

GOVERNMENT OF INDIA

MINISTRY OF INDUSTRY AND SUPPLY



सत्यमेव जयते

**REPORT**  
OF THE  
**PATENTS ENQUIRY COMMITTEE**  
**(1948-50)**

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## CORRIGENDUM

### Report of the Patents Enquiry Committee (1948—1957)

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\*N. BARWELL, Member  
after "GURU  
NATH BEWOOR.  
Member."

\*printing mutilations

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## THE PATENTS ENQUIRY COMMITTEE

To

THE HON'BLE MINISTER FOR INDUSTRY & SUPPLY,  
NEW DELHI.

SIR,

By Resolution No. 223-IRP (6)/48, dated October 1, 1948 the Government of India, Ministry of Industry and Supply appointed a Committee to review the Patent Laws in India, with a view to ensure that the Patent System is made more conducive to national interests than at present.

2. The terms of reference to the Committee are as follows:—

- (1) to survey and report on the working of the Patent System in India;
- (2) to examine the existing Patent legislation in India and to make recommendations for improving it, particularly with reference to the provisions concerned with the prevention of abuse of patent rights;
- (3) to consider whether any special restrictions should be imposed on patents regarding food and medicine;
- (4) to suggest steps for ensuring effective publicity to the patent system and to patent literature, particularly as regards patents obtained by Indian inventors;
- (5) to consider the necessity and feasibility of setting up a National Patents Trust;
- (6) to consider the desirability or otherwise of regulating the profession of patent agents;
- (7) to examine the working of the Patent Office and the services rendered by it to the public and make suitable recommendations for improvement; and
- (8) to report generally on any improvement that the Committee thinks fit to recommend for enabling the Indian Patent System to be more conducive to national interest, by encouraging invention and the commercial development and use of inventions.

3. The following were appointed as members of the Committee:—

- (1) Dr. Bakshi Tek Chand, Retired High Court Judge and Member, Constituent Assembly of India.—*Chairman.*
- (2) Shri Gurunath Bewoor, Tata Industries, Ltd.—*Member.*
- (3) Major General S. S. Sokhey, Director, Haffkine Institute, Bombay.—*Member.*
- (4) Shri S. M. Basu, Solicitor, Calcutta.—*Member.*
- (5) Mr. N. Barwell, Barrister, Calcutta.—*Member.*

(6) Shri S. P. Sen, Bengal Chemical and Pharmaceutical Works. Ltd., Calcutta.—*Member*.

(7) Shri K. Rama Pai.—*Member—Secretary*.

After the first meeting of the Committee, Dr. S. D. Mahant, Industrial Economist of the Council of Scientific and Industrial Research, was added as a member.

4. The procedure adopted by us has been explained in the *Interim Report* which was forwarded to Government on the 4th August 1949. A copy of the *Interim Report* is attached as Annexure A.

In our first meeting, we considered the general aspects of the patent system, and arrived at the conclusion that the field of our enquiry should be covered from three aspects, *viz.*, from the stand-points of the inventor, the industrialist and the consuming public.

As there had been no previous investigation into the working of patent law in India, we decided to issue a comprehensive Questionnaire in order to elicit views and suggestion from the public. Copies of the questionnaire are given in Appendices I and II to the *Interim Report*.

5. Pending the receipt of replies to the Questionnaire, we proceeded to examine the patent situation in India, in so far as it could be ascertained from readily available records. As a result of such examination, we felt that the Indian patent system has failed in its main purpose, namely, to stimulate invention among Indians and to encourage the development and exploitation of new inventions for industrial purposes in the country, so as to secure the benefits thereof to the largest section of the public. There were also numerous complaints that the Indian patent system was being misused, and in some cases abused, to the detriment of Indian interests, and that foreign concerns particularly those who had secured patent rights in industries concerned with food and medicine, had not been manufacturing their products in India, but had been using their monopoly rights merely to guarantee to themselves a market in this country free from competition, and in this way keeping up the prices artificially at a high level. We came to the conclusion that we should give our first attention to these complaints, and after careful consideration, decided that sections 22, 23 and 23A of the Indian Patents and Designs Act, which are intended to prevent the misuse or abuse of patent rights in India, should be replaced by new sections which would achieve the object more effectively. Accordingly, we made a recommendation to Government that legislation for this purpose be taken in hand as early as possible; *vide* our *Interim Report* dated the 4th August 1949 (Annexure A). We are glad to record that Government accepted our recommendation, and a Bill was introduced in the Parliament and was passed as Act XXXII of 1950.

6. Since submitting the *Interim Report*, we have carefully considered the views and suggestions received from nearly 400 persons and associations in reply to our Questionnaire and have also interviewed and examined a certain number of witnesses. We are indebted to all these persons for their co-operation.

Lists of places visited and persons interviewed are attached as Annexure B.

7. In all we have held 10 plenary meetings lasting for 25 days, and 2 *ad hoc* sub-committee meetings lasting for three days. Tables showing the places where the meetings were held and the number of meetings attended by each of the members are given in Annexure C. We now submit the Final Report.

8. During the course of our deliberations, we have greatly benefited from the reports of the Committee (known as the Swan Committee) which was appointed by the Board of Trade in England in 1944, under the chairmanship of Sir Kenneth Swan, to make recommendations for improving the Law of Patents in England. This Committee, which sat over a period of more than three years, submitted two *Interim* Reports and a Final Report dealing comprehensively with numerous problems which have been engaging our attention also. On the basis of its recommendations, legislation was taken in hand in the British Parliament, and a revised Act called the Patents Act, 1949 (12, 13 and 14 GEO. 6 CH. 87) was passed on the 16th December, 1949.

9. We would place on record our great appreciation of the assistance which we have had from the Member-Secretary, Shri K. Rama Pai. His vast experience of the working of the patent system in India extending over a period of 28 years and his intimate knowledge of the patent systems of other countries, have been of the greatest value to us. We would also like to mention our appreciation of the work done by Shri V. P. Mithal and Shri B. N. Atrishi, Assistant Secretaries to the Patents Enquiry Committee and by the other members of the staff.

10. One of our colleagues, Major-General S. S. Sokhey, has been unable to participate in the discussions of the Committee since the middle of January 1950 as he was appointed Assistant Director General of the World Health Organization and is at Geneva in these days. Our Report has, therefore, not been signed by him.

11. Our colleagues, Messrs. N. Barwell and S. M. Basu, have been unable to attend the meeting convened for formally approving and signing the Committee's Report. The draft Report has been sent to them in advance, but no comments have been received from either of them. In the circumstances we are sending to each of them a copy of the complete Report as signed by us with the request that it may be signed by them and forwarded to you direct.

BAKSHI TEK CHAND, *Chairman.*

GURUNATH BEWOOR, *Member.*

S. D. MAHANT, *Member.*

S. P. SEN, *Member.*

K. RAMA PAI,  
*Member-Secretary.*

Dated 30th April 1950.

**THE REPORT**

## CHAPTER

## THE PATENT SYSTEM

**Its origin and development with particular reference to Patent Legislation in India.**

*Origin of the Patent System.*—In its broadest sense, a “patent” is a grant by the Crown or other Sovereign Authority of a State, conferring rights, privileges, titles or other distinctions, on the grantee thereof. In relation to the “patent system”, the term “patent” is used in the limited sense of “patents of inventions”, which confer on inventors or others certain exclusive rights or privileges in respect of inventions applicable for industrial purposes.

2. The system of conferring exclusive privileges on inventors is not of recent origin. For instance, Phylarchus, a great historian of the third century B.C., writing about Sybaris, a Greek colony famous for living a life of luxury and self-indulgence, says that about the year 500 B.C., it had a law that “if any confectioner or cook invented any peculiar and exclusive dish, no other artist was allowed to make this for a year; but he alone who invented it was entitled to all the profit to be derived from the manufacture of it for that time, in order that others might be induced to labour at excelling in such pursuits.”

The national patent systems of various States, as they exist at present, are based on special laws enacted in those countries either on a recognition of the rights of inventors, or on a recognition of the economic aspects of patent grants.

3. The origin of the patent system, in so far as it is based on a recognition of the economic aspects of patent grants, can be traced back to the monopolistic grants made in England and in certain European countries, in the Middle Ages in exercise of the Prerogative powers of the Crown. These powers were generally exercised for granting monopolistic rights to artisans and craftsmen to encourage them to introduce new industries within the realm, but very often they were also exercised for making grants to royal favourites or for replenishing royal coffers by granting oppressive monopolies for the manufacture or sale of articles of daily need, frequently in return for large payments made to the Crown. This gave rise to strong condemnation of the system of granting such monopolistic privileges by the Crown, and led to the enactment of statutes which limited the powers of the Crown, and laid down specific conditions on which patents of invention might be granted by the Crown.

4. The Statute of Monopolies (21 Jac. 1, C. 3) enacted in England in 1624 A.D. is the earliest legislation for this purpose. This statute provided *inter alia*, that—

- (i) patents may be granted only in respect of new manufactures which, at the time of grant, were not in use within the realm;
- (ii) patents may be granted only to the true and first inventors of such manufactures;

- (iii) the duration of patent privileges shall be limited to a term of 14 years; and
- (iv) the patent privileges so conferred shall not be contrary to law, mischievous to the State by raising prices of commodities at home or hurt of trade, or generally inconvenient.

The patent legislation of all important countries is based on the fundamental principles enunciated above. Hence the modern patent system may be said to have originated with the Statute of Monopolies.

### **National Patent Systems of some of the Principal Countries of the World.**

5. *Patent Law in England.*—Based on the fundamental principles underlying the Statute of Monopolies, other principles have been developed as a result of Acts passed by British Parliament from time to time. Some of the more important features of the British Patent System, as it exists at present, are briefly mentioned below:—

- (a) The obligation on the applicant for patent to file a complete specification, either along with his application, or following a provisional specification filed with the application;
- (b) a substantial reduction in the initial fee that an applicant for patent should pay when filing his application;
- (c) the official examination of applications for patents, including compulsory searches for investigating the novelty of inventions;
- (d) opposition proceedings prior to the sealing of patents;
- (e) requirements as to payment of annual renewal fees for maintaining the patents in force;
- (f) the enlargement of the normal term of patent from 14 to 16 years, coupled with a provision for extending the term by a further period up to a maximum of 10 years in special circumstances;
- (g) Provisions as to Patents of Addition; Secret Patents; Priority Patents, Licences of Right; Privileges and Obligations of the Crown in connection with patents; Prevention of abuse of patent rights; and the right of the inventor to be mentioned as such in the patent or in any specification filed in respect of his invention;
- (h) the establishment of a Patent Office and the appointment of a Comptroller-General of Patents for purposes of the Patents Act;
- (i) the appointment of a Judge of the High Court as an Appellate Tribunal for hearing appeals from the decisions of the Comptroller-General; and
- (j) the practice of printing patent specifications and publishing convenient indexes and classified abridgements of such specifications.

6. *Patent Law of the U.S.A.*—Other countries were slow in following the example set up by England of regulating patent grants

by statutory law. The United States of America, which was the second country in the world to enact a law of patents, had her first legislation on the subject in 1790; i.e. nearly 166 years after the enactment of the Statute of Monopolies.

The American Patent Law differs in many respects from its counterpart in England. The main points of difference are:—

- (a) While the English Law accepts the prerogative of the Crown to grant monopolies, and grants patents for reasons of expediency, the American law is based on the recognition of the inalienable right of the inventor to the fruits of his genius and labour;
- (b) Under the American Law, an inventor enjoys a period of grace for one year after his invention becomes known. If his application for a patent is made before the expiry of this period, the validity of the patent granted thereon will not be prejudiced on account of the prior public knowledge of his invention; no such period of grace is allowed in England.
- (c) The publication of invention in any foreign country prior to the applicants' discovery thereof would be a bar to the patentability of the invention in America; but it would not be so in England.
- (d) Under the American Law, conflicting rights of two or more inventors are determined with reference to the priority of the evolution of their invention, and its reduction to practice and not with reference to the priority of the dates of filing their respective applications for patents, as in England.
- (e) There is no provision in America for any of the following matters:—

Renewal fees; Opposition proceedings; Revocation of patents; Compulsory working of patents in America and prevention of abuse of patent rights in any other way (which would not offend against any other provision of law); and special restrictions on patents relating to food or medicine;

- (f) The American law specifically provides for granting "plant" patents; English Law does not provide for such patents.

7. *Patent Law of France.*—Among the European Continental countries the first to enact a law of patents was France. Royal privileges granted to persons who introduced new manufactures may be traced in that country as far back as 1531. But the history of patent legislation, in its modern sense, began with the first French Patent Law of 1791, passed nearly 167 years after the enactment of the Statute of Monopolies.

The French Patent System, like the American System, is based on a recognition of the right of the inventor to the fruits of his invention. According to the French Law, patents are granted without examination (except for mere formalities) and without opposition proceedings. Prior publication or prior use in any country invalidates a patent. Infringers are liable to fine as well as damages.

8. *The German Patent System.*—The influence of the French Patent legislation in Europe received a severe setback when the first German Law embracing the whole territory of the German Empire came into force in 1877. The following extracts from “the Survey of the Principal National Patent Systems” by Jan Vojacek (1906) will indicate some of the important features of the German Patent Law:—

“The first German patent law, embracing the whole territory of the German Empire, came into force on July 1, 1877, and has exercised a decisive influence upon the further development of patent legislation in the whole world. The most important feature of this law is that it combined examination as to novelty (introduced in the United States in 1836) with opposition proceedings (Great Britain, 1852), and thus created a new system of procedure generally called the German system.”

The main stipulations of this law are as follows:—

Inventions contrary to law or morals, articles of food, medicaments and chemical products as such are excluded from protection; processes for the manufacture of these articles or products are patentable. Novelty is destroyed by prior publication at home or abroad, or by prior use at home. The first *bona fide* applicant is entitled to the patent; a defrauded inventor may file an opposition. Rights of prior user are recognised. The term of patent is 15 years from the day following the filing date, subject to the payment of progressively increasing annuities. A patent may be annulled for lack of novelty or general patentability, or for fraud, and revoked after the lapse of three years if the patentee does not exploit the invention or refuses to grant licences on reasonable terms. Applications are laid open to oppositions during eight weeks prior to grant. The Patent Office decides not only on the grant but, in the first instance, also on annulment or revocation of patents; in the last two cases appeal may be lodged by either party with the Supreme Court. Infringement may be prosecuted by both penal (fine or imprisonment) and civil proceedings, and damages may be claimed. Fraudulent marking as “patented” is punishable.

This patent law gave an immense impetus and aid to the development of German industry. The fact that in Germany henceforth chemical processes only, not however chemical products as such were patentable, thus leaving an open field for the search for new methods of manufacturing known chemicals, was of great advantage to the chemical industry. Technical progress in general was fostered by the excellent mental schooling which the combined examination and opposition proceedings gave to inventors.

How well the foundations were laid is shown by the fact that 14 years later, at the first revision, no essential changes were deemed necessary.

German patent law is very laconic, and leaves considerable latitude for jurisdiction and government decrees. Of



all the countries of the world Germany undoubtedly possesses the largest literature dealing with the theoretical aspects of patent law. With typical German thoroughness the basic conceptions of patent law are dissected and followed up almost to a transcendental plane."

9. *The Russian Patent System.*—Another European country which has a national patent system of its own is Russia. Privileges which were granted in Russia, as in other European countries as a reward for public service or as sign of personal favour, can be traced back to 1752, but the first Russian patent law dates from 1896. The law, as it existed prior to the first World War, resembled the German law.

10. The present law in Russia was promulgated in 1931. The following extracts from "A Survey of the Principal National Patent Systems", by Jan Vojacok, give an idea of the broad features of the Russian patent system as it exists at present:—

"The most interesting features of this law are the duty imposed on the Government and public authorities to promote inventions, and further, the choice open to every inventor either to apply for a patent, which gives the patentee the right to exploit the invention within the limits imposed by Soviet legislation on private industrial and commercial activities, or for a certificate of authorship, which gives the inventor a claim for recompense in case his invention is exploited by the Government or communal corporations (so called "communalized sectors").

Soviet citizens are forbidden under heavy penalties to take out or to exploit patents abroad without official permission; in the case of military inventions the penalty may be capital punishment.

There are no taxes to pay. The owner of the certificate may use or exploit the invention personally, but otherwise the right of exploitation is vested in the Government, which alone may grant licences. The owner of a certificate has a claim for indemnity only if his invention is recognised as useful or if it is actually exploited.

An office for the exploitation of inventions is attached to each of the syndicates into which the entire nationalised industry of Soviet Russia is divided. The patent office sends copies of patent applications regularly to all exploitation offices. The latter examine the inventions and improvements as to their utility independently of the examination as to novelty, which is simultaneously being carried on at the Patent Office. The exploitation offices are responsible for the actual exploitation in nationalised works of such inventions and improvements as are found useful.

It is to be noted that the exploitation offices examine the utility of inventions irrespective of whether patents or authorship certificates have been applied for. The latter inventions may be exploited by nationalised

works without further formalities, the inventor receiving an indemnity according to the importance, usefulness and novelty thereof. Inventors, particularly those belonging to the working class, enjoy in addition various personal privileges. The exploitation offices have, further, the right to take in hand the exploitation of an invention on which a patent has been applied for, and to offer the applicant an indemnity. If an understanding concerning the amount of compensation cannot be arrived at, the patent office can impose a compulsory licence or expropriate the patent, determining at the same time the amount of compensation."

11. *Patent System in Asia.*—It cannot be said that any of the Asian countries have taken to the patent system to the same extent as the Western countries. Many of the Asian countries that are, or were until lately, colonies of the Western Powers, had the system of "Colonial Patents" by which the patents of the mother country became operative in the colony either automatically or after formal registration. Some of the other countries have modelled their patent system on the lines of one or the other of the patent systems of the Western countries.

12. *Patent Law of Japan.*—Among the independent countries of Asia, Japan has made an earnest effort to introduce an effective patent system. The first law of Patents in that country was enacted in 1833. As in other fields, Japan has introduced in her Patent Law many features which constitute the best and most up-to-date features of patent laws in other countries, and it is considered by those who can speak with authority on the principal national patent systems of the world, that the Japanese Patent Law may justly claim to be the most carefully thought out, and perhaps the best, modern law in the world.

13. *Patent System in India.*—Information as to the system adopted in ancient India or during the Moghul period, either for encouraging inventors or for protecting new industries, based on such inventions is very meagre. It is, however, well established that ancient India had acquired a high standard of proficiency in art and science. But knowledge was handed on to posterity mainly through chosen disciples, or it was kept secret; only the results being made available to the public. Much of this knowledge has been lost in the course of ages in the absence of any written authoritative records. It was natural that, in the absence of any statutory protection to the inventor or possessor of valuable knowledge, he should have kept it secret and handed it over to a favourite pupil or a son as near his own death as possible and on condition of secrecy being maintained. Such sons or pupils were not always worthy successors but more often possessors of knowledge left to them far too late for transmission to succeeding generations. Though such knowledge is in some cases available in books, the writing is often in cryptic language and not easy of interpretation. If there had been a statutory patent protection, many of the possessors of such knowledge might have published it, secure in the protection which the law gave them to benefit from their intelligence and industry.

## Patent Legislation in India

14. The history of patent legislation in India falls into three periods, namely,

- (i) the "Pre-legislation" period;
- (ii) the period of "Exclusive Privileges"; and
- (iii) the period of "Patents".

A brief account of the major events of these three periods is given below.

### The Pre-Legislation Period, 1832-1856.\*

15. The earliest available reference to the patent system in India is contained in a letter dated the 23rd September 1835, from the Governor-General-in-Council to the Advocate-General of India, soliciting opinion as to the powers of the Government of India for granting patents in this country. Subsequent correspondence shows that the question of granting patents in India had been engaging the attention of the Government since about 1832, but no record is available of an earlier date than that of the letter referred to above. The original intention of the Government of India appears to have been to introduce a separate Bill for conferring patent rights in respect of each separate invention, as and when there was an application for such rights. The proposal to enact a general legislation for empowering the Governor-General to grant patent rights regulated by such legislation, appears to have been a later development.

16. The constitutional position of the Government of India at that time was that the power of the Governor-General-in-Council to make laws for the territories governed by the East India Company, was subject to certain restrictions, under which he was forbidden to make any law which would "in any way affect the Prerogative of the Crown."

The Advocate-General's opinion on the question referred to him was that the Government of India had no power to grant patents for new inventions, in view of the fact that interference with the Royal Prerogative might take place if it should happen that the King should grant a British patent for an invention and extend it to the 'colonies', and that the Governor-General also should grant a patent for the same invention.

17. As a result of this opinion, the Governor-General resolved to refrain from granting patents until the East India Company had procured for him the necessary power for doing so, if they deemed it desirable that he should possess such power.

18. The matter, however, did not rest there. Persons who enjoyed patent protection in England and who were about to export their patented products from England to India made frequent applications to the East India Company for extending their patent protection to the territories of the East India Company; and, therefore, the question of granting patents in India had to be taken up again. But,

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\*The information given here in connection with the pre-legislation period of the patent system in India has been taken from the National Archives of India, and so far as is known, has not been published before.

in view of the opinion given by the Advocate-General of India, the legal aspects of the question, particularly in relation to the 'Prerogative powers' of the Crown, gave rise to a prolonged controversy.

19. The parties to the controversy were (i) the Attorney-General and the Solicitor-General of England, (ii) the Legal Advisers of the Court of Directors of East India Company, and (iii) the Governor-General-in-Council.

The Attorney-General and the Solicitor-General took the most cautious attitude. They held that the question pertaining to King's Prerogative was by no means free from doubt, and they thought it "very inadvisable" for the Governor-General-in-Council to pass any measure on the subject of patents, or even to attempt to confer "exclusive privileges" in particular cases.

20. The Legal Advisers of the Court of Directors considered it unnecessary to express any opinion on the general question as to the Prerogative of the Crown, or as to its operation in the territories under the Government of the East India Company. They thought that it was competent for the Legislative Council of India to enact a Regulation for enforcing and protecting in the territories, subject to the Legislative authority of the Government of India, the patent rights already granted by the Crown. They considered that such a course of proceeding "would avoid any conflict of speculative rights, and secure every object of practical utility."

21. On the basis of the opinion given by their Legal Advisers, and in spite of the advice given by the Attorney-General and the Solicitor-General of England, the Court of Directors encouraged persons, who applied to them for patent protection in India, in the belief that the Legislative Council of India had authority "to enact Regulations for enforcing and protecting, within the British territories in India, patent rights granted by the Crown for Great Britain and extended to the Colonies", and that it rested, therefore, with those who wanted patent rights in India to satisfy the Governor-General-in-Council that in the case of the inventions for which they held British patents, there were sufficient grounds for the exercise of that authority.

22. The Governor-General-in-Council agreed neither with the views of the Attorney-General and the Solicitor-General of England, nor with those of the Legal Advisers of the Court of Directors. The Governor-General and his Councillors could not appreciate how the Government of India could, on the one hand, be under a disability to legislate for the granting of patents in India, and on the other hand, have, at the same time, power for extending to India the protection granted by the Crown in England. They contended that the proposal that the patent protection granted in England should be extended to India was not only illogical, but also injurious to the millions of India, as a British patent might very well be granted for a machine which was new in England but which was in every day use in India.

23. The Councillors of the Governor-General contended that the enactment of a legislation for the granting of patents in India would not interfere with the Prerogative powers of the Crown, and they advanced irresistible arguments in support of this contention; the Governor-General pressed the Directors either to accept this

contention of theirs, or, to take such action as would, even on the assumption that the King's Prerogative Powers of granting patents extended to India, enable the Legislative Council of India to enact the necessary legislation for the granting of patents in India.

24. In the long run, the Court of Directors felt obliged to get a special measure enacted in Parliament in 1853, for ending the uncertainty, and the unsatisfactory state of law with regard to the power of the Governor-General-in-Council to legislate for the purpose of granting patents for new inventions. The said special measure was contained in Section XXVI of 16 and 17 VIC. C.95, and reads as follows:—

“No Law or Regulation made by the Governor-General-in-Council shall be invalid by reason only that the same affects any Prerogative of the Crown, provided such Law or Regulation shall have received the previous sanction of the Crown, signified under the Royal sign manual of Her Majesty, countersigned by the President of the Board of Commissioners for the affairs of India.”

25. Thus, a satisfactory solution of the legal obstacles to the enactment of legislation for the granting of patents in India, could be found only as a result of the persistent efforts made for that purpose by the Governor-General-in-Council and the Court of Directors, for a period of more than twenty years.

26. Although the legal issue was the main subject of discussion in the prolonged controversy during 1832-1853, there have also been occasional references to the “expediency” of providing for the grant of patents in India. The extracts given below are typical of the views held at that time, as to the suitability of the patent system to Indian conditions.

In the minute by the Governor-General dated the 3rd February 1841, His Excellency said—

“I look upon India as a country to the circumstances of which the laws of Patent are very inapplicable, and in which, if such laws were in force within it, any projector depending upon them would, except in very rare cases, meet with certain disappointment. India is yet so backward that, with any invention requiring mechanical art, it will long be far cheaper to import than to imitate; and the intermixture of foreign settlements and of independent States with the British Territories is such, as would otherwise greatly impair the power of interference”.

“...I should be most unwilling in a Territory so wide, so backward, with means of administration so imperfectly organized, to pass stringent laws for the protection of any exclusive rights”.

“I would not enter into a nice discussion of the equity of 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 his

Sovereign is to secure to him exclusively, in compensation, the profits to be derived from it, for a term of years. It might perhaps be argued that the market of England, Ireland and Scotland and the exclusive right of manufacture within their limits would afford an ample compensation for such disclosure; and that more of injustice, than of justice, would accrue if the millions of India, only within the limits of the British dominion, are to be taxed and harassed, for the imperfect chance of a further reward."

In his minute dated the 5th February, 1841, the Hon'ble Mr. Amos, Member of the Governor General's Council said as follows:—

"On the subject of the policy of the Patent Laws with reference to India, I should doubt whether the stimulus of a monopoly would, at the present moment, produce so much benefit by promoting native inventions and the introduction of English or Foreign manufactures, as it would occasion general inconvenience. This subject, however involves a question whether, of common right, there ought not to be perpetual property in a man's inventions, of which the Copyright and Patent Laws are merely restrictive, and conferring no new privilege."

"But I think the time is very near when Patent Rights may be of considerable utility in India. Great progress has been made within the last few years in the scientific education of the native youth. I think it is to be fully expected that with a short period inventions and discoveries of great practical use in developing the resources of the Country and contributing to the convenience of life will be result of the instructions which are now imparted in our schools and colleges. Still I doubt whether the love of science will, for a long time, have much general influence along the native of India, unless it be kept alive and stimulated by the prospect of gain."

I am inclined to think that the cases in which patents would be most beneficially granted in India, would be where a Patent had not been obtained in England, and could not, owing to climate, prior use, or other local circumstances, pretend to a Patent Right or even possess utility, except in India."

In his minute dated the 14th February 1841 the Hon'ble Mr. Prinsep, Member of the Governor General's Council said as follows:—

"But if the principle be admitted that every man has a right and property in his invention which is entitled to protection, there can surely be no objection to establishing a form of procedure whereby the possessor of such a right and property may obtain redress in case of its being infringed. The law, I would suggest, should be based on this general principle as *prima facie* evidence that the property in the invention was in the Patentee."

After considering the above minutes, the Hon'ble Mr. Amos again added a minute on the 15th February 1841. The following is an extract from the said minute:—

“But I think it will be expedient only to allow of limited monopoly, and that subject to a previous investigation of merits and the publishing of a specification. This policy has the advantage of being in unison with that which prevails in England.”

27. On the whole, the antecedents of the first legislation for Patents in India show that the incentive came mainly from those who desired protection in India for goods and machinery made in England under patent protection in that country; but the credit for introducing the patent system in India must go to the successive Governors-General and their Councillors during this period (1832-1853).

### **The Period of Exclusive Privileges, 1856-1911**

28. *Act V of 1856.*—On the removal of legal obstacles for legislating for grant of patents in India, a Select Committee was appointed to consider and report on the law relating to Patents for inventions, and to prepare such Bill or Bills as may be necessary to authorise their granting in India.

The Bill prepared by the Select Committee was introduced in the Legislative Council on the 7th July 1855, and after revision in the light of the criticism offered by the public, it was duly passed by the Legislative Council, and it received the assent of the Governor-General on the 28th February 1856. This was the first legislation for the protection of inventions in India, and was designated Act No. VI of 1856.

29. The Select Committee appointed to draft the Bill above referred to, had to tackle many problems which are at present receiving the attention of the Patents Enquiry Committee. The measures provided in the Act of 1856 and the reasons which had actuated the Select Committee to provide them will, therefore, be particularly instructive. They are referred to briefly below—

#### *(a) Desirability of enacting a law for the protection of inventions:*

The first question considered by the Select Committee was whether it was practicable and desirable to enact legislation for the protection of inventions in India. In this connection, the Select Committee observed that there were many difficulties in connection with a law relating to patents for inventions, and that the expediency of granting patent rights had been frequently disputed. They considered, however, that the reasons preponderated in favour of law by which the *actual inventor* of a new and useful invention might obtain an exclusive privilege therein for a limited period, subject to certain conditions.

#### *(b) Desirability of providing protection by grant of patents:*

One of the preliminary questions which the Committee had to decide was whether, as in England, the protection afforded to inventors should be by the grant of patents. In this connection, it is significant that in the Act of 1856 patents rights had been referred to

as "exclusive privileges", and that the word "patents" occurs nowhere in that Act. The reasons which weighed with the Select Committee for avoiding the use of the term "patents" and for adopting the expression "exclusive privileges" may be found in the following observations of the Select Committee:—

"A Patent for an invention in England is an exclusive privilege granted by the Crown upon certain conditions under the powers reserved by the Statute 21 Jac. I. c. 3, by which all other monopolies were declared void. The patent right is derived entirely from the grant of the Crown and is subject to all the rules of law which are applicable to other grants made by the Crown. One of those rules is that the grant is construed most strictly against the grantee, and that it is absolutely void if it contains any misrecital. The consequence is that patents are frequently set aside upon grounds which are really purely technical.

In framing the Bill which accompanies this Report, we have thought it advisable that the inventor should not derive his exclusive privilege from a grant, but he should be entitled to it by law, subject to certain restrictions."

It is evident from these observations that the Select Committee desired to emphasise the fact that the exclusive rights conferred in India had their origin in the 'law' of the country, and not in the 'patents' granted by the Crown.

(c) *Authority for granting "exclusive rights" to patentees:*

Another matter which the Select Committee had to decide was whether the power to grant exclusive rights should rest with the Governor-General-in-Council or with the Local Governments. In this connection, the Select Committee observed that since the exclusive privilege, when obtained, will extend over all the territories in the possession of and under the Government of the East India Company, power of granting the exclusive privileges should be vested in the Governor-General-in-Council and not in the Executive Governments.

(d) *Purpose of the legislation:*

The purpose of the legislation, so far as it can be gathered from the 'Preamble' of the Act, was "encouragement of inventions of new and useful manufactures".

Another purpose of the legislation was to induce inventors to disclose the secret of their inventions. In this connection the Select Committee, in their Report, remarked as follows:—

"The disclosure of his secret is one of the considerations for granting to an inventor an exclusive privilege; and every patentee is required within a certain time to file a specification describing the nature of his invention and in what manner it is to be performed. According to the Bill which we have prepared, an inventor will not be entitled to an exclusive privilege until he has filed such a specification. This provision will secure the knowledge



of the invention from being lost, and will also enable any person who may be desirous of doing so to avail himself of the invention immediately the exclusive privilege of the inventor cease."

(e) *Persons entitled to exclusive privileges:*

As to the persons entitled to the grant of exclusive privileges, the provision contained in the Bill as originally introduced by the Select Committee, was that only the actual inventors should be entitled to the exclusive privileges and that "importers" of inventions should not be entitled to the grant. In the revised Bill, the right to apply for exclusive privileges was extended also to "importers"; but a distinction was made between the "inventor" and the "actual inventor". The expression "inventor" included the "actual inventor" as well as the "importer" of a new invention, and both the expressions included their executors, administrators or assigns. As between the "inventors" and the "actual inventors", the rights of the "actual inventor" prevailed over the rights of the "inventor" who was not the actual inventor in the following respects:—

- (i) If exclusive privileges have been granted to both of them, those granted to the inventor shall cease.
- (ii) Upon proceedings instituted *within two years from the date of the petition* made by an inventor to file a specification, the actual inventor may compel the inventor to assign to him any exclusive privilege obtained by the latter.

(f) *Criterion for the novelty of the inventions:*

In the Bill as drafted by the Select Committee, a general provision as to the criterion for the novelty of inventions was that the invention should not have been publicly known or used in India or in any other part of Her Majesty's Dominions or in any foreign country, before the time for apply for leave to file the specification.

This provision was, however, subject to certain exceptions namely, the petition for leave to file the specification may be made within six months from the commencement of such exclusive privilege; and

- (i) in the case of persons who were entitled to exclusive privilege in respect of the invention concerned, either in England or in any other place an objection on the ground of lack of novelty, would be inadmissible;
- (ii) where there had been no prior use of the invention in India before the date of the Letters Patent granted in England or in any other country, the application for the exclusive privilege in India may be made within one year from the date of the British or the foreign patent.

In the revised Bill as passed by the Legislative Council, the reference to foreign countries was omitted from the provision mentioned above, and the benefit of the exceptions was confined only to those who had applied for patents in England. The Act provided

that an invention shall be deemed to be a new invention in the following circumstances:—

- (i) If, before the time of applying for leave to file specification, it was not publicly used in India or publicly known in India by means of a printed publication.
- (ii) Prior knowledge or publication in fraud of the actual inventor, or any breach of confidence shall not be deemed a public use or knowledge of the invention.
- (iii) The use of the invention by the inventor himself, or by his servants or agents, or by any other person by his licence in writing, shall not be deemed a public use thereof.
- (iv) If an inventor, prior to his application for the exclusive privilege in India, had obtained a British Patent, the invention shall be deemed to be a new invention if his application for the exclusive privilege in India was made within six months from the date of the British patent, provided it was not publicly known or used in India before the date of the application for patent in the United Kingdom; but in extending this privilege to persons who had obtained British patents, a provision was made for saving the rights of persons who had used inventions in India prior to the date on which the Bill was introduced in the Legislative Council.

(g) *Procedure:*

The Act did not contain any provision empowering the Governor-General-in-Council to make rules for regulating the provisions under the Act. The procedure contemplated was simple, and it was embodied in the Act itself.

All that was needed was to submit to the Governor-General-in-Council (in the Home Department) a petition "for leave to file a specification under the provisions of the Act". The petition should contain a statement that the invention was new within the meaning of the Act, and should also include the title of the invention and a description of it.

The petition was to be accompanied by a declaration on a prescribed form, stating that the invention would be of public utility and that the petitioner was the inventor, or his assignee, executor, or administrator, as the case may be.

The failure on the part of an inventor to disclose full information as to the mode in which the invention is to be performed, was regarded as being in the nature of a public rather than a private injury, and therefore, it was provided in the Act that false statements in the declaration were punishable as perjury.

When a petition afforded *prima facie* reason as to the existence of novelty or utility, the Governor-General-in-Council referred the petition for the opinion of experts at the expense of the petitioner. Disputes as regards the amount of experts' fee were settled by the courts in a summary manner.

In other cases, as also in cases where the experts' opinion was in favour of the petitioner, leave was given to file the specification,

subject to such conditions and restriction as the Governor-General-in-Council considered to be expedient. The time limit for filing a specification was six months from the date of granting leave. On the specification being filed, the "executive privilege" sprang into existence by mere operation of law, provided that the claim was well founded in substance, a matter as to which the Governor-General-in-Council gave no guarantee.

It was necessary for the petitioner to deliver additional copies of the specification. In the Bill as originally provided, the requirement was that the petitioner should give fifty printed copies of the specification; but in the Act, as finally passed by the Legislature, the requirement was that the petitioner should deliver five copies of the specification in each case. One of the copies was retained by the Secretary to the Home Department for filing, and the other copies were distributed to the Secretaries of the Government of Madras, Bombay and North-Western Provinces.

Copies of the specification were available for public inspection in the Office of the Secretaries mentioned above, on payment of one rupee for the inspection of each specification.

(h) *Fees:*

The Act provided that every petition for leave to file a specification, or for the extension of the term of the "exclusive privilege", shall be written or printed on stamped paper of the value of one hundred rupees.

It also provided that where the Governor-General-in-Council refers the petition to any person for enquiry and report, a reasonable fee to be paid to such person should be paid by the petitioner.

There was no provision for the payment of any "Renewal Fees" after the filing of the specification.

(i) *Privileges accruing on the filing of the specification:*

On the filing of a specification, the petitioner, his executors, administrators, or assigns, became entitled to the "sole and exclusive privilege of making, selling and using the invention, and of authorising others so to do for the term of fourteen years from the time of filing such specification and for such further term, if any, not exceeding fourteen years from the expiration of the first fourteen years as the Governor-General-of-India in Council may think fit to direct upon petition to be represented by such inventor, at any period not more than one year, and not less than six calendar months, before the expiration of the exclusive privilege hereby granted."

(j) *Amendment of the specification:*

The Act provided for amendment of the specification only if in a proceeding for rescinding the "exclusive privilege", the court permitted the amendment. It was provided that the Court shall permit amendment only if the defect or insufficiency of the specification could be amended without injury to the public:

(k) *Infringement suits:*

It was provided that an action for infringement may be maintained by the inventor against any person who, during the continuance

of any "exclusive privilege" shall, without the licence of the inventor, make, use, sell, or put in practice the invention in question, or who shall counterfeit or imitate the same.

No such action could be maintained in any of the courts of the East India Company other than the principal court of original jurisdiction in civil cases within the local limits of whose jurisdiction the cause of action had accrued or the defendant resided as a fixed inhabitant.

It was specifically provided that in any action for infringement, it would not be open to the defendant to base a defence upon the ground of any defect or insufficiency of the specification of the invention. A defence on the ground that the plaintiff was not the inventor, was open to a defendant who alleged that he was the actual inventor or that he had derived title from the actual inventor.

A defence on the ground that the invention was not new, was open only to a defendant who alleged that he, or some person through whom he claims, had, before the date of the petition for leave to file the specification, publicly or actually used in India the invention, or that part of it of which the infringement had been alleged.

