stage of experimentation and they are not fully established. But the people know that such and such a drug is under experimentation and available. I have received several requests for an anti-cancer drug which is under experimentation.

SHRI KEITH C. ROY: An expensive range of what we call "service drugs" is not normally available in the market, but the medical profession knows about them, and we keep a small quantity in stock and make them available.

MR. CHAIRMAN: There is a strong organised sector, which feels that process patent is more suitable for India; this is the view of those in favour of patents. The general feeling is that the process patent will be more beneficial.

SHRI WYMAN: Either system is acceptable to the industry. It must be understood that one is much more simple than the other. I think we favour the product patent because of the simplicity with which the

product patents operate. If we have to follow the system of process patent, we will accept that. Then it is necessary to understand what I may call defensive research. Obtaining a large number of parallel processes for one particular product will remain. This should be accepted in that case.

MR. CHAIRMAN: There is a view that instead of obtaining all the processes the processes that lead to actual production should be patented or there should be a time limit within which the processes should be worked; otherwise, they should be released, which will enable the other scientists to register their processes.

SHRI WYMAN: The real essence of an invention in the drug field is the drug itself. If that cannot be patented as an entity, then the effort of the manufacturer will certainly be to stop his imitators getting the benefit from what he is doing. There are different paths of obtaining a drug by alternative processes.

MR. CHAIRMAN: Out of 10 processes patented, you are working only two. Have you any objection if the remaining 8 are released as they are not being worked?

SHRI DIVECHA: What you say is correct. At the present moment, an inventor has to claim various processes in his patent application. Thereafter, he develops the most economical processes which certainly leave the other ones unworked. If any person wants to utilise that process, there is provision even under the existing Act. There is the clear provision in the law which entitles any person, after the sealing of the patent, to work the invention in India if he is able to do so.

MR. CHAIRMAN: Why should not the processes which are not being worked be released?

SHRI DIVECHA: Chemical process of the chemical substance is a very small part. Clinical trials to make it acceptable to the medical profession as a useful drugs involve lot of investment. Today it is accepted that in India it takes two or three years before clinical trials are complete and the drug is allowed to be marketed. By just allowing the patent of one or two chemical processes, you are depriving the man who worked on these details, and that is where the team work of the company came into the picture.

SHRI FAKHRUDDIN ALI AHMED: I will just ask one or two questions for information. First of all, can you inform the Chairman and Members of this Committee, how many of the patents granted have remained unworked for over five years?

SHRI ROY: I regret we have no information.

SHRI FAKHRUDDIN ALI AHMED: Will it be correct for me to say that a large number of the patents granted—70 per cent, 80 per cent have remained unworked for a period of five years?

AN HON. MEMBER: That is what you said in your evidence.

SHRI KEITH C. ROY: I said that after five years, a number of the patents initially taken out lapse.

SHRI FAKHRUDDIN ALI AHMED: Do you agree that this is the matter which we have to consider that where patents remain unworkable for number of years they should automatically be revoked?

SHRI KEITH C. ROY: This is a proposition which, I must submit, we, with your permission would like to consider, and for which we want some time.

SHRI FAKHRUDDIN ALI AHMED: Let us have your views on this. If so, what is the period which you would like to prescribe for such revocation?

Then, you have said a good deal about royalty. Can you give me the number of cases where under the

existing arrangement and existing law Government have allowed royalty beyond 5 per cent?

SHRI KEITH C. ROY: No, Sir. I haven't that information. It is in the Ministry of Industrial Development.

SHRI FAKHRUDDIN ALI AHMED: I have been looking into it. I have not come across one case where more than 5 per cent has been allowed Only 5 per cent has been allowed in very exceptional cases. I think the Controller puts it at 1/1|2 or 2 per cent. Therefore, what objection can you have to this when we are fixing a limit of 4 or 5 per cent in our provision?

MR. CHAIRMAN: Under the present arrangement there is no ceiling. It did not exceed 3 to 4 per cent.

SHRI KEITH C. ROY: 4 per cent is subject to tax.

SHRI FAKHRUDDIN ALI AHMED: Everywhere it has been subject to tax.

SHRI KEITH C. ROY: Our basic position is that we envisage a situation in which we will much more willingly and freely negotiate....

SHRI FAKHRUDDIN ALI AHMED: Here we not you want us to remove an uncertainty. On the other hand, when we are laying down a certain standard, certain basis, you object to it. But what has been our experience during the past few years? I tell you I have taken into consideration what has been happening during the past few years. I think there are very few cases in which we have allowed even 5 per cent. Otherwise the percentage of royalty has been much less.

SHRI DIVECHA: The point that we make is that we are aware of the fact that there is one administratively imposed ceiling. But we are objecting to the statutory ceiling, which, if it is put in the law, is going to affect the development of the industry.

MR. CHAIRMAN: Thank you, Mr. Keith Roy, and your colleagues for giving evidence, and we shall see what advantage we can take of your evidence. The Committee will take note of this.

SHRI KEITH C. ROY: On behalf of my coleagues, I thank you all for the tremendous amount of care and attention that you have given to this Bill. We are also thankful to you for this opportunity given to us for placing our views before the committee. Thank you very much.

(*The Committee then adjourned*)

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE PATENTS BILL, 1967.

Saturday, the 26th July, 1969 from 10.00 to 12.45 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri Hari Krishna
4. Shri M. R. Masani
5. Shri Fakhruddin Ali Ahmed.

Rajya Sabha

6. Shri S. K. Vaishampayen
7. Shri Krishan Kant
8. Shri R. P. Khaitan
9. Shri K. V. Raghunatha Reddy
10. Shri Pitamber Das
11. Shri Dahyabhai V. Patel
12. Shri Godey Murahari
13. Shri G. Achutha Menon.

LEGISLATIVE COUNSEL

Shri S. Ramaiah, *Deputy Legislative Counsel, Legislative Department, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF INDUSTRIAL DEVELOPMENT, INTERNAL TRADE AND COMPANY AFFAIRS

1. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks.*
2. Shri Hargundas, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

I. Dr. T. R. Govindachari, *Director, CIBA Research Centre, Goregaon, Bombay—63.*

II. Shri Baldev Singh, *I.L. & E.O., C.S.I.R., New Delhi.*

1. Dr. T. R. Govindachari, *Director, CIBA Research Centre, Goregaon, Bombay—63.*

(The witness was called in and he took his seat).

MR. CHAIRMAN: Dr. Govindachari, the Committee would be very much pleased to have your views about the Patents Bill. Please make a short resume' of what you propose to state. Thereafter, hon. Members will put questions, to which you reply. Please note that the evidence given by you shall not be treated as confidential. It is liable to be made public and available to Members of Parliament. Please give an introduction of what you are and where you are.

DR. GOVINDACHARI: I am Director, CIBA Research Centre, established six years ago, and we are engaged primarily in developing new drugs and pharmaceuticals. I did not come prepared to make any statement, but I would make a few brief remarks about the Patents Bill. I should like to emphasize that I am not speaking as a commercial man. My knowledge of commercial transactions is zero. I am just speaking as a scientist in a research laboratory which has been engaged in developing new pharmaceuticals. I am not aware of the subtelties of economics, of commerce, price structure, this and that.

MR. CHAIRMAN: The Committee will be very pleased to know your work background and your contributions.

DR. GOVINDACHARI: Before coming to CIBA about six years ago, I was professor in the Presidency College at Madras. Later on, for two years, I was the Principal of the College also. In 1963, a new laboratory was set up and I was asked to take up the Director. I knew that the place had excellent facilities, most modern equipment and also a very good group of scientists. So I changed over and I have been there for the last six years. By training I am an Organic Chemist and I have been studying natural products, especially plant products, the isolation of compounds from substance, and so on. That is my scientific background.

I am a member of several learned institutions. I am a Fellow of the International Institute of Science. I am a Fellow of the Academy of Sciences of India. Also, I have been for 8 years a member of the Bureau of International Union of Applied Chemistry.

I have published more than 200 scientific papers in Indian and foreign journals.

Now, to put it very briefly, my opinion about the Patent Bill, I consider that patents are essential if active research has to be done for the development of new drugs. I feel that the existing term of 16 years is quite reasonable. Without beating about the bush, I come to the main points.

As regards product processes, I feel that product processes are really important things and product patents should be granted. I do not feel there is any justification in distinguishing between pharmaceuticals and other products. I think it is proposed to grant 14 years protection to other products and 10 years to pharmaceuticals. This, I do not think, is reasonable in my opinion.

MR. CHAIRMAN: What about Licence of Right?

DR. GOVINDACHARI: As far as licence of right is concerned, I feel that each individual case should be treated on its merits. Licence of Right is, I think, an expropriatory measure. Somebody spends lot of effort and time in developing a drug. And unless that party is unable, for various reasons, or unwilling, there is no justification in giving licence of right to other parties. But then the payment of royalty should be decided on the merits of each individual case —how much investment has been made, how much time has been spent, etc. An arbitrary royalty of 4 per cent or so should not be awarded. It should depend on the exact case.

MR. CHAIRMAN: Do you feel like this: By giving a longer period, it prevents the Indian scientists from

traversing other areas for a long time and thereby it hampers the improvement of the Indian scientists?

DR. GOVINDACHARI: I do not feel like that, because, in practice, we have been doing research of the same type as is being done in the leading laboratories of the world. I do not think it has come in our way.

MR. CHAIRMAN: Mr. Masani.

SHRI M. R. MASANI: It is a really impressive evidence. I have nothing to ask.

SHRI KRISHAN KANT: This is your paper?

DR. GOVINDACHARI: Yes, I wish I had spent more time in praparing this.

SHRI KRISHAN KANT: You have said: "There is a brain drain in this field....". May I know whether the brain drain in the pharmaceutical field is the same as in the engineering and technical fields, or is it something more?

DR. GOVINDACHARI: I would say that there is brain drain for various historical reasons. There is more brain drain in the case of Organic Chemists than probably in the Engineering field. If I may say, many of my students are abroad now, settled in the United States permanently because of lack of oportunities in India. I feel that the brain drain in the field of Chemistry is probably much more, than in other fields. Especially, Biochemistry is an area in which this country offers no opportunities at all and 90 per cent of the first rate Biochemists in India are settled mostly in the United States, a few in Europe and other countries. It is a very sad situation.

SHRI KRISHAN KANT: You have mentioned that investment can be wholly Indian. Collaboration from a reputed foreign pharmaceutical firm with adequate safeguards for national interest should not be unwelcome. Do you mean that the collaboration should be in the field of research or it should be only confined to the Industrial field?

DR. GOVINDACHARI: Just to give you the brief idea, in the United States alone they are spending 1000 million dollars I am told on research on pharmaceuticals whereas we (our Institute & CDRI) are spending hardly 20 million rupees or two crores of rupees. There has been nothing in the pharmaceutical research area. Due to various reasons, Western Pharmaceutical Companies have given a big lead. In research they are very very dominant even in India. For example in CIBA substantial share is held by them. There are many firms partly owned and partly financed by such pharmaceutical companies. There are purely Indian companies which are coming up for the last 10 years. I hope purely Indian segments should start on research line as well as others which are working in collaboration with foreign firms because there is a great deal of uncertainty about this pharmaceutical research and development in which we have practically no experience. Second advantage is supposing we had really first rate drug development from the Indian laboratory (no doubt if there is collaboration with foreign firm) we have much better chance of exploitation all over the world than purely from Indian firms for some of the leading firms like CIBA who have international reputation. They have some establishment to look after their interest and supposing some drug came out of research, such a firm has much better chance of getting used all over the world, thereby giving indirect return to Indian economy also.

SHRI KRISHAN KANT: Supposing the patent is not utilised for five years let it lapse.

DR. GOVINDACHARI: What do you gain in having it lapsed?

SHRI KRISHAN KANT: That patent need not allow others to work.

I hope you do not want others to shut their research work.

DR. GOVINDACHARI: In practice nobody shuts it. They do many other things. The possibilities in pharamaceuticals research are immense, otherwise you would not have almost 200 or 300 pharmaceutical companies. If there is no scope for work, why should they establish all this.

SHRI KRISHAN KANT: Can you have any objection if after five years of sealing they are allowed to lapse?

DR. GOVINDACHARI: There may be practical difficulties. They may file a patent and they may try to improve their product and try to get something better. The moment we get a lead in the biological laboratory, that there is some activity of desirable type and this is the time we apply for patent and after that it takes 5 years or so to go on answering the patent examiner. Some times they are not satisfied. They want other experiments to be done. This is a long process.

SHRI KRISHAN KANT: Not after the date of filing but five years after the date of sealing. Could you have any objection if it is allowed to lapse after five years from the date of sealing?

DR. GOVINDACHARI: I have not thought over this at all.

MR. CHAIRMAN: Somebody told us that 60 per cent are allowed to lapse after certain time because they do not think it commercially to be worked out. If it is so, my friend's argument is correct.

DR. GOVINDACHARI: It costs a lot of money to keep the patent alive. In some countries you have to pay exorbitant charges. Supposing it is of no use, the Company will be the first to drop the patent. For example in our laboratory we have so far filed 35 patents. Some of the earlier patents we have abandoned because sufficient work has shown that there is nothing much in it. Because it is very expensive to keep the patent alive, I do not think anybody does it for pleasure.

SHRI MASANI: How is it expensive to keep the patent alive?

DR. GOVINDACHARI: In West Germany you have to pay the fee.

MR. CHAIRMAN: Normally 60 per cent of the patents are allowed to lapse.

DR. GOVINDACHARI: There are some countries which charge exorbitant fee and we ourselves do not feel justified in spending so much money and keep the patent alive when we know that after two or three years there is nothing much in it. We have abandoned several patents.

SHRI KRISHAN KANT: Should there be any difference in the Patent Law of a developed country and under-developed or developing country or should it be the same? Should there be a weaker patent law for developing country or stronger patent law for a country?

DR. GOVINDACHARI: If you have a scientific patent law in this country and if it is your object to promote more and more research within the country, a weak patent law is going to have more adverse effect because in 1963 when CIBA took a decision to set up an institute with Indian staff, It was a big step. It was hoped that many other countries who also have big sales in India also would fall in line. Then there was delay of two, three years. Patent came in and many people when talk of enacting a new patent law entailing the benefits of the patent system, many forms given up the idea of selling up research laboratories.

You should not do anything which will definitely harm the further research and investment in this direction.

MR. CHAIRMAN: You said, after 1963, some of the plans|programmes sought to be executed were dropped; what do you mean by it?

DR. GOVINDACHARI: I know several other people who visited my laboratory. They sew and they wanted to know details about expenditure availability of staff, chemicals for research, equipments and all that. They were very keen to set up research labs. They recruited 5 or 6 scientists and trained them in Germany. Still this is going on for 5 years or so. Still they have not taken major decision to actually start research in India.

SHRI C. C. DESAI: You say, for setting up research laboratory, this has not been approved by Government.

DR. GOVINDACHARI: The Bill is going on for the last 5 years. From time to time various people have been coming and whenever I meet top people I ask them, why don't you set up this. They say unless they know something about this, something that is going to be finally done about it, they are not in too much of a hurry to invest a lot of money. This will come to 3 crores of initial capital investment and another 50 lakhs to a crore in subsequent years. Our last year's expenditure in 1968 was 97 lakhs including interest on capital charges. This is now going to level up at this level probably, almost a crore of rupees. We have been operating for last 6 years and probably spent about 4 crores, revenue expenditure and I don't know when we will get the product on the market which will recall he money which has been spent. We don't know this. This money could have been very well invested in some thing which is immediately yielding returns. I know CIBA have many other plans. They want to set up pesticide plants. They wanted to expand dyes and pharmaceutical production. All that money could have gone into actual production. Now, if there is no proper return on the investment I don't think people are going to be interested in any such activities.

SHRI KRISHNA KANT: There are various cooperative organisations which are doing such work in the other fields and I want to know whether such a cooperative research association can be set up for the pharmaceutical industry in this country.

DR. GOVINDACHARI: I personally believe that in the case of pharmaceutical industry this may not be a useful thing. In the case of textiles I know such research institutes have been of great help. There are various day-to-day problems which are there. The problems are in textile industry and pharmaceutical industry which are absolutely different.

SHRI KRISHNA KANT: You said when a product is coming out others who want to produce it by some other process should not be allowed to do it. Is it not trying to veto research and put a block in respect of original work of the scientists? Don't you think there should be freedom in research?

DR. GOVINDACHARI: It is product that is important. It is product which has an activity. Process is only a means to an end. When a company produces a product, scientific staff think of other means and other processes of making the compound and also cover it by patents.

SHRI KRISHNA KANT: It means, you stop research in that area to other persons. Does it not amount to restricting the freedom in the field of research? As scientist, would you like it to be done? You have given a statement saying: "Now, if only process patents are granted, a competitor may claim a new process which in reality may be much inferior". How can it be? Processes cannot be inferior; product may be inferior.