(1) *Rescinding the "exclusive privilege":*

(a) An application for declaring that any "exclusive Privilege" in respect of an invention has not been acquired, could be made by any person on any of the following grounds:—

- (i) that the invention was not, at the time of presenting the petition to file the specification, a new invention;
- (ii) that the petitioner for leave to file the specification was not the inventor of the invention concerned;
- (iii) that the said petitioner had fraudulently included in the petition or specification as part of his invention something which was not new or whereof he was not the inventor;
- (iv) that the petitioner had wilfully made a false statement in his petition; or
- (v) that the invention or the manner of performing it was not particularly described and ascertained in the specification.

(b) In the original Bill it was provided that in order to avoid conflicting decisions upon the validity of a specification, jurisdiction for rescinding the "exclusive privileges" was confined to the Supreme Court at Calcutta. But in the Bill as passed by the Legislative Council the jurisdiction was extended to "any of Her Majesty's Courts of Judicature".

(m) *Saving of the Prerogative of Crown:*

The Act had a special Section providing that nothing contained therein shall abridge or affect the Prerogative of the Crown in relation to granting or withholding the grant of any letters patent; or inventions, or affect or interfere with any letters-patent for an invention already granted, or that may be granted hereafter by the Crown.

30. The Act, as passed by the Legislative Council and as assented to by the Governor-General-in-Council, was forwarded to the Court of Directors for approval, but it came into operation without waiting for the latter's approval. Thirty-three "exclusive privileges" were granted under the said Act. In the meanwhile, the Court of Directors took strong exception to the Act on the ground that, notwithstanding the special provision enacted in the Parliament for empowering the Governor-General to enact any legislation which would interfere with the Prerogative of the Crown, provided he obtained the previous sanction of the Crown, the Governor-General-in-Council had not obtained such previous sanction for enacting the legislation. The Court of Directors, therefore, ordered that the Act should be repealed forthwith and that steps should be taken to introduce fresh legislation after obtaining previous sanction of the Crown.

31. *Act IX of 1857*.—The Act of 1856 was, therefore, repealed by Act IX of 1857. But the fresh legislation for the purpose of granting "exclusive privileges" in India was enacted only in 1859.

32. *Act XV of 1859*.—The Act of 1859 contained certain modifications of the legislation enacted in 1856. The more important of these modifications are as follows:—

- (i) It was provided that no "exclusive privilege" shall be acquired in respect of an invention which is of no utility.

The purpose of this provision was stated to be to prevent the filing of frivolous applications for "exclusive privileges".

Although there was a specific provision that no "exclusive privilege" shall be acquired in respect of an invention which was of no utility, it was not necessary for the patentee, in an action for infringement, to prove that his invention was useful; that is to say, the want of utility was not a defence which was open to a defendant in an infringement action.

It was, however, provided that the "exclusive privilege" may be set aside on this ground in an action for obtaining a declaration of the Supreme Court that any "exclusive privilege" in respect of an invention was not acquired under the provisions of the Act.

- (ii) The privilege extended to the importer of an invention to obtain an "exclusive privilege" under the Act of 1856, was withdrawn; and a specific provision was made that the importer in India of a new invention shall not be deemed to be an inventor within the meaning of the Act, unless he were the actual inventor.
- (iii) It was provided that an invention publicly used in India, or in the United Kingdom, or made publicly known by a written or printed publication in either country, was not a new invention within the meaning of the Act.
- (iv) The period of six months allowed by the Act of 1856 to English patentees for filing their petitions for leave to file specifications in India, was extended to twelve months.
- (v) In the provision contained in the Act of 1856 permitting the amendment of the specification, a restriction was

imposed that the amended specification should not operate to enlarge the "exclusive privilege" acquired prior to the amendment.

The special provision made in the Act of 1856 for saving the Prerogative power of the Crown, was omitted from the Act of 1859.

Though the Act of 1859, so far as substantive law was concerned, was based on the United Kingdom Act of 1852, it made important departure from the latter, particularly in the following matters:—

(i) In the United Kingdom, the inventor should always be a party to the application for protection, and a person who imported an invention into the United Kingdom was deemed to be an inventor entitled to protection.

In India, it was not necessary that the inventor should be a party to the application; his assignee could as well make an application. An importer in India of an invention not really made by him, was *not* deemed to be an inventor entitled to protection.

(ii) For the purpose of obtaining the grant of a patent in the United Kingdom, the user of publication abroad did not prejudice the novelty of the invention. On the other hand, any public user or publication in England, even by the inventor himself destroyed the novelty of the invention and rendered void the patent, if any, obtained.

Under the Indian Act any public user or publication *in the United Kingdom* or in India by a person other than the inventor or by one authorised by him prior to the application for protection, destroyed the novelty of the invention.

The use of an invention in public by the inventor or others under his authority for a period not exceeding one year prior to the date of applying for protection in India did not affect the novelty of the invention.

34. *Act XIII of 1872.*—The aforesaid Acts of 1856 and 1859 afforded protection for inventions only. There was thus no legislative enactment for the protection of Designs in India, although legal provisions for their protection in the United Kingdom had been made earlier in 1842 (5 & 6 Vict. C. 100). To remedy this defect, the "Patterns and Designs Protection Act" was passed as Act XIII of 1872, which received the assent of the Governor-General-in-Council on the 28th April 1872. This Act merely amended Act XV of 1859 so as to—

- (i) include within the meaning of "new manufacture", any new and original pattern or design, or the application of such pattern to any substance or article of manufacture";
- (ii) provide that the term of exclusive privilege in the case of a pattern or design should be limited to "three years and no more"; and
- (iii) invest persons, who had acquired in the United Kingdom "exclusive privileges" in respect of patterns or designs,

with the same privileges and civil remedies appertaining thereto in India also, in respect of the same patterns or designs.

35. *Act XVI of 1883.*—A further amendment was introduced in the Act of 1859 by the enactment of Act XVI of 1883, which, received the assent of the Governor-General-in-Council on 4th October 1883. This Act was intended to protect the novelty of the inventions which, prior to making applications for their protection, would be disclosed at the Exhibitions of India. It was provided that novelty of the inventions so disclosed would not be lost, if the inventors made applications for their protection within six months of the opening of such Exhibitions.

36. The substantive legislation of 1859 and the two Amending Acts of 1872 and 1883 continued in force till the 30th June 1888, when they were superseded by fresh legislation.

37. *Act V of 1888.*—About thirty years working of the legislation for “exclusive privileges” showed that—

- (i) the principles of Act XV of 1859 relating to Inventions were quite sound, but the Act required modifications in certain details, and
- (ii) Act XXX of 1872 relating to Designs had been so defective that not a single pattern or design had been registered under it, and the Act had thus failed to achieve the object for which it was passed.

Meanwhile, certain modifications had been made in law in the United Kingdom by an Act passed by Parliament in 1883 (47 & 47 Vict. C. 57). Some of these modifications, it was considered desirable to introduce in India.

These circumstances led to the enactment in 1883 of a substantive Act, to consolidate and amend the law relating to Inventions and Designs. This Act, known as Act V of 1888, received the assent of the Governor-General-in-Council on 16th March, 1888 and it repealed the previous Acts referred to above.

38. *Act V of 1888*, while retaining the main characteristics of the Indian Act of 1859, was divided into two Parts, one to deal with Inventions and the other to deal with Designs. The elaborate provisions of the United Kingdom Act of 1883 were not incorporated in the Act in their entirety. The modifications introduced in the Indian Law in some of the more important matters are set forth below:—

- (a) *Administration of the Act.*—The authority to administer the Act was shifted from the Home Department to a “Secretary”, which term included a Secretary to the Government of India or any other officer subordinate to the Government, authorised by the Governor-General-in-Council to discharge the necessary functions under the Act.
- (b) *Jurisdiction of Courts.*—The jurisdiction exercised by the High Courts at Calcutta, Madras and Bombay under the Act of 1859 was extended to the High Court of Allahabad, the Chief Court of the Punjab, and Recorder of Range

- (c) *Fees*.—It was recognised that the first requisite of a patent is that it should be cheap. This would be evident from the fact that before 1852 in the United Kingdom, the fee payable on obtaining a patent was £300. In that year it was reduced to £175 of which the initial fee, until the end of 1873, amounted to £25. Under the Act of 1883, the fee for obtaining a patent available for four years amounted to £4; the total fees payable for the full term of fourteen years being £154.

Under the Indian Acts of 1856 and 1859, the fee payable on a petition for leave to file a specification was fixed at Rs. 100. The Act of 1888 altered the amount of fees payable in such a way that the cost of securing an 'exclusive privilege' enduring for four years was kept at Rs. 40, Rs. 10 being payable on filing the application, and Rs. 30 on filing the specification.

A period of four years was deemed sufficient to determine whether the 'exclusive privilege' was worth maintaining or not. If worth maintaining, it was provided that the inventor should make *annual* payment of Rs. 50 for the next five years, and Rs. 100 for the last five years of the term. In case he obtained an extension of the term, he had to pay Rs. 100 for each year of the extended term. Provisions were also included for the grant of extension of time, not exceeding three months, for paying the renewal fees, on payment of Rs. 10 for one month, Rs. 25 for two months and Rs. 50 for more than two months. By omitting payment at any stage, the 'exclusive privilege' became abandoned. The fees were so graduated as to correspond approximately with the increasing value which the invention acquires as it becomes more generally known and used.

The fee on application for extension of the term of the privilege was reduced from Rs. 100 to Rs. 50.

(d) *Specifications*.—Experience had shown that the description of inventions furnished in the petitions for leave to file specifications was too meagre to ascertain their scope. Provisions were, therefore, made to enable the Governor-General-in-Council to insist that every specification must explain the principle of the invention set forth therein and the best mode in which the applicant has contemplated applying that principle, and must describe the manner of making and using the invention in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which the invention appertains, or with which it is most closely connected, to make or use the same.

(e) *Models*.—The Governor-General was also empowered to call for a model of the invention, and he could require that the model be neatly and substantially made of durable material and of dimensions not exceeding those, if any, specified in the requisition therefor.

(f) The time for filing a petition for leave to file a specification in respect of an invention already patented in the United Kingdom was altered from "twelve months from the date of the Letters Patent" to "twelve months from the date of sealing the Patent".

(g) *Time for filing specifications*.—Provisions were made to allow extension of time for filing the specification by a period not exceeding three months on payment of additional fees.



(h) *The procedure in India* under Act V of 1888 for obtaining an exclusive privilege was somewhat as follows:—

The inventor submitted to the Governor-General-in-Council an application, accompanied by the prescribed fee and containing a description of the invention. The title of the invention was notified in the *Gazette of India*.

After examination by the Secretary for formal matters, the application was exposed to public inspection in the Secretary's office for ten days, so that any member of the public could have an opportunity of objecting to the grant of leave to file the specification. The application was then further examined by the Secretary more closely to see whether it complied in all respects with the Act, and also, where possible, to see whether the invention was novel. Objections were also considered by the Secretary at this stage. If he found that the application was in order, leave to file a specification was granted, subject to conditions in the case of inventors who were Government servants. Within a period of six months (which could with permission be extended to nine months) the applicant, if he desired to obtain an exclusive privilege, should file six copies of a specification together with a second fee. The specification was then examined by the Secretary to see whether it was substantially identical with the description, drawings and claims in the application. As soon as this identity was secured, the specification was notified as filed as from the date on which it was first received, and the exclusive privilege accrued from that date. Subject to the payment of further fees, the exclusive privilege would endure for fourteen years, or with permission for a longer period, but it ceased if any corresponding English or foreign patent lapsed.

(i) *Extension of Term of Exclusive Privileges.*—The Governor-General-in-Council, while retaining the power to extend the term of an "exclusive privilege", was invested with the power to refer to the High Courts all questions relating to extension, including objections thereto lodged by any person. The term of extension which may be granted was limited to seven years ordinarily, and fourteen years in exceptional cases only.

(j) *Exclusive Privileges to bind the Government.*—The Acts of 1856 and 1859 did not contain any provision relating to the rights of the Crown. It was understood that the common law doctrine that patent rights do not prevail against the Crown had effect in India. In the Act of 1888, however, it was provided for the first time that the "exclusive privilege" had the same effect against the Crown as it had against a subject. But officers of the Crown had authority to use the invention for the services of the Crown on terms to be agreed upon, before or after use, with the approval of the Governor-General-in-Council, or in default of agreement, to be settled by him.

(k) *Exclusive Privilege acquired by Government Servants.*—The Governor-General-in-Council could impose any conditions he may deem expedient in respect of the "exclusive privileges" acquired by Government Servants.

(l) *Grant of compulsory licence.*—The Governor-General-in-Council was empowered to grant compulsory licences in case where an inventor who had acquired “exclusive privileges” did not make his invention accessible to the public on reasonable terms.

(m) *Compulsory Licences.*—Provision was made to empower the Governor-General-in-Council to require the grant of licences in cases where—

- (a) the “exclusive privilege” were not being worked in British India, or
- (b) the reasonable requirements of the public with respect to the invention could not be supplied, or
- (c) any person was prevented from working or using to the best advantage an invention, of which he was possessed.

(n) *Novelty of Inventions.*—The Act contained a provision for the protection of inventors, who might have used their inventions in the public prior to the date of their patent, for leave to file the specification. This provision was in the following terms:—

“Use of an invention in the public by the inventor thereof, or by his servant or agent, or by any other persons by his licence in writing, for a period not exceeding one year immediately preceding the date of the delivery or receipt of his application for leave to file a specification thereof, or knowledge of the invention resulting from such use thereof in public, shall not be deemed a public use or knowledge within the meaning of this Part.”

(o) *Contemporaneous Inventions.*—Provisions were included to allow concurrent applications for contemporaneous inventions; and the first of the applicants in respect of such inventions was allowed a preferential claim.

(p) *Publication.*—To ensure proper publication of the invention in India, it was provided that the specification should be filed not only in Calcutta, Madras and Bombay, but also in Rangoon and such other places as the Governor-General-in-Council may from time to time appoint.

(q) *Agents & Assignment.*—With a view to encourage foreign inventors, provisions were made to enable them to act through Agents in India and also to make assignment of their interest in any Province or other local area as they saw fit.

(r) *Designs.*—The Patterns and Designs Act, 1872, as already stated, having been found defective, was repealed, and provisions for the protection of “New or Original Designs” were made in Part II of the consolidating Act.

(s) *Power to make Rules.*—Provision was made for empowering the Governor-General-in-Council to make such rules and prescribe such forms as he thought necessary for carrying out the purposes of the Act, or to alter or amend the forms provided in the Schedules to the Act.

(t) *Exhibitions.*—Act XVI of 1883 was repealed and provisions were included in the consolidating Act to protect inventors who

exhibited their inventions at any Industrial and International Exhibition defined in the Act, not merely from the date of the opening of the Exhibition, but from the date of admission of the invention into the Exhibition.

### **The Period of Patents: 1912 to the Present Day**

39. *Act II of 1911.*—Even though Act V of 1888 was passed five years after the passing of the United Kingdom Act of 1883 (45 & 47 Vic. C. 57), the United Kingdom practice in its entirety was not introduced in India, as this country was still unripe for it. But after 23 years working of the Consolidating and Amending Act, or in other words, after about 55 years' operation of patent law in this country, it became imperative that the law and practice in British India should be brought into closer conformity with those of the United Kingdom, as in most of the other British possessions.

40. Besides this consideration there were the following additional reasons for making a revision of the law:—

- (a) Under the procedure laid down by Act V of 1888, the public had no proper opportunity of objecting to the grant of an 'exclusive privilege', as only a single manuscript copy of the application was available for inspection in Calcutta during the limited period of ten days. Such copy not infrequently contained only an imperfect description of the invention;
- (b) a defendant in an infringement proceeding could not plead invalidity and non-novelty in his defence; and
- (c) the duration of the Indian Exclusive Privileges depended on the duration of foreign patents.

It was felt that these provisions caused considerable hardship. Therefore, for the security of both the public as well as the inventors, a procedure more direct and more effective was called for not only in regard to the grant of 'exclusive privileges' but also in respect of their subsequent existence and operation.

41. For these reasons, fresh legislation was undertaken which resulted in the passing of Act II of 1911, which received the assent of the Governor-General on the 2nd March, 1911, thus replacing Act V of 1888. The opportunity, which presented itself for an amendment of the Act, was utilised for incorporating some of the provisions of the United Kingdom Act of 1907 (7 Edw. 7, c. 29) so as to narrow down the difference in law and procedure which obtained in the two countries.

42. The more important features of the new Act, which, with amendments, is still in force, were as follows:—

- (i) The term 'patent' was substituted for the expression 'exclusive privilege'.
- (ii) Patent rights were brought into existence by the sealing of a 'patent', instead of by mere operation of law, as in the case of 'exclusive privileges'. As a result, protection of inventions could be granted in a form which were

more suitable for commercial purposes than the 'certificates of the filing of specification' issued under the earlier Acts.

- (iii) The procedure for granting the patent rights was thoroughly overhauled. The revised procedure provided for the following stages:—
  - (a) submission of the application and the specification at the same time, together with the prescribed fee;
  - (b) "acceptance" of the application after an official examination, within twelve or fifteen months;
  - (c) publication of documents after such "acceptance";
  - (d) interval of three months for submission of the "opposition" to the grant of the patent;

The "opposition proceedings" were intended to provide on the one hand, an opportunity to any member of the public to prevent the grant of a patent which would be unfairly prejudicial to his interests, and on the other hand, to enable the applicant to restrict his claim to what was properly his invention, thus obviating to some extent his risk in subsequent infringement and revocation proceedings.

  - (e) grant of patent after objections (if any) had been disposed of, on payment of the prescribed fee.
- (iv) For the protection of the applicant, it was provided that the application was to be kept secret until it was accepted.
- (v) The duration of Indian patents was made independent of the duration of foreign patents.
- (vi) Requirements as to recording changes in proprietorship of patents were made more stringent by providing that the person registered as the proprietor of a patent or design shall, subject to any rights appearing from the Register of Patents and Designs to be vested in any other person, have power absolutely to assign, grant licences to, or otherwise deal with the patent.
- (vii) Amendment of the application and the specification was facilitated and provision was made for 'opposition' thereto by the public.
- (viii) Defendants in infringement suits were allowed in all cases to use the natural ground of defence by pleading non-validity and non-novelty of the patent.
- (ix) Provision was made for granting "Certificates of Validity of patents" in certain cases, with a view to give protection against wilful infringers.
- (x) Threats of legal proceedings were made actionable unless the patentee proceeded diligently with an infringement suit.
- (xi) Anomalies in favour of 'British' inventors were removed.

- (xii) Provisions relating to compulsory licences for the working of inventions were more clearly defined and the grounds on which they could be obtained were broadened.
- (xiii) Surrender of patents and restoration of ceased patents was made permissible.
- (xiv) The law of Designs, which followed the British Statute of 1883, was brought into line with the Statute of 1907.
- (xv) Finally, a Patent Office in charge of a Controller of Patents and Designs was established, and the Controller was vested with power to dispose of many matters which were formerly referred to the Governor-General-in-Council.

Generally speaking, the provisions of the Act followed, with necessary modifications, those of the British Inventions and Designs Act, 1907, only such provisions of the Indian Act of 1888 being retained as appeared necessary to meet the special conditions in India.

The Act of 1911 has undergone certain major amendments by the amending Acts of 1920, 1930 and 1945\*, as briefly explained below.

43. *Amending Act of 1920.*—The main object of the Amending Act of 1920 was to enable India to enter into “reciprocal arrangements” with the United Kingdom and other parts of His Majesty’s Dominions for securing ‘priority’ for the patent, taken out in any of the countries mentioned, by any person who has applied for a patent in India for the same invention. Provision for such an arrangement existed between various countries which were parties to the “International Convention” for the Protection of Industrial Property (the Paris Convention 1883 as amended from time to time). India was not a party to this Convention, nor is she a party to it even at present. Similar provision for inter-imperial arrangements was made in the United Kingdom by the Patents and Designs Act of 1911 and by virtue of this provision, it was made possible for the United Kingdom to enter into “reciprocal arrangements” with other Empire countries for securing ‘priorities’ in respect of patents and designs. A similar provision made in the Indian Act enabled India to enter into “reciprocal arrangements” not only with the United Kingdom, but also with other parts of His Majesty’s Dominions.

44. *Amending Act of 1930.*—The more important feature of the Indian Patents and Designs (Amendment) Act of 1930 were as follows:—

- (i) Provision was made for the grant of “Secret patents” in respect of inventions relating to instruments or munitions of war, provided that the inventions were assigned to Government.
- (ii) Provision was made for granting “Patents of Addition” for any improvement or modification of the invention which forms the subject matter of any basic patent. It was provided that no renewal fee was payable in respect of “Patents of Addition”, but a “Patent of Addition” would continue to be in force only so long as the original patent remained in force.

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\* Since writing this chapter, Act II of 1911 has been further amended by Act XXXII of 1950.

(iii) The provision relating to the privilege of the Government in respect of patented inventions was thoroughly modified. Under the revised provision, disputes in respect of the terms for the user of the patented invention by the Government were to be settled by the High Court and not by the Government.

It was also provided that Government would be free to use any invention, of which a description was contained in the records of the Government prior to the date of the patent.

(iv) The Controller was given the power of rectifying the Register of Patents, save in exceptional cases, which could be referred by him to the High Court.

(v) The Controller was also given power to proceed with an application for patent when the applicant had assigned it to another party and refused to proceed with the applications, or when disputes arose between joint applicants.

(vi) The normal term of a patent was enlarged from fourteen to sixteen years, and it was provided that the term might be extended ordinarily by five years or in exceptional cases by ten years.

(vii) Provision was made for enabling British India to enter into "reciprocal arrangements" with the Indian States for granting priorities to patents.

(viii) Besides these, a large number of amendments for making the provision of the Act more precise were also made.

45. A considerable number of the provisions of the Amending Act of 1930 were based on the British Patents and Designs Act of 1919, which represented a fairly general revision of the (British) Act of 1907. The said Act of 1919 contained provisions imposing special limitations on patents for "substances produced by chemical processes or intended for food or medicine". It contained also certain elaborate provisions for preventing the abuse of patent rights in the United Kingdom. The Amending Act of 1930 did not include any of these provisions of (British) Act of 1919. The absence of these provisions undoubtedly favoured the foreigner and enabled him to abuse his patent rights in India to the detriment of the people of this country.

46. *Amending Act of 1945.*—The main purpose of the Amending Act of 1945 was to provide for the filing of an application for patent on the basis of a "provisional specification"

In order to appreciate the importance of this provision, it is necessary to keep in view the distinction between a "provisional specification" and a "complete specification", and also to understand what is meant by "provisional protection".

A "complete specification" is a specification which particularly describes and ascertains the nature of the invention and the manner in which the same is to be performed. It should end with a distinct statement of the invention claimed.

A "provisional specification" differs from a "complete specification" in that it need describe only "the nature of the invention", that

it need not describe "the manner in which the invention is to be performed," and that it need not end with a statement of the invention claimed.

Thus, a "provisional specification" can be drafted as soon as the inventor conceives the invention; but a "complete specification" cannot be drafted until he develops the practical method for carrying out the invention and also determines the scope of the invention for which he should claim the patent.

"Provisional protection" broadly refers to the protection afforded to an applicant for patent from the consequence of use and publication of the invention during the pendency of his application in the Patent Office.

Before 1945, the Indian Act provided that any use or publication of the invention during the period between the date of the application and the date of sealing the patent shall not prejudice the patent to be granted. Thus, it provided for "provisional protection". But under the Indian Act as it existed till 1945, an application for patent could be made only on the basis of a "complete specification" as defined above. Hence, the "provisional protection" granted under the Indian Act was available to an applicant for patent only after he had worked out such details of practically carrying out his invention as were necessary for drafting his "complete specification". This had the drawback that an inventor could not develop the practical details of his invention under "provisional protection". As the practical working of an invention cannot in many cases be developed without disclosing the invention to others, inventors were obliged to develop their invention only under the risk of prejudicing their rights. The provision made in the Act for enabling applications to be made on the basis of "provisional specification" removed this deficiency of the Indian Act, and it enabled inventors to develop the practical aspects of their inventions under the "provisional protection".

The Amending Act of 1945 provided that where an application was made on the basis of a "provisional specification" the "complete specification" might be filed within nine months thereafter, and that this period might, on request, be extended by one month.

This Act also provided for the filing of a single "complete specification" in respect of two or more applications based on "provisional specifications" which were cognate to one another.

### **Minor Amending Acts**

47. Apart from the major amendments made by the amending Act referred to above, numerous minor amendments, mostly in the nature of drafting improvements, have been made in the Act of 1911, by amending or repealing Acts of 1914, 1924 and 1939. Certain special provisions affecting patents have also been made in various other enactments. Temporary amendments of the Act of 1911, and other temporary provisions were made during the two World Wars I & II, but they are no longer in force.

### **Rules made under the Acts of 1888 and 1911**

48. As mentioned already, the Acts of 1856 and 1859 did not contain any provision empowering the Governor-General-in-Council to make rules for regulating the administration of the two Acts.

49. The Act of 1888 contained a provision empowering the Governor-General-in-Council "to make such rules and prescribe such forms as he thinks necessary for carrying out the purposes of the Act and to alter or to amend the forms given in the second and third Schedules to that Act". It was also provided that the rules may provide, among other matters, for the printing of specifications, memoranda and amended specifications, and for the distribution or sale of printed copies thereof. Notwithstanding these provisions, it appears that the power vested in the Governor-General-in-Council was used only sparingly. Rules were made for the following special purposes:—

- (i) For amending the form of application given in the Schedule to the Act. (1892).
- (ii) For giving directions as to the preparation of applications and specifications and of drawings attached to such applications or specifications. (1895).
- (iii) For prescribing the manner of dealing with applications for patents. (1898).

A specific provision was made that if the application was found to be manifestly defective in respect of the following requirements:—

- (a) if it is not signed by the inventor or by his duly authorised agent;
- (b) if the name, occupation or address of the inventor is not stated;
- (c) if there is any material departure from the form prescribed in the Second or Third Schedule to the Act, as the case may be;
- (d) if, in the event of a patent in the United Kingdom having been obtained, the dates of such patent and of the actual sealing thereof are not stated;
- (e) if the nature of the invention is not described; or
- (f) if the particular novelty whereof the invention consists is not described;

the application was not deemed to be an application within the meaning of the Act, and it should be returned to the applicant for necessary amendments.

#### **Other Rules and Regulations**

50. Rules made under the Act of 1911 are the first set of rules in which an attempt was made to deal comprehensively with all procedural matters under the various provisions of the Act. These rules were replaced by more comprehensive rules promulgated in 1933 and the Indian Patents and Designs Rules of 1933 are now in force. The Act has provided that rules prescribed under the Act shall have effect as if enacted in the Act itself. The said Rules contain 68 rules and four schedules. The first schedule prescribes the fee payable in respect of the various proceedings under the Act. The second schedule gives a list of forms as well as the forms themselves that have to be used in proceedings under the Act. The third schedule gives a model form of patent, which, with suitable amendments



should be attached to the patent specification for sealing the Letters Patent. The fourth schedule gives the "classification" for the purposes of Registering Designs.

51. In addition to the Indian Patents and Designs Rules 1933, rules have also been prescribed for regulating proceedings regulating Secret Patents. These rules are known as the "Indian Secret Patent Rules, 1933". They are four in number and there is a form of the application for a secret period annexed thereto.

52. Apart from the rules made under the Act, special regulations relating to patents, applicable to Government servants employed in the Defence Services (including the Royal Indian Navy, and the Indian Air Force) the Scientific and Technical Research Services and the Railway Services have been made by the Central Government, under the rule making power of the said Governor-General-in-Council for regulating the conditions of service under the Government.

53. A brief resume of the existing law relating to patents in India, is given in the following chapter.

## **CHAPTER II**

### **RESUME OF THE EXISTING LAW OF PATENTS IN INDIA**

54. A brief resume of the existing law of Patents in India is given under the following heads:—

(A) SOURCES OF PATENT LAW IN INDIA.

(B) TERRITORIAL EXTENT OF THE INDIAN PATENTS AND DESIGNS ACT, 1911.

(C) KINDS OF PATENTS.

(D) WHO MAY APPLY FOR A PATENT.

(E) ESSENTIAL REQUIREMENTS FOR PATENTABILITY:

(i) Manner of Manufacture,

(ii) Novelty,

(iii) Inventive ingenuity,

(iv) Utility, and

(v) Not being contrary to Law and Morality.

(F) PROCEDURE FOR OBTAINING PATENTS:

(i) Documents required for applying for a patent.

(ii) The Provisional specification,

(iii) The Complete specification.

(iv) Outline of procedure,

(v) Filing the application,

(vi) Filing the Complete specification,

(vii) Numbering and dating of applications,

(viii) Public Inspection of specification.

(ix) Official examination,

(x) Acceptance,

(xi) Opposition,

(xii) Sealing the patent,

(xiii) Time limits, and

(xiv) Fees.

(G) DATE OF PATENT.

(H) DURATION OF PATENT.

(I) RIGHTS OF THE PATENTEE.

(J) RESTRICTIONS ON PATENT RIGHTS.

(K) REGISTER OF PATENTS.

(L) AGENCY.

(M) OFFENCES.

(N) THE PATENT OFFICE.

(O) POWERS AND DUTIES OF THE CONTROLLER.

(P) APPEALS FROM THE DECISIONS OF THE CONTROLLER.

(Q) POWERS OF THE CENTRAL GOVERNMENT.

### (A) Sources of Patent Law in India

55. The main provisions of the Law of Patents in India are contained in—

- (i) Parts I and III of the Indian Patents and Designs Act, 1911 (as amended up-to-date)\*,
- (ii) the Indian Patents and Designs Rules, 1933 (as amended up to the 15th June 1946), and
- (iii) the Indian Secret Patent Rules, 1933 (as amended up to the 13th July 1946).

Provisions bearing specifically on patents are also scattered among numerous statutes, such as—

- (a) The Indian Sea Customs Act, 1878.
- (b) The Indian Merchandise Marks Act, 1889.
- (c) The Indian Sale of Goods Act, 1930.
- (d) The Indian Aircraft Act, 1934.
- (e) The Trade Marks Act, 1940.
- (f) The Atomic Energy Act, 1948.

### (B) Territorial Extent of the Indian Patents and Designs Act.

56. The Indian Act was originally operative in British India only, and not in the Indian States. At present it extends to the whole of India with the exception of Jammu and Kashmir.

Patents granted in foreign countries are not operative in India, and patents granted in India do not extend to any place outside India.

### (C) Kinds of Patents

57. The following four kinds of patents are granted under the Indian Act:—

- (i) *An Ordinary Patent*.—This is the standard patent to which are attached neither any *special* privileges nor any *special* restrictions.
- (ii) *A Patent claiming 'Priority'*†.—Arrangements for giving 'priority' to patents exist between India on the one side and each of the following countries on the other:—

Australia, Canada, Ceylon, New Zealand, the State of Eire, The United Kingdom, the Union of South Africa and Pakistan.

\* In this Chapter, The Indian Patents and Designs Act, 1911, as amended up to the 16th April 1945 will be referred to as the Indian Act. See also footnote to para 42.

† Under the above mentioned 'priority' arrangements, any person who has filed an application for a patent for an invention in one or more of the countries mentioned, may, if he files his application for a patent for the same invention in India within twelve months of the earliest of such applications, claim that his Indian patent should be accorded the date of such earliest application. In other words, the application filed under this arrangement is given 'priority' over others, and the patent that may be granted thereon is ante-dated.

Similar arrangements which existed with Baroda, Mysore and Rampur have now become obsolete.

'Priority' arrangements between India and the countries mentioned above are on a basis of reciprocity. Hence, any person who has filed an application for a patent in India has a right to claim that the patent that may be granted to him in the countries aforesaid, shall have the official date of his Indian application, provided that he files his application in any of the said countries within twelve months from the date of his application in India.

(iii) *A Patent of Addition.*—A Patent of Addition is granted in respect of improvements or modifications of any invention protected by a substantive patent.

The advantage of taking out a Patent of Addition is that no renewal fees need be paid for its continuance. But there is the drawback that the term and scope of a Patent of Addition are dependent on those of the substantive patent.

(iv) *A Secret Patent.*—A Secret Patent may be obtained for any invention relating to instruments or munitions of war, if the Central Government consider that it is advisable to keep the invention secret. Inventions in respect of secret patents must be assigned to the Central Government.

#### (D) Who may apply for a Patent

58. *Statutory Provisions.*—Any person, irrespective of his nationality, may apply for an Indian Patent. The application may be made by him either alone or jointly with others, subject to the following restrictions:—

(a) In the case of a patent other than a Secret Patent or patent claiming 'priority', the applicant (or one of the applicants) for patent should be the "true and first inventor" or his legal representative or assign.

The "true and first inventor" of an invention may be either its actual inventor, its importer or communicatee from abroad.

As between rival claimants, he who has *bona fide* claimed to be the true and first inventor in the application of the earliest date, is deemed to be the true and first inventor, even though in point of time he may not have been the earliest to evolve the invention.

(b) In the case of a Patent of Addition, the application for patent can be made only by the registered proprietor of the substantive patent,

(c) In the case of a 'Patent claiming Priority' the applicant (or one of the applicants) for patent should be the person who has applied for the patent in a foreign country where the application in respect of which 'priority' is claimed was made, or his legal representative or assign.

- (d) In the case of a Secret Patent, the application for patent can be made only by the inventor.

59. *Employer and Employee.*—The Indian Act does not contain any provision for regulating relations between the employer and the employee, as to the ownership of any invention made by the employee. In practice, however, in the absence of a specific agreement between an employer and employee, the question of ownership of an invention made by an employee would be decided in each case according to its particular facts. Broadly speaking, the following tests are applied:—

- (1) Unless the employer has suggested the broad idea which results in the invention, his status as employer does not entitle him to be regarded as the inventor; suggestions which the employer might make will be credited to the employee-inventor.
- (2) If the invention is concerned with an art, wholly outside the scope of the employer's business, the employer has no right to it.
- (3) Even where the invention is concerned with an art connected with the employer's business, if the employee's invention is outside the scope of his proper work, the invention would not belong to the employer.
- (4) But if the invention is concerned with matters within the scope of the employee's proper work, the property in the invention belongs to the employer, and it is immaterial whether the invention was made in the employer's time or in that of the employee.

60. *Government Servants.*—Subject to any special conditions of service or to any special orders applicable to the persons employed in any particular department, all Government servants are at liberty to apply for a patent direct to the Patent Office.

Government servants employed in the Defence Services, including the Indian Navy and the Indian Air Force, should not apply for patents except in the manner laid down in the special Regulations applicable to them.

Government servants employed in Scientific or Technical Research are not permitted to apply for patents, or to cause or permit any other person to apply for, or obtain, a patent for an invention made by them, save with the permission of the Government and in accordance with such conditions as the Government may impose.

### (E) Essential Requirements for Patentability

61. The Indian Act does not contain any provision which indicates categorically what may be patented. From the provisions laid down for refusing applications for patents and for revoking patents, it may be surmised that in order to be patentable, the subject matter should satisfy the following essential requirements:—

62. *It should relate to a "manner of manufacture".*—It may be a process, or an apparatus, or a product of manufacture; but it must

suggest an act to be done or an operation to be performed by subjecting materials to manual, mechanical, chemical, electrical or the like operation.

Mere abstract principles or schemes which do not involve the subjecting of materials to manual or mechanical or other operations, and which do not relate to the making of vendible products, are not considered to be within the scope of this expression.

Results achieved by the working of an invention are also not considered to constitute any manner of manufacture.

The Indian Act contains no guidance for deciding whether or not inventions of the following categories constitute any manner of manufacture:—

- (a) Agricultural, Horticultural and Biological process and products.
- (b) Discoveries capable of industrial application, but which are not concerned with the making of any vendible products.
- (c) A chemical compound *per se* without reference to the process of its manufacture.

63. *It should be new.*—The Indian Act does not categorically lay down any criteria for determining the novelty of inventions, under all circumstances. But it is clear from the statutory grounds of revocation of a patent that an invention which has been publicly made known in India will cease to be novel thereafter except where the inventor has, as provided in Section 40 of the Indian Act, taken steps to safeguard his interest prior to the disclosure or the use of his invention at industrial or other Exhibition.

The secret working of an invention on a commercial scale, i.e., not merely by way of reasonable trials or experiments, would be fatal to the novelty of an invention, except when such working has been authorised by a Government Department.

64. *It should involve inventive step.*—The invention should involve an inventive step, having regard to what was known or used in India prior to the date of patent. The Act does not lay down any principles for determining the inventive merit of inventions; consequently the question whether any particular invention involves “inventive step” has been a very fruitful source of litigation.

65. *It should have “utility”.*—“Utility” has not been defined in the Act, although it has a special meaning. “Utility” does not mean abstract or comparative or competitive or commercial utility. It means an invention having practical existence as a manner of manufacture. If what is proposed by the invention is giving an option of a process or an apparatus which is better in some respect (though not necessarily better in every respect) than what is previously known, the invention will be deemed to possess “utility”

66. *It should not be contrary to law and morality.*—A patent for an invention will be refused, if, in the opinion of the Controller, its use would be contrary to law or morality. Thus, an apparatus for gambling, or an appliance for burgling houses or a method of adulterating food would be regarded as an invention contrary to law or morality, and would not be proper subject matter for a patent.

**(F) Procedure for obtaining Patents**

67. *Documents required to be filed with an application for patent.*—For filing an application for patent, it is necessary to have the following documents:—

- (a) An application on the appropriate form prescribed under the Indian Patents and Designs Rules; and
- (b) a Provisional or a Complete specification, in duplicate.

68. *Provisional Specification.*—A Provisional specification should contain a description of the nature of the invention.

69. *Complete Specification.*—A Complete specification should contain not only a description of the invention, but also full particulars of the manner of carrying out the invention into practice, and a statement of claims.

The Complete specification must be framed with the utmost good faith. It must not contain any false representation or misdescription of the invention. It must describe the best method known to the patentee of performing the invention and all his knowledge relating thereto, including that which he may have acquired during the period of provisional protection prior to the date of filing the Complete specification.

The detailed description should be supplemented by drawings in all cases in which the inventions are capable of being illustrated.

70. *Statement of Claims.*—The description in the Complete specification should be followed by a clear and succinct statement of "claims". The statement of claims should not be regarded as a part or summary of the description.

The object of the "Statement of Claims" is—

- (i) to show with conciseness, precision and accuracy as to what the invention is;
- (ii) to point out how much of what is described in the specification constitutes the invention; and
- (iii) to show what is not claimed and, therefore, open to public use.

A patentee who describes an invention in the body of a specification obtains no monopoly unless it is "claimed".

71. A Complete specification filed after a provisional specification should not differ from the latter as to the nature of the invention. The invention described in the Complete specification should be substantially the same as that which is described in the 'Provisional specification'.

72. As every patent is granted for a single invention only, the specification must not comprise more than one invention. When a specification comprises several distinct matters, they are not deemed to constitute one invention by reason only that they are all applicable to, or may form parts of, an existing machine, apparatus or process. But several modifications of an apparatus may constitute one invention if all of them have a novel characteristic feature in common.

73. *Documents required in special cases.*—If the true and first inventor or his legal representative or assign is not a party to the application and if the application is not endorsed, evidence of the applicant's assignment from him would be necessary.

When the application claims "priority date", it should be accompanied by a copy of the specification and drawings left with the application on which the claim for "priority" is based, certified as such by the official head of the Patent Office where such application was first filed.

When the application is for a Secret Patent, a certificate from the Central Government to the effect that the "particulars of the invention and the manner in which it is to be performed should be kept secret".

74. *Outline of Procedure.*—The following are the successive steps in the procedure for obtaining a patent:—

- (1) Filing the "Application", accompanied by either a Provisional or a Complete specification. It should be noted that the specification filed with an application claiming "priority date", should necessarily be a Complete specification.
- (2) Filing the Complete specification, if the specification filed with the application was a 'Provisional specification'.
- (3) Numbering and dating of the application.
- (4) Examination of the application.
- (5) Acceptance of the application.
- (6) Opposition proceedings, if any, and
- (7) Sealing the patent.

75. *Filing the Application.*—An application for a patent, other than a Secret Patent, may be filed by the applicant directly or through his agent. Every applicant should give an address for service in India, and the application must be accompanied by a specification in duplicate and by the prescribed fee, which is Rs. 10 if the application is made on the basis of a 'Provisional specification', and Rs. 30 if it is on the basis of a 'Complete specification'. The application accompanied by the necessary documents and fee may be left at the Patent Office in person or forwarded by a prepaid cover through the post, addressed to the Controller of Patents and Designs.

76. *Filing the 'Complete Specification'.*—If the application was accompanied by a Provisional specification only, the complete specification must be filed within a period of nine months from the date of filing the application. It is possible to obtain an extension of time by one month beyond the said period of nine months by filing a request accompanied by a fee of Rs. 10. If the 'Complete specification' is not filed within the period mentioned, the application is treated as abandoned.

77. *Numbering and dating of Applications.*—All applications for patents made in the prescribed manner are, on receipt at the Office, numbered and dated. The number accorded to an application is in the order of its receipt, and ordinarily, the date accorded to an application, called the Official date of the application, is the actual date of its receipt in the Office.



A filing receipt showing the number and the date accorded to the application is supplied to the applicants in respect of each application. In connection with all proceedings on the application thereafter, the application is referred to by its number, and the patent that may be granted on the application will also be identified by such number.

An application may subsequently be post-dated or ante-dated by order of the Controller under Section 5 of the Act.

Applications unaccompanied by the prescribed fee are not numbered and dated until the fee is paid. The date accorded to such applications on payment of the fee is the actual date of payment of the fee, and not the earlier date on which the application was first received in the Office.

78. *Public Inspection of Specifications.*—Specifications in respect of applications which have not been “accepted”, or which have been abandoned, or which have been deemed to be refused, are not open to public inspection, except in the case of applications for patents claiming “priority”, where they become open to public inspection at the end of eighteen months from the “priority” date claimed for the patent. Specifications of applications which have been “accepted”, become open to public inspection from the date of the notification of their “acceptance”.

79. *Official Examination.*—On the filing of a Complete Specification every application is referred by the Controller to an Examiner or Assistant Examiner of Patents for examination and report. If the Controller is satisfied on the report of the Examiner or Assistant Examiner, as the case may be, that the application or the specification does not fulfill the requirements of the Act and the Rules, particularly, with regard to—

- (a) the adequacy of the description of the invention;
- (b) the precision of the definition of the scope of the invention;
- or
- (c) the novelty of the invention.

the defects noticed in examination are communicated to the applicant. The application, specification or drawing, whichever is defective, should be amended as required by the Controller and returned to the Office in sufficient time to allow of re-examination before the expiration of the time allowable for “acceptance”.

The Controller may either refuse to “accept” the application or may direct that a reference to anticipating specification (if any) be inserted in the applicant’s specification by way of notice to the public, or may require that the application, the specification or the drawings be amended before he proceeds with the application.

In the last mentioned case, he may also direct that the application be post-dated to the date on which the official requirements have been met by the applicant.

80. *Acceptance.*—Applications found to be in order within the period allowed are “accepted” by the Controller.

The “acceptance” of every application (other than for a Secret Patent) is notified in the *Gazette of India*.

After the "acceptance" of an application, and until the date of sealing the patent thereon, the applicant has the same privileges and rights as if a patent had been granted on the application, except that any proceedings for infringement cannot be instituted by him unless the patent has been actually granted.

81. *Opposition*.—At any time within four months from the date of the advertisement of the "acceptance" of an application, any person may oppose the grant of the patent on the application concerned. Among the grounds on which the opposition may be based are:—

- (a) that the invention was obtained from him; or
- (b) that the invention was publicly used or publicly known in any part of India.

Where notice of opposition has been given, the Controller gives notice of the opposition to the applicant and after hearing the applicant and the opponent, if desirous of being heard, decides the case.

The decision of the Controller is subject to appeal to the Central Government.

82. *Sealing the Patent*.—An application which is not "opposed" within the prescribed period, or which emerges successfully in the opposition proceedings, becomes mature for the sealing of the patent. At the expiration of such period, a notice to that effect is issued by the Controller to the applicant concerned or his agent along with a blank form for making the request for sealing the patent.

The request for sealing, duly filled in, accompanied by the prescribed fee should be sent to the office so as to enable a patent to be sealed within the prescribed period.

On the due filing of the request for sealing, the patent is sealed.

83. *Time Limits*.—The aforesaid steps should be taken within the prescribed time limits which are briefly as follows:—

- (i) The normal time limit for filing a Complete specification following one or more Provisional specifications, is nine months from the date of the earliest of the Provisional specifications; it can, on application be extended by one month.
- (ii) The normal time limit for the "acceptance" of an application is eighteen months from the date of the application; it can, on application, be extended by three months.
- (iii) The normal time limit for the sealing of patent is twenty-four months from the date of the application; it can, on application, be extended by three months.

84. *Fees*.—The fee payable on filing an application for patent accompanied by a Complete specification is Rs. 30 only. If the application is based on a Provisional specification, the filing fee is Rs. 10 only, but an additional fee of Rs. 20 is payable later for filing the Complete specification in respect of it. The fee is payable in respect of admitting the application or the specification and will not be refunded if the application is refused. The prescribed fee for filing a request for sealing the patent is Rs. 30 only.

The fees may be paid in cash at the Patent Office, or may be sent by Postal Order, Money Order, or Cheque, made payable to the Controller at Calcutta.

When fees are forwarded by means of cheques, the cheques should be drawn on a scheduled bank as defined in the Reserve Bank of India Act, and the cheques should also include sufficient addition for bank commission.

Stamps are not accepted in payment of fees.

A proceeding in respect of which a fee is payable is of no effect unless the fee has been paid.

### (G) Date of Patent

85. Every patent, other than a patent claiming 'priority', is dated and sealed as of the date of the application made in respect of it.

In the case of a patent sealed in respect of two or more applications made on the basis of Provisional specifications, the patent bears the date of the earliest of such applications.

A patent claiming "priority" is dated as of the date of the application in respect of which "priority" has been allowed.

### (H) Duration of a Patent

86. The normal term of a patent (other than a patent of addition) is sixteen years from its date.

The term of a Patent Of Addition is limited by the duration of the original patent to which it is an addition.

If it appears that a patent has not been sufficiently remunerative during its normal term, the term of the patent may, upon petition made to the Central Government, be extended for a further term of not exceeding five, or in exceptional cases, ten years.

### (I) Rights of the Patentee

87. 'Patentee' means the person for the time being entered in the Register of Patents as the grantee or proprietor of the patent.

An Indian patent confers the following rights and privileges on a patentee:—

- (1) The exclusive privilege of making, selling and using the invention throughout India.
- (2) The exclusive privilege of authorising others to make, sell or use the invention throughout India.
- (3) Title to institute proceedings for infringement against any person who, during the continuance of his patent, makes, sells or uses the invention without his licence, or who counterfeits or imitates his invention without his licence.

A suit for infringement may be instituted in a District Court having jurisdiction to try the suit against the person alleged to have infringed the patent.

- (4) Title to institute proceedings under the Indian Patents and Designs Act for the following purposes:—

- (a) to obtain the extension of the term of the patent;

- (b) to apply for a Patent of Addition for improvements or modifications of the invention covered by his patent;
- (c) to obtain the "restoration" of the patent if it has lapsed owing to the failure of the patentee to pay any prescribed fee within the prescribed time;
- (d) to apply for the amendment of the application or the specification filed in respect of the patent.

An application or specification (including Drawings) may be amended by way of disclaimer, correction, or explanation, if no suit for infringement or no proceeding for the revocation of the patent is pending;

- (e) to surrender the patent; and
  - (f) to apply for a duplicate of the patent if the original patent is lost or destroyed.
- (5) Title to assign the patent to any other person.

### **(J) Restrictions on Patent Rights**

88. The rights and privileges referred to above are subject to the following limitations: —

- (i) The exclusive privilege conferred by a patent would not give the patentee a right to work his patented invention in infringement of any prior patent which, for the time being, is in force.
- (ii) The exclusive right conferred on the patentee is subject to the special privilege conferred on the Government to use patented inventions for the service of the Government, on terms that may be agreed upon with the approval of the Central Government, or that may be settled by a High Court in case of disagreement between the patentee and the Central Government.
- (iii) The validity of the patent may be questioned by any person in an infringement suit or in a proceeding for the revocation of the patent.
- (iv) An essential requirement for maintaining a patent in force is that the patentee shall pay the prescribed renewal fees in respect of the patent after the fourth year of the patent.

For the first four years of the term of a patent, no fees are required to be paid for its continuance; thereafter, the continuance of all patents other than a Secret Patent or a Patent Of Addition, is subject to the payment of an annual renewal fee.

A patent which has ceased owing to the non-payment of any prescribed renewal fee in proper time, may be restored by the Controller, on application for its restoration by the patentee. It is open to any person to oppose the application within a period of six weeks of the advertisement of the application. The Controller's order on the application, either refusing the application or restoring the patent is subject to an appeal to the Central Government. In the order for the restoration of the patent, the

Controller imposes such conditions and restrictions as are deemed to be advisable in the circumstances of the case. Provisions for the protection of persons who may have availed themselves of the subject matter of the patent after it has ceased, are also included in the order.

- (v) It is open to the Central Government or the High Court to grant compulsory licences or to revoke the patent, if the patentee fails to meet the demand for the patented article in India to an adequate extent and on reasonable terms.
- (vi) It is open to the Central Government to grant compulsory licences or to revoke the patent if it is proved that the patented article or process is, after four years from the date of patent, manufactured or carried on exclusively or mainly outside India.
- (vii) A patent may be revoked by notification of the Central Government that the patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public.
- (viii) It is obligatory on a patentee to mark every patented article with the year and the number of the patent under which it is protected. The mere making of an article with the word "Patent", or "Patented", or any word or words expressing or implying that a patent has been obtained for the article unaccompanied by the year and the number of the patent is not to be deemed to constitute notice of the existence of the patent. Failure to observe this requirement may prevent the patentee from claiming damages, from an innocent infringer of the patent.

### (K) Register of Patents

89. The Act provides that a Register of Patents shall be kept at the Patent Office, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmission of patents, of licences under patents, and of amendments, extensions, and revocations of patents, and such other matters effecting the validity of proprietorship of patents.

The Register of Patents constitutes *prima facie* evidence of any matters directed or authorised to be inserted therein. It is open to inspection by the public at all convenient times.

Except in the case of an application made for the rectification of the Register of Patents, a document or statement in respect of which no entry has been made in the Register of Patents, shall not be admitted in evidence in any court in proof of the title to any patent, or to any interest therein.

A person registered as the proprietor of a patent has (subject to the rights appearing from the Register as having vested in any other person) the power absolutely to assign, grant licences as to, or otherwise deal with, the patent and to give effectual receipts for any consideration in respect of any such assignment, licence or dealing.

**(L) Agency**

90. Any person duly authorised by means of a power of attorney or by means of authority given in the prescribed form, is allowed to act as an agent provided that he is resident in India. Special authorisation from Patent Office is not necessary.

The Controller may, if he sees fit, require—

- (a) any such agent to be resident in India;
- (b) any person not residing in India to employ an agent residing in India;
- (c) the personal signature or presence of any applicant, opponent or other person.

**(M) Offences**

91. If any person uses on his place of business or on any document issued by him, or otherwise, the words "Patent Office", or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he is liable to be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence, with further fine of twenty rupees for each day on which the offence is continued after conviction therefor.

**(N) The Patent Office**

92. The Act provides for the establishment of an Office called the Patent Office, under the immediate control of the Controller of Patents and Designs, who acts under the superintendence and direction of the Central Government. Its present set-up and functions are dealt with in detail in Chapter VI.

**(O) Powers and Duties of the Controller**

93. The Controller is not a Court, nor is the Civil Procedure Code as such, applicable to proceedings before him, but the principles of natural justice must be observed by him.

Where any discretionary power is given to the Controller, he cannot exercise it adversely to an applicant without (if so required by the applicant) giving him an opportunity of being heard.

The Controller may, in any case of doubt or difficulty arising in the administration of any provisions of the Indian Patents and Designs Act, apply to the Central Government for directions in the matter.

The Controller may refuse to grant a patent for an invention of which the use would, in his opinion, be contrary to law or morality.

The Controller has to issue periodically certain publications containing information about the Indian Patent System and Indian Patents.

The publications issued by him at present are:—

- (i) The Patent Office Handbook.
- (ii) A Guide to Inventors.
- (iii) Specifications of Inventions.

- (iv) Weekly Notifications of the Patent Office published in the *Gazette of India*.
- (v) The Patent Office Journal.
- (vi) Annual Reports on the Working of the Patent Office.

The Central Government has authorised the Deputy Controller of Patents and Designs as an Officer who can function for the Controller of Patents and Designs as regards applications and matters transferred to him for disposal by the Controller of Patents and Designs.

#### **(P) Appeals from the Decisions of the Controller**

94. Generally speaking, every decision of the Controller in respect of an application or proceeding before him, is subject to appeal to the Central Government. Where the Controller's decision is in connection with an application for the rectification of the Register of Patents, the appeal lies to a High Court and not to the Central Government.

Where an appeal lies to the Central Government, it shall be made within three months of the date of the order passed by the Controller. The Central Government may, if it thinks fit, obtain the assistance of an expert in deciding appeals from the decisions of the Controller, and the decisions of the Central Government shall be final.

#### **(Q) Powers of the Central Government**

95. The Central Government has, apart from its powers of superintendence over the Controller and of functioning as the appellate authority from his decisions, the power to make rules generally by regulating the business of the Patent Office, the conduct of proceedings before the Controller, and for the purpose of carrying into effect the provisions of the Indian Patents and Designs Act.

### CHAPTER III

#### A SURVEY OF THE WORKING OF THE PATENT SYSTEM IN INDIA.

96. Substantive legislation for the protection of inventions in India was, as stated in Chapter I, enacted in 1856, 1859, 1888 and 1911. In the first three of these enactments, patent rights were referred to as "exclusive privileges". The initial step of the procedure for obtaining an "exclusive privilege", was to file a petition "for leave to file the specification of an invention". If on leave being granted, the petitioner filed the specification within the time allowed, he became entitled to the "exclusive privilege" in respect of that invention. The petition referred to above corresponds to the "application for patent" under the existing law, and will be herein referred to as an "application for an 'exclusive privilege'."

97. The number of applications for "exclusive privileges" or "patents" under the various enactments referred to above, and the number of such applications filed by Indians are as given below:—

	Total Number	From Indians
Under the Act of 1856 . . . . .	33	Nil
Under the Act of 1859 . . . . .	3417	234
Under the Act of 1888 . . . . .	11727	1131
Under the Act of 1911 (up to the end of 1949) . . . . .	42498	5899

98. Table No. 1 (Appendix I) gives the number of applications as well as the number of applications from Indians, filed each year from 1856 to 1949, and (also from 1910 on-wards) the number of applications that had originated in India.

99. With reference to more than 15,000 applications for "exclusive privileges" filed prior to 1912, and more than 40,000 applications for patents filed since 1912, the approximate time during which successive batches of 5,000 applications were filed is given below:—

1st batch of 5000 . . . . .	applications for "exclusive privileges" filed in . . . . .	19	years
2nd batch of 5000 . . . . .	do . . . . .	19	"
3rd batch of 5000 . . . . .	do . . . . .	8	"
1st batch of 5000 . . . . .	applications for patents filed in . . . . .	8	"
2nd batch of 5000 . . . . .	do . . . . .	4	"
3rd batch of 5000 . . . . .	do . . . . .	5	"
4th batch of 5000 . . . . .	do . . . . .	5	"
5th batch of 5000 . . . . .	do . . . . .	5	"
6th batch of 5000 . . . . .	do . . . . .	5	"
7th batch of 5000 . . . . .	do . . . . .	3	"
8th batch of 5000 . . . . .	do . . . . .	2	"



100. An analysis of applications for patents which had originated in India during the period 1931 to 1949, classified according to Provinces and Indian States of origin, is given in Table No. 2 (Appendix I).

This Table discloses certain interesting features. For instance,—

- (i) Until 1947, Bengal had a clear lead over other provinces. With the partition of Bengal in 1947, the leading position of Bengal was taken by Bombay, and in 1949, Bombay has ousted Bengal from the lead.
- (ii) In the case of the Punjab also, the figures were steadily on the increase upto 1947, but from 1947 onwards, they have been dwindling.
- (iii) The United Provinces, Mysore State, Madras and Delhi have been showing a steady increase year after year. The increase has been very marked in the case of Delhi; for instance, for three years in the early part of the period under review, the total number of applications which originated in Delhi was only 9; but, for three years in the concluding part of the period, the total is 68.
- (iv) There has been a marked, but unsteady, increase in the figures for Bihar.

101. An analysis of the applications of foreign origin, during the period 1931 to 1949, classified according to the countries of origin, is given in Table No. 3 (Appendix I).

The first five places in the beginning of the period mentioned were occupied by the following countries in the order mentioned:—

The United Kingdom, the United States of America, Germany, France and Australia.

At present the first five places are occupied by the following countries in the order mentioned:—

The United Kingdom, the United States of America, Holland, Switzerland and France.

102. The Indian Patents and Designs (Amendment) Act of 1920 provided for granting "priority" to patents granted on the applications of persons who had previously applied for patents for the same inventions in the United Kingdom, certain parts of His Majesty's Dominion, or the Indian States. The number of applications for patents filed from 1931—49, which claimed "priority" under this provision, is shown in Table No. 4 (Appendix I).

The Table shows that nearly 35 to 48 per cent. of the applicants for Indian patents have availed themselves of the arrangements that exist for claiming "priority".

103. The Indian Patents and Designs (Amendment) Act of 1930 provided for the granting of "Patents of Addition", for improvements or modifications of an invention in respect of which there is a subsisting patent. The number of applications for the grant of "Patents of Addition", made since this enactment, is not more than three per cent. of the total.

104. The Patents and Designs (Amendment) Act of 1945 provided for filing applications for patents on the basis of "Provisional Specifications". The number of applications in which this provision has been availed of is as given below:—

Year	Total No. of applications filed	No. of application, which Provisional Specifications were filed.	Percentage of Provisional Specifications accompanying applications for patents in relation to the total number of application filed.
1946 . . .	2610	96	3.7%
1947 . . .	2370	99	4.2%
1948 . . .	1921	196	10.2%
1949 . . .	1725	225	13%

105. The procedure for obtaining a patent involves the following stages:—

- (i) "Acceptance" of the application after an official examination under Section 5 of the Indian Patents and Designs Act.
- (ii) "Opposition", if any, under Section 9 of the Indian Patents and Designs Act.
- (iii) "Sealing" of the patent.

Table No. 5 (Appendix I) shows the number of applications "Accepted", "Opposed" and "Sealed", in relation to those filed each year during the period 1931—1947.

106. The normal term of a patent under the Indian Patents and Designs Act, as it stood originally was 14 years from the date of the patent; but by the Amending Act of 1930, this period has been enlarged to 16 years. It has, however, been provided that a patent shall cease if the patentee fails to pay an annual "renewal fee" in respect of the fifth year to the sixteenth year of its term.

10,692 patents were in force on the 31st December 1949; of these 763 had been granted on applications of Indian origin.

107. The number of patents which were in force have been steadily increasing. The number of such patents on the 31st of December each year in 1912, 1920, 1930, 1940 and 1949 was as follows:—

Year	No. of Patent in force	No. of Patents filed.
1912	3284	716*
1920	3333	2284*
1930	5195	2344
1940	5426	2143
1949	10692	6101

\*These figures include Exclusive Privileges also.

The number of patents "renewed" each year in the years mentioned is also shown in the third column above.

108. Table No. 6 (Appendix I) shows the number of patents that have ceased annually, side by side with the number of patents granted annually, during the period 1931—1949.

It will be noticed that in 25 out of the 38 years given in the Table more patents have been granted than had ceased during each year, and that this has been the case ever since 1943.

109. Table No. 7 (Appendix I) shows the number and the percentage of the patents sealed and kept in force for the duration indicated, in respect of the applications for patents made in 1912, 1922, 1932 and 1942. Here also it is noticed that the number of patents kept in force for the full length of their term have been increasing from year to year.

110. Section 15 of the Act, as it stood originally, provided that if a patent was not sufficiently remunerative to the patentee, the normal term of the patent might be extended for a further term not exceeding seven, or in exceptional cases, fourteen years. By the Amending Act of 1930, the said periods of extension were reduced to five and ten years respectively. Table No. 8 (Appendix I) shows the number of patents of the period 1920—1933 whose normal terms were extended by the periods mentioned therein.

111. Section 16 of the Act provides for the "restoration" of patents which had ceased on account of unintentional or unavoidable failure of the patentee to pay the "Renewal fee" within the prescribed period. The extent to which the provision contained in Section 16 is being utilised will be evident from Table No. 9.

(Appendix I) which gives the number of applications for "Restoration" made each year during the past twelve years, and also the number of patents "Restored" as a result of the said applications.

112. Section 17 of the Act provides for the amendment of an application or a specification by way of disclaimer, correction and explanation. The extent to which this section is being utilised during 1938—40 will be evident from Table No. 10 (Appendix I).

113. Section 22 of the Act provides that an application for a compulsory licence or for the revocation of a patent, may be made on the ground that the demand for a patented article is not being met to an adequate extent or on reasonable terms. So far, there have been only two petitions under this section involving three patents. One petition was not pursued as the patent in question lapsed due to non-payment of renewal fees. In another case, the petition was dismissed by the Calcutta High Court to which it was referred by the Central Government.

114. Section 23 of the Indian Patents and Designs Act provides that an application for a compulsory licence or for the revocation of a patent may be made on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside India. So far, there has been only one application under this Section. The said application is still pending.

115. Section 24 of the Act provides for the "surrender" of a patent by the patentee. So far, there have been only five offers to surrender the patents.

116. Section 25 of the Act provides for the revocation of a patent on certain public grounds. So far there have been two instances in which this Section was invoked. In both cases, Government was requested by petition to revoke the patents in pursuance of this provision. But in both cases Government declined to accede to the prayer of the petitioners.

117. Section 26 of the Act provides for the revocation of a patent on the petition presented by any person interested. So far only six petitions have been made under this Section. Five of them were allowed. There have been no appeals from the decision of the original Court.

118. Section 29 of the Act provides—

- (a) for institution of "infringement" suits by patentees;
- (b) for a counter-claim by defendants for revocation of the patents concerned; and
- (c) for questioning the validity of the patents concerned, as a defence to "infringement" suits.

It also lays down that "infringement" suits may be instituted in "a District Court having jurisdiction to try the suit".

The Act also provides that a Court making a decree in an infringement suit shall send a copy of the decree or order to the Controller of Patents and Designs, and that the latter shall cause an entry thereof to be made in the Register of Patents. So far, only 31 orders or decrees have been transmitted to the Patent Office. But it cannot be asserted that as a rule copies of the decrees or orders of the Court are transmitted to the Controller or that the records of the Patent Office can provide a reasonable indication of the extent of litigation arising from "infringement" of patent rights.

So far as the information could be gathered from the records of the Patent Office, it appears that—

- (a) 41 suits for "infringement" have been instituted since 1921;
- (b) of these 23 have been in District Courts and 18 in the High Courts;
- (c) a defence on the ground of alleged invalidity of the patent concerned was raised in 21 suits;
- (d) revocation of the patent concerned was counter-claimed in 2 suits;
- (e) patents were held invalid in 12 suits;
- (f) orders for revocation were made in 2 suits;
- (g) patents were held to be not infringed in 5 suits; and
- (h) 24 suits were decreed in favour of patentees.

Appeals from the judgment of the court of original jurisdiction were filed in respect of 8 suits, and were allowed in 4 cases.

There have been no Second Appeals.

119. Section 36 of the Act provides for remedies in case of groundless threats of legal proceedings. But so far, there has been no instance where this provision of the Act was invoked.

120. Section 40 of the Act contains certain provisions for safeguarding the interests of inventors from the consequences of the prior publication or prior use of their inventions, as a result of displaying or using the inventions in exhibitions, or as a result of publishing a description of the invention in papers read before learned societies or in the transactions of learned societies. So far, there have been only 10 instances where the provisions of this Section have been invoked.

121. Section 41 of the Act provides that the trustees of the Indian Museum may at any time require a patentee to furnish them with a model or sample of his invention on payment to the patentee of the cost of the manufacture of the model or sample, the amount to be settled, in case of dispute, by the Central Government. There appears to have been no instance where this provision has been availed of.

122. The Act provides for the maintenance of a Register of Patents for entering notices of matters affecting the validity or proprietorship of patents, and various other matters. The number of entries made in the Register of Patents during 1944—48 is as given in Table No. 11. (Appendix I).

123. The 'consideration' for which licences are granted or patents are assigned, might be of interest for indicating the monetary value of Indian patents. But in many cases, the 'consideration' referred to in the documents in question is merely nominal, and is thus not truly indicative of the monetary value of such patents. An analysis of the transactions where the 'consideration' exceeded Rs. 1,000 is given below:—

	<i>Value of consideration</i>	<i>No. of transactions</i>
(i)	1000—5000	50
(ii)	5000—10,000	6
(iii)	10,000—50,000	21
(iv)	50,000—1,00,000	4
(v)	exceeding 1,00,000	4

The inventions covered by the patents referred to in (iii), (iv) & (v) above, i.e., where the consideration exceeded Rs. 10,000, were concerned with spinning frames, copwinding frames, nozles for discharge of fluids, aircraft, linings for cementitious pipes, and methods and means for storage of gases, such as acetylene, under pressure.

As registration of change of title or interest in respect of patents is not compulsory, it is very probable that there have been many transactions of which notice has not been entered in the Register of Patents.

124. Apart from the proceedings referred to above, the Act provides for other proceedings which are of minor importance. The total number of such proceeding during the past six years is shown in Table No. 12 (Appendix I).

125. Table No. 13 (Appendix I) gives the annual Income and Expenditure of the Patent Office, and also the Surplus of Income over Expenditure, for the period 1912—1949.

It will be noticed that the surplus of income over the expenditure has been steadily increasing; during the past three years it was more than Rs. 2,00,000 per year and that in 1949 it was more than Rs. 2,50,000.

An analysis of the income of the Patent Office during 1940—49 is given in the Table No. 14 (Appendix I).

The ratio of the expenditure on the salary of the staff of the Patent Office to the total expenditure of the Office during 1940—49 is given in Table No. 15 (Appendix I).

### **Trends of Invention**

126. The annual Reports of the Patent Office from 1904 onwards contain brief references of the 'trend of invention'. A few extracts from those reports of general interest are given below:—

#### **Extract from the Report for the Year 1904**

"For the decade ending 1904, the total number of applications include 471, or 9·6 per cent., by natives, 1,306, or 26·7 per cent., by other residents of India, and 3,113, or 63·7 per cent., by non-residents. The annual details are too irregular to show much of the trend of applications in this country, but they indicate that foreign applications are mainly responsible for the increase. Except for 1904, the number of native inventors has been fairly constant between 45 and 50. The range of inventions, for which protection is sought, covers nearly all the arts and industries, but the leading place is easily taken by transport, to which 90 applications relate. Of these, 30 deal more particularly with locomotives and vehicles for railways, 20 with signals, and 20 with permanent-way. Only two refer to water transport and the balance to road vehicles, harness and saddlery and cycles. The textile and electrical industries follow, nearly on a par with each other, with 52 and 51 applications".

#### **Extract from the Report for the Year 1905**

As usual the range of inventions, for which protection is sought, covers nearly all the arts and industries, but the leading place is again taken by transport as was the case last year. The textile industries are also well to the fore. Up to the end of the year, however, the Swadeshi movement could hardly be expected to have much effect on the number of applications in the short time available, and in fact, only one out of the four inventions for looms was devised by a native of India." Subsequent events have shown that the native is busy in this direction and several applications for protection have been made for looms and their appurtenances. As this matter is of such particular interest at the moment, it may be of interest to consider specially the inventions made by Hindus and Mohamedans in this country. It was stated above that 71 applications were made during the year by them. Of these nine were concerned with methods of lifting water, exclusive of five for sluices and modules,

and eleven appertained more or less directly to lamps. Three applications were made in each of the following subjects:—Ginning cotton, preparing fibre other than cotton, wrapping machines, road vehicles, sugarcane mills, hockey sticks. Many of these alleged inventions are of the most elementary character and a reference to the history of the subject shows that more efficient means of an equally simple character were proposed long ago and abandoned in favour of more complicated machinery arranged to have automatic action and to be driven by power. This is especially true of textile machinery, and it becomes a serious question whether many of the recent proposals can really be considered as subject matter for valid patents.”

#### **Extracts from the report for the year 1906.**

“As usual the range of inventions, for which protection is sought, covers nearly all the arts and industries. Two-thirds of the applications came from abroad and only one-third can be denominated Swadeshi. Amongst the latter, railways have a predominating influence as there have been 21 applications relating to signals, 5 to other permanent way and 10 to vehicles. The textile industries, which have been brought so prominently forward during the year, have supplied 10 applications for looms and an equal number concerned with the various steps in the preparation of the yarn and the fibre.

Several curious applications, all of which were not however brought on the register, were made during the year. They included perpetual motion, cure of snake bites by magnets, and use of the “Sun’s wires in the form of garland rays” for enabling any person to understand any language.”

#### **Extracts from the report for the year 1907.**

“One inventor in this country, in spite of apparently insuperable difficulties, both theoretical and practical, has attempted to produce a legible record of speech by a combination of telephone and typewriter with electric selecting mechanism for the various elementary sounds; but he has been unable to complete his application. Drinking tumblers made of ice, a motor car driven by hand power, a universal panacea for all diseases and the usual perpetual motion are other proposals for varying interest”.

#### **Extracts from the report for the year 1908.**

“One of the features of interest of the year is to be found in the inventions for safeguarding railway passengers, which arose from some recent notorious incidents. Of the applications that originated in this way, two refer to alarm systems, two to modified foot boards, two connect the doors with the brake system, and two others lock the doors by the motion of the train. Some six inventions for locking railway wagon doors have also been put forward for the protection of goods against train thieves.

#### **Extracts from the report for the year 1910.**

“A rather noteworthy feature of the year has been the increase in the number of applications under the heading of cooking appliances, and that is directly traceable to the prize offered by Mr. David

Yule for the best *chula* shown at the United Provinces Exhibition at Allahabad.”

### **Extracts from the Report for the year 1930.**

“A conspicuous feature worth mentioning in connection with the applications for patents filed in 1930, is the effort made by a large number of Indian inventors for perfecting the Charka, or the hand spinning wheel. The attention which the Charka has been receiving from the inventors has been somewhat spasmodic. During the period of eleven years, from 1910—1920, there was not a single application for a patent relating to the Charka. In 1921, however, there was an intense propaganda in the country for popularising the Charka, and there were suddenly 11 applications during the year, dealing with improved Charkas. Since then there was a rapid decline in the number of inventions in this field, and there were only 6 applications dealing with the Charka in 1922, nil in 1923 and 1924, and a total of only 5 during the period of five years from 1925—1929. In 1930, there was again a sudden increase, and the number of such applications filed during the year, reached a record figure of 19. The great prize offered by the All India Spinners Association for an efficient Charka was, in a large measure, responsible for the strong incentive given to the number of inventors engaged in this field. Practically all the improvements proposed in connection with the Charka aimed at carrying out continuously and automatically the operations of initial drawing and twisting the cotton fibres, of spinning and twisting the thread and of winding the yarn.”

### **Extracts from the Report for the Year 1933.**

“The year shows a pronounced increase in the number of applications for the protection of inventions relating to structural steels, most of the inventions originating in India. This is in striking contrast with the paucity of such applications in the past, and it is probable that the proposal to use special alloy steels for the construction of the new Howrah Bridge, and the prospect of attracting a fair amount of major bridge building business in India in the near future, are to a large extent responsible for opening the eyes of Indian inventors to a wide field in this direction, and for giving them the necessary impetus for their investigations. The object of most of the inventions was to produce a steel having a higher tensile strength and yield point, and possessing greater resistance to corrosion than British Standard structural steel, and at the same time being capable of manufacture on a commercial scale at a sufficiently low cost.

The number of applications dealing with inventions on advertising and displaying apparatus, also showed a marked increase. While in the year 1932 there were only six applications under this head, in the year 1933 there were 17 applications, 11 of which originated in India. The sudden rise in the number of applications relating to this subject is probably the result of a large demand for effective publicity means, amongst Indian manufacturers and merchants who are making strenuous efforts to overcome the prevailing trade depression, and are adopting modern methods of reviving business to an increasing extent.

A large number of inventions under the head “Railways and Tramways” (about 50%) originated in India, and were devoted to the method and means of securing rails upon their supports and sleepers.



There were several inventions which aimed at overcoming the difficulty met with in securing an efficient and even application and release of the brakes on all the vehicles forming part of a long train. An Indian inventor claimed to have devised a release valve comprising a minimum number of parts and easy to handle, and at the same time resulting in great quickness in releasing the brakes of a detached vehicle. Another inventor devised a system of controlling the operation of vacuum brakes electricity, in which a graduated application of the brakes could be obtained by varying the strength of the operating current.

A lively interest was shown by Indian inventors in the construction of folding and collapsible boxes for the purpose of easy transport. A self-loading transporter for field use was also devised, and another invention had for its object a frame and trestle arrangement for enabling two motor car chassis being loaded in one wagon.

As compared with 1932, the number of applications relating to devices for catching and destroying vermin increased by about 200 per cent; 50 per cent of the inventions originated in India. Most of the inventions related to traps of the type in which insects attracted by a luminous source are sucked inside the trap by a suction fan. As different insects are attracted by different light waves, the light source is interposed by different coloured screens so as to omit different light waves around the same source. Where electricity is used for illuminating the source, it is utilised also for destroying the insects by electrocution."

#### **Extracts from the Report for the Year 1936**

"The year under review, witnessed considerable activity relating to pumps of the reciprocating piston or plunger type, and a number of inventions originated in India. Indian inventors appear to have concentrated attention upon plunger pumps adapted to be driven either by animal power or manually."

#### **Extracts from the Report for the Year 1937**

"There was an increase in the number of applications relating to spinning, and a decrease in those relating to weaving. The activity of the Indian inventors in these spheres remained steady; but the keen interest for improving the spinning wheel or charkas which was noticed among Indian inventors in previous years, was not much in evidence.

About 45 per cent. of the inventions relating to cement manufacture originated in India. The manufacture of light weight concrete was the subject of a number of applications. The production of ceramic materials having very low co-efficient of expansion suitable for sealing to quartz or hard glass at high temperature without blistering, or is of great practical importance in the manufacture of electric discharge devices and a new cementitious composition having these properties has been claimed.

The production of suitable composition from molasses, for road making purposes continued to engage the attention of some of the Indian applicants, and considerable interest was maintained in inventions relating to bituminous composition."

### **Extracts from the Report for the Year 1939**

“A majority of the inventions relating to railway signalling apparatus and system originated in India. A number of these Indian inventions had for their object the detection of any tampering with the track, and the provision of means whereby in case of a rail or fish plate being removed, automatic warning would be given to the nearest railway station and to the oncoming train, if any.

Other inventions in this sphere aimed at providing improved locking arrangements for railway points and crossings, and preventing the incorrect setting of points and signals, thus avoiding the possibility of collisions beyond the signals. Some of the inventions also aimed at reducing the shock effect produced when the train passes over rail joints.”

### **Extracts from the Report for the Year 1941**

“Most of the inventions for which patents were applied for during the period under review were concerned with the needs created by the war. As may be expected, there has been a considerable increase in inventions relating to armament industries and appliances essential for the prosecution of the war. As instances of such inventions may be mentioned explosives, gun-sights, small arms, armour-piercing projectiles, special steel and alloys, easily erectable bridges, road constructions on marshy soils, bullet-proof tyres, camouflaging devices, parachutes, radio beacons for aeroplanes, and machines for training air pilots.

Increased activity was also noticed in connection with inventions which aimed at providing alternatives for commodities the normal supply of which has been either cut off or reduced due to war conditions. Particularly noticeable in this category was the large number of inventions concerned with overcoming the shortage of petrol and providing alternative means for propelling motor cars. Most of these inventions related to the equipment of charcoal gas producer apparatus for working the internal combustion engines of motor cars and transport vehicles. While the total number of applications relating to such inventions during the preceding twenty-five years, i.e., from 1916 to 1940 was only 19, the number for 1941 is 15. Most of the inventions originated in this country.”