DR. GOVINDACHARI: What we mean by processes is this. Suppose a product goes into the market. It is made by a particular scheme of reaction starting from some raw material. Some competitor may claim by different scheme of reaction starting from the same raw material or different raw material that he has made

it cheaper. He files a process patent. In reality it may be that it is a spurious claim.

SHRI KRISHAN KANT: In reality you can't say, process is inferior. Product may be inferior.

DR. GOVINDACHARI: I do it in a different scheme of reaction. He has used some other process of reaction and says the product is cheaper. It is just to hoodwink the people.

SHRI KRISHAN KANT: This is not a scientific approach to the problem. A scientist does not expect this thing from you.

DR. GOVINDACHARI: You have aspirin. It is made by a certain scheme of reaction starting from some element. Somebody tries some other compound and makes it and says it is cheaper. Therefore he wants to go to the market. But really it is not so. How do you check it? That is the point. He may start production and say, I am making it by different process.

SHRI KRISHAN KANT: Somebody wants to make some mischief. You can give suggestions for preventing that. But there should not be a ban on intellectual research.

MR. CHAIRMAN: Take West Germany and Japan; they have followed the process patent and they did very well with that. Scientifically they are very much advanced. Yet they don't have product patent in the case of drugs. West Germany is a case in point. So also Japan. They are very much advanced scientifically and otherwise.

DR. GOVINDACHARI: It is desirable if it is product. It is not such a tragedy to have process patent. I am pointing out about the difficulty to go to the court.

MR. CHAIRMAN: There are two sides of the argument.

DR. GOVINDACHARI: You are placing premium on dishonest persons.

SHRI KRISHAN KANT: You could give suggestions for that. What more is required to be done?

DR. GOVINDACHARI: Actually I think in the last 1968 Budget very generous concessions have been given to the industry to set up research units where research expenditure can be treated on a different level. really great inducement has been given.

SHRI KRISHAN KANT: Have you any more suggestions to give?

DR. GOVINDACHARI: These tax concessions should continue. People should be encouraged to set up research in India. Large number of talented young people can be employed in India. I really feel that we are in no way intellectually inferior to any foreigner Japanese or Americans. What we principally lack is organizational ability. We do not have the same organizational ability as those people. Man to man our people are as clever, as motivated and capable of delivering the goods as any other people. Intellectually they are not any the better. Unfortunately our country lacks organizational ability which we will get by actual practice. I feel once we have a large number of laboratories doing this kind of research not only in pharmaceutical list also other fields more and more products will come which will be used all over the world. Indirectly it will bring prestige and foreign exchange earning capacity to this country.

SHRI C. C. DESAI: You said just now that very generous provisions have been made for expenditure incurred on research. As you know a great deal of expenses and 25 per cent is allowed tax exempt. Entire expenditure is really meant tax exempt. In view of that why is it necessary to have any patent protection at all? Take the case of CIBA. All your expenses have been covered by tax

exemption at least to the extent that the Government pays the tax. You produce it in our own factories. By certain practice you compensate yourself further. Now I take it that when you discover a drug and put it on the market after obtaining the approval of the Drug Controller, you will have to examine it. But even apart from the chemical compensation which is not available to the other person, why do you want still further patent protection?

DR. GOVINDACHARI: It is very easy to have a pharmaceutical product patent and market it.

SHRI C. C. DESAI: If it is as easy as that, then everybody will make discovery.

DR. GOVINDACHARI: Ciba is one of the small companies. There are many drugs developed by Ciba and there is no patent protection.

SHRI C. C. DESAI: In whose interests. The interests may be merged in the manufacturer. As against that there is the consumer who has a peculiar interest. If there is any process by which the consumer can get the same article at a lower price, I am afraid you are on the wrong path. You could go on gaining your research and make them available to the consumer at a lower price.

SHRI KRISHAN KANT: In the beginning it may be what you propose. Now they charge 6.4 expenditure on research. Even then the price they charge the market is much more than that.

DR. GOVINDACHARI: The price of a thing is something entirely different.

SHRI KRISHAN KANT: Supposing it is added to the body that may be repeated in the same pressure, In India, maybe, even if this is added to the cost of production of drugs, the cost of a drug in the market will be much more than this.

DR. GOVINDACHARI: My main point is that the cost of drugs in India is very different not because there has been no research at all but mainly because the cost of raw materials is practically somewhere from 10 to 15 times the international price. For example I may mention nitric acid, sulphuric acid, caustic soda and other inorganic chemicals which are much more expensive. Basically there can't any comparison at all with regard to our price and international price for the sulphuric acid, caustic soda, soda ash etc. In fact our cost would increase the cost of drugs in our country and nothing else. I have more experience in the costing work and I have tried my best to compare the international price. Raw material cost of ours is very expensive.

SHRI C. C. DESAI: The hon. Minister mentioned the third party also, namely, the inventor. To what extent is the inventor compensated for his talent in producing the drug which is quite distinct from a manufacturer or a company? He simply gets a fixed monthly salary—may be a small or big monetary benefit. If there is result the man is kept; if there is no result, he is gone.

DR. GOVINDACHARI: We still have to produce something but have not come to the stage of marketing the product. I know in CIBA, Basle the Scientist who they have really contributed and developed a new drug. They have also get special promotions and special bonus for this. They go up the ladder very much faster than the other people. There is definitely a recognition for all their contributions. If anyone has gone something he is promoted out of turn even though he may be younger to his other colleagues. He gets rewarded for this.

SHRI C. C. DESAI: Does he get Padma Shri?

DR. GOVINDACHARI: He gets a title of scientific expert, group leader or vice-director or director. There are various such things in big companies.

SHRI C. C. DESAI: How many patents have been taken up by CIBA and how many have been sealed?

DR. GOVINDACHARI: Since 1963 we have filed 35 patents in India but no patents have been granted so far because we have actually sealed in Belgium 11 patents, 4 in Great Britain, 1 in U.S.A. 14 in France, two in Hungary, one in Sweden and three in Austria.

SHRI C. C. DESAI: Even if there is no patent law or there is patent law as British Patent Law or any other country, I believe certain patents have been filed or sealed in other countries. Will that not affect your business here?

DR. GOVINDACHARI: Probably each country has got its own laws. We can only file our patents. We have filed 335 patents so far. Now I would amount that has gone into this kind of development. We have actually tested in our laboratory upto-date 7,500 compounds to find out their biological activities. In the last four or five years—to be exact in the last three years—we have submitted to the clinical trials about 12 compounds. These have been actually tried out in hospitals and out of these 12, zone have been dropped because the clinical trails showed that they were found satisfactory in animals but not in humanbeings. They had some undesirable effects on humanbeings. We tried them out actually by doing clinical trials in the hospials. Of course we do not do them ourselves but we simply hand them over to the doctors in hospitals. Five compounds have been dropped actually as being not fit for human use. We still have seven compounds in the clinical trials. It will take two years to find out whether any one of them will prove to be useful as drug. We are putting up enormous efforts in this regard.

SHRI C. C. DESAI: In fact greater concessions are shown in the matter of tax exemption so that one can produce it cheaper and make it available to the public freely. How will it affect your zeal or your anxiety for going in for research and development So you are covered as also the consumers in this way.

DR. GOVINDACHARI: How are we covered, Sir?

SHRI C. C. DESAI: Suppose you spend Rs. 50 lakhs in capital expenditure or 75 lakhs or whatever it may be. You get a plenty of tax exemption on that. So, you cannot exploit the consumers.

DR. GOVINDACHARI: I do not agree with you when you say that we are trying to exploit the consumers. I do not know if this thing can go on indefinitely.

SHRI C. C. DESAI: Suppose there is no Patent Law and everybody is free to manufacture anything. Probady everbody will produce anything with the same potency; it might also be cheaper and it may benefit the consumers as well.

DR. GOVINDACHARI: Many of our own pharmaceutical firms, I do not think, will be in a position to produce them cheaper than the real discoverers because the basic factor is the price structure for raw materials. Our price of raw materials is much higher and that is the reason why our cost of drug is more.

I do not think any other person in India is going to produce that. CIBA is a discoverer of a particular drug which no other company would be able to manufacture at a much cheaper price than CIBA itself.

SHRI C. C. DESAI: If there is no patent law, anybody else would be able to produce a much cheaper drug and will be able to compete with you. I want to know whether the Patent Law has any adverse effect on the consumers. You have to justify it.

DR. GOVINDACHARI: There are drugs in the market now the patents for which have expired in 1969. All these drugs had been discovered before 1953 and so the 16 year patent period has expired. We are not doing anything for the patents have already expired but we are trying to stifle whatever research is going on.

SHRI KRISHAN KANT: If we are free as you say just now, if we could get any drug.

DR. GOVINDACHARI: We have got big companies in this country. They can get the drugs in those laboratories and make them available to the consumer at the lower prices.

SHRI KRISHAN KANT: My point is: What have you done for the drugs which are in very large use for which patents expired some years ago. I would say 80 per cent of the drugs are basic drugs on which research has been done and their patents have expired and still people are using it.

SHRI C. C. DESAI: You said there should be no distinction. The life of a patent should be 15 years from the date of application.

DR. GOVINDACHARI: 15 years from the date of scaling. Supposing it takes so many years to examine a patent and grant it. We have filed 35 patents in India. Not a single patent has been granted.

SHRI KRISHAN KANT: If your process of perfecting the process is going on.

DR. GOVINDACHARI: We must take a reasonable time. 2 years is a reasonable time to ask all questions and clear all doubts. I have no clear idea. There is a last Select Committee hearing on this that has been going on since years now.

SHRI F. A. AHMED: As research worker, I am sure you are interested in stimulating research in India. Would it not be more appropriate that instead of giving some kind of protection to the manufacturer some suitable remuneration should be given to the person who invents and after doing it it can be accepted by the State.

DR. GOVINDACHARI: The main answer to that question would be you must distinguish between research of this type with a definite end in view of producing a new pharmaceutical. This cannot be done by individuals at all. This is a most highly complex business. It is not one type of scientist involved.

SHRI KRISHAN KANT: We want the scientists who is doing that should be fully compensated and should be fully rewarded. Whether the manufacturer should also be included in this?

DR. GOVINDACHARI: Actually manufacturer invests the money.

SHRI F. A. AHMED: The difficulty arises because the person deciding must have the benefit of research. The State exploits and gives all the necessary assistance to other scientists. What objection can you have in relation to the patent law? He can have something and a survey which will provide some sort of suitable remunneration to the inventor.

DR. GOVINDACHARI: There are inventions of various types, inventions in the field of electronics made perphaps to be done by a single individual. I do not think Russians have evolved a single new drug on their own ever since Russia came into existence.

SHRI F. A. AHMED: They have patent law.

DR. GOVINDACHARI: I would like you to mention a single drug of Russian orign.

SHRI F. A. AHMED: We are concerned not only with pharma ceutical. We are concerned with all the research also.

DR. GOVINDACHARI: I am only speaking about pharmaceutical. It is not entirely correct. If the manufacturer who employs the workers get the return. The manufacturer can reward us in turn. It is not as if he is going to take away all the money. It is a public limited company.

MR. CHAIRMAN: Thank you very much, Mr. Govindachari, for the trouble you have taken to place your views before the Committee.

DR. GOVINDACHARI: Thank you, Sir, for the patient hearing.

(The witness then withdrew)

MR. CHAIRMAN: Before we send for the other witness, let us decide about asking for extension. The extension of time is to be asked for, as it will end by the end of this session.

SHRI C. C. DESAI: Yes. We can decide about that.

MR. CHAIRMAN: I think we can approve this:

"The Committee decided to seek further extension of time for the presentation of their report till the first day of the second week of the next session of Lok Sabha in view of the fact that the clause-by-clause consideration of the Bill could not be completed and their report presented to the House by the prescribed date *i.e.* the last day of the current session, as the consensus of the members was that during the session when some important measures were before Parliament they could not sit for a series of days to complete this task. It was urged that the very nature of the importance of the Bill coupled with the fact that the mass of evidence taken thereon had to be carefully sifted the clause-by-clause consideration required very careful thought and there was no point in rushing through this at this stage.

The Committee authorised the Chairman and in his absence . . .

SHRI KRISHNA KANT: Mr. C.C. Desai.

MR. CHAIRMAN: Yes, Mr. C. C. Desai.

". . . . Shri C. C. Desai to move the necessary motion in the House to the that effect on the 29th August, 1969."

HON. MEMBERS: Yes. We may approve of this.

MR. CHAIRMAN: This is approved. We may send for Mr. Baldev Singh.

II. Shri Baldev Singh, I.L.&E.O. Council of Scientific and Industrial Research, New Delhi.

(The witness was called in and he took his sent)

MR. CHAIRMAN: Mr. Baldev Singh, would you please give your views about the Patents Bill in brief?

SHRI BALDEV SINGH: I am extremely grateful to you for the opportunity you have given to me to express my views. I will certainly try to be very brief.

As a scientist, I would like to look at the facts. Unfortunately, in the case of patents in this country sufficient data is not available. I do not mean that we do not have data in regard to patents; I meant the data which is required for the formulation of a policy in regard to patents in the country. For example, we have no data in regard to the utilization of patents. Recently, the Controller of Patents has given some data. But as far as I am aware, the relevant data is not available. But the Patent Office Technical Society has given some

data which may be useful for forming some of our ideas. I, with your permission, would like to read a few facts.

Whenever we talk of legislation, particularly Patents legislation, perhaps it might be useful to have some preamble as to why we want Patents legislation, what is the objective, etc. I think that the objective should be to provide incentives to research workers and inventors, but, still more so, Patents should help promoting the industrial development of the country. When these two objectives are clear before us, then it might perhaps be useful to give a preamble.

I would say that in the Indian context the Patent law appears to be more or less an infructuous exercise. I am reading the 1967 figures. The position is that out of the patents taken (103 by firms, 773 by individuals, 103 by research institutions), 70 per cent of patents are taken by individuals, who have no means or resources to develop them into industrial production. These Patants in due course lapse. Let us see the corresponding figures for foreign patents in India. Out of about 4,000 patents, 3760 are by firms. I would like to make it clear that all foreign patents in India are by industrial firms, and not by individuals and not by research institutions. Individuals have contributed 236: research institutions 1105. In our country, 60 to 80 per cent of the patents are by individuals, whereas a predominant portion of the foreign patents is by industrial firms. Secondly, even here 60 per cent of the total patents are for chemicals and food. Even foreign patents are mostly for drugs and foods.

The point arises: Are all these patants utilized? What is the fact of this prediminance obtaining in this country? Why do foreign firms come in at all?

I had a discussion the other day with some of my colleagues, including Dr. Atma Ram on this matter. trial manufacture in this country The argument generally advanced is that if patents are not given, then the foreign firms will not put up indus- and we will be impeded. It is a very valid argument. But then it should also be determined as to how many of these patents are really patents which carry technology. Are they really helping industrial development? My contention is that I have no means; I have no figures on this particular item. I do'n think that more than 10 per cent of these patents are in production. Ninety per cent of the patents are not carriers of technology . . .

SHRI KRISHAN KANT: Indian or foreign?

SHRI BALDAV SNGH: Indian patents really do not matter. So far as Indian patents are concerned, you may have them or you may not have them, because 70 per cent are by individuals, who do it just for the satisfaction of filing a patent, which lapses in due course. I do not know how many of them keep on, because the total Indian patents in force are only 3274 up to date for 20 years or so, whereas foreign patents in force are 35,000 out of 12 lakhs that might have been filed in this country about 38,000 are in force, out of which 35,000 are foreign. Really speaking the Patent Law in India to-day means how to regulate foreign patent only. Of the Indian Patents, 70 to 80 per cent are individual who have no means to take to industrial production. I would conclude that those patents are really inventor satisfaction patent. They are not industrial satisfaction patent.

SHRI R. P. KHAITAN. Will you give us some of the Indian patents taken for food and drugs?

SHRI BALDEV SINGH: I am afraid there is no analysis given by the society.

The Patent if it carries technology with it and if it is industrial patent, it is most welcome. But 90 per cent do not carry technology with them. Patent by itself does not lead to production. It is a key to production Patent separated from technology cannot lead to production and most of the patents in this country are not carrying technology with them and that is the weakest point. We should see the patent which carries technology and that should not be hindered. When it does not carry technology with it, something should be done.

My next point is what does this patent do when it has no technology. Why does it come here? The objective is two-fold. Firstly they permit imports at least for a number of years when the Patent is in force and not in production, the local agent or branch enjoys exclusive monopoly for import of that particular item on which the patent gives the production. This is one thing on which I feel I would digress it. The United Nations said something on it and we should take notice of it. Second effect of untilised patents is that they hinder the technology from coming in accompanied by a patent from other country.

I would say that the predominant effect of the foreign patents—unutilised in this country is two-fold:

1. To permit exclusive imports and thus encouraging outgo of foreign exchange some times at a higher cost than would otherwise be available and secondly hindering technology coming in.