### **Extracts from the Report for the Years 1942—48.**

“The warfare in the East particularly in the jungles has been responsible for a number of inventions relating to insecticidal compositions and also for a large number of medicinal preparations for fighting malaria and other tropical diseases. A large proportion of such insecticidal compositions related to the use of D.D.T. (dichlorodiphenyl-trichlore-ethane) in the form of emulsions so that it can be easily sprayed in the form of a foam or mist. Activity in this direction increased from the year 1944 and continued upto 1947 after which there has been a decrease in the number of applications filed relating to the same. Almost all the applications in this field were filed from abroad.

The curative effect of Pencillin drew a lot of attention from the inventors with regard to its preparation and purification. It may be

a matter of interest to note that 90% of the applications filed for medicinal preparations in 1946 related to Pencillin.

Use of substitutes or use of waste materials, such as paper substitutes from plant leaves, paper pulp from bagasse, sizing materials from tamarind seeds, mouldable products from jute and jute-waste, razor blade-sharpening devices, coir either for reconditioning or for making new tyres, all appear to have engaged a number of inventors.

Another field which drew the attention of the inventors appears to be that relating to foodstuffs, particularly for preservation, quick cooking and easy transport, mostly in order to meet the needs of the troops. There was also a number of inventions for extraction of vitamins from fish oils. Attention was also directed to dehydration of food articles and in making tablets of tea and coffee.

In addition to these problems, the Indian inventors were also engaged in solving problems connected with water lifting and drawing devices, fire extinguishing apparatus to make them portable and easier to handle the fire, and variable speed gearing in cycles with a view to obtain maximum of speed with minimum of effort, extraction of oils from cashew nut shells, and other fats and fatty oils, grinding and washing of seeds, plastic compositions containing vegetable materials, luminous paints, coloured glass bangles, locks and household articles such as cookers, tiffin carriers etc."

## CHAPTER IV

### DEFECTS IN EXISTING LAW AND PROCEDURE

127. The Indian patent system is based on the Indian Patents and Designs Act, 1911, which contains substantive provisions for regulating—

- (a) the granting of patents and keeping them in force,
- (b) the rights and obligations of patentees, and
- (c) the powers and duties of the Controller of Patents and Designs, the Central Government and the Courts.

The procedure in respect of the various proceedings under the Act and the fees payable are prescribed in the Indian Patents and Designs Rules, 1933.

128. The efficient working of the patent system depends, however, not only on a suitable provision of the law, but also on the setting up of a properly staffed and organized Patent Office for administering it, as also on providing facilities by the State for the exploitation of patents. Proposals for reforming the patent system must, therefore, be considered from the point of view of (a) Patent Law, (b) organization and functions of the Patent Office, and (c) special facilities provided by the State for furthering the objects of the Patent System.

129. We issued a comprehensive Questionnaire and obtained the views and suggestions of the public on all those matters. We have also had personal discussions with a number of persons who were interested in the patent system as research workers, patentees, patent agents and industrialists.

The Committee also inspected the Patent Office at Calcutta and on the spot examined its present organisation and practical working.

In the light of all available information, we are of the opinion that the patent system in India is defective in several respects.

130. Some of the defects in the existing law and procedure, to which attention may be drawn, are briefly as follows:—

- (i) The Indian Patents and Designs Act does not clearly indicate the field of inventions to which patent protection is available thereunder, and to the extent that it does, it is inadequate to meet the present needs of the country.
- (ii) The criteria for determining the novelty of patentable inventions are not adequately set out in the Act.
- (iii) The Act does not afford adequate protection to an inventor during the stage of trial and experiment to test the practicability and utility of the invention before applying for protection by grant of letters patent.

- (iv) It does not provide for prompt public inspection of specifications filed in respect of applications for patents.
- (v) It does not contain any provision for compulsory search by the Patent Office to determine 'novelty' of inventions.
- (vi) Opposition proceedings in respect of 'accepted' applications for patents are often abused.
- (vii) The rights and obligations of patentees are not adequately defined in the Act.
- (viii) The commercial value of patents is seriously affected by reason of the fact that no time limit has been provided for questioning their validity.
- (ix) The provisions of the Act relating to the 'working' of patents in India have been found to be ineffective.
- (x) The provisions of the Act which aim at preventing the misuse and abuse of patent rights, are inadequate.
- (xi) Proper arrangements do not exist to ensure that patent specifications and subject matter indexes, etc., required for making 'searches' are printed and published promptly and regularly.
- (xii) The present arrangement for dealing with appeals from the orders of the Controller are out of date and unsatisfactory.
- (xiii) There is no provision for regulating the profession of Patent Agents.
- (xiv) The Register of Patents does not give full and correct information regarding matters affecting the title and interest of patentees and licensees.

131. Our proposals for rectifying these and other defects of the existing law and procedure are given in Chapter V of this Report.

In Chapter VI, we give a brief account of the Patent Office, its origin and present set-up, the defects in its working and our recommendations for rectifying them.

Chapter VII contains our recommendations in regard to measures which we feel are necessary to enable inventors and industrialists to make a more effective use of the Patent System in the best interest of the country.

## CHAPTER V

### RECOMMENDATIONS FOR IMPROVING THE LAW OF PATENTS IN INDIA\*

132. *Patentable Inventions.*—One of the first requisites of the patent legislation of a country should be to give a precise indication as to what may be protected by a patent grant in that country. The laws of most countries contain specific provisions as to what may be patented. For instance, in the patent law of the United States of America, it is laid down as follows:—

“Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant,.....”, may obtain a patent therefor.

133. The provisions relating to patentable inventions contained in the respective laws of some other countries† are:—

#### *France:*

- (i) Any invention of new industrial products, or new means or new application of means already known for obtaining an industrial result on product, is patentable.
- (ii) Processes for producing pharmaceutical compounds or remedies are patentable, but the products are not.
- (iii) Bare principles of inventions having no “industrial results” are not patentable.

#### *Japan:*

Any new industrial invention may be patented. But the following inventions shall not be patented:—

- (i) Articles of drink and food or articles of taste and stimulants;
- (ii) medicines and methods of compounding them;
- (iii) substances to be manufactured by chemical processes; and
- (iv) articles which are apprehended to be prejudicial to public order or good morals, or injurious to health.

*Canada.*—Invention is defined as any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter.

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\* In this Chapter, the Indian Patents and Designs Act, 1911, as amended up-to date, will be referred to as the Indian Act, and the United Kingdom Patents Act, of 1949 will be referred to as the British Act.

† From Hadan's Compendium.

**Germany:**

- (i) All new inventions which permit of industrial use are patentable, unless not compatible with law or morality, and with the exception of articles of food, drinks, medicines, and chemical products, in so far as the invention does not relate to distinct processes of manufacturing such articles.
- (ii) A patent for a process covers also the product when made by that process.
- (iii) Principles are not patentable ; but if a principle be known, a patent may still be given for a particular mode of reducing the principle to practice, provided that the carrying out of the invention or solution of the problem is not already within the capacity or skill of handicraft or of a worker in the trade.

*Holland.*—New products, new processes, or new improvements of processes or products, not previously publicly described, or known in Holland, to such extent that they can be used by experts in the art and capable of industrial application, are patentable.

*Russia.*—Novel inventions capable of industrial uses are patentable.

134. *United Kingdom.*—There is no such categorical statement in the British Act. But the object is indirectly achieved by using throughout the Act the expression “invention” in reference to the subject matter of a patent granted thereunder, and by defining “invention” as follows:—

“invention” means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies and any new method or process of testing applicable to the improvement or control of manufacture, and includes an alleged invention.

The Statute of Monopolies (21 Jac. 1, C. 3) expressly states that letters-patent may be granted for “the sole working or making of any manner of new manufactures within this Realm, to the true and first inventor of such manufactures, which others at the time of making such letters-patent shall not use.”

This provision in the Statute has been interpreted in a large number of cases decided by British Courts during the last three centuries. It is in the light of these decisions that the expressions “manner of new manufacture” and “the true and first inventor” are understood in the British Patent System, and the criteria of “novelty” and “utility”, which are implicit in the section, are determined.

135. The British Act, without expressly enumerating the essential requirements of “patentable inventions”, contains provisions which indicate some of these requirements. For instance, section 10 authorises the Comptroller to refuse an application for patent, *inter alia*, on the grounds—

- (a) that it is frivolous, as it claims as an invention anything obviously contrary to well established natural laws ; or

- (b) that the use of the invention would be contrary to law or morality; or
- (c) that it claims as an invention a substance capable of being used as food or medicine which is a mixture of known ingredients possessing only the aggregate of their known properties; or
- (d) that it claims as an invention a process of producing such a substance by mere admixture.

136. Again, section 32 of the British Act permits the revocation of a patent by the Court on, among others, the following grounds:—

- (a) that the subject-matter of the patent is not an “invention” as defined in the Act; or
- (b) that the subject-matter is not new; or
- (c) that it is obvious *i.e.*, it does not involve any “inventive step” having regard to what was known or used prior to the applicant’s invention; or
- (d) that it is not useful.

The Act, however, does not define or explain the words “new”, “inventive step” or “useful”. A large volume of case-law has grown in England explaining the meaning and significance of these expressions, and on some points there are decisions of high authority, which it is not easy to reconcile.

137. *India*.—The Indian Act, which, as already stated, was based mostly on the British Act, has proceeded more or less on the same lines. It, too, does not specifically state what may or may not be patented. This has been left to be inferred from—

- (a) the definition of “invention” as given in section 2(8), read with section 2(10) of the Act;
- (b) the grounds on which an application for patent may be refused by the Comptroller as set out in sections 5 and 69 of the Act; and
- (c) the grounds on which a patent may be revoked by the Court under section 26.

The definition of “invention”, as given in the Act, is as follows:—

“invention” means ‘any manner of new manufacture’ and includes an improvement and an alleged ‘invention’ [section 2(8)].

This definition, though it closely follows the definition in the British Act, is not word for word the same. It does not, as indeed it could not, contain any reference to the Statute of Monopolies. The result has been that though the Statute of Monopolies has never been in force in India, the vast case-law, which has accumulated in the United Kingdom on the interpretation of section 6 of that Statute, has been very largely drawn upon by the Courts in this country in determining the patentability of the subject-matter of Indian patents. The English Law Reports, in which these cases are reported, are costly and not easily available to most courts and lawyers in this country.



138. We think that in the new set-up of things, it is not desirable to leave the law in this state and in our opinion, it is necessary that the Indian Act should contain, as far as possible, clear and specific provisions as to what is patentable.

139. It is outside the functions of this Committee to attempt a precise definition of a "patentable invention" or of its various elements. But we recommend that at the time of the revision of the Act, the following considerations should, *inter alia*, be kept in view:—

- (a) "invention" should be given a wider meaning than in the present Act, so as to include inventions capable of application for industrial uses, even if they are concerned with processes only and do not result in the manufacture of any article;
- (b) Substances prepared or produced by chemical processes or intended for food or medicine should not be patentable except when made by the invented processes or their obvious equivalents;
- (c) Inventions of which the primary or intended use would be contrary to law or morality should not be patentable,
- (d) Novelty should be determined on the basis of prior knowledge or prior user in India;
- (e) "Inventive step" in relation to what was known or used in India should be an essential requisite for Novelty;
- (f) Novelty of an invention should not be prejudiced:—
  - (i) by the secret use, of the invention, except where such secret use has been on a commercial scale by or on behalf of the applicant for patent, or any person through whom he claims; or
  - (ii) by prior user or prior publication if it was in fraud or in breach of confidence of the applicant for patent or any person through whom he claims; or
  - (iii) by prior use of the invention by the applicant for patent, or any person through whom he claims, for purposes of reasonable experiments and trials only, if the application for patent is made within six months of such use; or
  - (iv) by the display or the use of the invention in any public exhibition if the application for patent is made within one year from the date of such display or use; or
  - (v) by prior documentary publication by the applicant, or any person through whom he claims, if the application for patent is made within one year from the date of such publication; or
  - (vi) where there has been prior publication or use of the invention as mentioned in (iii), (iv) and (v) above, by any further publication or use of the invention by any other person during the interval mentioned.
- (g) Patent specifications and official abridgements thereof should not be taken into account if they are more than fifty years old;

- (h) To be 'useful', the invention should not only achieve the object claimed for it, but should also be in the nature of technical advance on the existing stock of knowledge of the particular art in India.

140. *True and First Inventor.*—The expression "true and first inventor" is used in the Indian Act and Rules and in the prescribed Forms, but is not defined anywhere. According to existing practice, the true and first inventor may be neither a true inventor nor the first inventor. He may be merely an importer, or a communicatee, of the invention from abroad; and as between rival inventors, the true and first inventor is one who has *bona fide* claimed himself to be such in respect of the patent of the earliest date that may be granted to him in India, even though, in point of time he may not be the earliest to evolve the invention. This practice is based upon a series of rulings given by the British Courts on section six of the Statute of Monopolies. But, as already pointed out, that Statute is not operative in this country. Further confusion has been created by the inclusion of certain provisions contained in some of the earlier Indian Acts and their omission in later legislation. In the Acts of 1856 the expression "Inventor" was defined as *including* the "importer" of an invention, while in the Acts of 1859 and 1888 it was defined as *excluding* the "importer". This provision in the Acts of 1859 and 1888 was not repeated in Act II of 1911, which gives no indication as to whether the expression includes or excludes the "importer".

141. It is necessary to put this matter beyond doubt in the Statute, and we recommend that the expression "true and first inventor" be defined so as to include not only the actual inventor, but also the "importer" and "communicatee" of an invention from abroad. We also recommend that a provision be made in the Act that in the case of rival claimants, one who had *bona fide* claimed to be true and first inventor in respect of the Indian patent, having a claim of the earliest "priority date" that may be granted for the invention, will be deemed to be the true and first inventor.

142. *Inventor to be mentioned as such in the Patent.*—In connection with the rights and privileges of the inventor, our attention has been drawn to the fact that under existing practice, an application for patent may be made without making the true and first inventor a party to the application. In such a case neither the patent specification, nor the letters patent sealed on the application, would contain any mention of the name of the true and first inventor. Where the true and first inventor is also the actual inventor of the invention, and not merely an importer or a communicatee from abroad, it is considered desirable that the patent specification as well as the letters patent should contain the name of such inventor. We recommend, therefore, that the Indian Act should contain a provision that where the true and first inventor claims to be the actual inventor of the invention, his name should be mentioned as such in the patent specification as well as in the letters patent.

143. *Public Inspection of Specifications.*—Section 6 of the Indian Act provides that applications and specifications should be laid open to public inspection "on the acceptance of an application".

Section 61 provides that where an application for a patent has been abandoned or deemed to have been refused, the specifications and drawings (if any) shall not, save as otherwise expressly provided by the Act, at any time, be open to public inspection.

The proviso to sub-section (3) of section 78-A of the Indian Act provides that if the application for a patent claiming 'priority' is not accepted within eighteen months from the "priority date" claimed, the specification shall be open to public inspection at the expiration of that period.

In view of these provisions of the Indian Act, it has been the practice to treat applications and specifications filed at the Patent Office as confidential, until the applications are "accepted" (except in the case of 'priority' applications).

As the "acceptance" of an application may be delayed by one year or more after the 'complete specification' has been filed, it is found that under the existing practice applications and specifications remain in the records of the Patent Office for long periods without being open to public inspection. There is, however, no strong reason why such specifications should not be made open to public inspection as soon as the 'complete specifications' in respect of the corresponding applications have been filed by the applicant. On the other hand, as one of the main objects of the patent system is to give prompt publicity to new inventions, it is very desirable that the specification should be published as soon as possible after the 'complete specification' has been filed.

It may be mentioned in this connection, that as a post-war measure for reforming the Australian Patent System, it has been provided in the Australian Act that every application for patent together with the specification or specifications filed in respect of it should be open to public inspection as soon as the filing of the 'complete specification' in respect of it has been notified. We recommend that a similar provision should be made in the Indian Act.

144. *Compulsory Searches.*—The Indian Act does not contain any provision for a compulsory search in the Patent Office, for ascertaining the novelty of inventions before applications for patents in respect of them are "accepted". We consider that a specific provision should be made in the Act requiring the Controller to make a search for novelty in respect of every application for patent. The scope of the compulsory search should be limited to Indian patent specifications which have been published during fifty years preceding the date of the application, or since 1912, whichever is later. We consider that as regards patent literature a search of records for fifty years sufficient to establish the novelty of an invention, and this is also the law in England. The limit of 1912 is suggested because of the fact that printed copies of published specifications are available in the Indian Patent Office only from 1912 onwards.

The purpose of the search must be not only to look for previous publications, but also to ascertain whether any claim of the applicant's specification would be in conflict with any claim of a complete specification which would be of a prior date to the applicant's claim; and also whether in carrying out the applicant's invention in practice, there would be any substantial risk of infringement of a claim.

of any other patent. We recommend that suitable provision should be made in the Act to this effect.

We also recommend that it should be open to the Controller to take into consideration anticipations of the applicant's invention not only from the specifications that are brought to his notice as a result of the compulsory search referred to above, but also from other publications.

145. *Disclosure of Results of Searches.*—Under Section 60 of the Indian Act, reports made to the Controller under the Act shall not in any case be published or be open to public inspection. In pursuance of this section, the citations made by the Examiners of Patents in their examination reports to the Controller are not made available to the public. It has been suggested that there should be a provision entitling any member of the public to the disclosure of the results of the search made by the Examiners of Patents, as in the British Act. We are in favour of adopting this suggestion.

146. *Opposition Proceedings.*—Opposition Proceedings are complementary to the official examination proceedings that take place before the Controller prior to the 'acceptance' of an application for patent. They provide an opportunity to the public to co-operate with the Controller in preventing the sealing of a bad patent. They are expected to provide to the interested public as well as to the patentee, a less expensive and more expeditious proceeding for obtaining an adjudication on their respective rights, prior to the sealing of the patent, than the revocation proceedings which, after the sealing of the patent, should necessarily be before the Courts.

147. We cannot say that these expectations have been justified. Where the invention is worth fighting for, parties engage counsel or legal practitioners in the same way as they would in proceedings before a Court. Even if legal practitioners are not engaged, the proceedings are by no means less expensive, as the fees charged by experienced Patent Agents are not substantially less than those ordinarily charged by legal practitioners.

148. As to opposition proceedings being "expeditious", we understand that this is by no means the case.

The prescribed procedure, even under the normal time—limits provided for the proceedings at various stages, will, as stated below, take up a several months after the date of the Notification of the 'acceptance' of the application:—

Filing Notice of opposition	4 months
Filing the opponent's written statement	$\frac{1}{2}$ month
Filing the applicant's reply statement	1 „
Filing the opponent's affidavit evidence	1 „
Filing the applicant's reply affidavits	1 „
Filing the opponent's further affidavits	1 „
Appointment of hearing	$\frac{1}{2}$ „
Total	<hr/> 9 months <hr/>

As a rule, the parties are not able to comply with the prescribed time limits, and almost invariably, an extension of about one month at each stage is granted as a matter of course. Thus, more than a year after the 'acceptance' of an application would elapse before the opposition becomes mature for the 'Hearing'. The hearing, the decision by the Controller, and, if an appeal is filed, the disposal of the appeal by the Central Government, would easily entail further delay of about a year. If the opponents resort to dilatory tactics, the delay may be longer still. Numerous instances have been brought to our notice where the opposition proceedings have lingered on for three years.

149. The consequences of such delays are serious. In the first place, they cause a substantial loss to the patentee of the effective term of the patent, which is 16 years from the date of the application for patent. This period is lost at a time when the patentee would be expected to concentrate his attention for the development of the invention for its commercial working and for finding funds for the exploitation of the patent. What is still more important is that the opponent or any other person can, during the tendency of the proceedings before the Controller, indulge with impunity in the infringement of the rights of the applicant for patent, as the latter would not be entitled to institute infringement proceedings until the patent is sealed.

150. Further, under section 26 of the Act, there are 14 grounds on which the validity of a patent may be questioned in a revocation proceeding, and therefore 14 grounds on which there may be a conflict of rights between the parties. Only 5 of these grounds can be invoked in opposition proceedings; thus, the opposition proceedings do not provide for the adjudication of a large majority of grounds on which the parties might seek adjudication.

151. Moreover, it is not as if the adjudication by the Controller, even if it is upheld by the Central Government as the appellate authority, would settle once and for all the matter adjudicated upon. The Controller's decision is not binding on the courts, and it is open to an aggrieved opponent or any other person to reagitate the matter for fresh decision by the courts. The value of the opposition proceedings as a means for adjudication on the respective rights between the parties appears, therefore, to be not substantial.

152. Besides the drawbacks referred to above, which are inherent in the opposition proceedings, it has been represented to us that the said proceedings are more often abused than legitimately used; that they are frequently invoked for the purpose of black-mailing the applicant for patent by threatening him with expensive litigation, in order to obtain royalty free licences or other concessions from him and that rich parties interested in any particular industry often make it a practice of opposing every application in that field of industry on wholly unsubstantial grounds.

153. On the whole, we consider that opposition proceedings, as provided at present, have failed to achieve their purpose, and that they expose *bona fide* applicants for patents to an unfair fight against

vested interests. In our opinion, it is necessary that opposition proceedings should be replaced by proceedings which would—

- (a) prior to the sealing of the patent, provide an opportunity to any person interested, to bring to the notice of the Controller anything against the grant of the patent ;
- (b) provide any person interested, with a further opportunity to attack the patent in a proceeding before the Controller, within one year from the date of the sealing of the patent ; and
- (c) render the Controller's decision final, as between the same parties, subject to an appeal to an appropriate authority.

154. For achieving these objects, we make the following recommendations:—

- (i) Provision in the present Act permitting opposition proceedings before the sealing of the patent, should be omitted ;
- (ii) instead, it should be clearly provided in the Act that the Controller shall not "accept" an application for grant of a patent for a period of four months from the date of the notification of the filing of the 'complete specification'. During this period of four months, it should be open to any person to present a statement to the Controller, setting out objections against the grant of the patent. The objections should be considered by the Controller along with the Examiner's report, before accepting or refusing the application.
- (iii) Revocation proceedings in respect of any patent *before the termination of one year from the date of its sealing*, should lie only to the Controller on any of the grounds on which revocation can be sought under the Act.
- (iv) The order of the Controller in such proceedings will be subject to appeal to the High Court.
- (v) After one year the revocation proceedings shall be before the Court as in the present Act.

155. The proposals outlined above would provide much wider scope and opportunity, for attacking a bad patent in a revocation proceeding before the Controller, than that available at present for attacking an application for a bad patent in an opposition proceeding before the Controller; and they will have the additional advantage that during the pendency of the litigation before the Controller, a patentee, who finds that his patent rights are being infringed, will be able to institute appropriate proceedings to safeguard his interests.

156. *Rights of the Patentees.*—Section 12 of the Indian Act provides that on sealing a patent, the patentee shall have the "exclusive privilege of making, selling and using the invention throughout India and of authorising others so to do". The expression "making, selling the invention" appears to us to be inept, as the "exclusive right" is strictly speaking not for 'the making of the invention' or for 'the selling of the invention'. Moreover, the present wording of the

section has given rise to a doubt as to whether a patentee, who enjoys an exclusive right in respect of making an article or using any process, enjoys also the right of making the article or using the process *without regard to other subsisting patents*. We suggest, therefore, that the rights of the patentee should be set out in the Act on the following lines:—

- (a) in the case of a patented invention of any article, the patentee shall have the exclusive right to make, use and/or sell such article or to authorise others to do so ;
- (b) in the case of a patented invention of a process, the patentee shall have the exclusive right to use such process and to use, and/or sell articles made by such process or to authorise others to do so ;
- (c) the exclusive right conferred by any patent shall be subject to rights already subsisting in respect of any other patent.

[An 'explanation' be added stating that a new identical article shall, unless the contrary is proved, be presumed to have been made by an identical process.]

157. *Compulsory Licences*.—The present Act makes no provision for the grant of compulsory licences except when there is an abuse of patent rights (*vide* sections 22, 23 and 23A of the Indian Act). It has, however, been suggested that the monopolistic rights conferred on a patentee are detrimental to the public interest, and that it would be more conducive to such interest, if every patent is made subject to the grant of a compulsory licence to any one, who asks for it, on terms which, in default of agreement, may be settled by the Controller or the Court. Another suggestion is that the provisions in regard to the granting of compulsory licences should be made applicable at least to patents for inventions relating to food, medicine and surgical appliances.

We have given careful consideration to the arguments advanced for and against these suggestions.

158. As regards the first suggestion, we are wholly opposed to it. The 'exclusive right' conferred by a patent is the essence of the patent system, and compulsory licences are a negation of such 'exclusive right'. A patent which is liable to be restricted by the granting of compulsory licences would confer 'exclusive right' neither on the patentee nor the licensee. Most of those who take out patents do so with a view to enjoy the 'exclusive right' conferred thereunder, and the system of granting compulsory licences in respect of patents generally would not be attractive to them and, therefore it would drive them to resort to methods of secrecy for enjoying exclusive rights in their inventions. Such a system would, therefore, defeat one of the fundamental objects of the patent system, namely, to secure the prompt disclosure of new inventions evolved by inventors. Such a system would also make the patent even less attractive to the industrialist than it is at present. We are, therefore, definitely against the adoption of this suggestion.

159. As regards the other suggestion, we had in our *interim* Report dealt with the question of subjecting patents for Food and

Medicine to the restriction of compulsory licences, and remarked as follows:—

“As regards the question whether Food and Medicine patents should be subjected to the grant of “compulsory licences”, the replies received may be classified into three categories, advocating respectively three different views as follows:—

- (i) Patents for food and medicine should be subjected to the grant of compulsory licences to any one who asks for them.
- (ii) Patents for food and medicine should be subjected to the grant of compulsory licences at the discretion of the Controller of Patents and Designs.
- (iii) There should be no special restrictions on patents in the field of food and medicine but if patent rights in respect of such patents are insufficiently used, or misused, or abused, such patents should be dealt with in the ordinary way; and where there can be no complaint against the patentee on any of the grounds just stated, the patent should not be subjected to the grant of compulsory licences.

“We feel that a recommendation as to which of the three courses mentioned above would be most conducive to public interest, cannot be made without further investigation of several questions, such as—

- (i) what would be the effect of a system of granting compulsory licences in respect of Food and Medicine patents—
  - (a) on ‘research’ in the field of Food and Medicine industries;
  - (b) on the tendency to work in secrecy on inventions in this field;
  - (c) on attracting capital for developing new inventions for creating a market for new products in this field; and
  - (d) on the risk of bringing new inventions into disrepute as a result of granting “compulsory licences” to unscrupulous manufactures?
- (ii) If licences are to be granted at the discretion of the Controller—
  - (a) what are the circumstances in which he should, or should not exercise his discretion in favour of an application for licence;
  - (b) should licences be granted to others even if the patentee has been working the invention in India to its full extent, and has not been offending in any way against the public interest; and
  - (c) should any statutory guidance be given to the Controller in respect of this matter?

“These are questions on which we cannot make any final recommendations without examining them more fully from theoretical as well as practical standpoints. We have hitherto had no opportunity to discuss these questions with those who are competent to express opinions thereon. At present, therefore, we are not in



a position to make any specific recommendation on the three alternative courses referred to above on question of subjecting Food and Medicine patents to the grant of compulsory licences."

160. Since submitting the *Interim* Report, we have discussed this question with a number of persons interested in the pharmaceutical industry in India. Some of them are in favour of imposing such restrictions, and they have drawn our attention to the fact that the provision introduced in the British Act in 1919 to the effect that the Comptroller, unless he sees good reasons to the contrary, may grant to any person a licence for the preparation or production of Food or Medicine, has been retained in the new (British) Act of 1949. We have given careful consideration to this matter but we do not think that conditions in this country at present are such as would justify the making of a similar provision in the Indian Act. The difficulties which have been experienced hitherto in connection with such patents are really attributable to the defective provisions of sections 22, 23 and 23A of the Act, and as these provisions have been replaced by the Amending Act passed by the Parliament of India in April 1950 and provision made to prevent the abuse of patent rights, we are of the opinion that the working of the amended law should be watched for some time before considering the necessity of imposing any special restrictions on patents relating to Food and Medicine.

161. *Joint ownership of Patents.*—Section 37 of the Indian Act provides that "where a patent is granted to two or more persons jointly, they shall unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as joint tenants, but, subject to any contract to the contrary, each such person shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a licence without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his legal representatives".

The expression "joint tenant" used in this section is obscure. It is well known that its signification in English law is different from that in Indian law. It is, therefore, necessary to use more precise language to make the meaning clear.

The section is also defective in that it does not specifically refer to the rights of co-owners of a patent who were not the co-grantees; and it does not provide for the contingency that might arise if two co-patentees do not agree with regard to the granting of licences or assigning their respective shares to third parties.

We suggest that provisions be made in the Act in respect of the rights of co-owners of patents on the following lines:—

- (i) Each of them shall be entitled to an equal undivided share in the patent;
- (ii) Unless there is an agreement to the contrary, each of them shall be entitled by himself or by his agents to make, use or exercise the invention for his own benefit without accounting to the others;
- (iii) A licence under the patent shall not be granted and a share in a patent shall not be assigned, except with the

consent of all persons who are registered as grantees or proprietors of the patent:

Provided that where an article is sold by one of two or more persons registered as co-grantees or co-proprietors of a patent, the purchaser, and any person claiming through him, shall be entitled to deal with it in the same manner as if the article had been sold by a sole patentee ;

(iv) The principles of law applicable to the ownership and devolution of personal property generally shall apply in relation to patents, in the same manner and to the same extent as they apply in relation to other choses in action;

(v) where two or more persons are registered as grantees or proprietors of a patent, the Controller may, on an application made to him, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, as he thinks fit; and if the said directions are not complied with within a specified time, upon an application made to the Controller, he may give directions empowering any person to execute the relevant instrument in the name and on behalf of the persons in default.

162. *Date of Patents.*—Under the existing law, the date of patent, other than a patent claiming "priority", is the date of application filed in respect of it; and the date of a patent claiming "priority" is the "priority date" allowed.

It happens that the "priority date" allowed is very often nearly one year earlier than the date of the application. Consequently, in the case of patents claiming "priority", the effective term of a patent will be nearly one year less than that of a patent not claiming "priority".

It is considered desirable that all patents (other than Patents of Addition) should have the same period of effective term, irrespective of the "priority" that may be claimed for any patent under reciprocal arrangements with other countries. We may mention that this would be an essential requirement for enabling India to join the 'International Convention for the Protection of Industrial Property'. We recommend, that for computing the term of a patent, its commencement should be reckoned from the date on which the 'complete specification' was filed, irrespective of any "priority" allowed to the patent under reciprocal arrangements with other countries.

163. *Priority date of claims.*—At present, the date of a patent is the crucial date for deciding the novelty of an invention with reference to known prior art. The only exception to this general rule is that provided in section 13A of the Indian Act, namely, that in a case where a single 'complete specification' has been filed in respect of two or more 'provisional specifications', the novelty of the inventions will be determined with reference to the respective dates of the 'provisional specifications' relating to the several matters contained in the 'complete specification'.

We consider that the principle underlying the exception referred to above shall be extended for determining the novelty of any invention which, for the first time, has been disclosed in a 'complete sp

'fication' following one or more 'provisional specification', or, in the case of patents claiming 'multiple priorities', was disclosed in two or more foreign specifications of different dates. For this purpose, it should be provided in the Act that for the purpose of determining the novelty or priority over other patents, the Controller or the Court, as the case may be, shall have regard to the 'priority date' of each claim of the 'complete specification' with reference to the provisional, complete, or foreign specification on which the claim in question is based.

164. *Extension of the Term of Patent.*—Under the Indian Act, a petition for the extension of the term of a patent is to be made to the Central Government, and it is open to the Central Government to refer such petitions to the High Court. We recommend that the authority for granting an extension of the term of a patent should be the Controller, and that the Controller's decision should be appealable to the High Court.

165. *Government and Patents.*—Sub-section (1) of section 21 provides that subject to the other provisions of that section, a patent shall have to all intents and purposes the like effect as against the Government as it has *against* a private person.

We recommend that a provision be added in the Act declaring that Government shall apart from the special privileges provided in section 21 of the existing Act have the same rights and privileges as a private person.

166. Sub-section (2) of section 21 provides that "the officers or authorities administering any department of the service of the Government may, by themselves or by such of their agents, contractors or others as may be authorised in writing by them, at any time after the application, and after giving notice to the applicant or patentee, make, use or exercise the invention for the service of the Government on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Central Government.....".

We are of the opinion that the privilege contained in this provision should be exercisable only by the Union Government, and that it should not be open to any officers or authorities administering any department of the service of the Union Government or Government of States.

167. The provision contained in the sub-section quoted above that the Government may use the invention only after giving notice to the applicant for patent or the patentee, imposes undue responsibility on the Government to ascertain whether any article which they desire to manufacture is covered by a patent. In this respect, Government is placed at a disadvantage as compared with a private person. We suggest that this requirement should be dispensed with altogether, or if it is proposed to retain it, it be modified by adding the word "so far as possible".

168. *Register of Patents.*—The Indian Act does not provide for the compulsory registration of assignments, licences, etc. With a view to induce parties to enter in the Register of Patents a notice of their title or interests, it is provided in the Act that—

"except in the case of an application made under section 64, a document or instrument in respect of which no entry

has been made in the register in accordance with the provisions of sub-sections (1) and (2) shall not be admitted in evidence in any Court in proof of the title to a patent or to copyright in a design or to any interest therein, unless the Court, for reasons to be recorded in writing, otherwise directs."

A further provision is contained in items Nos. 41 to 46 of the First Schedule to the Indian Patents and Designs Rules, 1933. These items provide that any person who makes his request for a notification in the Register of Patents of any interest acquired by him more than six months prior to the date of his request, will be required to pay a fee of Rs. 20, instead of Rs. 5, which is the fee that would be required if the request is made within six months prior to the date of the request.

These provisions of the Act and Rules have not been effective in compelling parties to notify assignments, licences, etc., in the Register of Patents.

We suggest that more stringent provisions be made with regard to the notification of assignments, licences, etc. in the Register of Patents, on the following lines:—

- (a) The change must be notified within a period of six months from the date of the transaction.
- (b) Extension of six months may be allowed by the Controller; but after one year, it will not be registered in any circumstances.
- (c) The penalty for extending the normal period by six months on application to the Controller, will be ten times the original fee.
- (d) From the date of the enactment of the new law, within a period of six months, all transactions completed before the date of the said enactment, should be registered at ordinary rates.

169. *Revocation of Patents.*—We have, in connection with 'opposition proceedings', made a recommendation that revocation proceedings in respect of any patent before the termination of one year from the date of its sealing, shall lie to the Controller only and that after one year from the date of sealing the patent, such applications would lie only to the High Court.

It has been represented that the existing practice of calling into question the validity of a patent at any time during its normal or extended term, has considerably affected the value of an Indian patent, and that after a specified period, it should not be open to anyone to question the validity of a patent either in revocation proceedings or by way of defence in an infringement suit. Under the German Law, 'annulment suits' for lack of novelty may be brought only within five years from the publication of the grant. A similar provision exists in the laws of Holland and Japan. We are in favour of including a provision in the Indian Act to the effect that after six years from the date of sealing the patent, or six years from the date on which the revised Act comes into force, whichever is later, it should not be open to any person to question the validity of the patent on any ground, in revocation proceedings, or by

way of counter-claim in an infringement suit, except on the following grounds:—

- (i) that the patent was obtained in fraud of the rights of the person applying for the revocation or of any person under or through whom he claims; or
- (ii) that the patent was obtained on a false suggestion or representation.

170. *Abuse of Patents Rights.*—Our detailed proposals for the prevention of abuse of patent rights are contained in the *Interim Report* submitted by us on the 4th August 1949 (*vide* Annexure A). We see no reason to modify our proposals beyond adding a further provision in the Act with regard to restrictive conditions in contracts. Our proposal in this connection is that any contract for sale, licence or lease of a patented article or patented process shall be void in so far as it purports to impose restrictions with regard to the purchase of articles other than the patented articles.

171. *Declaratory Judgments.*—Manufacturers or others who wish to market a new article, or undertake a new process of manufacture, are naturally desirous of making sure that in doing so they will not incur liability for infringement of any patent. A search through the patent literature would indicate to them the various patents which they have to consider. With regard to such patents, it will be necessary for them to consider (i) whether the manufacture, use or sale of the article in question would constitute an infringement of any such patents, and (ii) whether any of the patents concerned are likely to be invalid. Under the existing Act, if they have any doubt as to these points, they can decide only the question of validity, by making an application for the revocation of the patent under Section 26 of the Act. But, they have no means of ascertaining in advance whether they would be infringing any patent. The question of infringement can be ascertained by them only in a suit for infringement instituted by the patentee. Ordinarily such a suit will be instituted by the patentee after infringement has taken place.

In this connection, it is to be noted that the precise construction and scope of a patent is a difficult matter, and in the absence of a judicial determination, manufacturers may not be willing to take the risks involved in possibly infringing a patent. With the industrial progress of this country, it is not unlikely that the absence of a provision for ascertaining in advance whether the manufacture or the sale of any particular article could constitute an infringement of any particular patent, would act as a serious deterrent to manufacturers, particularly where the contemplated manufacture would involve a considerable outlay in plant and machinery.

One of the innovations recently introduced in the British Act as a result of the recommendations of the Swan Committee, is to provide for a 'Declaratory Suit', which may be instituted by any person who has reasonable cause to doubt whether the use of any process, or the making, using or selling of any article would constitute any infringement of a claim of any particular patent. Various safeguards have been provided in connection with such suits.

Firstly, it has been provided that the plaintiff must have applied in writing to the patentee or licensee for written acknowledgment

to the effect of a declaration claimed and furnished him with full particulars of the process or article in question; and the patentee or licensee must have refused or neglected to give such an acknowledgment. Secondly, the cost of all parties in proceedings in the declaratory suit shall, unless for special reasons the court think fit to order otherwise, be paid by the plaintiff. Thirdly, the validity of any claim in the specification of the patent shall not be called in question in proceedings for a Declaration.

We recommend that similar provisions for Declaratory suits be made in Indian Act.

172. *Fees*.—For obtaining a patent and for maintaining it in force for its full term, fees are payable as stated below:—

- (i) On the filing of an application for patent, accompanied by a 'complete specification'.—Rs. 30.