We should have some selective method of finding out if they carry technology with them. When we consider patent law we should consider its effect on industrial policy because industrial policy should have some relationship as also scientific policy and technological policy with patent policy. They are inter-realated subjects. You cannot separate one from the other. Sir, I submit that Industrial Policy and industrial development is being impeded by present method of operating Patent Law because we have come across certain cases. Take for example the case of Talbutamide and there are other cases like that also. I would say that when we are taking of Patent we should talk in the world wide context as India is not the only country which is having the patent problems. The other developing countries also have these problems and some attempts are being made at the United Nations level to solve these problems and one of the points which they have made is that in some countries if the Government permit it should be punishable to import because of a Patent. I submit it is an important clause. If you separate import advantage from the patent then the tendency and temptation for a person to take a patent will automatically be less. If we follow the United Nations Model Law on Patents and that we should not link up imports of the patented materials with the patent protection in a country, in some cases it should be punishable to do so, then it will solve quite a bit of the problems.

MR. CHAIRMAN: You are basing the argument on Model Law in the United Nations.

SHRI BALDEV SINGH: Partly, Sir.

In some countries it might be of advantage to have something—licence of right to start with. In five years if it is not utilised, it automatically lapses. Nobody is bothered about it. But if it comes into production, then it should be given full protection which an inventor or a producer may like to have. I think that in India some such legislation would very greatly help the affairs. If the patent is taken in the country, it is only recording of invention filed.

SHRI KRISHAN KANT. After five years he has to apply again.

SHRI BALDEV SINGH: They say in-between this if you want to start production, he has to pay heavily—some times ranging from 30 to 50 pounds i.e. Rs. 1,000 practically and ask for full production. He will go in for production only if he means business. If he means business and brings technology I will welcome. All over the world the trend is towards patent and there is not much point in selecting country on Patent Law but considering that we do want technology to come from other countries, we will have to form our laws on the objectives which are outlined in the beginning. Does it carry technology and we can operate in our legislation suitably in some causes which could be referred to. We give to them some sort of a certificate and that certificate can only means that person has filed an invention, but full protection, will be given to him as soon as he puts up the same. We should link up with industrial policy. We have a Licensing Committee on which I have the honour to represent. We examine applications. If application comes with details that he wants to start production and along with patent production, we will welcome it. But that is not what happens. So, Sir, that is all I have to say.

We introduce two basic clauses completely separate and in fact make punishable imports based on patents. File patents as a protection of an invention as soon as technology comes in production. If these two are incorporated and promptly when we have a Patent Law linked up with industrial policy and science policy and then we contribute not only to our own development but also to other countries who have similar problems.

श्री आर० पी० खैतान : क्या आप पेटेंट ला चाहते हैं या नहीं चाहते हैं ?

MR. CHAIRMAN: He wants patent and he does not want to get away.

SHRI R. P. KHAITAN: For how many years you want—10 years or 7 years?

SHRI BALDEV SINGH: I am a little allergic to administrative prejudice for 5 years; 7 years or 10 years. There should be a rationale about it. When patent comes into the country, the other person is investing and he expects some return Can't we calculate in how many years he will be able to get a reasonable return. I may say five years or 10 years is quite enough. We should have a rule of thumb as I have submitted.

I may say that you have raised a very vital point. You say that foreign collaboration will be agreed to for five years and your patent is for 10 years. After five years he says, thank you very much. My patent is no longer here. What will you do? We find in the licensing Policy after five years if collaboration is ending, you cannot have collaboration.

I would say the biggest weakness of the administrative machinery is the absence of it. If it is 5 years it is a different thing; if it is 14th years, royalties have got to be paid beyond that. It is possible to compute with a reasonable degree of fairness as to what should be the percentage and what should be the period.

श्री खैतान : आप ने बताया है कि ज्यादातर पेटेन्ट्स फ़ारेन लोगों ने करा रखे हैं । ऐसी हालत में इस का एडवांटेज ज्यादातर फ़ारेन लोगों को मिलता है । ऐसा पेटेन्ट रखने से क्या लाभ है जिस से ज्यादातर फ़ायदा फ़ारेन लोगों को ही हो ।

श्री बलदेव सिंह : आप का फ़रमाना बजा है । फ़ारेन पेटेन्ट्स बहुत ज्यादा हैं । इस सिलसिले में हमें दो क्राइटेरिया रख देने चाहिए एक तो हमें यह देखना चाहिए कि जो पेटेन्ट आ रहा है वह टेकनालोजी के साथ आ रहा है या उस के बग़ैर । जो पेटेन्ट टेकनालोजी के बग़ैर आ रहा है उस की इजाज़त न दी जाये । दूसरे यह तय कर दिया जाये कि इम्पोर्ट की इजाज़त नहीं होगी । ऐसा करने से वही पेटेंट आयेंगे जिन को हम चाहेंगे और जिन से हमारे मुल्क को फ़ायदा होगा । इस वक्त जो पेटेन्ट ला है वह तो एक रैकेट बन गया है । ये दो क्राइटेरिया रखने से वह बन्द हो जायेगा ।

SHRI VAISHAMPAYEN: He said, there is no data with regard to the utilisation of the patents. What is the correct position?

DR. VEDA RAMAN: I have no authority to demand from the patentees whether they are working or not. What has been done is this. I have addressed 30,000 letters. We are engaged in collecting the data as to how many patents are worked in this country. I have addressed individually about 30,000 patentees asking them whether they are working on the patent in the country and if not what are the difficulties encountered by them. When we are getting replies it will be seen how many of them are not working. Only a fraction of foreign patents have been working...

SHRI VAISHAMPAYEN: What is the percentage?

DR. VEDA RAMAN: I cannot tell you. I am collecting it.

SHRI ARJUN ARORA: Nobody collects that information. We merely give the patent and forget about it.

DR. VEDA RAMAN: They can very well refuse to give it. I have addressed personal letter to the people concerned asking them to supply me with such information. There is no provision under the present Act. But hereafter in the new Act we have provided a Clause whereby this can be done. In Russia for example, 35 per cent of the patents registered are worked in that year itself. In some other countries it is 20 per cent or 25 per cent. In our country it is almost nil.

SHRI VAISHAMPAYEN: Whatever things come in the way of achieving our objective may be amended and provided for in the present Bill. We may remove any provision which comes in the way of fulfilment of our objectives.

SHRI BALDEV SINGH: The entire thing, as formulated, does not fulfil the objectives. It does not have the inhibiting clauses which I would like to have. Anybody can go and file a petition. You cannot import simply because you have a patent You should give protection of the patent only when you really want production 80 per cent of the foreign patents are put forward, not by individuals but by firms. In India, 70 to 80 per cent are individuals, not firms. No individual can have resources of that order to start production.

SHRI HARI KRISHNA: In the foreign country also they may be having their own system like that. There may be individuals there also.

SHRI BALDEV SINGH: They have. But that does not impinge on their industrial development. The patent law in a developing country is just like the industrial policy. In America they don't have any industrial policy Resolution like ours. I went once to the USSR and discussed some of these things with their patent people. They have a regular system of promoting patents. They go there, they examine their places and they drop meciclessly if some thing is not worthwhile. Here the

people come for protection for imports, not protection for production; that is the situation. I would support if these things are linked with the technology which we want to develop. From the data which will be available in respect of various countries it will be seen as to what is the index of the industrial self-reliance and independence of those countries. Take Canada for instance: It has got 85 to 90 per cent of American patents. Canada's economy is dominated by the US economy. Japan has only 35 per cent foreign patents. It has to be admitted that the condition of the Patent Law cannot be divorced from the Industrial Policy, the industrial policy, within the spheres of your total objective, which you want to achieve in this country. It is to form part of the total concept of your development. It is not an isolated thing at all. If you want to have the concept of self-dependence, economic independence, economic self-respect etc., then your concept has to be linked with it. But if you are satisfied with Belgium's condition, that is a different thing. It is up to us to do so.

SHRI VAISHAMPAYEN: Under clause 48 of the present Bill, the power of importation under certain circumstances has been given to the Government. Do you agree with this particular clause? I would also like to know whether institutions like CSIR should be excluded from making use of this patent?

SHRI BALDEV SINGH: Government in most countries have unfettered powers to import whatever may be the protection given to the patentees. In Britain, National Health Service can import under the law from Italy or any other source notwithstanding the patent held by Pifzer or Lederle.

SHRI VAISHAMPAYEN: You said that the patentee should be compensated.

SHRI BALDEV SINGH: Yes, in production.

MR. CHAIRMAN: The patentee should be compensated if Cl. 48 is acted upon. Is that your view?

SHRI BALDEV SINGH: Not having the advantage of a legal background, I would put it this way. If you use somebody else's invention and are producing, you are gaining and you add to the national income or personal income or to the firm's income. Whether it is public sector or private sector, if you are using somebody else's invention, then he should be entitled to some benefit.

SHRI VAISHAMPAYEN: Clause 88(5) provides for a ceiling of royalty to be paid to the patentee and the ceiling is 4 per cent. Do you want this ceiling to be there?

SHRI BALDEV SINGH: I have said this both in terms of time and quantum of royalty: We should have some scientific method of computing what I consider to be a fair return for that period.

MR. CHAIRMAN: So far in the Act there is no ceiling. But all the same the Patent Office after consulting expertise, fix it up at 1 per cent or 2 per cent or 3 per cent. If a ceiling is put, have you got any objection? Suppose we say that it should not in any case go beyond 4 per cent?

SHRI BALDEV SINGH: When you say that it should not go beyond 4 per cent, that means that you always go to the ceiling. What you consider to be maximum becomes the usual limit. Therefore, I say that there should be some machinery for computation on a scientific basis. But this is not usually incorporated.

SHRI KRISHNA KANT: What can you put in the law?

SHRI BALDEV SINGH: Quite a few times in the licensing, there is an understanding; but we do not say so. We all know in the licensing committee that when a foreigner

comes for expansion, we tighten the screw regarding lowering the foreign share. But we do not put it anywhere. The Controller of Patents should see to it.

SHRI VAISHAMPAYEN: That means each case should be examined on its own merit.

SHRI PITAMBAR DAS: I find that your approach to this problem is, if not entirely, greatly different from the approach of many others. For instance, Rajagopala Ayyangar's report has got a different approach to this problem. Have you gone through that report?

SHRI BALDEV SINGH: Sometime back.

SHRI PITAMBAR DAS: The approach you have put forward leads us to the conclusion that situated as we are at present this patent law is not fit for our country because of the two objectives that you have pointed out. It does not achieve those objectives. I would like you to tell us what disadvantages we shall have or we are likely to have by the abrogation of patents? I want you to have a balanced picture. You have put before us one picture which is a very persuasive picture. Now, Rajagopala Ayyangar's report has got a different approach. If you look at the problem from that point of view, that is. abrogating the patent law, what particular disadvantages are we likely to have. Even if you have to enter into an evil, let us enter into a lesser evil.

SHRI BALDEV SINGH: There is a tendency to go in for precedents and copyright a law of other countries Developing countries should not do that. We should be capable of fresh and bold thinking. If the objectives are agreed to, then the law should follow that pattern. If not, we should formulate correct objectives. My submission about Rajagopala Ayyangar's report is that it goes too much into details which are not very relevant. It gives you the legal opinion as to how it operates world over and in countries which have no similarity to our system or difficulties. That is why even the United Nations Model Law does not follow the pattern of the report. But basically even that report points out the futility of patent law in this country and how it had not worked to the advantage of industrial development of the country. Let us be quite straightforward. There are two correct objectives. If we can do something about it, we will do it. Our Controller of Patents is a party to this model law. He has attended the meeting where something was done for the developing countries. Ayyangar report is earlier than this. I am aware of the CSIR patents We have got 1,500 patents. Out of these, 150 are in some form used. 70 to 80 are actually in production stage. But those patents do not stand the challenge of international patents. Not one of them can be filed in any foreign country. What is the point of our talking on theoretical premise and not on realities. With the greatest respect for the Ayyangar Report and for its Chairman, he has done a very wounderful, job. But I would respectfully submit that the report is too theoretical.

SHRI BALDEV SINGH: It does not convey what it wants to achieve.

SHRI PITAMBAR DAS: So far as foreign business houses are concerned, their interest would be in permitting the exports of thier country's products meaning thereby encouraging the imports in our country.

That is only their point of view. And this is exactly what we aim at. So, how can we reconcile their objectives and our objectives? We have to find out some method by which we can harmonise both the objectives for

the industrial development of our own country. The natural desire on their part is to encourage their own exports. Can't you suggest anything short of abrogation of the Patents?

SHRI BALDEV SINGH: I respectfully submit that I have not advocated the abrogation of patents. I have only said that an exporting country would like to export only certain selective things. A country which is producing a certain selective thing would not like that to be imported. Take for example textiles. Very recently Britain refused to give protection on import of textiles. It is only in our own interest that we export textiles. If a country wants to get textiles from this country, naturally that country would like to import them under a protected law. I would say that this will not be in the interests of our country. If it is desired we can give them protection.

SHRI PITAMBER DAS: One condition should be made compulsory and that is this. It should be produced in this country and they should not bring the produced goods in this country.

SHRI BALDEV SINGH: That is what I want.

SHRI KRISHAN KANT: You have made general remarks about the Patent Bill. Have you been able to go through various clauses of the Bill? What amendments can you suggest to various clauses?

SHRI BALDEV SINGH: I did try that with our patent officers. It will mean our sitting with these people in re-drafting the whole Bill. In case any assistance of that type is required, it would be rendered to you. But we accept the objectives of the Bill first.

SHRI KRISHAN KANT: Is it possible for you to suggest some amendments to the various clauses so that we may consider them at the clause-by-clause consideration stage of this Bill? If the CSIR would like to suggest any amendments or modifications to the Bill, they may please be sent to us before we take up the claus-by-clause consideration of this Bill.

SHRI BALDEV SINGH: If the objectives are not accepted, then there is no point in our suggesting amendments to various clauses of the Bill.

SHRI PITAMBER DAS: Tell me whether you have gone through the aims and objects of this Bill as given at the end of this Bill.

MR. CHAIRMAN: The objectives are very clear. It is only on the basis of those objectives that this Bill is drawn up.

SHRI PITAMBER DAS: Your approach is quite different. The whole purpose for which the Bill has been brought is mainly based on the recommendations in Ayyangar Committee's Report which you feel is most theoretical unless of course you agree with those objectives.

SHRI BALDEV SINGH: I submitted that it would perhaps be useful to incorporate here what is suggested in these objectives. I do not think I can find them here.

SHRI PITAMBER DASS: You have to distinguish between the objectives of the Bill and objesctives of the patent system. Have you gone thought them?

SHRI BALDEV SINGH: I have quickly gone through them. As far as I can see this does not contain the objectives that I have in mind. In fact these laws are based on the U.K Patent Law which is not relevant to our country.

SHRI VAISHAMPAYEN: Do you think that the U.K. Patents Law does not satisfy the objectives that we have before us?

SHRI BALDEV SINGH: May I say with great respect that the U.K. is trying to follow us? They had the American domination in the field of drugs, medicines, automobiles and computors. The way in which the Wilson Government goes, it seems that they go on setting up a committee to re-change the patent's law. In the course of aur discussions, we have come to know that the British Government have been dominated by the Americans. They are now trying to change their patent laws to protect their own interests.

SHRI KRISHAN KANT: The Bill is now before this Committee. Can you suggest some amendments immediately or afterwards after consulting your experts and send them on to us so that this Committee can make best use of your suggestions?

SHRI BALDEV SINGH: I would respectfully ask whether the objectives outlined here are acceptable to the Committee.

MR. CHAIRMAN: It is no good arguing on this.

SHRI DAHYABHAI V. PATEL: From his point of view he says that the objectives should be like this. He can send us a note on that. If he says that objectives mentioned here are not complete and they need some change, let him send us the amendments to the objectives so that we can consider them.

MR. CHAIRMAN: He says that the objectives should be two-fold. One is that it must develop our industrial growth and secondly it must encourage inflow of know-how along with patents.

SHRI ARJUN ARORA: Can we change the objective?

MR. CHAIRMAN: We cannot.

SHRI KRISHAN KANT: Then the whole evidence will become infructuous. Within the framework of the Bill, can you make some suggestions?

SHRI BALDEV SINGH: My legal knowledge is very poor.

SHRI KRISHAN KANT: You or your expertise in the CSIR can think about it and send a note, say, within 15 days.

SHRI BALDEV SINGH: I can certainly try that.

SHRI ARJUN ARORA: Do you have any information about how the benefits or gains of discovery under the present patent system are shared between the scientists and manufacturers? Does the scientist get some share of the gain?

SHRI BALDEV SINGH: According to the rules in the CSIR, discoveries are licensed for industrial manufacture through the National Development Corporation which charges lump sum premium and royalty over a number of years. The royalty ranges between 1|2 per cent to 5 per cent. 40 per cent of the share of the royalties and the premia is distributed to the research workers and others who are associated with the development. That is the practice in CSIR. Defence and Agriculture have no clear rules and they have asked us and I think they are adopting our rules.