(If the application is made on the basis of a 'provisional specification', the fee may be paid at two stages, i.e., Rs. 10 with the application, and Rs. 20 with the 'complete specification').

- (ii) On request for sealing the patent—Rs. 30.

- (iii) Renewal Fee—

(a) in respect of the first 4 years of the patent.	Nil
(b) in respect of each year of the fifth to the eighth year of the patent.	Rs. 50
(c) in respect of each year of the ninth to the twelfth year of the patents.	Rs. 100
(d) in respect of each year of the thirteenth to the sixteenth year of the patent.	Rs. 150

The stages for the payment of these fees and the amounts payable at different stages have been determined after taking into account various factors, such as—

- (a) Inventors cannot be expected to incur large sums at the outset. Therefore, the initial fee should be low.
- (b) Very few inventions are lucrative from the outset. Accordingly, the patentee should not be burdened with renewal fees, during the initial period of the patent.
- (c) After the initial period, the patentee is expected to decide each year, in advance, whether it would be worth-while for him to keep his patent in force for another year. The longer he desires to keep his patent in force, the larger the amount of renewal fees that he will be required to pay.
- (d) If the patent is not lucrative, the patentee is not obliged to keep the patent in force. He may discontinue the payment of renewal fees at any stage.

These rates were fixed some years ago. In our opinion some of these fees are low and we recommend that they be enhanced as follows:—

- (a) The fee for an—  
application accompanied by a 'provisional specification', be increased from Rs. 10 to Rs. 20.
- (b) The fee for—  
filing a 'complete specification' following a 'provisional specification', be increased from Rs. 20 to Rs. 30.
- (c) The fee for an—  
application accompanied by a 'complete specification', be increased from Rs. 30 to Rs. 50.
- (d) The renewal fee for maintaining a patent in force, which—  
for the 11th year is Rs. 100, be raised to Rs. 125,  
for the 12th year is Rs. 100, be raised to Rs. 125,  
for the 15th year is Rs. 150, be raised to Rs. 175,  
for the 16th year is Rs. 150, be raised to Rs. 175,  
for every year after 16th year is Rs. 150, be raised to Rs. 200.
- (e) The charges for providing typed copies of documents are insufficient to cover their actual cost. They should be raised from 1 anna for 100 words to 4 annas for 100 words.

173. In the United States and in Canada, there are no fees payable after the grant of a patent. Some of those who have replied to our Questionnaire have suggested that on the model of these countries, the requirement as to renewal fee should be dispensed with. We are not in favour of this suggestion. If the renewal fees are dispensed with, it would become necessary either to enhance the initial fee payable for obtaining the patent to a figure which would be far beyond the means of an average Indian inventor, or to encroach on the general revenues of the country for meeting the expenditure in connection with the Patent Office.

174. *Patents under 'reciprocal arrangements'*.—With regard to patents under reciprocal arrangements with other countries the existing law provides only for the granting of a single "priority" date for any patent. Where an applicant has made two or more applications for foreign patents in respect of two or more applications which are cognate with one another, he could claim 'priority' in India only if he makes a separate application in respect of each of these inventions. Most of the countries have provided that in such a case, a single application may be made claiming "multiple priorities". We consider that the provisions of the Indian Act should be enlarged so as to include for "multiple priorities", within the scope of reciprocal arrangements between India and other countries.

Certain countries have provided that "multiple priorities" may be allowed even if all the foreign applications concerned have not been made in one and same foreign country. We recommend the inclusion of a similar provision in the Indian Act.

175. Another drawback of the Indian Act is that at present an inventor who makes an improvement after filing an application for patent abroad, cannot claim "priority" in respect of the original invention, if he incorporates in the Indian application, the subject matter of the improvement also. It is provided in the law of some countries that in such a case, it should be permissible to allow "priority" in respect of only that part of the invention for which there is a corresponding foreign application. It has been suggested that India should also provide for the granting of "partial priorities". We recommend the adoption of this suggestion.

176. *Utility Models*.—It has been represented to us that in addition to the four kinds of patents mentioned in Chapter II there should be a provision for a class of patents known as "Utility Models" for protecting articles which have a new shape or configuration, which serves some useful purpose, but which may not involve a substantial degree of inventive merit.

Protection for Utility Models is given in comparatively few countries, namely, Germany, Japan, Poland and Spain. It cannot be said that this system of protection has been considered necessary to the same extent as the protection of inventions, designs or trade-marks. Moreover, no authoritative opinions are available as to the usefulness of this form of protection. In the circumstances, we are not in favour of providing for a new species of protection in this country until the need for it becomes more pronounced than at present.

177. *Appeals from the decisions of the Controller*.—At present appeals from the decisions of the Controller, except under sections 51A and 64 of the Indian Act, lie to the Central Government; and appeals under sections 51A and 64 lie to the High Court. It has been represented to us that the Central Government is not adequately equipped for dealing with the appeals which are at present made to it under the various provisions of the Act. As regards the High Court also it is not quite clear from the Act whether such appeals would lie only to the High Court at Calcutta or to any of the High Courts in India. Apart from these drawbacks, it has also been represented to us that there should be a single Tribunal to deal with appeals in all matters disposed of by the Controller, and that such Tribunal should be conversant with Patent Law and Practice in India.

In this connection we would mention that in the *Interim Report* submitted by us we had recommended that, for the purposes of "appeals" under the revised sections 22, 23 and 23A proposed by us, the Appellate Authority should consist of a Special Tribunal composed of :—

- (i) a sitting or retired Judge of a High Court who will be the president of the Tribunal ;
- (ii) a Barrister or an Advocate of not less than ten years standing, preferably conversant with Patent Law and Procedure; and
- (iii) a technical expert in the subject with which the patent in question is concerned.

This recommendation has not been accepted to Government, and in the Amending Act passed in April 1950, it has been laid down



that appeals from orders of the Controller under the revised sections 22, 23 and 23A, shall lie to a Bench of two Judges of the High Court at Calcutta; and that in case of disagreement between the said two Judges the case shall be referred to a third Judge of the same High Court.

We recommend that appeal from other orders of the Controller should lie to the High Court.

178. *Patent Agents.*—The profession of Patent Agents is controlled in many important countries of the world. There is no such control in India. In the absence of such control, it is open to any person to advertise himself as a Patent Agent, irrespective of whether he has any proper qualifications for it or not. This frequently causes a great deal of inconvenience and loss of numerous applicants for patents. In order to provide such applicants with proper and reliable advice, we strongly recommend that the profession of Patent Agents should be controlled and properly regulated, and to that end we make the following recommendations which, we suggest, should be implemented without any delay:—

- (i) The profession of Patent Agents should be regulated by registration.
- (ii) A qualifying examination should be prescribed for eligibility for registration.
- (iii) For this purpose, the Central Government should be authorised to appoint a Board of Examiners consisting of—
  - (a) the Controller of Patents,
  - (b) a person who is a member of the Union Public Service Commission or a State Public Service Commission, and
  - (c) a suitable person nominated by the Central Government.
- (iv) Person who have been in practice as Patent Agents for at least five years before January 1, 1950 and have dealt on an average with at least five patent applications a year, or who had been Examiners or Assistant Examiners of Patents for a period of not less than five years, may be exempted from passing the Examination and permitted to be entered in the Register of Patent Agents after an interview by the Board which would determine their eligibility for being brought on the Register.
- (v) The Central Government should be authorised to frame rules laying down the qualifications for admission in the qualifying examination and the subjects for examination. It is suggested that the minimum qualification for appearing in the qualifying examination should be the I.Sc., or I.A.
- (vi) The qualifying examination should include tests in the following subjects:—

*Group I:*

- (A) Applied Mechanics, Heat, Light and Sound.
- (B) Chemistry and Electricity.

The standard as regards subjects (A) and (B) of Group I should be B.Sc. or B.E. degree standard of an Indian University. A candidate who has obtained a University degree in Science or Engineering or an equivalent qualification from any recognised institution may, on application, be exempted from taking the Science papers.

*Group II:*

(C) Indian Patent Law and Practice.

(D) Foreign Patent Law and Practice.

*Group III:*

(E) Tests in the preparation of a Specification for Indian and foreign patents from such materials as patent Agents usually receive.

(F) Test in the interpretation and criticism of Indian specifications.

(vii) It should be made an offence for any person to describe himself, or hold himself out, as a Patent Agent, unless he is registered as a Patent Agent.

179. *Separate Acts for Patents and Designs.*—Act II of 1911 contains the law of patents as well as the law of designs. The scheme of having composite legislation for patents and designs had its origin in 1872, when design legislation was introduced in this country by adding a few sections to the Act of 1859 as explained in Chapter I. In doing so, the Indian Legislature followed the then existing British Act. In subsequent Acts, both in England and India this scheme of having a single Act for patents and designs continued. Such consolidated legislation, however, has obvious defects and with the increase and development of industrial inventions with which the law of patents is primarily concerned, and also with the growing importance of industrial designs, it has become necessary to have separate legislation for patents and designs. This has been done in the United Kingdom where in 1949 the British Parliament passed two separate Acts. One of these Acts, (Nos. 12, 13, 14 Geo. 6 Ch. 87) deals with patents only and the other (Nos. 12, 13, 14 Geo. 6 Ch. 88) deals with designs only. We recommend similar action in India.

180. *Employees of Patent Office.*—In certain countries, employees of the Patent Office are debarred from taking out patents, so long as they are employed in that Office. In England such a restriction is imposed merely as a matter of convention and tradition. In the United States of America, however, a statutory provision exists which lays down that all officers and employees of the Patent Office shall be incapable, during the period for which they hold their appointments, to acquire or take directly or indirectly, except by inheritance or bequest, any right or interest in any patent issued by the office.

We recommend that the Indian Act should contain a similar provision.

181. *Time for Leaving Complete Specification.*—Representations have been made to us that the time for filing the "complete specification" following one or more "provisional specification", should be

enlarged from 9 months from the date of the earliest of the said "provisional specifications", and that the Controller should have power to extend this time-limit by 3 months, instead of by one month as at present. We are not in favour of enlarging the 9 months period to 12 months. The period of extension may, however, be enlarged from one month to three months.

The Act should also contain a provision for enabling the Controller where a "complete specification" has been filed following a "provisional specification", to allow the applicant to cancel the "provisional specification" and to proceed with the application as of the date of filing the "complete specification".

182. *Grant and Sealing of Patent.*—(i) Sub-section (1A) of section 10 empowers the Controller to give directions when an applicant who has agreed in writing that on the grant of the patent to him, he would assign it to another party and refuses to proceed with the application, or when disputes arise between joint applicants as to proceeding with the application. From the position of this subsection in the Act, a doubt has been raised as to whether it could be invoked prior to the "acceptance" of an application. We recommend that the Act should be so amended as to make it clear that this provision could be invoked even prior to the "acceptance" of the application.

(ii) The time limit for sealing a patent is at present reckoned with reference to the date of the application for patent. We recommend that it should be reckoned from the date of the "acceptance" of the application, and that it should be normally six months from such date.

(iii) At present there is no provision in the Act to enable the resealing of a patent in the name of a proper party, if by mistake it has been sealed in the name of an applicant who was not alive on the date on which the patent was sealed. We recommend a provision for this purpose is necessary in the Act.

183. *Patent of Addition.*—(i) The Indian Act does not contain any specific provision as to whether the term of a patent of Addition may be extended, and if so, whether it could be extended independently, or whether it would be extended automatically when the term of the basic patent is extended. We suggest that the Indian Act should contain a specific provision to the effect that if a patentee wants extension of the term of his Patent of Addition, he should ask for the same for a specific period and that a Patent of Addition cannot be extended independently of the basic patent.

(ii) As to the requirement that the claims of a specification must relate to a single invention, we are of the opinion that the claims of a specification for a "Patent of Addition" may include any claim which would have been allowed in the basic patent without being objected on the ground that it related to an independent invention. We recommend that a provision to this effect should be made in the Act.

184. *Suits for Infringement.*—At present a suit for infringement may be instituted only by a patentee. Instances occur where the patentee would have granted an "exclusive licence", which would

confer on the licensee, to the exclusion of other persons (including the patentee), certain rights in respect of the patented invention. It is desirable that in such a case the "exclusive licensee"—should be entitled to institute suits for infringement, if he would be the party actually interested in stopping the infringement or in recovering damages in respect of any infringement that had taken place.

185. *Marking of Patented Articles.*—At present a patentee is required to affix on patented articles a mark which would indicate the year and the number of the patent. As the serial numbers of patents are continued from year to year without break, it appears to be unnecessary to require that the patentee should give an indication of the 'year'. The relevant section should therefore be modified by dispensing with the indication as to the year of the patent.

186. *Innocent Infringer.*—At present an innocent infringer would merely be exempted from the liability to pay damages to the patentee, but he would be liable for an injunction against him. The effect of an injunction on an innocent infringer might be to cause serious loss to him for no fault of his. It is suggested, therefore, that where a defendant satisfies the court about his innocence, the court should have the option of ordering the patentee to give a compulsory licence to the defendant, if it thinks it is a fit case for such a relief.

187. *Models to be Furnished to Museums.*—Section 41 provides that the trustees of the Indian Museum may at any time require a patentee to furnish them with a model or sample of his invention on payment to the patentee of the cost of the manufacture of the model or the sample. It has been represented to us that this section should be enlarged, so as to make it applicable to other museums also. We recommend that this section should be enlarged so as to make it applicable to other museums in this country, in respect of which a notification is made by the Central Government in the Official Gazette.

188. *Entry of Assignments, etc.*—Section 63 provides for the registration of the title of any person who becomes entitled by assignment, transmission or other operation of law, on an application by such person. It does not provide for the registration of assignments and transmissions on the request of the assignor or the licensor. We recommend that this section be amended on the lines of section 74(2) of the British Act to entitle the assignor or the licensor also to apply for a notification of the change of title in the Register of Patents.

189. *Costs in Proceedings before Controller.*—Section 65 provides that the Controller's power to award costs in proceedings before him shall be subject to rules made in that behalf. So far no rules have been made as contemplated in this section. We recommend that rules should be framed by the Central Government to provide for a scale of costs in proceedings before the Controller.

190. *Powers of the Controller.*—At present there are no means of ascertaining whether, and if so to what extent, patented inventions are worked in this country. We consider it necessary that the

Patent Office should have information on this matter, and with a view to enable the Controller to collect the necessary data we recommend that the Controller should be empowered to call for periodical statements from patentees giving information as to the extent to which their patents have been commercially worked in this country.

191. As we are proposing that the "appellate authority" over the Controller should be the High Court, it is not desirable that the Central Government should give any directions to the Controller, except in respect of purely administrative matters. We suggest, therefore, that section 68 of the Act should be amended by substituting the words "in administrative matters" for the words "in the administration of any provisions of this Act".

## CHAPTER VI

### THE PATENT OFFICE

#### **Its origin, present set-up and proposed organization and functions**

192. *Administration of the "Exclusive Privileges".*—The administration of the law relating to Patents required the establishment of a separate office, known as the Patent Office. Such an Office, however, was not set up simultaneously with the introduction of the Patent System in India. As mentioned already, the first legislative enactment in India dealing with patents was Act V of 1856, which provided for the conferring of "exclusive privileges" on inventors. Under this Act, as well as under Act XV of 1859 which replaced it, the administration of conferring "exclusive privileges" was vested in the Secretary to the Government of India in the Home Department.

193. As the Acts of 1856 and 1859 contemplated that no person should be entitled to an "exclusive privilege" if the invention was devoid of utility and novelty, it became incumbent on the Home Department to consider these questions before granting leave to applicants to file their specifications. In most applications, the official examination was confined to mere formalities; but such of them as were obviously without novelty and utility had to be referred to experts for investigation and report. As the number and the technicality of inventions increased, it became difficult for the Home Department to deal with the applications satisfactorily, as part of its ordinary current work. Consequently, with the passing of Act V of 1888, the administration of "exclusive privileges" was transferred from the Home Department to the Department of Revenue and Agriculture; and the Secretary in that Department was appointed to discharge the functions of the Secretary under the Act.

194. In course of time, it became difficult for that Department also to deal with the applications satisfactorily as part of its ordinary current work, and it was felt that a specialist should be appointed for the efficient scrutiny of the specifications describing the inventions. Various officials of the Government of India were authorised from time to time to deal with the work as part-time 'Patent Secretaries'. Some of the officials so appointed were—

- (1) The Assistant Surveyor General-in-Charge of Mathematical Instruments,
- (2) The Secretary, Board of Examinations,
- (3) The Officer-in-Charge of the Records of the Government of India, and
- (4) The Librarian, Imperial Library.

As these officials could devote only part-time attention, the work did not receive the scrutiny and supervision which it deserved. Accordingly, it became necessary to appoint a full-time Patents

Secretary, and in 1904 one of the Examiners of Patents from His Majesty's Patent Office in London was selected for the post.

195. The appointment of a whole-time Patents Secretary naturally led to the establishment of a separate Branch for the administration of the Patent Law, and, later, to the separation of that Branch from the Secretariat of the Government of India. An opportunity for making provision in the law for this purpose presented itself when it was found necessary to overhaul the law for the protection of inventions and designs in India and the Inventions and Designs Act of 1888 was replaced by the Indian Patents and Designs Act, 1911.

196. *The Establishment of the Patent Office.*—The Patent Office is set up under section 55 of Act II of 1911, which requires that the Central Government shall provide, for the purposes of the Act, an office which shall be called the Patent Office. It was established on the 2nd January, 1912 when the Indian Patents and Designs Act came into force. It is under the immediate control of the Controller of Patents and Designs, who functions under the superintendence and control of the Central Government. At present the office is attached to the Ministry of Industry and Supply.

The Office is located at 214, Lower Circular Road, Calcutta. It has no Branches anywhere in India.

197. *General set-up of the Patent Office.*—The Patent Office has to discharge two important functions, namely,—

- (i) to perform statutory duties under the Patents and Designs Act; and
- (ii) to render certain specified services to the public for enabling the Patent System to achieve its main purposes.

For performing these functions the Controller is assisted by an establishment comprising both technical and non-technical staff. The general set-up of the Patent Office is shown in Appendix II.

It has five main Branches, namely,—

- (i) Patents and Designs Branch,
- (ii) Abridgement and Classification Branch,
- (iii) Policy Branch,
- (iv) Administration Branch, and
- (v) Library.

The Policy Branch and the Library are directly under the Controller. The other Branches are under Sectional Officers, as shown in the said Appendix.

The permanent Technical staff of the Patent Office consist of—

- (i) The Controller of Patents and Designs.
- (ii) The Deputy Controller of Patents and Designs.
- (iii) The Examiner of Patents-in-Charge.
- (iv) 7 Examiners of Patents.
- (v) 11 Assistant Examiners of Patents.

A brief statement of the nature of their duties is given below.

198. *Controller of Patents and Designs.*—The Controller of Patents and Designs is the official head of the Office. He has to perform administrative as well as judicial functions.

His main duties on the administrative side are—

- (a) to organize and supervise the working of the staff under him;
- (b) to dispose of matters relating to appointments, promotions, discipline, leave and all other matters of an administrative nature ;
- (c) to prepare the budget and to control the expenditure of the office ;
- (d) to realise the fees payable under the Indian Patents and Designs Act ; and
- (e) to settle questions which govern the practice of the Patent Office.

The judicial functions of the Controller come into operation in his day to day work of administering the various provisions of the Indian Patents and Designs Act. A large number of proceedings under the Act are in the nature of litigation between interested parties, and in connection with such proceedings, it becomes necessary for the Controller to exercise the powers of a Civil Court, vested in him under section 65 of the Indian Patents and Designs Act. The decisions of the Controller are appealable in some cases to the Central Government, and in others to the High Court.

In discharging his judicial functions, the position of the Controller is not merely that of an adjudicator between the parties, but he has also to have regard to the public interest and is not bound to confine his investigations to matters in issue between the parties. If the grant of a patent is not in the public interest, the Controller is bound to raise objection *suo moto*, even though the opponent to the grant may have failed to do so.

Another function of the Controller is to act as the expert adviser to the Government on matters relating to industrial property in general, and patents and designs in particular. Some of his duties in this capacity are—

- (1) to advise Government with regard to legislation relating to patents and designs ;
- (2) to formulate draft rules for implementing such legislation ;
- (3) to advise Government with regard to the use of patents for the service of Government ;
- (4) to advise Government with regard to the disposal of inventions under Rule 48A of the Fundamental Rules in their application to the services (including the Railways Services) under the rule-making control of the President ; and
- (5) to submit Reports to the Government in connection with proceedings, which under the Indian Patents and Designs Act, are to be disposed of by it, e.g., extension of the term of patents, applications under sections 22 and 23 seeking relief in respect of abuse of monopolies, and appeals under sections 5, 9, 10A, 15, 17, 43 and 69.



199. *Deputy Controller of Patents and Designs.*—The function of the Deputy Controller is to assist the Controller in the discharge of his duties above mentioned. For this purpose, certain items of work have been made over to the Deputy Controller. These are—

- (1) dealing with applications for patents (approximately 50% of the total number);
- (2) opposition proceedings in connection with applications dealt with by him;
- (3) dealing with applications for the registration of designs; and
- (4) proceedings under sections 16, 17, 62, and 63 including opposition proceedings involved therein.

200. *Examiner of Patents-in-Charge.*—This officer is in charge of the special work of compilation and publication of Classified Abridgements of patent specifications, which was undertaken for the first time by the Patent Office in 1946. As the first step in this direction, it was necessary for the Examiner of Patents-in-Charge to revise the subject-matter index-headings, to compile a provisional 'Key' to the revised subject-matter index, and to give detailed instructions to Examiners and Assistant Examiners of Patents for abridging and indexing patent specifications.

He has personally to edit every abridgement compiled by the Examiners and Assistant Examiners, and to check the accuracy of the indexing of every individual specification.

201. *Examiners of Patents.*—The main function of the Examiner of Patents is to examine applications, specifications and drawings filed for the grant of patents, and to report to the Controller (or the Deputy Controller) whether the said documents comply with the requirements of Patent Law, chiefly in regard to matters set out in section 5(I) of the Act. He also examines and reports upon amendments of specifications proposed by applicants and patentees.

In the case of opposition proceedings, the Examiner is required to examine the statements and the evidence filed by the parties and prepare a brief of the case for the hearing officer and to assist the hearing officer at the hearings.

202. *Assistant Examiners of Patents.*—The Assistant Examiners of Patents have been appointed partly for preparing the "Classified Abridgements", and partly for giving relief to the Examiners of Patents in connection with the technical duties of the latter. Their work at present is confined to the examination of patent applications under section 5 of the Act, and the preparation of material for the Classified Abridgements.

203. *Method of Recruitment.*—Appointments to the posts of Assistant Examiners are made by direct recruitment, on the recommendations of the Union Public Service Commission.

Fifty per cent of the Examiners are appointed by direct recruitment through the Union Public Service Commission and the remaining fifty per cent. by selection, from amongst the Assistant Examiners.

The posts of Examiner-in-Charge, Deputy Controller and Controller are filled by selection from among Examiners, the Union Public Service Commission being consulted in the case of the two last mentioned posts.

204. *Volume of Work and its Growth During Recent Years* i.e., 1930-1949.—It will be noticed from Table No. 1 of Appendix I that while the average number of applications received during 1930-43 was about 1000 per year, during 1944-49 it has been nearly 2,000 per year.

The number of applications of Indian origin also shows the same rate of growth. Such applications rose from 212 in 1930 to 400 in 1949.

The increase in the number of patent applications is reflected in the increase of income. While the income in 1930 was Rs. 2,05,363 it rose to Rs. 6,29,833 in 1949. The net *surplus* contributed by the Office to the general revenues of the Government has increased from nearly 1 lac of rupees in 1930 to nearly 2½ lacs of rupees in 1949.

Though the Staff has been strengthened periodically since 1912, the increase has not been commensurate with the increased volume of work and responsibilities, and under the present set-up the Patent Office has been unable to discharge its functions properly even to the limited extent required by the existing law.

205. *Unsatisfactory Conditions in the Patent Office*.—As a result of our visit to the Patent Office and the enquiries made by us we are of the opinion that the Patent Office is very much under-staffed and very inadequately housed. The result has naturally been that its work is not being done efficiently and arrears have accumulated. We were surprised at some of the methods of the work followed by the Office.

We cite a few instances of the unsatisfactory conditions noticed by us—

- (i) There is no fixed standard for the examination of patent applications. Investigations for determining the novelty of inventions are made or omitted altogether, at the discretion of the Examiners and Assistant Examiners.
- (ii) There is a huge accumulation of arrears even under the limited examination that is at present conducted by the Office.
- (iii) The publications of the Patent Office are not issued with regularity or promptness. For instance—
  - (a) patent specifications accepted and open to public inspection should be printed within 4 to 6 weeks of the date of acceptance. But we found that such specifications have not been printed for the last 3 years. This has necessitated the sealing of Patents without attaching the printed specifications, as laid down in the model form of patent grant;
  - (b) the publication of the Patent Office journals, which ought to have been issued annually, was suspended in 1941, and was resumed only in 1950.

- (iv) In view of the fact that the Patent Office is away from the location of the Central Government, there is heavy delay in getting routine matters through. For instance, we were informed that it took nearly a year for the Government of India to approve the price of a new publication. In the meantime the publication, though printed, was not issued and the printing of further volumes had been held up.
- (v) The Technical Library is not properly organized.
- (vi) The facilities provided to the public for making searches are most inadequate.
- (vii) The Subject-matter Indexes of patent specifications are incomplete or neglected. It is, therefore, impossible at present to obtain any reliable information as to the patent position in any branch of industry.
- (viii) Copies of printed specifications are not available for sale at the Patent Office. This causes serious inconvenience to the public.
- (ix) As the Controller has personally to deal with and dispose of fifty per cent of the patent applications he has not adequate time left for his general duties e.g., laying down policies, supervision and control of the staff.
- (x) The notifications of the Patent Office which are at present published weekly as a part of the *Gazette of India*, do not provide adequate publicity to the new inventions disclosed to the Patent Office.
- (xi) Reports of Decisions of the Controller and other authorities in respect of proceedings under the Act, are not published for the guidance of the public.
- (xii) In the matter of rendering assistance to the public in patent matters the Patent Office has no special arrangement except perhaps the maintenance of a good Technical Library.

Our attention has also been drawn to the serious inconvenience experienced by the public because of the absence of the branches of the Office in other parts of the country.

We are definitely of the opinion that the Patent Office requires to be thoroughly re-organized and considerably strengthened. This is a matter of great urgency and we invite the immediate attention of Government to it.

206. *Proposals for Reorganization.*—Our recommendations for the re-organization of the Office, the strength of its staff and the rates of remuneration are set out in the following paragraphs. We consider that unless the Office is reorganized on these lines, all attempts to improve the law will fail to achieve the object we have in view. Administration is as important as, if not more than, legislation.

207. *General set-up.*—We recommend that the Patent Office should have five Divisions:—

- (a) One Division under a Deputy Controller (Engineering) for dealing with patent applications relating to inventions.

in the field of Mechanical, Electrical, Communication, Civil and Textile Engineering.

- (b) Another Division under a second Deputy Controller (Chemistry) for dealing with patent applications concerning inventions in other fields, including Chemical and Metallurgical industries and also with Designs.
- (c) A Public Relations Division under a Public Relations Officer, in charge of the Publications Section, the Printing and Sales Section, the Publicity Section, the Search Section, the Documents Inspection and Copying Section, the Information Section and the Library.
- (d) An Establishment Section, a Budget and Accounts Section, a Cash Section, Receipt and Issue Section and the Record Room, under an Administrative Officer.
- (e) A Policy Section and a Special Proceedings section, directly under the Controller.

The reorganization that we propose is shown in Chart 1 of Appendix III. The principles underlying the reorganization that we propose may be briefly stated as follows:—

208. *Supervision by the Controller.*—In order to enable the Controller to exercise personally general supervision over the working of the Patent Office (which is not the case at present) and to give individual attention to various special proceedings under the Indian Patents and Designs Act, he should be relieved of the routine work of dealing with applications of patents, except in cases which involve doubt or difficulty.

209. *Policy Section.*—The Policy section will be the Controller's Secretariat. It will deal with the Central Government, State Governments and public bodies like the Chambers of Commerce etc., and be responsible for issuing directions for establishing 'precedents' and regulating the practice of the Patent Office and the supervision of the Branch Offices situated elsewhere.

210. *Special Proceedings Section.*—This section will deal with all special proceedings under the Patents & Designs Act, such as Appeals, Compulsory Licences, Oppositions, Revocations, Restorations, Extensions, Ratifications and Register, etc. Proposals for the amendment of the Act and the Rules will be dealt with in this section. This section will also conduct the examination prescribed for the Patent Agents and maintain the Register of Patent Agents.

211. *Examination of Applications for Patents.*—The work of dealing with patent applications must be done by the two Deputy Controller one of whom will deal with applications concerned with engineering industries and the other with chemical, metallurgical and other industries. Both will be authorised to accept or refuse applications for the grant of patents.

For conducting examination of patent applications, Examiners of Patents will be grouped on the basis of allied subjects; and there will be a Chief Examiner over a group of four to five Examiners. The Chief Examiner will guide, control and supervise the work of the Examiners under him and check every report made by them, before forwarding it to the Deputy Controller.

All work in connection with the examination of patent applications including correspondence with the Patent Agents and applicants must always be done either by the Examiner or the Chief Examiner concerned. The ministerial staff employed in these sections will be required to do the routine work in that connection only. In the proposed reorganization, therefore, we recommend only Upper Division and Lower Division Clerks for these sections. For every six clerks there will be a Superintendent to supervise their work.

212. *Public Relations Division.*—At present there is no specific unit or organization for 'Public Relations' in the Patent Office but we consider it absolutely necessary to have such a Division for rendering proper service to the public. The Patent system cannot function properly by providing merely appropriate legislation for regulating patent rights and a Patent Office for discharging its statutory duties. The utility of the Patent System, especially in industrially backward countries, would depend to a large extent on the extent of the services rendered by the Patent Office. We, therefore, attach the utmost importance to the establishment of an appropriate Public Relations wing in the Patent Office. This Division will have six sections as follows:—

- (1) Information Section.
- (2) Publications Section.
- (3) Printing and Sales Section.
- (4) Documents Inspection, Copying and Photostat Section.
- (5) Publicity and Search Section
- (6) Library.

213. *Information Section.*—The main functions of the Information Section will be to attend to all verbal and written enquiries from the public on various matters connected with Patents and Designs and to give to inventors proper guidance with regard to the established practices of the Patent Office.

214. *Publications Section.*—The Publications Section will deal with the issue of all publications of the Patent Office. It will collect, arrange and edit material for the different publications of the Patent Office, maintain the subscription list to the publications of the Patent Office and distribute them accordingly and be responsible for the procurement and display of advertisements in different publications of the Patent Office.

215. *Printing and Sales Section.*—The Printing and Sales Section will deal with the collection of material required to be printed and its despatch to the press, reading and correction of proofs, and the binding of all the records. It will be the responsibility of this branch to look after the sale of all publications and the maintenance of regular accounts of such sales.

216. *Documents Inspection, Copying and Photostat Section.*—The Documents Inspection, Copying and Photostat Section will deal with the preparation and supply of typed and photostat copies of all documents by Patent Agents or the public on payment, together with the

maintenance of the account of the supply of copies. It will also arrange for the Inspection of Register of Patents, all applications for patents and the specifications filed in respect of them and other documents which are open to public inspection.

217. *Publicity and Search Section.*—The Publicity and Search Section will deal with—

- (1) all publicity work for popularising the Indian Patent System;
- (2) all publicity required to be given to the Indian patented inventions;
- (3) Organizing Exhibitions of patented inventions in different parts of the country;
- (4) organizing and maintaining a permanent Museum of patented inventions at the Patent Office;
- (5) the inspection of all the free Inspection Centres located at different places in the country;
- (6) the maintenance of a proper register of patents which their owners wish either to sell or to license, and the preparation of non-technical notes on all such patents for giving them publicity for purposes of their sale or licence;
- (7) the maintenance of a register in which all problems, the solution of which may be sought by the industries of the country, will be entered, and the preparation of lists of all such problems for giving them publicity for the purpose of finding out solutions for them;
- (8) the maintenance of an up-to-date mailing list of the different industries of the country and the Government and Semi-Government Research Institutions to which the non-technical notes and problems will be distributed;
- (9) the maintenance of a 'Search Room' at the Patent Office where up-to-date and properly classified research of Indian and foreign patents and designs, required for search purposes, will be kept; and
- (10) carrying out searches for public on payment, and maintenance of guides and helpers to assist the public in the Search Room by directing them to proper classes and sub-classes.

218. *Library.*—The technical library attached to the Patent Office should be kept up-to-date and be available for reference to the Office staff and the public. There should be a Committee consisting of Controller as Chairman, two Deputy Controllers and the Chief Examiners for selecting books, periodicals, Journals, etc. for the library.

219. *Administration Division.*—The Administration Division, under an Administrative Officer will deal with all administrative and account matters, with the following sections:—

- (1) Establishment Section,
- (2) Budget and Account Section,
- (3) Cash Section,

- (4) Receipt and Issue Section,  
 (5) Record Room.

220. *Branch Offices.*—We recommend the opening of Branch Offices at Bombay, Madras and Delhi; and if at any time the Head Office is shifted from Calcutta, a Branch Office at Calcutta also. Each Branch Office will be in charge of an Examiner of Patents, who will advise inventors and others on the practice and procedure of the Patent Office, and explain to them the objections raised by the Examiner in connection with their applications. The Branch Offices will have no statutory or administrative duties, but will maintain a library of patent literature and provide other essential facilities to the public. The detailed organization of the Branch Offices has been given in Chart Nos. 17, 18, and 19 of Appendix III.

221. *Pay Structure in the Patent Office.*—The following are the scales of pay at present sanctioned for the staff of the Patent Office:—

(1) Controller . . . . .	Rs. 1,000—50—1,500 ----- Rs. 1,300—60—1,600	Class I (Gazetted)
(2) Duty Controller . . . . .	Rs. 900—50—1,100 ----- Rs. 800—40—1,000 1,000—1,050—1,050 —1,100—1,100—1,150	Class I (Gazetted)
(3) Examiner of Patents-in- Charge . . . . .	Rs. 300—25—800 ----- Rs. 275—25—570—E.B. 30—650—EB—30 —710	+ Rs. 100 Special pay Class II (Gazetted)
(4) Administrative Officer . . . . .	Rs. 400—20—500 ----- Rs. 250—15—400	+ Special pay Rs. 75 Class II (Gazetted)
(5) Examiner of Patents . . . . .	Rs. 300—25—800 ----- Rs. 275—25—500—E.B. 30—650—E.B.—30— 710	Class II (Gazetted)
(6) Assistant Examiner of Patents . . . . .	Rs. 200—10—300—15— 450—25/2—500	Class II (Non-Gazetted)
(7) Superintendents . . . . .	Rs. 400—20—500 ----- Rs. 250—15—400	Class III
(8) Assistant-in-charge . . . . .	Rs. 130—10—350 ----- Rs. 80—5—120—EB—8 —200—10/2—220	+ Special pay Rs. 50 Class III
(9) Assistants (pre-1931 ent- rants only) . . . . .	Rs. 130—10—350	Class III
(10) Cashier and Accountant . . . . .	Rs. 150—5—200 ----- Rs. 160—10—250	Class III
(11) Upper Division Clerks . . . . .	Rs. 80—5—120—EB— 8—200—10/2—220	Class III

(12) Stonographer . . .	Rs. 80—5—120—EB—8 200—10/2—220	Class III
(13) Clerk-in-charge . . .	Rs. 55—3—85—EB—4 125—5—130	+ Special pay Rs. 40 Class III
(14) Clerk-in-charge . . .	Rs. 55—3—85—EB—4 125—5—130	+ Special pay Rs. 20 Class III
(15) Steno-typist . . .	Rs. 55—3—85—EB—4 125—5—130	+ Special pay Rs. 20 Class III
(16) Lower Division clerks . . .	Rs. 55—3—85—EB—4 125—5—130	Class III
(17) Record Keeper . . .	Rs. 40—1—45	Class IV
(18) Duftry . . . . .	Rs. 35—1—50	Class IV
(19) Jamadar . . . . .	Rs. 35—1—50	Class IV
(20) Peon . . . . .	Rs. 30— $\frac{1}{2}$ —35	Class IV
(21) Farash . . . . .	Rs. 30— $\frac{1}{2}$ —35	Class IV

*Note:*—The figures above the line give the existing scales for pre-1931 entrants and those below the line give the scales recommended by the Central Pay Commission.

With regard to the above mentioned scales we have the following remarks to offer:—

222. *The Controller.*—The Controller is the head of a highly technical department. His duties require a comprehensive knowledge in many technical fields together with sound knowledge of a highly specialised branch of law. In administering the provisions of the Indian Patents and Designs Act, the very wide discretionary powers vested in him are comparable to those exercised by the Judges of a civil court. Being the head of a department he must also possess administrative ability. In view of the duties and responsibilities which he has to discharge and the qualification which he must possess, we consider that the present scale of pay of the Controller is inadequate. We recommend that the scale should be revised and fixed at Rs. 1,800—100—2,000—125—2,250. In this connection we may refer to the scales of pay for the corresponding officer in the United Kingdom, the United States of America and Canada, which are as follows:—

(1) Commissioner of Patents (United States of America).	§ 10,000	(Annual)
(2) Comptroller-General of Patents, United Kingdom.	£ 2,750	(Annual)
(3) Commissioner of Patents (Canada)	§ 7,000 to 9,000	(Annual)

223. *The Deputy Controller.*—The Deputy Controller is responsible for the investigations to be made in the Patent Office prior to the grant of a patent, and for the proper classification and indexing of patent specifications. In connection with many proceedings under the Act he will have to discharge the functions of the Controller, and



to conduct hearings and adjudicate on matters in dispute before him. In our opinion the pay of this post should be Rs. 1,000—50—1,300—60—1,600.

224. *Chief Examiners.*—The main function of this post is to control, guide and supervise the work of Examiners of Patents, and to ensure that the work of examination of applications and grant of patents is carried on efficiently and expeditiously. The pay of this post which is essentially supervisory, should be Rs. 800—40—1,000.

The present post of Examiner of Patents-in-Charge will be unnecessary in the proposed reorganization.