SHRI ARJUN ARORA: What about private sector?

SHRI BALDEV SINGH: Private sector does not have much of inventions which have been put into production which they share with the inventors.

SHRI KRISHAN KANT: Can we put something in the Patent Bill to ensure some share for the inventor?

SHRI BALDEV SINGH: It is a little difficult because I have gone

through the Patents and Development Organisation in Canada. They pay 10-15 per cent to the inventor; 35 to 40 per cent to the research institute concerned and the rest goes to the Canadian Development Organisation. In America the Research Corporation pays 15 per cent to the inventor. In Britain they do not pay anything to the inventor, but the private patentees bargain it out and get a substantial cut. The system of rewarding the inventor is a complex one. I think it will be difficult to incorporate it in the law.

SHRI ARJUN ARORA: How does the patent system act as an incentive to scientists in India?

SHRI BALDEV SINGH: In India the patent system, really speaking, does not act so far as Indian scientists are concerned. It is more in name. The patentees have some advantage. They have something substantial to sell to the industry and they are protected against stealing or copying. From this point of view, there is an incentive.

MR. CHAIRMAN: You have referred to the model law of the United Nations. We got the idea of licence of right from them. In the model law, the owners of patents have to inform the patent office for making a patent available as a licence of right. Here, we make it automatic. Can you say how far the automatic licence of right along with the patent is in consonance with the United Nation's model law and how could we reconcile the two, if it is necessary at all? Or, should we change it for the benefit of India?

SHRI BALDEV SINGH: Licence of right is for the patent, not for the technology

MR. CHAIRMAN: Will you kindly go through all the provisions of this Bill and send us your considered view on this and also on other points?

SHRI BALDEV SINGH: I will certainly do so. If I may be permitted to say, it has been the contention from the beginning that the existence of patent or right of patent does not lead to technology.

MR. CHAIRMAN: That is another proposition. We are more concerned with the concrete law. You have referred to the model law and also licence of right. There is a conflict of opinion.

SHRI BALDEV SINGH: I would study it and send a note.

MR. CHAIRMAN: You need not give any legal phrasology, but just your view.

Thank you very much for your evidence which is very useful.

(The Committee after discussing their future programme adjourned to meet again on the 16th September, 1969)

GIPND—LSI—1006 (E) LS—2-12-69—1300

C. B. II No. 239

LOK SABHA

JOINT COMMITTEE

ON

THE PATENTS BILL, 1967

EVIDENCE

(Volume II)

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JOINT COMMITTEE ON THE PATENTS BILL, 1967

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24. Shri Krishan Kant
25. Shri R. P. Khaitan

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*Fell Vacant *w.e.f.* 23-12-1969 on the demise of Shri Diwan Chand Sharma.

3206 (B) LS—1.

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27. Shri T. V. Anandan

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Shri R. V. S. Peri-Sastri, *Addl. Legislative Counsel, Ministry of Law.*

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3. Dr. S. Vedaraman, *Controller General of Patents, Designs and Trade Marks, Bombay.*

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5. Shri Hargundas, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

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*Resigned *w.e.f.* 3rd February, 1970.

JOINT COMMITTEE ON THE PATENTS BILL, 1967

MINUTES OF THE TWENTY-SEVENTH SITTING OF THE JOINT COMMITTEE ON THE PATENTS BILL, 1967

Thursday, the 29th January, 1970 at 10.30 hours.

PRESENT

Shri Rajendranath Barua—*Chairman.*

MEMBERS

Lok Sabha

2. Shri C. C. Desai
3. Shri B. D. Deshmukh
4. Shri Kanwar Lal Gupta
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15. Shri T. Ram
16. Shri Maddi Sudarasanam
17. Shri Ramesh Chandra Vyas
18. Shri Fakhruddin Ali Ahmed

Rajya Sabha

19. Shri Krishan Kant
20. Shri R. P. Khaitan
21. Shri Arjun Arora
22. Shri T. V. Anandan
23. Shri Om Mehta
24. Shri K. V. Raghunatha Reddy
25. Shri Dahyabhai V. Patel

LEGISLATIVE COUNSEL

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5. Shri Hargundas, *Under Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESS EXAMINED

Shri Niren De—*Attorney-General of India.*

[*The witness was called in and he took his seat*]

MR. CHAIRMAN: Attorney-General; you are welcome here. We are extremely grateful to you for your views, and for coming here. Now, hon. Members will ask for certain clarifications.

SHRI M. R. MASANI: I am referring to your answer to Question No. 3. At the end of your opinion, you have answered specific questions. Kindly refer to Question No. 3 and your answer: "It is not now open to Parliament not to have any patent law with regard to invention, in cases where patent rights have already been conferred by the existing law, namely, the Patents and Designs Act.."

May I take it that this is which is based on certain Articles of the Constitution?

ATTORNEY-GENERAL: 19 and 31 lead to this answer.

SHRI M. R. MASANI: Then you go on to say: "Parliament would, however, be competent to provide in the new Act that in future patents in respect of certain articles, which may be chosen by Parliament, will be granted only on the condition that such rights will not extend to the importation, or the making or use by or on behalf of the Government, or for the purpose of experiment or research, as envisaged in clause 48."

May I ask you: Would not Article 31(2) of the Constitution also apply to new patents? If not, why not?

ATTORNEY-GENERAL: So far as Clause 48 is concerned, it proceeds on the assumption that you give a patent right and after the right is granted, this right will be of no avail. So far as the patent right is concerned, as you know, it means a right on the part of the patentee for using his invention exclusively. Well, that right will then be affected and various complications will arise as to whether such rights can be taken away without payment of compensation, and secondly there are the rights already granted under the existing Patent Act. Therefore, I felt that the wiser course could be that before the right is granted, you should make it a condition that this right will not be exerciseable under certain circumstances.

SHRI M. R. MASANI: The answer to Question No. 4 is: "In view of the answer to the last question, this question does not arise'. This is a little vague. May I take it you mean that Clause 48 is Unconstitutional?

ATTORNEY GENERAL: So far as Clause 48, as it stands, is concerned, I feel it might be said 'uncontitutional' because you are taking a right away without payment of compensation Secondly, if I may say so, the matter it still in doubt. It has been also asserted that in cases of acquisition of property the law will have to satisfy not only Article 31, clause (2) but will also have to satisfy Article 19, clause (5) that is, right to property.

SHRI KRISHAN KANT: In reply to Question 3, you have said:

> "It is not now open to Parliament not to have any patent law with regard to invention, in cases where patent rights have already been conferred by the existing law...."

Can we remove certain clauses—drugs, foods and other things? Is there a constitutional bar? We can't remove?

ATTORNEY GENERAL: I think my answer will be more or less on the same lines....

SHRI KRISHAN KANT: Supposing Government wants to abolish the Patent Law....

ATTORNEY GENERAL: You may make it a condition. I won't use the expression 'abolish'.

SHRI KRISHAN KANT: Is it not open to the Government and Parliament not to give fresh patents?

There is no law for them. The question is whether all these three things are possible or not.

ATTORNEY GENERAL: The first question I have answered *i.e.* by paying compensation.

About the second and third questions if the Government wishes to utilise or use certain patent for the good of the public, Government would naturally do so on payment of compensation.

SHRI KRISHAN KANT: Supposing we do not want to have any patent in this country for drugs or any other article, is it open to Parliament to do anything or not?

ATTORNEY GENERAL: So far as that is concerned, I have my doubts. It might violate Article 14. In future there will be no patent right at all. I would not like it.

I should seek acquisition in public interest. If you go beyond that, that will not be accepted.

SHRI NAMBIAR: We have got the Patent Law to-day and that law gives certain rights to the patentee for a period which is limited in the law and to-morrow the Parliament passes a legislation saying that hereafter there cannot be a patent right in the country. Do you mean to say that Parliament has no right and it should be challenged?

ATTORNEY GENERAL: I feel it will be challenged.

SHRI NAMBIAR: Parliament is sovereign. Can this right be taken away? Are we to take like that?

ATTORNEY GENERAL: Please do not get angry with me. We are bound by the judgements of the Supreme Court. We have to proceed in accordance with the judgements.

SHRI NAMBIAR: If somebody can give a right, that somebody has a right to take it away. It is very fantastic to say that if I can give a right, I cannot take it back.

ATTORNEY GENERAL: The question which you have asked is, can Parliament take away rights? Fundamental rights cannot be taken away.

SHRI KRISHAN KANT: No patent can be granted in respect of Atomic Energy--Clause 4—it means that this clause was added in 1962. Original patent law was since 1911. Do you mean to say that it was unconstitutional?