225. *Examiner of Patents.*—The posts of Examiners will be filled by direct recruitment. After a substantial number of Examiners are recruited by competitive examination the higher posts of Chief Examiners, Deputy Controller and the Controller must, in our opinion, be filled up by promotion on a purely selection basis from amongst senior and experienced Examiners. It is, therefore, essential that candidates recruited for the posts of Examiners of Patents should not only satisfy the minimum qualifications laid down for such posts, but should also be capable of holding in due course higher technical posts in the Patent Office. If the right type of candidates is to be attracted for these posts we think that the scale of pay should be comparable with that of the Senior Scientific Officers appointed by the Council of Scientific and Industrial Research (350—350—380—380—30—590—E.B. 30—770—40—850), with the modification that during the period of two years probation they should get Rs. 250; they should then be brought on to the regular scale of pay of Rs. 350—25—500—E.B.—30—800 on confirmation after passing a departmental test in Patent Law and Practice, which would be the same as that recommended for the Patent Agents.

226. *Abolition of Assistant Examiners.*—The Office has at present a number of Assistant Examiners, but for all practical purposes their duties are identical with those of Examiners. They do not assist Examiners in any way. This cadre was created apparently for the purpose of economy by getting the work of Examiners performed by men on a lower scale of pay with a different designation. The result, has, however, been that the right type of persons have not been attracted for recruitment to these posts. We, therefore, recommend that this cadre of Assistant Examiners be abolished and that all new recruits to the posts of Examiners should be on probation for 2 years, thus getting the required training and experience.

227. *Examiner of Designs.*—The duties and responsibilities of the Examiner of Designs will be the same as those of Examiner of Patents and we recommend the same scale of pay for this post as that of Examiner of Patents i.e., 250—250—350—25—500—E.B.—30—800.

Probation

228. *Public Relations Officer, Information Officer, Technical Officers, Special Proceedings Officer.*—The post of Public Relations Officer will be filled by officers of the cadre of Chief Examiners and the posts of Information Officer, Technical Officers and Special Proceedings Officer will be filled from those of Examiners of Patents, and they will be generally retransferable.

229. *Administrative Officer.*—We understand that the post of the Administrative Officer was created some time in 1944 when the strength of the Patent Office was about 50 men and the income was about Rs. 3,00,000 per annum. The then Superintendent was appointed to this post who was drawing a pay of Rs. 500 in the scale of pay of Rs. 400—20—500, and was given a Special Pay of Rs. 75 p.m. in addition to his pay. There had been no revision of pay of this post though the strength of the Patent Office has increased to about 150 and the income to about Rs. 6,00,000. As a result of the reorganization recommended by us the strength of the Patent Office will be about 300 men and the income is also expected to increase to about Rs. 8,00,000. In view of the duties and responsibilities of this post we recommend the scale of pay of Rs. 650—30—800 for it.

230. *Ministerial and Class IV Staff.*—The ministerial work of the office should be done by Upper and Lower Division Clerks, and there is no need of the class of Secretariat Assistants in this Office. Each section in the Patent Office will have a Superintendent in the scale of pay of Rs. 250—15—400.

All Stenographers should be in the same scale *viz.*, Rs. 80—5—120—E.B.—8—200—10/2—220, but those attached to the Controller and the Deputy Controllers should be called Personal Assistants and given an allowance of Rs. 30 per mensem.

The scale of pay of the Cashier should be the same as at present *viz.* Rs. 160—10—250.

The Librarian of the Patent Office should draw pay in the scale of Rs. 160—10—350, which is one of the scales prescribed by the Education Ministry for the posts of Librarians.

The Library Attendants of Head Office Library should be in the same scale as that of Duftries *i.e.*, Rs. 35—1—50.

The Proof Readers and the Salesman should be in the same scale of pay as is admissible in the case of the Lower Division Clerks *viz.* 55—3—85—E.B.—4—125—5—130.

The posts of Upper and Lower Division Clerks should carry the scales of pay prescribed for these posts under the Central Civil Services (Revision of Pay) Rules, 1947, *namely* Rs. 80—5—120—E.B.—8—200—10/2—220 and 55—3—85—E.B.—4—125—5—130, respectively.

The posts of Jamadars, Duftries and Peons should also carry the scales of pay prescribed for these posts under the Central Civil Services (Revision of Pay) Rules, 1947, *namely* Rs. 35—1—50, 35—1—50 and Rs. 30— $\frac{1}{2}$ —35, respectively.

231. *Method of Recruitment.*—(a) The posts of Examiners of Patents should be filled by direct recruitment through the Union Public Services Commission by a Competitive Examination.

(b) New recruits should be on probation for two years, during which period they should get trained and pass the tests in Patent Law and Practice, prescribed for Patent Agents' examination.

(c) The posts of Chief Examiners, Deputy Controller, and Controller should be filled, as far as possible, by promotion on a pure selection basis from the next lower grades. For the posts of Chief Examiners, only those Examiners should be considered who have put in five years' service, excluding the probationary period of two years.

(d) As far as possible, a candidate for the post of Controller of Patents should be selected at least six months in advance of the vacancy and should be given a chance of foreign study, unless his term of service as Controller is likely to be short.

(e) Until recruitment to the post of Examiner of Patents begins by a Competitive Examination and a substantial number of Examiners are so recruited, the posts higher than those of the Examiner of Patents should be open to direct recruitment so as to secure the proper type of candidates for the posts

232. The re-organization, shown in charts 2 to 19 of Appendix III, has been worked out on the lines indicated above, by our Member-Secretary, who has had extensive experience of the work of the Patent Office over a long period of twenty-eight years, and we recommend it for the urgent consideration of Government. A table showing the existing and proposed strength of the Patent Office is given in Appendix IV.

233. If these recommendations are accepted the expenditure on the Patent Office and its Branches will be about Rs. 7,50,000 per annum. This will be amply covered by the Revenue receipts. This remark of ours must not, however, be taken to mean that we accept the proposition that the Patent Office should be self-supporting or be a source of revenue. On the other hand, we hold that the Patent Office provides a public purpose and is set up in the general industrial and economic interests of the country. As such, it must be supported from general taxation and the income from application fees, etc. must be treated as general revenue.

234. *Inspection Centres.*—(a) In addition to the Branch Offices proposed elsewhere, there should be 'Inspection Centres' as at present, where the publications of the Indian Patent Office would be available to the public for inspection, free of charge.

(b) The number of such Inspection Centres should be increased, and preferably, one centre each be opened in all the National Research Laboratories that have been and are being built under the Council of Scientific and Industrial Research throughout the Indian Union.

(c) There should be a half-yearly inspection of the 'Inspection Centres', by an Officer of the Patent Office, and steps should be taken to ensure that the publications supplied to such centres are maintained up-to-date and are readily available to the public for reference.

235. *Location.*—The question of the location of the Patent Office in Calcutta has received our anxious consideration. Its location at the eastern border of the Union of India has certain serious disadvantages, but so would its location in Bombay, Madras or for that matter in Delhi. While it is true that Calcutta is an industrial city, there are other cities equally interested in industrial and technical

matters. Some of us are of the opinion that in view of the present disadvantages and the difficulty of securing suitable office accommodation in Calcutta, the Office should be moved to a central locality in India. Others, however, are of the opinion that as the Office has for many years been in Calcutta, is now well known and possesses a corps of suitable Patent Agents, which other centres will take time to build, it should continue in Calcutta, but that efforts should be made to select a better building or construct a new one.

The location of the office in Delhi has distinct advantages and we would have strongly advocated this, were we not aware of the acute shortage of accommodation in the capital. After taking into consideration all views, we recommend that the office may continue in Calcutta for the present and that the question of its being shifted to some other centre may be taken into consideration by Government after five years in the light of circumstances then existing.

236. *Housing*.—The present office accommodation available to the Patent Office is totally inadequate even for the present staff. On the implementation of the Committee's recommendations for the reorganization of the Office, more accommodation would be required. We hope that Government will take early steps to find the necessary accommodation for this purpose.

We wish, particularly, to draw the attention of Government to the extremely unsatisfactory condition of the Record Room which is located in the Hastings Street at a distance of about three miles from the Patent Office. This Record Room is in the basement, without electric light or ventilation and is in a dilapidated state. The room is infested by white ants, rats and other insects and the roof is in a dangerous condition.

It is of urgent importance that the Patent Office records, which are kept here, be immediately removed to another place. It is suggested that either the existing record room in the compound of the Patent Office be expanded or a new record room constituted in the compound of Office. We recommend the Government to give attention to the matter immediately.

237. *Publications of the Patent Office*.—The Patent Office should in our opinion issue the following publications:—

- (a) The Patent Office Manual.
- (b) A "Guide" to applicants for patents.
- (c) A Monograph explaining the functions and the organisation of the Patent Office.
- (d) A popular publication explaining the Patent System and its utility; this should be available in English as well as in important Indian languages, and it should be distributed to Research Centres and Industrial concerns.
- (e) A weekly journal, entitled "Official Journal of the Patent Office", containing the Notifications of the Patent Office.\*

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\* The contents of this weekly journal should be as given in Appendix V.

- (f) The following should be printed and published as supplement to the weekly journal:—
- (i) Name indexes of applicants for patents and subject matter indexes of patent specifications which are open to public inspection, published annually, within 2 or 3 months after the termination of each calendar year.
  - (ii) Annual lists of patents which have “ceased”, classified industrywise and indicating the field of inventions, with which they are concerned.
  - (iii) A decennial consolidated subject matter index of patent specifications.
  - (iv) Illustrated technical abridgements of accepted specifications on acceptance of applications.
  - (v) Quarterly supplements indicating additions and modifications made—
    - (a) in the ‘key’ to the subject matter index, and
    - (b) in the ‘lists’ of specifications grouped under index heads or sub-heads.
  - (g) Classified Abridgements, with name indexes and subject matter indexes should be published in small handy volumes covering a range of 5,000 specifications in a set.
  - (h) A ‘Key’ to the subject matter index of patent specifications.
  - (i) An Annual Report of the working of the Patent Office.

238. *Printing of Specifications.*—We have been given to understand that at present more than 3,000 “accepted” patent specifications are lying unpublished. Some of these specifications have not been printed though they were “accepted” as long ago as 3 years. Normally, they should have been printed within four weeks of the “acceptance”. We have also been given to understand that the Government Press at Calcutta will take a very long time to complete the printing of specifications which are in arrears.

Printing of specifications and some other documents is required to be done under the Act within a certain prescribed time. These statutory obligations are not and cannot under present arrangements be fulfilled by the Patent Office. This is an extremely unsatisfactory state of affairs.

We, therefore, recommend that until the Government Press is able to cope with this work satisfactorily, temporary arrangements should be made for having the patent specifications printed on contract in one or more private presses on a tender basis. For this purpose, it will be necessary to allot funds in the budget and place them at the disposal of the Controller.

239. *Advisory Committee.*—We recommend that an Advisory Committee composed of—

- (i) the Controller as Chairman ;
- (ii) two representatives of the Federation of the Indian Chambers of Commerce ;
- (iii) two representatives of Patent Agents ;
- (iv) two representatives of Patent Holders Association, if any ;
- (v) two other persons selected by Government to represent any other interest ;

should be constituted for the purpose of advising the Controller for the efficient working of the Patent System. This Committee should meet at least once a quarter.

## CHAPTER VII

### ADDITIONAL RECOMMENDATIONS

240. *National Patents Trust*.—A proposal to set up a National Patents Trust for India was first considered by the Industrial Research Planning Committee of the Council of Scientific and Industrial Research. This Committee which was presided over by Shri Shanmukham Chetty, came to the conclusion that for developing inventions and exploiting patents in the best interests of the country, it was necessary to set up a National Trust for Patents.

241. One of the important objects of the patent system is to stimulate invention and further the industrial development of the country. Inventions can only be useful when they are applied for production on a commercial scale, and the material produced finds a market. As a rule, many difficulties have to be overcome for adapting an invention for commercial production and the solution of these difficulties, before the products of inventions can be placed in the market as finished materials, requires technical knowledge, skill and capital.

242. A matter which has been repeatedly stressed in the replies to the questionnaire issued by the Committee is the non-availability of adequate facilities for the development of inventions in India.

243. Apart from the development aspects of an invention, its exploitation calls for a specialised technique. It needs an organization having specialised branches, e.g., for taking out a patent, assessing the value of the patent, negotiating agreements and licences, etc. Such an organization is frequently beyond the means of most of the inventors in this country.

244. The attention of the Committee has been pointedly drawn to the urgent need of providing a state organization to assist inventors in exploiting their patents.

245. We have reason to believe that a large number of Indian inventions, which are intrinsically meritorious, are at present lost to the country for lack of necessary resources at the disposal of inventors and patentees. We, therefore, endorse the recommendation of the Chetty Committee that facilities for developing inventions and exploiting patents, be provided for the benefit of such inventors.

246. Certain developments have already taken place in connection with the utilisation of inventions resulting from researches sponsored from public funds. Facilities for the exploitation of such inventions were non-existent in India until recently. The need for an organization for this purpose appears to have been realised by Government for the first time in 1941, i.e., a year after the establishment of the Board of Scientific and Industrial Research. The Government of India then decided to set up the Industrial Research Utilisation Committee for commercial exploitation of the results of researches conducted under the auspices of the Board.

When the Council of Scientific and Industrial Research was created in 1942, the Industrial Research Utilisation Committee was required to tender its advice to the Governing Body of the Council, instead of the Government of India.

In 1947 the Council dissolved the Industrial Research Utilisation Committee and decided to replace it by a more compact body styled the Industrial Liaison Committee. The functions of the new Committee remained the same as those of the previous Industrial Research Utilisation Committee.

247. The Industrial Research Utilisation Committee (as also the Industrial Liaison Committee which took its place later) was competent to deal only with the processes and inventions worked out under the auspices of the Council of Scientific and Industrial Research. Consequently, other Government research organizations had to exploit their inventions by themselves on an *ad hoc* basis, without any separate organization for this purpose.

248. The feasibility of entrusting the exploitation of all Government patents to the Industrial Research Utilisation Committee was considered by Government but ultimately they decided to set up an inter-departmental committee, known as the Patents Advisory Committee, under the administrative control of the Ministry of Industry and Supply. This Committee is intended to discharge for all Government research organisations the functions which the Industrial Liaison Committee does for the Council of Scientific and Industrial Research. The Secretary of this Committee acts as the Patent Agent to take out patents for inventions resulting from researches in Government Departments. Thereafter the Committee explores the possibilities of commercial exploitation of the patents and leases them out on an exclusive or non-exclusive basis, according to the merits of the processes.

There is collaboration in working between the Patents Advisory Committee and the Council of Scientific Industrial Research, and the advice of the appropriate office of the Council of Scientific and Industrial Research is freely available to the Patents Advisory Committee whenever required.

249. Thus, at present there are two separate organisations for dealing with the results of researches financed from public funds, namely, (i) the Industrial Liaison Committee to deal with those of the Council of Scientific and Industrial Research and (ii) the Patents Advisory Committee to deal with those of Central Government departments.

Both the organizations have been discharging useful functions; but neither of them can render any service to private inventors and patentees.

We see no reason why the functions of both the Committees mentioned above should not be discharged by a single body; nor do we see why the facilities provided by such a body should not be made available also to private inventors and patentees.

250. The difficulties in the way of the development and exploitation of new inventions are not peculiar to India. They are being experienced even in industrially advanced countries like the United



States of America, the United Kingdom and elsewhere to overcome the difficulties inherent in the working of many useful inventions, special corporations have been constituted in these countries.

251. The provision made in the United Kingdom is on the basis of the 'Act for Promoting a National Research Development Corporation', passed by the British Parliament in 1948. It is laid down in that Act that the Corporation shall have the functions—

- (a) of securing, where the public interest so requires, the development or exploitation of inventions resulting from public research, and of any other invention as to which it appears to the Corporation that it is not being developed or exploited or sufficiently developed or exploited; and
- (b) of acquiring, holding, disposing of and granting rights (whether gratuitously or for consideration) in connection with inventions, resulting from public research and where the public interest so requires, in connection with inventions resulting from other sources.

This Corporation came into existence on the 28th June 1949.

252. In India, the Reviewing Committee of the Council of Scientific and Industrial Research presided over by the late Mr. Ardeshir Dalal recently considered the question of proper utilisation and exploitation of the results of researches, and recommended the establishment of a National Research Development Corporation of India with functions similar to those of the United Kingdom Corporation mentioned above. The recommendations of the Committee were—

"The Industrial policy of the Government of India envisages the establishment of a number of important industries under State-ownership and a large number of other major industries under State control. The Research Development Corporation may take powers under the Law to secure co-operation from all the State-owned and controlled industries to develop new processes in the plant of the manufacturing firms who are likely to be interested in such processes on the condition that the Corporation will reimburse to the firms any loss that may be incurred.

"In Section 7 of its report, the Chetty Committee recommended the institution of a National Trust for Patents. It should be the duty of this Corporation to exploit in the public interest all patents of the Council of Scientific and Industrial Research and all such patents as may be dedicated to it not only by individual scientists, whether independent workers or Government servants, but also by Universities and by Institutions supported from public funds or private endowments.

"The actual composition and powers of the proposed Research Corporation and the terms on which it should develop

and exploit scientific processes patents will have to be considered in detail if the principle of establishing such an organization is accepted. The funds to be placed at the disposal of the Corporation will depend upon the functions to be assigned to it. If it is to develop and exploit patents taken out by the Council of Scientific and Industrial Research as well as patents assigned to it by Universities, other institutions and individuals, as well as patents which, though taken out by others are not being fully exploited at present, it will have to maintain laboratories of its own and the capital and recurring expenditure will have to be on a large scale. If it makes a modest beginning and confines itself to the development of the processes of the Council of Scientific and Industrial Research, not in laboratories of its own but in the plants of existing industries, large grants will not be necessary. A start can be made in that case with a capital grant of about Rs. 50 lakhs and a recurring grant of Rs. 5 lakhs which can be increased if the operations of the Corporation justify it."

253. These recommendations have been accepted by the Governing Body of the Council of Scientific and Industrial Research, and a special Committee has been appointed to draw up a detailed plan of the proposed Corporation.

In view of this development, we consider it unnecessary to recommend the constitution of a separate National Patents Trust in this country. The purpose of such a Trust will be equally served by the proposed National Research Development Corporation.

254. The functions of the proposed Corporation should, in our opinion, include the development of such private inventions as are dedicated to it and/or the development of which appears to be in the public interest. The Corporation should afford facilities to private inventors and advise and assist them in obtaining patents on the lines of the facilities afforded to Government Servants by the Patents Advisory Committee.

255. We hope that the proposed Corporation would be able to develop a large number of useful Indian inventions which are at present lost to the country. We attach the utmost importance to the speedy implementation of this proposal.

256. In view of the comprehensive functions which the proposed Corporation will discharge, it will be unnecessary to continue the Patents Advisory Committee and the Industrial Liaison Committee, the functions of both of which would be fully performed by the proposed Corporation.

257. *Publicity.*—The patent system cannot give its maximum advantage to this country without effective publicity of its existence and utility. Under existing conditions, inventors and industrialists in India are not adequately aware of its existence and functions. Every effort should, therefore, be made to give effective publicity to

the patent system and to Indian patents. Our specific proposals for this purpose are—

- (a) The publications of the Patent Office should be improved as explained in the recommendations made in Chapter VI.
- (b) "Elementary Patent Law" should be included as one of the optional subjects in the curricula of studies for Technological Diplomas and for University Degrees in Engineering and Commerce.
- (c) Where candidates are given an option to select subjects for the B.L. or LL.B. degree, or for post-graduate course in Law, Patent Law should be included as one of the optional subjects.
- (d) Steps should be taken to arrange for Lectures on Patent Law, in the Universities.
- (e) A museum of Indian Patents should be attached to the Patent Office.
- (f) A "Patents" Section should be organised in Industrial museums.
- (g) The holding of Exhibitions of Indian Patents in important centres of the country should be encouraged.
- (h) Scholars sent to foreign countries for technical studies should be asked to spend a fortnight in the Indian Patent Office in order to acquaint themselves with the technical details available in the Patent literature of this country on their respective subjects.

258. In this connection we would mention the commendable efforts made by the Curator and the Trustees of the Lord Reay Maharashtra Industrial Museum, Poona to establish a section of Indian Patents. As a first step in this direction, they have held two Exhibitions of Indian Patents, and collected a large number of interesting exhibits. The museum authorities represented to us that the proper maintenance of a Patents section in that museum needs an annual recurring expenditure of Rs. 6,000 and have appealed to us for securing substantial financial help from Government. We were favourably impressed with the work done in this institution for popularising the Indian Patent system and for publicising Indian inventions. We support their appeal for financial aid and commend it for sympathetic consideration by the Government of India.

259. *Income-tax.*—It has been represented to us that industrialists will have greater incentive to promote research and to exploit Patents, if they are given income-tax relief in respect of the expenses involved in the experimental work for research and the development of inventions for industrial purposes, royalties payable to patentees, and depreciation of the value of patents. In the United Kingdom, the Income Tax Act of 1945 has provided for many concessions regarding expenses allowable in income tax assessments. The relief given there will be evident from the following extracts from "Inventions, Patents and Monopoly" by Peter Meinhardt, pages 124 and 125.

"When paying a royalty, the manufacturer shall deduct income-tax at the standard rate from the amount paid

to the patentee, but he need not pay to the Inland Revenue the amount so deducted.

"A person who incurs capital expenditure to acquire rights under Patents, receives an allowance towards his liability to income-tax. Ordinarily this allowance is spread over 17 years. Therefore, if a person purchases a patent or obtains a licence under a patent and pays to the vendor or licensor a capital sum, he may deduct in each of the following 17 years one seventeenth of that sum from his taxable income. If the life of the right acquired is shorter than 17 years, the allowance is spread over such shorter period.

"Under the Income-tax Act, 1945, expenses incurred for grant, maintenance or extension of a patent are allowable as expenses for income-tax purposes. A patentee can therefore deduct from his taxable income filing fees, renewal fees and similar expenses which he has incurred in connection with patents owned by him.

"Expenses incurred by a patentee for the purposes of protecting his rights under a patent, such as expenses caused by legal action against an infringer, are allowable for income-tax purposes. Expenses incurred by a defendant in an infringement action presumably are also allowed as expenses, but this point is not free from doubt".

The nature of the income-tax relief granted in the United States of America is thus described in "Inventions and their Management" by A. K. Barle & L. S. DeCamp, pages 582 and 583:—

"For purposes of taxation it is assumed that patents depreciate uniformly throughout their lives in other words, one-seventeenth of their original value each year. In each individual case the established value whether the patent was acquired from the Government or by purchases from a former owner, is apportioned over the remaining unexpired life of the patent. If the book value of a patent is the cost of getting it, the yearly depreciation is one-seventeenth of that. If the book value is the cost of buying it from a former owner, the annual depreciation will be the cost to the buyer divided by the number of years it had to run at the time of purchase."

"Current Expenses: A Patent owner may charge depreciation against his gross income as current expense. Other deductible expenses are the costs of advertising the patent, salesmen's commission, royalties and enforcement. Expenses for prosecution of infringement suits and other litigation are deductible from gross profit as on ordinary operating expenses. Royalties paid under licence contract are deductible as operating expenses. In one case, the loss of an amount paid on a licence contract to use a process was held to be deductible upon proof that the process had been found worthless and had been abandoned."

260. The Indian Income-tax Act makes no specific provision for expenditure relating to patent rights. The Act is, however, based on the general principle that income-tax is a tax on income and only revenue expenses incidental to the carrying on of trade should be allowed to be set off against revenue receipts from business, *vide* section 10(2) (xv) of the Income-tax Act. On a reference to the Central Board of Revenue we found that the present position is as follows:—

- “1. A trader who has acquired patent rights by purchases will not be allowed to claim the purchase price as deduction against profits.
2. Expenditure incurred in successfully enforcing patent rights will be of a revenue nature and will therefore be admissible as a deduction against the profits of a business.
3. Expenditure incurred by a trader in successfully defending a suit brought against him in connection with his business would also be admissible.
4. Although patents are a capital asset, there has been so far no provision for allowing depreciation on patent rights, because, under the existing law, depreciation allowance is permissible only in respect of plants, tools and machinery, and a patent right does not fall in any of those categories.
5. Expenditure on fees for taking out patents would not be admissible as it would be regarded as capital expenditure.
6. Royalties payable to patentees are admissible as a deduction from profits.
7. Expenses connected with advertising and sale of patent rights are not admissible because the profits on the sale of patent rights are not taxable; but where a person habitually makes it a business to buy and sell patent rights, then these expenses will be admissible.
8. As regards the cost of research and experiments needed for developing inventions, there are already in India provisions for allowing even capital expenditure on scientific research related to the business—*vide* section 10(2) (xiv).

261. In the above circumstances, we think that the law in this country should be brought in line with that in the United Kingdom and the United States of America, and the Income-tax Act be so amended as to give further relief to patentees by allowing depreciation on the amount spent in the acquisition, maintenance or extension of a patent. The expenditure incurred on such acquisition, maintenance or extension should be allowed to be written off by annual allowances over the unexpired period of the life of the patent.

262. *Association of Inventors and Patentees.*—At present there is no Association or other organized body for catering to the special needs of inventors and patentees. It was represented to us that an attempt, which was made sometime ago for establishing a National Inventors

Association (India), had to be abandoned, presumably for want of funds to meet the preliminary expenses.

Associations of Inventors and Patentees have been discharging useful functions in other countries; and there is good scope for service for similar Associations in this country. We recommend that encouragement be given by Government to the establishment of Associations of Inventors and Patentees.

263. *Patent Office Society*.—The employees of the Patent Office have formed a Patent Office Society, mainly for holding discussions on matters of common interest to them in connection with Patent Law and Practice. The Society works under the guidance of the Controller of Patents and Designs, and its activities are not allowed to interfere with the official duties of the members. A useful publication entitled "Patents and Designs" has been brought out under the auspices of this Society, and monthly bulletins containing information of interest in connection with patents and designs are published by the Society for private circulation.

We record our appreciation of the work done by the Patent Office Society and we trust that the Society will continue to receive encouragement from Government as it has done in the past.

264. *Designs*.—The Indian Patents and Designs Act deals with Patent as well as Designs. The terms of reference of this Committee are, however, confined to Patents only. As the registration of Designs is one of the functions of the Patent Office, we had included in our General Questionnaire certain questions relating to Designs. From the replies received, it appears to us that the Design legislation of this country has not received the attention which it deserves, and that it calls for a major revision. This Committee does not include any representative of those interested in the registration of Designs in India, and we consider that we would be going beyond the terms of reference of the Committee if we were to proceed to make suggestions for improving the law relating to Designs. We, therefore, recommend that Government should, as soon as it can conveniently do so, take appropriate measures to revise the law relating to the registration of Designs.

265. *International Convention*.—A convention known as "the International Convention for the protection of Industrial Property" was established in Paris in 1883. The Convention aims at securing for its members certain interests of industrial property within the home country as well as abroad, by providing in the mutual laws of the member-countries, a uniform solution of some of the difficulties in affording protection to foreigners.

266. Nearly fifty countries have joined this Convention; but India has not joined it so far.

The main reason for India's non-participation in the Convention was that until 1940 India was ineligible to join the Convention, because she had no Trade Marks Registration Law, which is an essential requirement for the membership of the International Convention; and after such legislation was passed, the question of India's participation could not be considered on account of conditions created by the War. Now that the War has ended, and conditions have stabilised, it is necessary to decide whether India should participate in the Convention.

267. One of the objects of the Convention is to confer "priorities" by virtue of which any person who first applies for a patent in any one of the member States on a particular date, would, if his application for a patent in any of the other member States is filed within one year thereafter, be entitled to claim that his patent in the said other States should be dated as of the date of the application made in the State of origin.

Indian inventors who seek to obtain patents in foreign countries are at present handicapped for want of this 'priority'. Certain other privileges extended to members of the Convention are also denied to Indian applicants for foreign patents. It has, therefore, been suggested that India should join the Convention.

As against this view there is a feeling in some quarters that India will not gain much by joining the convention as experience has shown that by joining other International Bodies, she has suffered rather than gained any advantage.

It is quite evident from the Articles of the Convention that Indian Inventors, whose number is increasing, will gain substantial advantages, particularly with regard to obtaining 'priorities' for the patents taken out by them in foreign countries. It may be that, for some time to come, the number of Indian Inventors who would derive such advantages in respect of their foreign patents will not be as many as the foreign inventors who would secure corresponding advantages in respect of Indian patents granted to them. Even so, we do not consider that this circumstance alone should be decisive as to whether India should join the International Convention.

268. In the General Questionnaire issued by this Committee, a specific question (No. 101) was included as to whether India should join the International Convention. The replies received are overwhelmingly in favour of India joining the Convention.

269. It may also be noted that India has already entered into 'reciprocal arrangements' for 'priority' with the Commonwealth countries. Thus, India's participation in the Convention would be merely in the nature of an extension of this arrangement to countries outside the Commonwealth. We, therefore, recommend that India should join the Convention.

270. It is understood that the meetings of this Convention take place at long intervals, and that the next session of the Convention will be held at Lisbon in 1952. It is expected that important decisions will be taken in that session, as the Convention would be meeting for the first time after the War. It is in our opinion desirable that India should participate in this session.

## CHAPTER VIII

### SUMMARY OF RECOMMENDATIONS.

#### 1. Legislation

Our main recommendations for improving the existing patent legislation in India are summarised below:—

The existing Act (II of 1911) has in many respects become out of date and it is desirable to replace it by a new Act.

In framing the new Act the following points be kept in view:—

(1) *Patentable inventions.*—(i) The Act should contain a clear and specific provision as to what is patentable:

(ii) “invention” should be given a wider meaning than in the present Act, so as to include inventions capable of application for industrial uses, even if they are concerned with processes only and do not result in the manufacture of any article;

(iii) substances prepared or produced by chemical processes, or intended for food or medicine, should not be patentable, except when made by the invented processes or their obvious equivalents;

(iv) inventions of which the primary or intended use would be contrary to law or morality should not be patentable;

(v) “novelty” should be determined on the basis of prior knowledge or prior user in India;

(vi) “inventive step” in relation to what was known or used in India should be an essential requisite for novelty;

(vii) “novelty” of an invention should not be prejudiced—

(a) by the secret use of the invention, except where such secret use has been on a commercial scale by, or on behalf of, the applicant for patent or any person through whom he claims; or

(b) by prior user or prior publication if it was surreptitious, or it was in fraud or breach of confidence of the applicant for patent or any person through whom he claims; or

(c) by prior use of the invention by the applicant for patent or any person through whom he claims for purposes of reasonable experiment and trial only, provided the application for patent is made within six months of such use; or

(d) by the display or use of the invention in any public exhibition, provided the application for patent is made within one year from the date of such display or use; or



(e) by prior documentary publication by the applicant or others through whom he claims, provided the application for patent is made within one year from the date of such publication ; or.

(f) where there has been prior publication or use of the invention as mentioned in (c), (d) and (e) above, by any further publication or use of the invention by any other person during the interval mentioned.

(viii) patent specifications and official abridgements thereof should not be taken into account if they are more than fifty years old; and

(ix) to be "useful", the invention should not only achieve the object claimed for it, but should also be in the nature of technical advance on the existing stock of knowledge of the particular art in India.

(2) *True and First Inventor.*—The expression "true and first inventor" be defined so as to include not only the actual inventor but also the importer or the communicatee of a new invention from abroad.

(3) *Mentioning the inventor in patent.*—Provision be made in the Act that where the "true and first inventor" claims to be the actual inventor of the invention, his name should be mentioned as such in the patent specification as well as the letters patent.

(4) *Public Inspection of specifications.*—Provision be made in the Act that every application for patent, together with the specification or specifications filed in respect of it, should be open to public inspection as soon as the filing of the 'complete specification' has been notified.

(5) *Compulsory searches.*—The Act should contain a specific provision requiring the Controller to make a search for 'novelty' in respect of every application for patent. The scope of such compulsory search should be limited to Indian patent specifications which have been published during fifty years preceding the date of the application, or since 1912, whichever is later.

It should, however, be open to the Controller to take into consideration anticipations of the applicant's invention from other publications also.

(6) *Disclosure of results of searches.*—Provision be made in the Act entitling any member of the public to the disclosure of the results of the searches made by the Examiner of Patents.

(7) *Opposition proceedings.*—(i) Provision in the present Act permitting opposition proceedings before the sealing of the patent, should be omitted ;

(ii) instead, it should be clearly provided in the Act that the Controller shall not "accept" an application for grant of a patent for a period of four months from the date of the notification of the filing of the 'complete specification'. During this period of four months, it should be open to any person to present a statement to the Controller, setting out objections against the grant of the patent. The objections should be considered by the Controller along with the Examiner's report, before accepting or refusing the application.

(8) *Revocation of patents.*—(i) All applications for revocation of patents made within one year from the date of the sealing shall be made only to the Controller (and not to the High Court), and it shall be open to the applicant for revocation to rely on any of the grounds on which the patent may be revoked under the Act.

(ii) The order of the Controller on such an application for revocation shall be appealable to the High Court.

(iii) After one year from the date of sealing, but before the expiry of six years from such date, all applications for revocation of the patent shall be made to the High Court, as at present.

(iv) After six years from the date of sealing the patent, or the date on which the revised Act comes into force, whichever is later, it shall not be open to any person to question the validity of the patent on any ground, in revocation proceedings or by way of counterclaim in an infringement suit, except on the grounds—

(a) that the patent was obtained in fraud of the rights of the person applying for the revocation or of any person under or through whom he claims; or

(b) that the patent was obtained on a false suggestion or representation.

(9) *Rights of the patentee.*—The Act should contain clear provision that—

(a) In the case of a patented invention of any article, the patentee shall have the exclusive right to make, use and/or sell such article or to authorise others to do so;

(b) in the case of a patented invention of a process, the patentee shall have the exclusive right to use such process and to use, and/or sell articles made by such process or to authorise others to do so, and

(c) the exclusive right conferred by any patent shall be subject to rights already subsisting in respect of any other patent.

[An 'explanation' be added stating that a new identical article shall, unless the contrary is proved, be presumed to have been made by an identical process.]

(10) *Joint ownership of patents.*—The rights of co-owners of a patent should be more clearly defined than in the present Act. The new provision should be on the lines indicated in para. 161. of the report.

(11) *Dating of patents.*—For computing the term of a patent, its commencement should be reckoned from the date on which the 'complete specification' was filed, irrespective of any 'priority' allowed to the patent under reciprocal arrangements with other countries.

(12) *Priority date of claims.*—For the purpose of determining the novelty or priority over other patents, the Controller or the Court, as the case may be, shall have regard to the 'priority date' of each claim of the 'complete specification' with reference to the provisional, complete, or foreign specification on which the claim in question is based.

(13) *Extension of the term of patent.*—All petitions for the extension of the term of a patent should, in the first instance, be made to the Controller of Patents, whose decision shall be appealable to the High Court.

(14) *Government and patents.*—

- (i) Provision should be made in the Act declaring that Government would, apart from the special privileges provided in section 21 of the existing Act, have the same rights and privileges as a private person.
- (ii) Section 21 should be so modified as to limit its applicability to the use or exercise of the patent for Government purpose by the Central Government only.

(15) *Register of patents.*—The provision of the Act with regard to making entries in the Register of Patents of assignments of patents, grant of licences and other changes of interest should be made more stringent on the lines suggested in paragraph 168 of the report.

(16) *Abuse of patent rights.*—Clear provision be made in the Act that any contract for sale, licence or lease of a patented article or patented process shall be void in so far as it purports to impose restrictions with regard to the purchase of articles other than the patented articles.

(17) *Declaratory suits.*—The Act should contain a provision on the lines of section 66 of the British Act permitting the institution of a 'declaratory suit' by any person who has reasonable cause to doubt whether the use of a process, or the making, using or selling of any article would constitute an infringement of a claim of any particular patent.

(18) *Fees.*—A small increase in some of the fees payable under the Act is recommended in paragraph 172 of the report.

(19) *Patents under Reciprocal Arrangements.*—The Act should contain provisions for granting patents with "multiple priorities" and "partial priorities", under reciprocal arrangements with other countries.

(20) *Appeals from the decisions of Controller.*—Appeals from certain specified orders passed by the Controller should lie to the High Court and not the Central Government as at present.

(21) *Powers of the Controller.*—The Act should contain a provision empowering the Controller to call for periodical statements from patentees giving information as to the extent to which their patents have been commercially worked in this country.

(22) *Patent Agents.*—The present Act contains no provision for controlling or regulating the profession of Patent Agents. The Committee is of opinion that the time has come for making statutory provision in this behalf. Its recommendations are set out in paragraph 178 of the report.

(23) *Separate Act for Designs.*—Act II of 1911, besides laying down the law of patents, also contains provisions relating to the law of designs. The Committee thinks the provisions relating to

designs be excluded from the new Patents Act, and be incorporated in a separate Designs Act, as has been done in England in 1949.

(24) *Employees of the Patent Office.*—The Act should contain a clear provision disqualifying officers and employees of the Patent Office, during the tenure of their appointment in the office, from enquiring or taking out directly or indirectly, except by inheritance or bequest, any right or interest in a patent.

(25) *Time for filing complete specification.*—The period for which extension of the normal time limit for filing the ‘complete specification’ be granted, be enhanced from one month to three months.

(26) *Suits for infringement of patents.*—The Act should contain a clear provision entitling an “exclusive licensee” to institute suits for infringement in cases where the alleged infringement would affect his rights.

(27) *Marking of patented articles.*—The requirement in the present Act that the ‘year’ be marked on a patented article, in addition to the serial number of the patent, be dispensed with.

## II. The Patent Office

The Patent Office is at present much understaffed and badly housed. It is not, therefore, working efficiently, and large arrears have accumulated. In our opinion, the office requires to be reorganised, and its immediate needs are better and more suitable accommodation and additional supervisory staff.

Our main recommendations relating to the reorganization of the Patent office are:—

(28) *General set-up of the office.*—The office should have five Divisions as under:—

- (a) Engineering Division, dealing with patent applications for inventions in the field of Mechanical, Electrical, Communication, Civil and Textile Engineering. This Division will be in charge of a Deputy Controller (Engineering).
- (b) Chemistry Division dealing with patent applications for inventions in other fields, including Chemical and Metallurgical industries. This Division will be in charge of a Deputy Controller (Chemistry).
- (c) Public Relations Division under a Public Relations Officer, in charge of Publications section, Printing and Sales section, Publicity section, Search section, Documents, Inspection and Copying section, Enquiries section and the Library.
- (d) Establishment Division having Budget, Accounts and other sections under an Administrative Officer.
- (e) Policy and Special Proceedings Division, directly under the Controller.

(29) *Supervision by Controller.*—For the efficient working of the Patent Office, it is necessary that the Controller should give greater personal supervision to the working of the office, and devote individual attention to the various special proceedings under the Act. To enable him to do so, he should be relieved of the work of dealing with patent applications, except in cases which involve doubt or difficulty.

(30) *Examination of patent applications.*—There should be two Deputy Controllers, instead of one as at present. The Deputy Controllers should deal with patent applications which will be divided into (i) Engineering and (ii) Chemistry sections, and they will be authorised to accept or refuse applications, except in case of doubt or difficulty.

Examiners of Patents should be divided into different groups, each group dealing with allied subjects. There should be a Chief Examiner over four to five Examiners. The Chief Examiner will guide, control and supervise the work and personally check *every* report made by such Examiners, before forwarding it to the Deputy Controller.

(31) *Publicity and Search Branch.*—

- (i) The "Search Room" of the Patent Office should have an appropriately classified record of Indian and foreign patents, which will be periodically brought up-to-date.
- (ii) The Patent Office should carry out searches on the request of any member of the public on payment of prescribed search fees.
- (iii) The Patent Office should maintain a permanent museum of patented inventions.

(32) *Branch Offices.*—Branch Offices should be established at Bombay, Madras and Delhi, and if at any time the Head Office is shifted from Calcutta, there should be a Branch Office at Calcutta also.

Each Branch Office will be in charge of an Examiner of Patents, who will advise inventors and others on the practice and procedure of the Patent Office, and explain to them the objection raised by the Examiners of Patents in connection with their applications. The Branch Offices will have no statutory or Administrative duties, but they will maintain a library of patent literature and provide essential facilities to the public.

(33) *Pay Structure.*—The scales of pay of the Controller and the other staff of the Patent Office should be revised and grades fixed as set out in detail in paragraphs 222 and 230.

(34) *Recruitment.*—

- (i) The posts of Examiners of Patents should be filled by direct recruitment through the Union Public Service Commission by a competitive examination.

- (ii) New recruits should be on probation for 2 years during which period they should get training and pass the tests prescribed for Patent Agents in Patent Law and Practice.
- (iii) The posts of Chief Examiners, Deputy Controllers and Controller should be filled, as far as possible, by promotion on a pure selection basis from the next lower grades.
- (iv) As far as possible, a candidate for the post of Controller of Patents should be selected at least six months in advance of the vacancy and should be given a chance of foreign study unless his term of service as Controller is likely to be short.
- (v) Until a substantial number of Examiners are recruited on the basis of competitive examinations, the higher posts of the Patent Office should be open to direct recruitment so as to secure proper type of candidates required for the posts.

(35) *Location.*—The Patent Office may for the present continue in Calcutta. The question of its permanent location be considered after five years.

(36) *Publications of the Patent Office.*—(i) The publications of the Patent Office should be improved, both qualitatively and quantitatively. It is necessary that the Patent Office should publish a weekly Official Journal containing its notifications.

(ii) “Classified Abridgements” of published specifications are incomplete and out of date. They should be completed without delay and maintained upto date in future.

(37) *Printing of patent specifications.*—The Government Press is at present unable to print the patent specifications promptly and regularly. Until the Government Press is able to cope with this work satisfactorily, temporary arrangements should be made for having the patent specifications printed on contract in one or more private presses on a tender basis. For this purpose, it will be necessary to allot funds in the budget and place them at the disposal of the Controller.

(38) *Advisory Committee.*—An Advisory Committee should be constituted for advising the Controller. Its constitution and functions are given in paragraph 239.

### III. Additional Recommendations

(39) *National Patents Trust.*—In view of the proposal now under active consideration of Government for setting up a National Research Development Corporation, it is not necessary to establish a separate National Patents Trust. The proposed Corporation should, in addition to providing facilities for exploiting the results of researches financed from public funds, undertake the development of private inventions which may be dedicated to it and/or the development of which is considered necessary in the public interest.

(40) *Publicity*.—The present facilities for giving publicity to patented inventions are inadequate. They should be greatly improved on the lines suggested in paragraph 257.

(41) *Income-tax*.—The Indian Income-tax Act be amended so that the expenditure incurred on the acquisition of patent rights be written off by annual allowances spread over the unexpired period of the life of the patent, as is the case in England and America.

(42) *International Convention*.—India should join the International Convention for the protection of Industrial Property established under the Paris Convention of 1883.

BAKSHI TEK CHAND, *Chairman*.

GURUNATH BEWOOR, *Member*.

S. D. MAHANT, *Member*.

S. P. SEN, *Member*.

S. M. BASU, *Member*.

K. RAMA PAI, *Member-Secy*.

## **APPENDICES**



**APPENDIX I (Para 98)**  
(15 TABLES)

Table No. 1

*Number of patent applications showing also the number of such applications from Indians, filed each year from 1856-1949.*

Year	Total No. of applications filed.	Total No. of applications filed by Indians.	No. of applications originated (from 1902 onwards) in India.
1	2	3	4
1856	33	Nil	
1876	1,116	7	
1886	275	33	
1896	461	49	
1900	492	45	
1910	667	62	199
1920	1337	128	296
1930	1099	114	212
1931	940	109	208
1932	928	162	269
1933	954	199	295
1934	1007	203	341
1935	980	156	253
1936	1068	199	275
1937	1246	202	303
1938	1243	220	313
1939	1060	238	317
1940	741	214	274
1941	755	111	255
1942	681	175	234
1943	1097	219	316
1944	1527	241	297
1945	1989	246	330
1946	2610	236	301
1947	2370	222	267
1948	1921	297	361
1949	1725	345	399

Table No. 2.

## APPENDIX I (Para. 100).

(15 TABLES)

*Applications of Indian origin classified according to Provinces or Indian States of origin.*

NAME OF PROVINCE OR STATE	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Bengal . . . . .	73	119	106	129	91	96	100	106	99	83	86	77	73	87	115	124	83	105	90
Bombay . . . . .	40	58	65	82	61	53	77	76	91	69	72	72	70	66	80	58	80	103	98
United Provinces . . . . .	17	16	34	20	19	31	25	28	34	30	33	22	39	32	30	25	20	23	46
Punjab . . . . .	26	27	25	34	35	33	37	39	36	24	21	12	40	35	39	51	12	6	18
Madras . . . . .	19	18	22	22	14	26	22	18	15	20	19	24	21	18	22	20	24	41	46
Behar . . . . .	5	6	18	5	3	3	7	7	5	13	8	10	15	11	2	16	5	21	18
Delhi . . . . .	4	1	6	4	2	2	7	2	6	6	6	15	18	19	26	20	18	22	28
Assam . . . . .	6	10	2	5	7	3	3	6	4	3	2	..	7	2	1	4	3	1	2
C. P. & Berar . . . . .	2	1	..	7	4	5	4	..	4	6	2	2	2	2	3	2	1	9	7
N. W. F. P. . . . .	..	..	..	1	1	1	2	1	..	..	..	..	..	3	..	..	..	..	..
Ajmer . . . . .	..	..	..	..	..	..	..	..	..	2	1	..	1	..	..	..	..	..	..
Burma . . . . .	5	2	2	11	3	2	..	..	..	..	..	..	..	..	..	..	..	..	..
Indian States . . . . .	11	11	15	21	12	20	19	29	23	18	29	18	30	39	29	35	21	30	51
	269	208	295	341	253	275	303	312	317	274	279	252	316	314	357	355	267	361	399

Table No. 3

APPENDIX I (Para 101).  
(15 TABLES).

*Applications of foreign origin classified according to the countries of origin.*

NAME OF COUNTRY	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
United Kingdom . . . . .	350	299	289	321	366	426	424	446	347	290	325	316	491	651	938	1348	1198	901	694
Australia . . . . .	114	22	24	25	21	24	22	21	18	9	8	14	9	26	35	50	65	45	28
Canada . . . . .	2	2	1	3	2	7	4	10	8	9	4	4	25	38	22	51	56	13	12
Union of South Africa . . . . .	6	2	1	1	5	1	4	8	6	3	3	4	11	11	14	25	15	5	8
Newzealand . . . . .	3	7	4	4	5	4	4	6	4	2	4	..	1	2	3	3	4	1	..
Germany . . . . .	89	92	78	80	91	80	148	156	94	..	..	..	..	..	..	..	..	..	18
France . . . . .	17	31	35	42	32	38	37	33	40	9	..	..	..	..	28	89	60	78	66
Holand . . . . .	13	17	14	22	26	15	19	19	21	6	..	..	..	..	4	69	88	79	85
Switzerland . . . . .	17	5	15	11	15	13	20	20	20	8	8	6	7	23	33	66	69	49	77
Sweden . . . . .	21	19	30	13	11	6	18	9	15	4	6	4	7	11	22	21	22	30	23
Italy . . . . .	17	6	12	15	9	10	15	19	12	9	..	..	..	..	..	1	9	19	24
Belgium . . . . .	13	9	7	5	10	6	10	11	8	1	..	..	..	..	7	12	11	4	16
Denmark . . . . .	1	3	8	5	8	6	9	8	7	1	..	..	..	..	1	15	12	15	6

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Table No. 3—*contd.*

## APPENDIX I (Para 102).

(15 TABLES).

*Applications of foreign origin, classified according to the countries of origin.*

NAME OF COUNTRY	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Norway . . . . .	4	3	7	4	9	5	3	..	4	1	..	..	..	..	..	14	11	8	10
Czechoslovakia . . . . .	1	2	7	3	2	3	3	1	2	..	..	..	..	..	1	3	12	6	10
Hungary . . . . .	2	3	3	2	1	..	3	4	1	3	..	..	..	..	..	..	2	1	4
Austria . . . . .	14	10	12	9	8	5	10	2	..	..	..	..	..	..	..	..	4	2	5
United States of America . . . . .	117	79	69	59	75	115	149	114	103	99	106	75	186	228	421	452	439	273	218
Spain . . . . .	6	18	6	9	4	4	2	..	..	..	..	..	..	..	2	2	7	4	1
Argentine Republic . . . . .	3	1	3	..	1	..	..	..	..	1	1	1	1	8	4	10	7	7	1
Japan . . . . .	9	6	3	5	7	8	8	12	4	3	1	..	..	..	..	..	..	..	..
Irish Free State . . . . .	..	2	2	3	2	..	..	..	..	..	1	..	1	1	2	..	..	2	..
Other foreign countries . . . . .	13	21	29	25	17	17	31	31	27	9	9	5	12	14	17	22	12	18	20
	732	659	659	666	727	793	943	930	743	467	476	429	571	1013	1554	2253	2103	1560	1326

## APPENDIX I (Para 102).

(15 TABLES)

*Applications for patents claiming "priority" filed during 1931—49.*

Year	Total No. of applications filed.	No. of Priority applications	Percentage of Priority applications in relation to the total number of applications filed
1931	940	312	33%
1932	928	267	29%
1933	954	266	28%
1934	1007	291	29%
1935	980	347	35%
1936	1068	396	37%
1937	1246	430	35%
1938	1243	439	35%
1939	1060	364	34%
1940	741	211	28%
1941	755	174	23%
1942	681	166	24%
1943	1097	347	32%
1944	1527	412	27%
1945	1989	677	34%
1946	2610	1157	44%
1947	2370	1129	48%
1948	1921	707	37%
1949	1725	636	37%

Table No. 5.

## APPENDIX I (Para. 105).

(15 TABLES)

*Applications "accepted" "opposed" and "sealed" in relation to those filed each year during 1931—47.*

Year	No. of applica- tions filed.	No. of applica- tions accepted.	No. of opposi- tions entered.	No. of applications sealed.
1931	940	832	5	807
1932	928	809	13	766
1933	954	843	22	808
1934	1007	893	15	838
1935	980	893	13	853
1936	1068	963	18	920
1937	1246	1144	17	1095
1938	1243	1124	14	1042
1939	1060	866	10	787
1940	741	639	12	602
1941	755	662	9	620
1942	681	589	13	559
1943	1097	969	14	929
1944	1527	1422	12	1335
1945	1989	1812	15	1721
1946	2610	2383	10	2255
1947	2370	2181	7	2073

## APPENDIX I (Para 108).

(15 TABLES)

*Patents "sealed" and patents ceased each year during 1931—49.*

Year	Granted	Ceased	
1912—1930	751	611	(Average)
1931	957	920	
1932	820	1162	
1933	723	1188	
1934	771	970	
1935	892	754	
1936	921	666	
1937	949	623	
1938	1084	698	
1939	1079	702	
1940	652	733	
1941	568	681	
1942	611	697	
1943	528	517	
1944	679	341	
1945	804	265	
1946	644	400	
1947	1215	736	
1948	1394	949	
1949	3192	1680	

Table No. 7.

APPENDIX I (Para. 109).

(15 TABLES)

*Percentage of the Patents sealed and kept in force for the duration indicated in respect of the applications for patents made in 1912, 1922, 1932 and 1942*

Year	Applica- tions filed		Patents sealed		Number and percentage of patents kept in force in relation to those sealed for the duration indicated below																				Extended Patents						
			No.	% in re- lation to applica- tions filed	5th year		6th year		7th year		8th year		9th year		10th year		11th year		12th year		13th year		14th year		15th year		16th year		18th year		21st year
	No.	%			No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	
1912	678	606	89	250	41	224	37	182	30	164	27	153	25	119	20	91	15	74	12	57	9	45	7	3	5	2	3	...	..	1	.2
1922	1,117	934	84	485	52	375	40	309	33	272	29	232	25	188	20	148	16	110	12	86	9	73	8	53	6	50	5	...	..	...	..
1932	928	771	83	462	60	393	51	342	44	298	39	218	28	186	24	172	22	155	20	138	18	33	17	125	16	107	14	.1	.1	...	...
1942	681	560	82	52	9	37	7	41	7	168	29	110	20	17	3	...	...	4	7	1	2	...	...	...	...	...	...	...	...	...	...



## APPENDIX I (Para 110).

(15 TABLES)

*Patents whose normal term was extended.*

Year of Patents	Extended for a period of						Total No. of Patents extended.
	10 Years	8 Years	7 Years	6 Years	5 Years	3 Years	
1920	..	..	..	..	1	1	2
1921	..	..	..	..	..	..	..
1922	..	..	..	..	..	..	..
1923	..	..	..	..	..	..	..
1924	..	..	..	..	1	..	1
1925	..	..	1	..	..	..	1
1926	..	..	..	..	1	..	1
1927	..	1	1	..	..	..	2
1928	..	..	..	..	4	..	4
1929	1	..	..	..	..	..	1
1930	..	..	..	..	..	..	..
1931	..	..	..	..	3	..	3
1932	..	..	..	..	1	..	1
1933	..	..	..	..	..	..	..

**APPENDIX I (Para. 111)**

(15 TABLES)

*Applications filed under Section 16 for "Restoration of Patents"  
during 1938-49.*

---

Year	Number of applications for Restoration filed
1938	6
1939	10
1940	7
1941	18
1942	14
1943	22
1944	22
1945	24
1946	25
1947	26
1948	36
1949	29

---

## APPENDIX I (Para. 112)

(15 TABLES)

*Requests filed under Section 17 for amendment of applications and specifications during 1938-49*

Year	Number of requests filed	No. of requests allowed
1938	77	74
1939	73	70
1940	63	63
1941	32	31
1942	70	69
1943	62	62
1944	61	61
1945	67	67
1946	111	107
1947	166	166
1948	210	209
1949	152	133†

\*One request filed in 1948 was pending at the end of the year 1949.

†19 requests filed in 1949 were still pending at the end of the year 1949.

## APPENDIX I (Para. 122)

(15 TABLES)

*Number of entries made in the Register of Patents during 1944-48*

Year	Sealed cases	Assignments, etc.	Renewal fees	Other entries	Total
1944	679	102	3266	476	4523
1945	804	35	3460	356	4655
1946	644	55	3955	606	5260
1947	1215	9	4403	74	5701
1948	2640	166	5239	113	8158

## APPENDIX I (Para 124)

(15 TABLES)

*Miscellaneous proceedings under the Act durings 1944-49*

Year	Duplicate Patents	Certified copies	Inspection of Register of Patents	Rectifica- tion of Register	Correcti on of clerical errors
1944	12	102	25	Nil	2
1945	13	105	67	Nil	2
1946	7	38	88	Nil	2
1947	5	32	73	Nil	2
1948	6	792	46	Nil	16
1949	3	555	331	Nil	4

## APPENDIX I (Para 125)

Table No. 13

(15 TABLES)

*Annual Income and Expenditure of the Patent Office and also  
the surplus of Income over Expenditure from 1912-49*

Year	Receipts			Expenditure			Surplus		
	Rs.	AS.	PS.	Rs.	AS.	PS.	Rs.	AS.	PS.
1912	72,017	1	0	Figures not available					
1913	72,159	6	0	Ditto					
1914	73,159	8	0	Ditto					
1915	69,760	3	0	Ditto					
1916	77,608	13	0	Ditto					
1917	90,846	7	0	Ditto					
1918	95,166	8	0	Ditto					
1919	1,29,672	6	0	47,156	7	0	82,515	15	0
1920	1,23,008	2	9	41,723	5	6	81,284	13	3
1921	1,39,164	4	0	64,987	0	0	74,177	4	0
1922	1,38,130	15	0	56,362	6	4	81,768	8	8
1923	1,41,764	2	0	59,242	9	8	82,521	8	4
1924	1,44,869	14	0	50,057	13	11	94,812	0	1
1925	1,47,310	7	0	61,286	11	8	86,023	11	4
1926	1,49,493	2	0	64,491	2	0	85,002	0	0
1927	1,57,895	1	0	63,773	1	0	94,122	0	0
1928	1,77,607	8	0	73,695	6	0	1,03,912	2	0
1929	2,04,003	6	0	82,919	5	4	1,21,084	0	8
1930	2,05,363	13	0	1,02,662	0	1	1,02,701	12	11
1931	1,91,420	3	0	93,500	10	0	97,919	9	0
1932	1,89,388	14	3	80,790	5	11	1,08,598	8	4
1933	1,93,142	0	0	83,304	12	2	1,09,837	3	10
1934	1,95,368	15	9	85,631	14	1	1,09,737	1	8
1935	2,04,980	7	11	94,878	0	9	1,10,102	7	2
1936	2,02,573	10	0	94,304	15	10	1,08,268	10	2
1937	2,33,991	15	0	96,311	14	6	1,37,680	0	6
1938	2,45,020	6	3	96,030	0	1	1,48,940	6	2
1939	2,34,959	7	0	1,00,968	15	1	1,33,990	7	11
1940	1,98,247	6	0	99,683	14	7	98,563	7	5
1941	2,21,943	8	6	91,018	12	8	1,30,924	11	10
1942	2,56,503	5	0	89,530	15	1	1,66,972	5	11
1943	2,77,405	12	0	1,05,783	12	1	1,71,621	15	11
1944	3,06,216	1	0	1,19,140	14	3	1,87,075	2	9
1945	3,47,842	0	6	1,83,522	1	1	1,64,319	15	5
1946	4,42,500	9	6	2,66,425	2	10	1,76,075	6	8
1947	5,28,810	9	6	3,22,846	7	3	2,05,964	2	3
1948	5,76,213	4	10	3,72,502	1	1	2,03,711	3	9
1949	6,29,833	1	6	3,75,154	13	10	2,54,678	3	8

## APPENDIX I (Para 125)

Table No. 14:

(15 TABLES)

*Analysis of Income of the Patent Office from 1940-49*

Year	Application fee	Sealing fee	Renewal fee	Other fees	Total
	Rs.	Rs.	Rs.	Rs.	Rs.
1940 . .	7,410	19,530	1,57,700	13,607	1,98,247
1941 . .	7,550	17,040	1,80,200	17,153	2,21,943
1942 . .	6,810	18,840	2,19,700	11,153	2,56,503
1943 . .	10,960	16,440	2,37,250	12,755	2,77,405
1944 . .	15,270	20,370	2,56,000	14,576	3,06,216
1945 . .	19,890	23,730	2,87,750	16,272	3,47,842
1946 . .	53,060	38,910	3,31,700	18,830	4,42,500
1947 . .	69,120	59,820	3,71,250	28,620	5,28,810
1948 . .	53,710	81,660	4,06,100	34,743	6,76,213
1949 . .	46,990	68,820	4,78,200	35,773	6,29,833

**APPENDIX I (Para. 125)**

(15 TABLES)

*Statement showing the Expenditure of the Patent Office from 1940 to 1949*

Year	Total salary of the staff including allowance	Total Expenditure	Percentage of salary in relation to the total expenditure
	Rs.	Rs.	
1940	90,148	99,684	90%
1941	85,433	91,019	94%
1942	83,243	89,531	93%
1943	89,159	1,05,784	84%
1944	1,05,524	1,19,141	89%
1945	1,64,901	1,83,522	90%
1946	2,40,906	2,66,425	90%
1947	2,86,924	3,22,846	89%
1948	3,16,815	3,72,502	85%
1949	3,21,538	3,75,155	86%

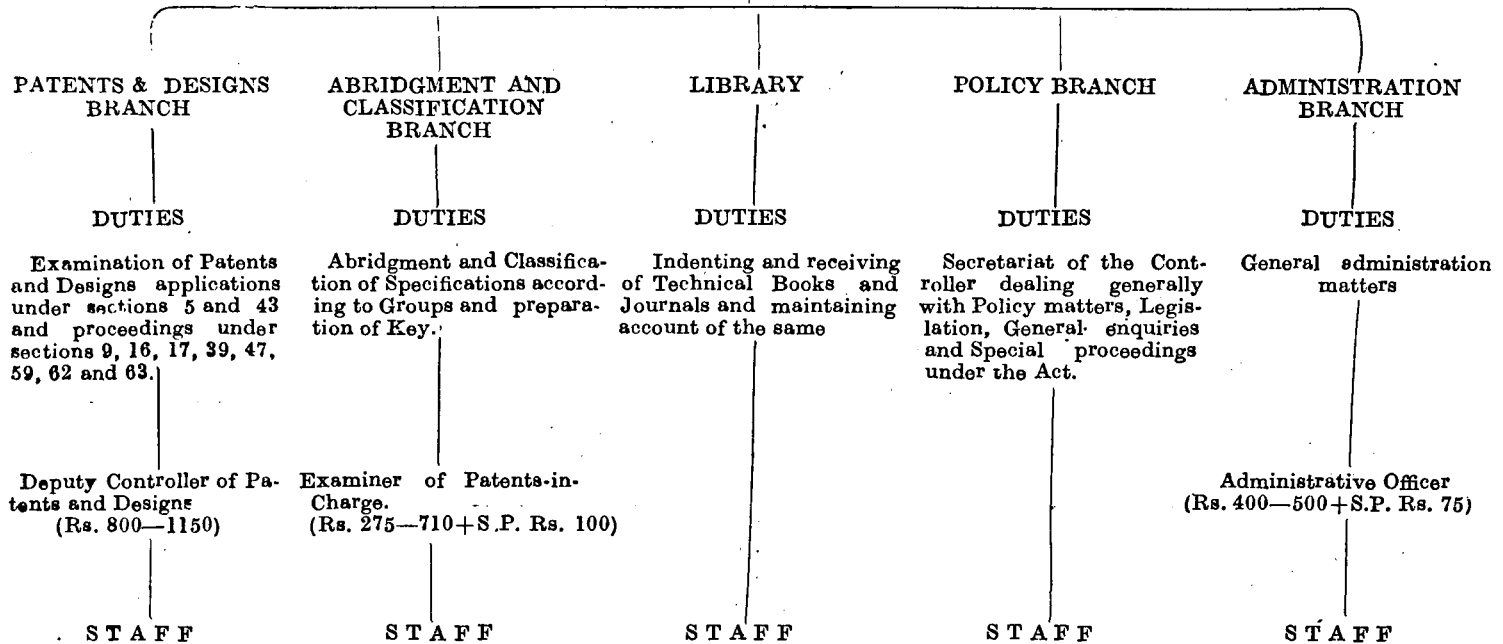


## APPENDIX II (Para. 197)

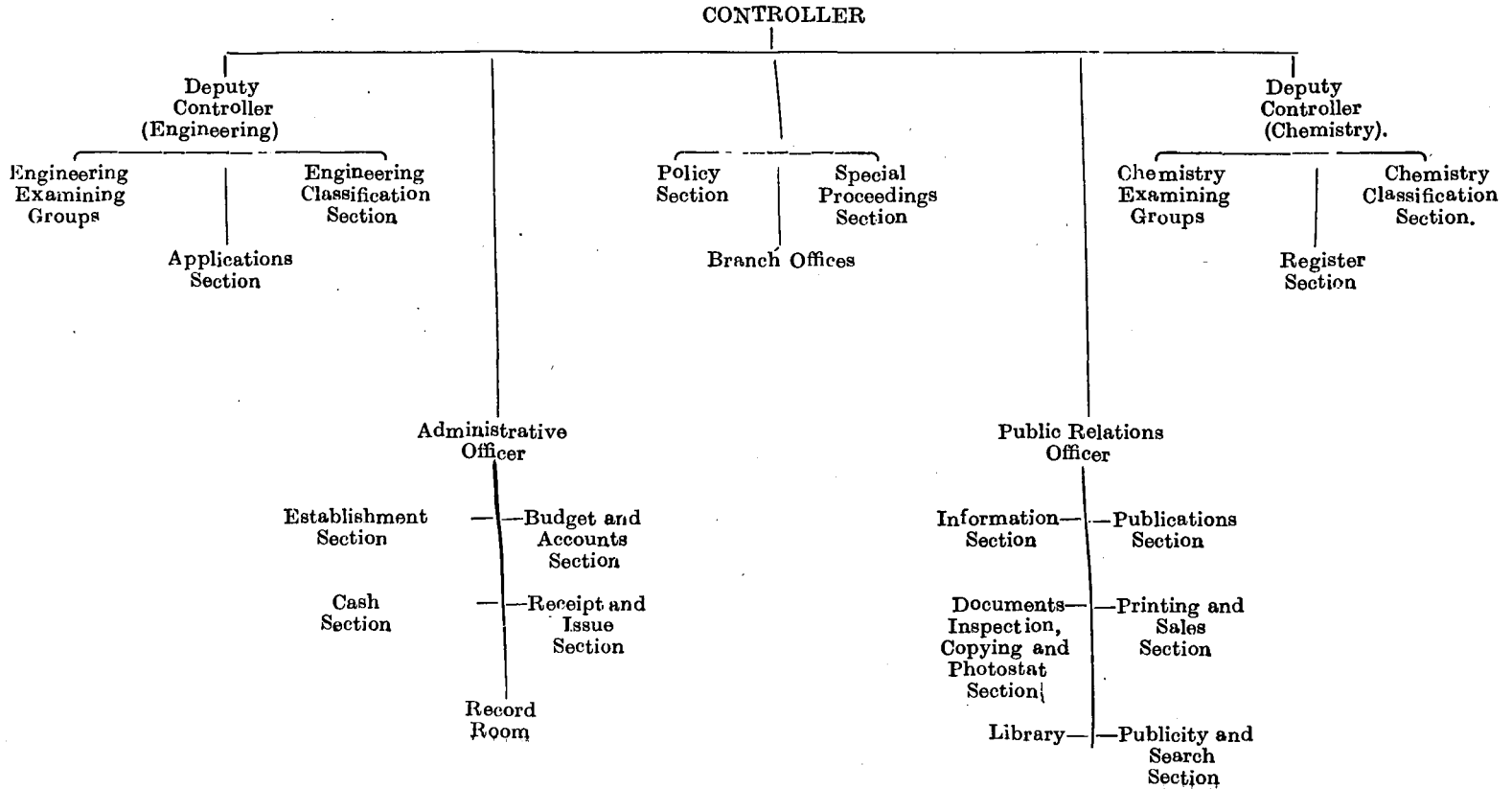
*Present set up of the Patent Office*

## CONTROLLER

(Rs. 1300—1600)



(19 CHARTS)

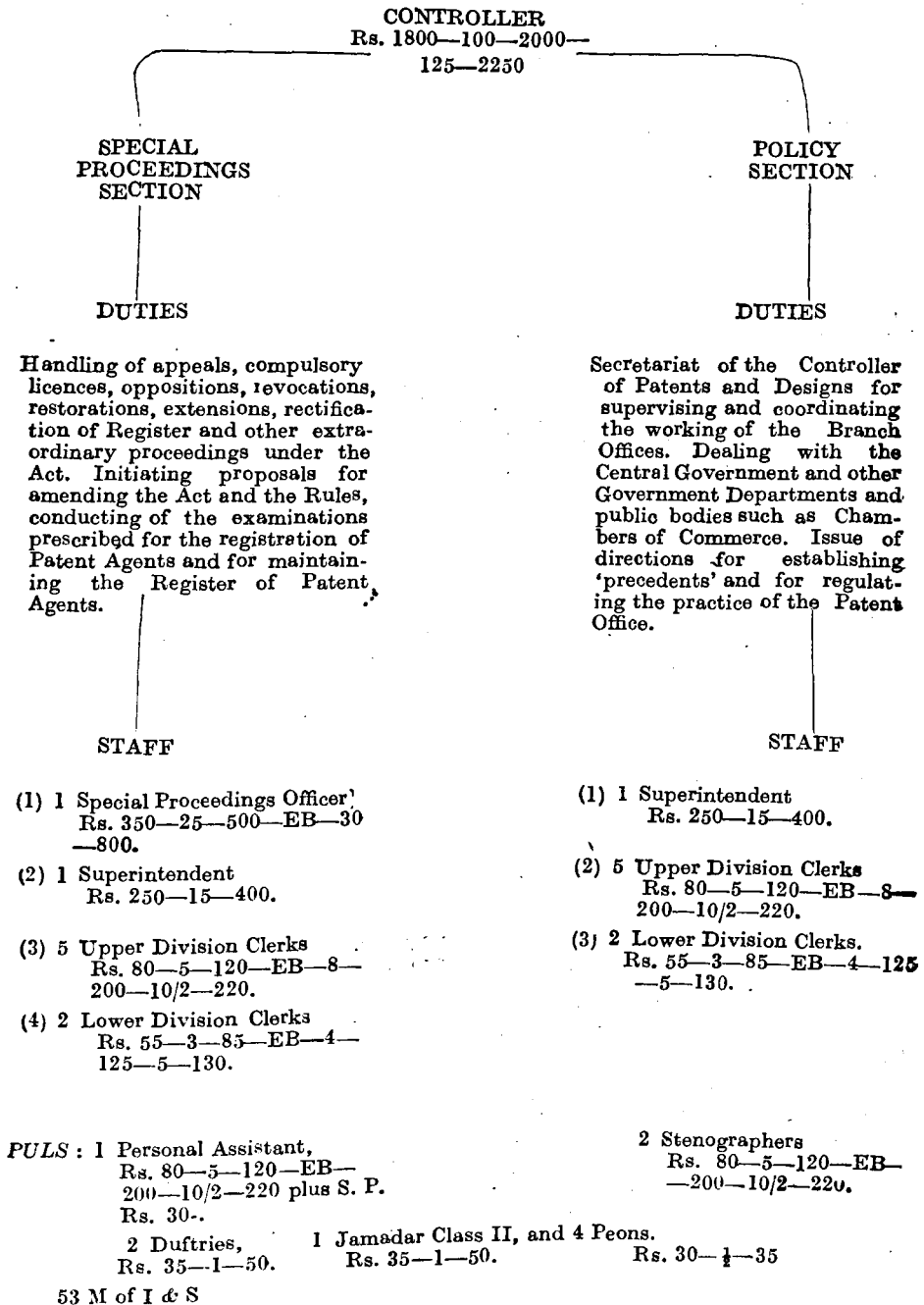


*Policy and Special Proceedings Sections*

## APPENDIX III (Para. 232)

Chart No. 2

(19 CHARTS)

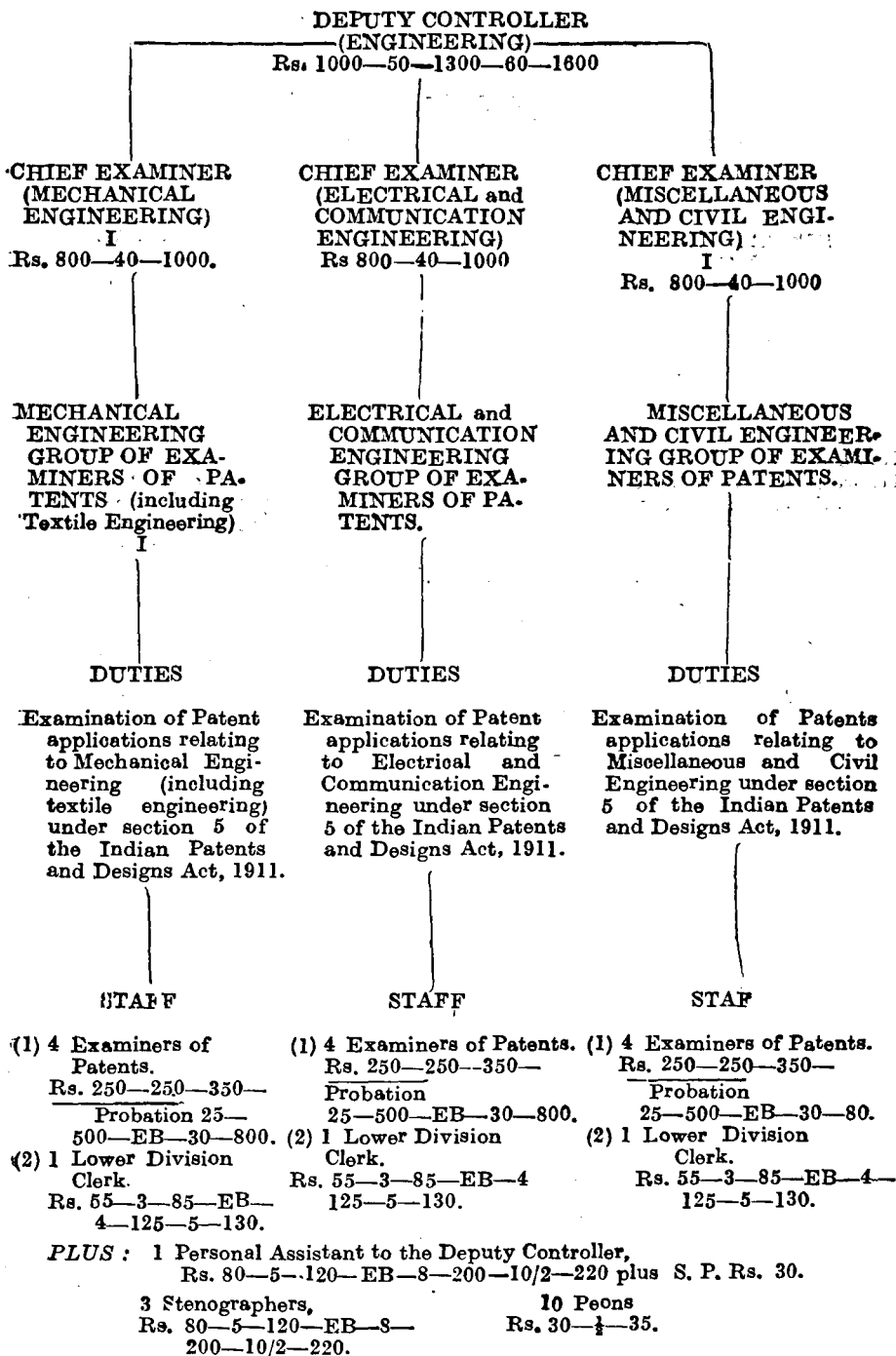


## Examination Groups of the Engineering Division

## APPENDIX III (Para 232)

Chart No. 3

(19 CHARTS)



*Application Section*

APPENDIX III (Para 232)  
(19 CHARTS)

Chart No. 4

DEPUTY CONTROLLER  
(ENGINEERING)

(See Chart No. 3)

APPLICATION  
SECTION

DUTIES

Official examination of Patent applications  
filed at the Patent Office.

STAFF

- (1) Superintendent  
Rs. 250—15—400.
- (2) 6 Upper Division Clerks  
Rs. 80—5—120—EB—8—200—10/2—  
220.
- (3) 3 Lower Division Clerks  
Rs. 55—3—85—EB—4—125—5—130.

PLUS :—1 Daftry, and 1 Peon.  
Rs. 35—1—50. Rs. 30—1—35.

*Classification Section Engineering***APPENDIX III (Para 232)  
(19 CHARTS)****Chart No. 5****DEPUTY CONTROLLER  
(ENGINEERING)**

(See Chart No. 3)

**ENGINEERING  
CLASSIFICATION  
SECTION****DUTIES**

This will be the Central Branch of the Patent Office where patent specifications connected with inventions in the field of Engineering will be properly classified for search purposes. Will be responsible for the compilation of classification index and key relating to classes and sub-classes in the field of engineering.

**STAFF**

- (1) 3 Examiners of Patents  
Rs. 250—250—350—35—500—EB—30—800.  
Probation
- (2) 1 Superintendent  
Rs. 250—15—400.
- (3) 4 Upper Division Cleks  
Rs. 80—5—120—EB—8—200—10/2—200.
- (4) 2 Lower Division Clerks  
Rs. 55—3—85—EB—4—125—5—130.