This Law came in 1962. Prior to that there was no law like that and of patent in any field of science whether Atomic Energy or Chemistry or Mechanical Engineering. So this thing was either unconstitutional or constitutional, then we can certainly put 'no patent shall be granted in respect of invention or process of method to other things'.

ATTORNEY GENERAL: This law is not unconstitutional.

SHRI KRISHAN KANT: Question came in 1962. Before 1962 it was open for any one to have patent.

ATTORNEY GENERAL: I think you have misunderstood me. In my view if no one has been granted patent rights in respect of atomic energy, the clause regarding patent rights in atomic energy can be deleted.

SHRI MADHU LIMAYE: Mr Chairman, I would like to draw attention to his answer to Question No. 3. You have said it is not now open to Parliament to have any patent law with regard to invention in cases where patent rights have already been conferred by the existing law. Here you do not limit by saying a particular class of invention. Later on, you say it would not also be open to Parliament to take away any right already granted with regard to any particular class mentioned.....

Now, I would like to know whether clause 4 which was mentioned by my friend Shri Krishna Kant is covered by part 1 of your answer.

ATTORNEY GENERAL: I think it is.

SHRI MADHU LIMAYE: Whether part one of your answer also hits clause 4 of this Bill or section 20 of the Atomic Energy Act?

ATTORNEY GENERAL: It will apply to all articles in respect of which patent rights have been granted.

SHRI MADHU LIMAYE: So, it means that the patent right which was created by the existing law has relevance only in regard to those classes of inventions for which patents have already been issued.

ATTORNEY GENERAL: I am concentrating on the grant of patent right and not on the existing patent law.

SHRI MADHU LIMAYE: Now, I would like to draw your attention to clause 3 of the Bill. Would it be open to Parliament to add a clause something like this. I have referred to definition.

ATTORNEY GENERAL: I am afraid I have not studied these clauses. Clause 3, I suppose, lays down certain processes which are not deemed to be invention. I do hope this is in line with the existing patent law. I would not like to add things to it because then you would again come up against Article 14.

SHRI MADHU LIMAYE: I would like to know whether in interpreting this clause 5 in relation to Article 19 this expression of directive principles will have any relation.

ATTORNEY GENERAL: Of course, it would.

SHRI KRISHAN KANT: Does it mean than that the Parliament either have right to repeal an Act or change the Constitution or have a new Constitution?

ATTORNEY GENERAL: Parliament has sovereign right. There are two limitations that Parliament must be competent to pass the law and secondly it must satisfy the fundamental rights.

SHRI C. C. DESAI: I take it that you have seen the cyclostyled copy of the opinion circulated to the Members of the Committee.

ATTORNEY GENERAL: I have glanced through it.

SHRI C. C. DESAI: There is no date on this opinion. Whether the date was omitted by Mr. Dey or by the Ministry? If it is omitted by the Minigtry it is a matter of privilege.

ATTORNEY GENERAL: I cannot answer the question.

SHRI C. C. DESAI: I have a copy of the note circulated to us; it is not dated.

ATTORNEY GENERAL: It should have borne a date. I can tell you that is my opinion. Sometimes when I have given an opinion, I have asked for it to be brought back and change it myself without any influence from any quarter.

SHRI C. C. DESAI: In which case?

ATTORNEY GENERAL: So far as this Bill is concerned, I have given a final opinion which you are reading.

SHRI C. C. DESAI: If there is an earlier opinion, can that be circulated to us?

ATTORNEY GENERAL: I cannot answer that.

I hope you will appreciate my position. My opinions are supposed to be confidential. I can answer questions here on the basis of the final opinion which I gave; whether I have given three or four opinions is not relevant. But I want to say one thing: no power on earth can influence me in my opinion.

SHRI C. C. DESAI: But the fact remains that there are two opinions: one given earlier and the other the later opinion.

ATTORNEY GENERAL: I did not say so.

SHRI C. C. DESAI: I would like you to enlighten me on that by a categorical statement.

ATTORNEY GENERAL: I am sorry I cannot enlighten you on that.

SHRI C. C. DESAI: In other words, it is really within your knowledge whether you have given an earlier opinion.

ATTORNEY GENERAL: Certainly there are many things in life within my knowledge which I am not prepared to talk about.

SHRI C. C. DESAI: The Committee can draw its own conclusion from that.

DR. SUSHILA NAYAR: If I have understood you correctly, you think that the Government has right to make this condition that they can use these patents for their own use, but you object to cl. 48 as it is worded. It is not very clear to me. If you make a condition, won't you have it incorporated in the law?

ATTORNEY GENERAL: I will explain. If you allow 48 as it stands, it proceeds on the assumption that a right has been given. This is borne out by the wording—'shall not be deemed to constitute an infringment of the rights conferred on the patentee....'. That is why I suggest that it should be made a condition for the grant.

DR. SUSHILA NAYAR: Would you put it in some other place?

ATTORNEY GENERAL: That is a matter of drafting, as long as you see that in future when a patent is being granted, it should be subject to cerain conditions.

DR. SUSHILA NAYAR: Second point—You said that to make a distinction between past and future patents would be wrong. In other words you cannot make a condition for something already given. How do you meet that difficulty?

ATTORNEY GENERAL: There is no difficulty. I am emphasising the point that the trouble comes after you give the patent right. But you can avoid it by providing that in future the patent right will not be given under certain circumstances. With regard to any invention there is no exclusive right and it is unenforceable in law unless the patent is granted, but before granting it if you make a condition that under certain circumstances it will not be granted that should be perfectly all right.

DR. SUSHILA NAYAR: So that it is merely drafting.

ATTORNEY GENERAL: A substantial difference plus a drafting device. The substantial diffrence is that you do not give the right under this article when he gets the patent.

DR. SUSHILA NAYAR: So that the object of Government that they can use this invention for a public purpose without having to pay compensation etc. can be achieved.

ATTORNEY GENERAL: Yes, I think that is the whole object regarding this particular problem, and also in regard to articles 19 and 14. That also can be covered.

MR. CHAIRMAN: According to your view, the existing right conferred cannot be interfered with. Tomorrow we pass a law in which we do not give compensation in certain matters. As you say, a conditional conferment of right will not infringe the constitutional provision so far as future conferment is concerned. Suppose now a firm has got some patents. They have got hundreds of them. You cannot take it away without paying compensation in the light of the new amendment. This applies to future cases. But what about the past ones. Glaxos, Sandows and so many others—what happens to their rights. Can I take it away under the new provision if necessary for public purpose without compensation.

ATTORNEY GENERAL: You can always take away any right including existing right by paying compensation provided it is in public interest.

MR. CHAIRMAN: Compensation according to the past Act?

ATTORNEY GENERAL: Compensation must be paid because it is an existing right you are taking away.

MR. CHAIRMAN: According to the existing law, compensation shall have to be paid. But he acquired the right under the original Act. When I take it away under the new provision, will I be forced to pay compensation according to the old Act?

ATTORNEY GENERAL: You will have to pay compensation for taking away property. The quantum of compensation or the principle of compensation is not in the Act; it is in the Constitution itself.

MR. CHAIRMAN: So past rights are completely protected.

ATTORNEY GENERAL: As long as you pay compensation.

DR. SUSHILA NAYAR: Does this mean that once having enacted a law, Parliament is not competent to revise it?

ATTORNEY GENERAL: I would not say so. I put it this way. If a person has got a right today—it may be under common law or statute law—it cannot be taken away without satisfying the constitutional condition.

DR. SUSHILA NAYAR: For the future, if you refuse to confer such a right, will there be invidious distinction.

ATTORNEY GENERAL: It depends upon the kind of thing which you are talking about. Again, so far as the patent right is concerned, it does not come into picture unless the patent is granted. There is no question of enforcing any right at all.

DR. SUSHILA NAYAR: A person may say that till yesterday, you gave it. On what grounds you refuse it today? And you have no right to refuse now, when you have given it in the past.

MR. CHAIRMAN: Will it not be discrimination? And can it not be challenged?

ATTORNEY GENERAL: It is very difficult to answer this question that whether it can be challenged successfully or not. But, personally, I think that might be sustained on two grounds—the one is that future policy of the Parliament has changed, and it can be supported on that basis. And in future certain rights will not be granted in respect of certain articles.

MR. CHAIRMAN: Thank you very much. We are extremely grateful that you have come in spite of so many engagements.

ATTORNEY GENERAL: I thank you and the hon'ble Members. It has been privilege for me. It was also duty on my part to come here.

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