**PLUS :** 1 Stenographer  
Rs. 80—5—120—EB—8—200—10/2—220.

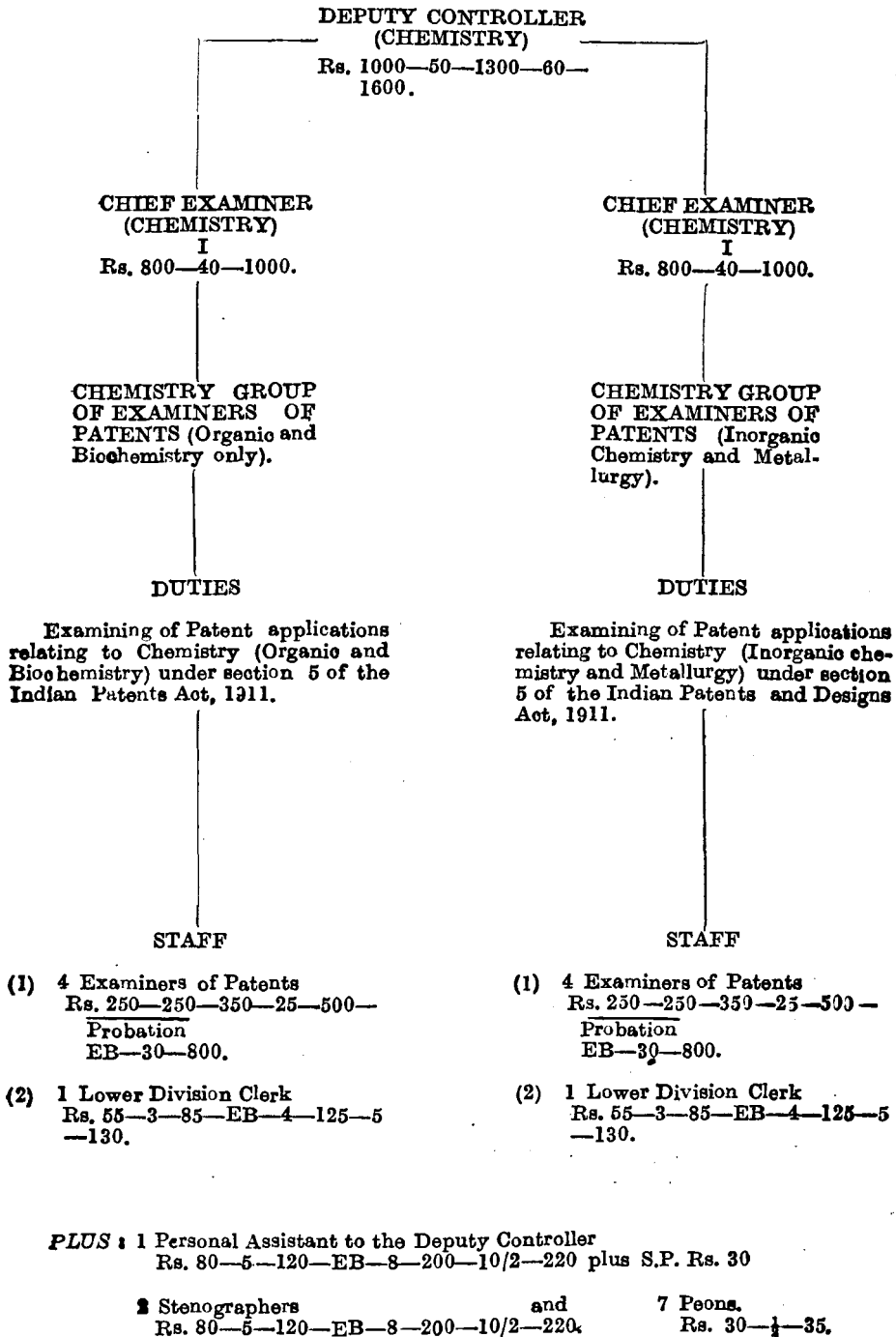
1 Duftry, and 2 Peons.  
35—1—50. Rs. 30— $\frac{1}{2}$ —35.

*Examination Groups of the Chemistry Division*

**APPENDIX III (Para 232)**

**Chart No. 6**

(19 CHARTS)



## Register Section

APPENDIX III (Para. 232)

Chart No. 7

(19 CHARTS)

DEPUTY CONTROLLER  
(CHEMISTRY)  
(See Chart No. 6)

REGISTER  
SECTION

## DUTIES

Sealing of Letters Patents in respect of Patent applications filed in the Patent Office ; making entries in the Register of Patents ; dealing with licences, assignments and renewal fees ; notification of all proceedings which have to be notified in the Register of Patents, after the Patents have been sealed.

## STAFF

- (1) 1 Superintendent  
Rs. 250—15—400.
- (2) 5 Upper Division Clerks  
Rs. 80—5—120—EB—8—200—10/2—220.
- (3) 2 Lower Division Clerks.  
Rs. 55—3—85—EB—4—125—5—130.

**PLUS:** 1 Duftry. and 1 Peon.  
Rs. 35—1—50. Rs. 30—1—35.



## Classification Section, Chemistry

APPENDIX III (Para. 232)

Chart No. 8

(19 CHARTS)

DEPUTY CONTROLLER  
(CHEMISTRY)  
(See Chart No. 6).

CHEMISTRY  
CLASSIFICATION  
SECTION

## DUTIES

This will be the Central Branch of the Patent Office where patent specifications connected with Chemical inventions will be properly classified for search purposes. Will be responsible for the compilation of classification index and key relating to class in the field of science.

## STAFF

- (1) 2 Examiners of Patents  
Rs. 250—250—350—25—500—EB—30—800.  
Probation
- (2) 1 Superintendent  
Rs. 250—15—400.
- (3) 4 Upper Division Clerks  
Rs. 80—5—120—EB—8—200—10/2—220.
- (4) 2 Lower Division Clerks  
Rs. 55—3—85—EB—4—125—5—130.

PLUS : 1 Stenographer  
Rs. 80—5—120—EB—8—200—10/2—220.

1 Duftry,  
Rs. 35—1—50.

and 2 Peons  
Rs. 30— $\frac{1}{2}$ —35

*Designs Section*

APPENDIX III (Para. 232)

Chart No. 9

(19 CHARTS)

DEPUTY CONTROLLER  
(CHEMISTRY)  
(See Chart No. 6)

DESIGNS  
SECTION

— JTIES

Will be the Central Branch of the Patent Office where all the internal work of the Patent Office will be done in connection with applications filed for the Registration of Designs.

STAFF

- (1) 1 Examiner of Designs  
Rs. 250—250—350—25—500—EB—30—800.  
Probation
- (2) 1 Superintendent  
Rs. 250—15—400.
- (3) 4 Upper Division Clerks  
Rs. 80—5—120—EB—8—200—10/2—220.
- (4) 2 Lower Division Clerks  
Rs. 55—3—85—EB—4—125—5—130.

PLUS : 1 Stenographer  
Rs. 80—5—120—EB—8—200—  
10/2—220.

1 Duftry,  
Rs. 35—1—50.  
and

2 Peons.  
Rs. 30— $\frac{1}{2}$ —35.

*Information Section*

APPENDIX III (Para. 232)

Chart No. 10

(19 CHARTS)

PUBLIC RELATIONS  
OFFICER  
Rs. 800—40—1000

INFORMATION  
SECTION

## DUTIES

Attending to all verbal and written enquiries from the public on various matters connected with Patents and Designs. Guiding inventors in obtaining Patents and Designs. Rendering general advice to inventors regarding the patentability of their inventions.

## STAFF

- (1) Information Officer  
Rs. 350—25—500—EB—30—800.
- (2) 1 Upper Division Clerk  
Rs. 80—5—120—EB—8—200—10/2—220.
- (3) 1 Lower Division Clerk  
Rs. 55—3—85—EB—4—125—5—130.

PLUS: 1 Stenographer to the Public Relations Officer  
Rs. 80—5—120—EB—8—200—10/2—220.

1 Stenographer  
Rs. 80—5—120—EB—8—200—10/2—220.

1 Duftry  
Rs. 35—1—50 and

3 Peons  
30—1—35

*Publications Section*

APPENDIX III (Para. 232)

Chart No. 11

(19 CHARTS)

PUBLIC RELATIONS  
OFFICER  
See Chart No. 10

PUBLICATIONS  
SECTION

DUTIES

Publication of all the publications of the Patent Office. Will collect, arrange and edit material for different publications of the Patent Office. Will look after the subscription list to the publications and their distribution. Will look after the collection and publication of the Patent Office.

STAFF

- (1) 1 Superintendent  
Rs. 250—15—400.
- (2) 5 Upper Division Clerks  
Rs. 80—5—120—EB—8—200—10/2—220.
- (3) 2 Lower Division Clerks  
Rs. 55—3—85—EB—4—125—5—130.

PLUS: 1 Duftry

Rs. 35—1—50.

and 1 Peon

Rs. 30—1—35.

(19 CHARTS)

PUBLIC RELATIONS  
OFFICER  
(See Chart No. 10)

PRINTING AND SALES  
SECTION

DUTIES

Will collect material for printing and despatch the same to the Press. Will arrange for the reading and the correction of proofs received from the Press. Will arrange for binding of the records of the Patent Office. Will be responsible for the sale of all the publications of the Patent Office and for the maintenance of a proper account thereof.

STAFF

- (1) 1 Superintendent  
Rs. 250—15—400.
- (2) 2 Upper Division Clerks  
Rs. 80—5—120—EB—8—200—10/2—220.
- (3) 1 Lower Division Clerk  
Rs. 55—3—85—EB—4—125—5—130.
- (4) 4 Proof Readers  
Rs. 55—3—85—EB—4—125—5—130.
- (5) 1 Salesman  
Rs. 55—3—85—EB—4—125—5—130.

PLUS : 1 Duftry Rs. 35—1—50. and 1 Peon Rs. 30— $\frac{1}{2}$ —35.

*Document Inspection, Copying and Photostat Section*

APPENDIX III (Para 232)

Chart No. 13

(19 CHARTS)

PUBLIC RELATIONS  
OFFICER

See Chart No. 10

DOCUMENTS INSPECTION,  
COPYING AND PHOTO-  
STAT SECTION.

## DUTIES

Preparation of typed and photostat copies of all documents, copies of which are to be supplied to Patent Agents and applicants, etc., on payment when asked for and keeping of a proper account of the same.

Will arrange for the inspection of the Registers, applications for Patents and the specifications filed in respect of them, and other documents which are open to public inspection, but are not available for free inspection in the Search Room and the Inspection Centres by the patentees Patent Agents and other members of public. It will keep record of all such inspections.

## STAFF

- (1) 1 Superintendent  
Rs. 250—15—400
- (2) 2 Upper Division Clerks  
Rs. 80—5—120—EB—8—200—10/2—220
- (3) 6 Lower Division Clerks  
Rs. 55—3—85—EB—4—125—5—130.

PLUS : 1 Duftry and 1 Peon.  
Rs. 35—1—50 Rs. 30—1/2—35

## (19 CHARTS)

PUBLIC RELATIONS  
OFFICER

(See Chart No. 10)

PUBLICITY AND  
SEARCH SECTION

## DUTIES

This branch will be incharge of—

- (1) all publicity work for the popularisation of Indian Patent System ;
- (2) all publicity required to be given to the Indian Patented Inventions ;
- (3) organizing exhibitions of the patented inventions in different parts of the country, periodically ;
- (4) organizing and maintaining a permanent museum of patented inventions at the Patent Office ;
- (5) inspection of all the free Inspection Centres located at different places in the country to ensure that records kept therein are up-to-date and proper assistance is being rendered to the visitors ;
- (6) the maintenance of a proper register of patents which their owners wish either to sell or to licence, and the preparation of non-technical notes on all such patents for giving them publicity for purposes of their sale or licence ;
- (7) the maintenance of a proper register in which all problems the solution of which may be sought by the industries of the country will be entered, and the preparation of lists of all such problems for giving them publicity for the purpose of finding out solutions for them ;
- (8) the maintenance of an up-to-date mailing list of the different industries of the country and the Government and Semi-Government Research institutions, etc., to which the non-technical notes and problems will be distributed ;

- (9) the maintenance of a ' Search Room ' at the Patent Office where up-to-date and properly classified Indian Foreign Patents and Designs records required for search purposes will be kept ; and
- (10) Carrying out searches for public on payment and maintenance of guides and helpers to assist the public in the ' Search Room ' by directing them to proper classes and sub-classes.

|

STAFF

- (1) 3 Technical Officers  
Rs. 350—25—500—EB—30—800.
- (2) 1 Superintendent  
Rs. 250—15—400.
- (3) 8 Upper Division Clerks  
Rs. 80—5—120—EB—8—200—10/2—220.
- (4) 4 Lower Division Clerks  
Rs. 55—3—85—EB—4—125—5—130.
- PLUS : 1 Stenographer      4 Duftries and 5 Peons  
80—5—120—EB      Rs. 35—1 30—1—35  
—8—200—10/2      —50  
—220.



(19 CHARTS)

PUBLIC RELATIONS  
OFFICER

(See Chart No. 10)

## LIBRARY

## DUTIES

There will be an up-to-date technical library attached to the Patent Office (Head Office). It will be available to the staff of the Patent Office as well as to the public. The staff in the Library will be responsible for indenting and receipt of books, etc., of which they would maintain an account. They will also be responsible for its upkeep, etc. Library hours will be from 9 A. M. to 8 P. M.

## STAFF

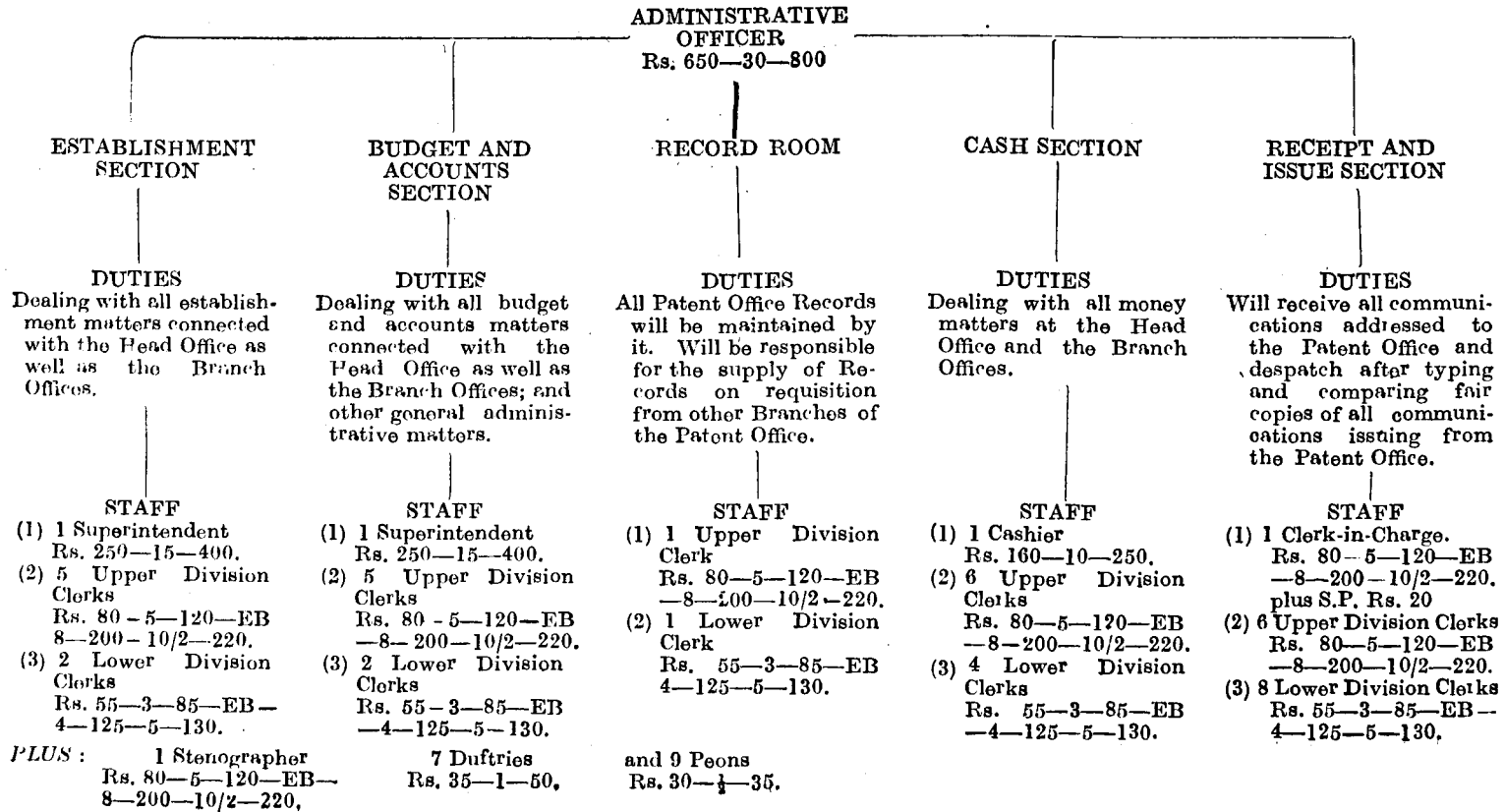
- (1) 1 Librarian  
Rs. 160—10—350.
  - (2) 1 Upper Division Clerk  
Rs. 80—5—120—EB—8—200—10/2—220.
  - (3) 1 Lower Division Clerk  
Rs. 55—3—85—E.B.—4—125—5—130.
  - (4) 2 Library Attendants  
Rs. 35—1—50.
- PLUS : 1 Duftry and 2 Peons  
Rs. 35—1—50 Rs. 30—1—35

Administration Division

APPENDIX III (Para. 232)

Chart No. 16

(19 CHARTS)



(19 CHARTS)

BRANCH OFFICE  
BOMBAY

EXAMINER OF PATENTS

Rs. 250—250—350—25—

Probation

500—EB—30—800.

DUTIES

Maintenance of a Library of all literature relating to patents. Rendering of advice to all intending patentees and others on the procedure they should follow. Explaining of objections raised by Examiners of patents in connection with the examination of Patent applications. Receiving of all fees, etc. that the public may like to pay at the Branch Office. Will receive from public all communications addressed to the Controller for onward transmission to Head Office. Drawing and disbursing pay and allowances to staff of the Branch Office. Correspondence with Head Office and public.

STAFF

1 Lower Division Clerk

Rs. 55—3—85—4—125—EB—5—130.

PLUS: 2 Peons

30— $\frac{1}{2}$ —35.

## APPENDIX III (Para. 232)

Chart No. 1E

(19 CHARTS)

BRANCH OFFICE  
MADRASEXAMINER OF  
PATENTS

Rs. 250—250—350—25—

Probation  
500—EB—30—800.

## DUTIES

Maintenance of a library of all literature relating to patents. Rendering of advice to all intending patentees and others on the procedure they should follow. Explaining of objections raised by Examiners of patents in connection with the examination of patent applications. Receiving of all fees, etc. that the public may like to pay at the Branch Office. Will receive from public all communications addressed to the Controller for onward transmission to Head Office. Drawing and disbursing pay and allowances to staff of the Branch Office. Correspondence with Head Office and public.

## STAFF

1 Lower Division Clerk.

Rs. 55—3—85—4—125—EB—5—130.

PLUS: 2 Peons  
30— $\frac{1}{2}$ —35.

BRANCH OFFICE  
DELHIEXAMINERS OF  
PATENTS  
Rs. 250-250-350-25  
Probation

-500-EB-30-800

## DUTIES

Maintenance of a library of all literature relating to patents. Rendering of advice to all intending patentees and others on the procedure they should follow. Explaining of objections raised by Examiners of patents in connection with the examination of patent applications. Receiving of all fees etc. that the public may like to pay at the Branch Office. Will receive from public all communications addressed to the Controller for onward transmission to Head Office. Drawing and disbursing pay and allowances to staff of the Branch Office. Correspondence with Head Office and public.

## STAFF

1 Lower Division Clerk  
Rs. 55-3-85-4-125-EB-5-130.

PLUS : 2 Peons.  
Rs. 30- $\frac{1}{2}$ -35.

## APPENDIX IV (Para. 232)

Table showing the existing and proposed strength of the Patent Office

S. No.	Designation of Post	Present Strength	Proposed Strength
1	2	3	4
1	Controller of Patents and Designs . . . . .	1	1
2	Deputy Controllers of Patents and Designs . . . . .	1	2
3	Public Relations Officer . . . . .	..	1
4	Chief Examiners . . . . .	..	5
5	Examiner of Patents-in-Charge . . . . .	1	..
6	Administrative Officer . . . . .	1	1
7	Information Officer . . . . .	..	1
8	Special Proceedings Officer . . . . .	..	1
9	Examiners of Patents . . . . .	8	28
10	Examiner of Designs . . . . .	..	
11	Technical Officers . . . . .	..	3
12	Assistant Examiners of Patents . . . . .	17	..
13	Superintendents . . . . .	2	13
14	Assistant-in-Charge . . . . .	1	..
15	Cashier . . . . .	1	1
	Assistants/Upper Division Clerks . . . . .	16	..
17	Personal Assistants . . . . .	..	3
18	Stenographer . . . . .	1	14
19	Clerk-in-Charge . . . . .	2	1
20	Librarian . . . . .	1	1
21	Upper Division Clerks . . . . .	..	75
22	Lower Division Clerks . . . . .	55	55
23	Proof Readers . . . . .	..	4
24	Salesman . . . . .	..	1
25	Library Attendants . . . . .	..	2
26	Duftries . . . . .	10	23
27	Jamadars (Class II) . . . . .	2	1
28	Peons . . . . .	30	57

## APPENDIX V (Foot note to Para 237).

## RECOMMENDATIONS AS TO CONTENTS OF THE OFFICIAL JOURNAL

1. *Official Notices:*

(i) Special Notices.

(ii) Recurring Notices,—

*e.g.*, Information as to—

(a) the location of the Head Office and the Branch Offices of the Patent Office,

(b) the location of the Inspection Centres,

(c) the publications of the Patent Office, and their prices,

(d) rules of practice which are of importance as general information to applicants for patents, and

(e) Patent Office Library.

2. *Lists of Patents available for sale or Licence (on the Model of the Lists Published in the United States Patent Office Gazette).*3. *Patent Proceedings:*

Under this heading will be published Notifications, if any, in respect of the following matters:—

(i) Applications filed, in the order of their Serial Numbers: The Notification should contain the Serial Numbers, the names of the applicants and abridged titles of the specifications.

(ii) Complete Specifications filed: The Notification should contain a brief heading showing the field of invention, the Serial Number of the Specification, the name of the applicant, abridged statement of objects and one or two claims.

(iii) Applications treated as abandoned on account of failure to file the Complete Specification.

(iv) Applications dated otherwise than of the date of their filing.

(v) Amendments of applications.

(vi) Applications 'accepted'.

(vii) Illustrated Abridgements of Accepted applications.

(viii) Printed Specifications.

(ix) Patents sealed.

(x) Assignments registered.

(xi) Licences registered.

(xii) Transmissions registered.

(xiii) Rectifications of the Register.

(xiv) Renewal Fees paid.

(xv) Patents ceased on account of non-payment of Renewal Fees.

(xvi) Amendment Proceedings.

(xvii) Restoration Proceedings.

(xviii) Proceedings for the extension of the term of patents.

(xix) Decrees and Orders of the Court.

(xx) Compulsory licences.

(xxi) Revocation Proceedings.

(xxii) Appeals from the decision of the Controller.

4. *Designs Proceedings.*5. *Reports of decisions and Rules of the Controller and other Authorities under the Act.*

**ANNEXURE A**

**THE *INTERIM* REPORT**



# FIRST INTERIM REPORT OF THE PATENTS ENQUIRY COMMITTEE

To

THE HON'BLE DR. SYAMA PRASAD MOOKERJEE

MINISTER FOR INDUSTRY & SUPPLY

NEW DELHI.

SIR,

## INTRODUCTORY

This Committee was appointed by the Government of India on October 1, 1948, for the purpose of reviewing the laws relating to 'Patents' in India, and making recommendations for ensuring that the Indian Patent System is made more conducive to national interests than at present.

### 2. The Terms of Reference to the Committee are:—

- (1) to survey and report on the working of the Patent System in India;
- (2) to examine the existing Patent legislation in India and to make recommendations for improving it, particularly with reference to the provisions concerned with the prevention of abuse of patent rights;
- (3) to consider whether any special restrictions should be imposed on patents regarding food and medicine;
- (4) to suggest steps for ensuring effective publicity to the patent system and to patent literature, particularly as regards patents obtained by Indian inventors;
- (5) to consider the necessity and feasibility of setting up a National Patents Trust;
- (6) to consider the desirability or otherwise of regulating the profession of patent agents
- (7) to examine the working of the Patent Office and the services rendered by it to the public and make suitable recommendations for improvement; and
- (8) to report generally on any improvement that the Committee thinks fit to recommend for enabling the Indian Patent System to be more conducive to national interest, by encouraging invention and the commercial development and use of inventions.

### 3. The composition of the Committee was originally as follows:—

- (1) Dr. Bakhshi Tek Chand, Retired High Court Judge and Member, Constituent Assembly of India.—*Chairman.*
- (2) Shri Gurunath Bewoor, Tata Industries Ltd., Bombay.—*Member.*
- (3) Major-General S. S. Sokhey, Director, Haffkine Institute, Bombay.—*Member.*
- (4) Shri S. M. Basu, Solicitor, Calcutta.—*Member.*
- (5) Mr. N. Barwell, Barrister, Calcutta.—*Member.*
- (6) Shri S. P. Sen, Bengal Chemical and Pharmaceutical Works, Ltd., Calcutta.—*Member.*
- (7) Shri K. Rama Pai.—*Member-Secretary.*

Subsequently, Dr. S. D. Mahant, Industrial Economist of the Council of Scientific and Industrial Research, was nominated as an additional member of the Committee.

4. Of the eight members that constitute the Committee at present, two are from Bombay, three from Calcutta and the remaining three from Delhi. Accordingly, a meeting of the full Committee cannot take place without necessitating long journeys by most of the members. It was, therefore, considered desirable that the number of meetings of the full Committee should be reduced to the minimum; and with this end in view, it has been the practice that before convening the meetings of the full Committee, the Chairman and the Member-Secretary hold preliminary discussions on the questions that have to be considered by the Committee, examine such questions from all aspects, and circulate to the members, in advance of each meeting of the full Committee, detailed notes clarifying the issues involved in the various items included in the agenda for the meeting concerned.

5. The Committee held its first meeting on the 20th of November 1948. So far, there have been three meetings of the full Committee, one meeting of an *ad hoc* sub-committee and about fifty meetings between the Chairman and the Member-Secretary for holding informal discussions in advance of the full meetings of the Committee. All the meetings were held at Delhi.

6. At its first meeting, the Committee considered the general aspects of the Patent System, and arrived at the conclusion that they should cover the field of enquiry from three aspects, *viz.*, from the standpoints of the inventor, the industrialist and the consuming public.

7. In this connection, it may be stated that the fundamental purpose of the patent system is to promote the industrial progress of a country by establishing new industries and by improving existing industries. The Patent System seeks to achieve this purpose by stimulating men of genius to invent new industrial processes and new industrial products, and by encouraging manufacturers to develop new industries and expand existing industries by the adoption of new inventions, so that the benefits of the new inventions are secured to the largest section of the public.

8. The underlying idea of the patent system is that any person who is in possession of a new invention in the field of manufacturing industries, may be granted a 'patent' for it, if he discloses to the State full particulars of his invention and the manner of applying it for practical purposes. By obtaining a patent for the invention, he would enjoy, for the duration of the patent (which is normally sixteen years in most countries), the exclusive privilege of making, using or selling the invention throughout the country, and of authorising others to do so.

9. The exclusive privilege secured under a patent enables a patentee to prevent the unauthorised use of his invention by others, and thus gives him an opportunity to develop his invention and adopt it for industrial purposes, without being hampered by a competitive use of his invention by others. Such a use of patent rights is perfectly legitimate, as it would result in the establishment of new industries or the improvement of existing industries in country.

10. It is found, however, that patentees frequently fail to make use of their patent rights for working the invention to its fullest extent within the country; and that very often they even misuse or abuse their rights prejudicially to public interests. Thus, a patentee who is incapable of setting up a new industry based on his patented invention, may either refuse permission to others to work the invention, or impose unreasonable conditions for the use of his invention for industrial purposes; or he may take advantage of his exclusive right to keep up the prices artificially at a high level; or, if he is a foreigner who is working his invention in his home country, he may utilise his patent rights in India merely to dump this country with imported articles; or he may deliberately use his patent rights for obstructing the industrial progress of the country in various ways.

11. The patent laws of various countries have attempted to ensure that on the one hand, the patentee works his invention to its full extent within the country, and on the other, he does not misuse or abuse his patent rights prejudicially to public interests.

12. Referring more particularly to the Indian Law on Patents, we would observe that the first legislation for protection of invention in this country was enacted in 1856, and was based on the then existing English Law. Since then, the Indian Law has been revised on several occasions, mainly on the

lines of changes made in the English Law from time to time. The important point, however, is that while the evolution of the English Law proceeded on national lines after comprehensive investigations at every stage by Expert Committees, the Indian Law has tended to follow the English Law closely, and there has been no investigation hitherto of the patent system from India's standpoint, *e.g.*, for ascertaining whether, and if so to what extent, the Indian Patent System has been fulfilling its purpose; or whether it has been misused or abused; and how it could be improved.

13. As we could not look for assistance in the form of reports and recommendations of any Committees or other authorities that had previously investigated the working of the patent system in India, we decided to issue a comprehensive Questionnaire to elicit views and suggestions from various sections of the public interested in the Indian Patent System,

14. The Committee's Questionnaire consists of two Parts, namely, Part I comprising a General Questionnaire of 104 questions of a general character, and Part II comprising 101 questions grouped together as six Special Questionnaires intended respectively for Central and Provincial Governments, Patentees, Patent Agents, Industrialists and Research Institutions. The Committee's General Questionnaire has been reproduced as Appendix I to this Report, and the Special Questionnaires as Appendix II.

15. Although, the Committee's Questionnaire might appear to be unusually lengthy, it may be pointed out that having regard to the wide scope of our Terms of Reference, and also the paucity of information available at present on various matters which have to be considered by the Committee, we could not make it briefer. The task of preparing a suitable questionnaire was particularly difficult as the patent system has been one of those subjects which are little known in India.

16. We would draw particular attention to the fact that most of the questions included in the General Questionnaire are preceded by an explanatory statement which is intended to give the public some idea of the nature of the problems to which the questions related. It was felt, however, that notwithstanding the background provided in the Questionnaire, enlightened opinion on many of the questions might not be forthcoming unless further assistance was rendered to the public for appreciating the Indian Patent System in its proper perspective. It was, therefore, decided that while the Questionnaire was under the consideration of the public, the Member-Secretary should visit important industrial centres and research institutions, and render to the interested public necessary assistance for appreciating fully the implications of the questions included in the Committee's Questionnaire.

17. In pursuance of this decision, the Member-Secretary has visited the following places:—

Calcutta, Jamshedpur, Bombay, Poona, Ahmedabad, Ajmer, Waltair, Madras, Trivandrum, Cochin, Bangalore, Mysore and Hyderabad.

In the course of his visits to these places, he has had prolonged discussions with representatives of a large number of Commercial and Industrial Bodies (such as Chambers of Commerce and Manufacturers' Associations), Scientific Societies, Research Institutions, Industrial Concerns, Government Departments, Scientific Research Workers, Patent Experts and Patentees.

18. These discussions have been useful in many ways. For instance, as a result of these discussions, the Committee's Questionnaire has received effective publicity in proper quarters; and many of those who would have been indifferent to the Questionnaire, but whose views would be helpful to the Committee, have been induced to co-operate with the Committee's work.

19. Again, as a result of these discussions, scientists and scientific research workers who were hitherto indifferent to the patent system, and in many cases even strongly prejudiced against it, have appreciated the importance of the patent system from the standpoint of public interest, as distinguished from individual benefit.

20. The Member-Secretary's discussions during his tour have also brought to light numerous drawbacks of the Indian Patent System, particularly, in respect of such of the provisions of the Indian Patents and Designs Act as are intended to prevent the abuse of patent rights.

21. Wide publicity was given to the Committee's Questionnaire by means of press notes, editorial comments, radio talks and advertisements in leading newspapers and technical journals published in English and Indian languages, and by means of special circulars addressed to Indian patentees.

22. We have sent the Questionnaire not only to those who have applied for it, but also to a large number of eminent persons and scientific and industrial bodies. More than 4,000 copies of the Questionnaire have been issued so far; requests for the same are, however, still being received from the public.

23. As the Questionnaire was unusually lengthy and as many of the questions asked were concerned with highly controversial matters, it was originally proposed that a period of two months should be allowed to the public for sending their views and suggestions on the matters covered by the Questionnaire. As, however, it was represented to us from various quarters that the two months period allowed for sending the replies was too short, it was decided not to adhere strictly to the time limit of two months and that as far as possible, all replies received should be entertained and considered by the Committee, if received in time for consideration in due course.

24. So far, 176 (upto 31st May 1949) replies have been received to the Committee's Questionnaire. Although the date for sending the replies to the Questionnaire expired long ago, a substantial number of replies are still being received. As the Committee has already commenced the consideration of the suggestions put forward by the public, it is hoped that those who have not sent their replies already, would do so without further delay.

#### PATENT POSITION IN INDIA

25. As a first step in its investigations, the Committee examined the patent situation in India, in so far as it could be ascertained from readily available records.

The position may be briefly stated as follows:—

- (a) India has not made use of the Patent System to the same extent as other countries. For instance, taking the figures for a period of seven years preceding the war, i.e., 1930 to 1937, which may be regarded as a normal period, the average of the number of patents granted per annum in various countries is as follows:—

<i>Name of the country.</i>	<i>Average number of Patents granted annually.</i>
United States.	42,697
Germany.	20,621
France.	20,025
Great Britain (1930—35).	18,417
Italy.	10,634
Belgium.	7,315
Switzerland (1930—36).	7,307
Japan.	4,845
Czechoslovakia.	3,613
India.	898

- (b) The number of patents granted per annum during the said period for every million population in India; as compared with some of the highly industrialised countries of the West is as follows:—

<i>Name of country.</i>	<i>Number of patents granted per million population.</i>
Switzerland.	1,016
Belgium.	892
Great Britain.	493
U. S. A.	374
India.	2

(c) A very large majority of Indian Patents has been granted to foreigners.

The following table gives the percentage of the number of patents granted to nationals and to foreigners in the countries mentioned therein during the same period (1930—1937):—

Name of country.	Percentage of the number of patents granted to	
	Nationals	Foreigners
United States . . . . .	86·8	13·2
Japan . . . . .	76·0	24·0
Germany . . . . .	74·2	25·8
France . . . . .	70·1	29·9
Great Britain (1930-35). . . . .	48·3	51·7*
India . . . . .	10·0	90·0

(d) It appears from the Annual Reports of the Patent Office that Indian inventors have been confining their attention to cottage and small-scale industries, and that among the major industries of India, there is none which has attracted appreciable attention of Indian inventors.

(e) There is at present no means of ascertaining the extent to which patents granted in India have been, or are being, worked in this country.

(f) The Indian Patent System has failed to achieve its main purpose, namely, to stimulate invention among Indians and to encourage the development and adoption of new inventions for industrial purposes in the country, so as to secure the benefits thereof to the largest section of the public.

(g) The Indian Patent System has been misused, and in some cases abused, to the detriment of Indian interests, particularly for blocking free use of industrial processes for the growth and development of industries in the country.

(h) Foreign concerns owning patent rights in India impose unreasonable terms for authorising the use of their patents.

(i) Such foreign concerns, particularly those who have secured patent rights in industries concerned with Food and Medicine, do not at all undertake the manufacture of their products in India. They merely use the monopoly rights to guarantee to themselves a market in this country free from competition; and in this way they keep up the prices artificially at a very high level.

### MISUSE OR ABUSE OF PATENT RIGHTS.

26. In the circumstances explained above, the Committee felt that it should give its first attention to complaints made in regard to the misuse or abuse of the Indian Patent System, and examine whether it should submit an interim report to Government recommending urgent legislation in respect of patents for inventions relating to Food and Medicine. The Committee addressed special letters to principal manufacturers of Food and Medicine, and also to the principal Medical Associations in the country, drawing their attention particularly to questions 33 and 34 of the General Questionnaire which deal with this matter, and asking them to give priority to these questions and send their replies in time for consideration by the Committee.

27. The question whether the Committee should make an interim report to the Government as mentioned above, was considered at its Third meeting held on the 16th April, 1949, which was attended by all the members with the exception of Major-General S. S. Sokhey (who unfortunately had been taken suddenly ill) and Shri S. M. Basu.

28. From the large volume of replies received in respect of Questions 33 and 34 it was evident that there was general dissatisfaction in India with

(\* This includes patents granted to nationals of Dominions and Colonies).

the provisions of the Indian Patents and Designs Act which were intended to prevent misuse or abuse of Indian Patents, but had signally failed to achieve their object.

### EXISTING LEGISLATION FOR THE PREVENTION OF MISUSE OR ABUSE OF PATENT RIGHTS IN INDIA.

29. Existing legislation for the prevention of misuse or abuse of patent rights in India is contained in Sections 22, 23 and 23-A of the Indian Patents and Designs Act, 1911, of which a summary is given below.

30. Section 22 provides that any person interested may present a petition to the Central Government alleging that the demand for any patented article is not being met to an adequate extent and on reasonable terms, and praying for the grant of a compulsory licence; or in the alternative, for the revocation of the patent. For "elucidating" the scope of this section, it is provided therein that the demand for a patented article shall not be deemed to have been met to an adequate extent and on reasonable terms, if by reason of the default of the patentee any existing trade or industry or the establishment of any new trade or industry in British India is unfairly prejudiced.

31. The said Section also provides that the Central Government may either dispose of the petition itself, or refer it to a High Court for decision; and that the Central Government or the High Court may either order the patentee to grant a licence to the applicant, or revoke the patent, as it considered fit.

32. Section 23 of the Indian Act provides that at any time, not less than four years after the date of any patent, any person may apply to the Central Government for relief thereunder on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside India; but relief under this Section can be claimed *only if the applicant is in a position to work the invention, and the patentee has refused to grant a licence on reasonable terms*. The Section provides that where a proper case has been made out, the Central Government may make an order either revoking the patent or ordering the patentee to grant a licence to the applicant, which may be a licence exclusive to him or otherwise, as the Central Government may direct.

33. Section 23-A contains merely a formal provision to the effect that any order of the Central Government or the High Court under Sections 22 and 23 shall operate as if it were embodied in a deed executed by the patentee in favour of the licensee.

34. As Sections 22 and 23 of the Indian Act were based on the corresponding provisions of the British Patents and Designs Act of 1907, which themselves were substantially modified in 1919, and as it is now under contemplation (in the British Patents and Designs Bill, 1949, which is at present pending before the British Parliament) to make further modifications of the said provisions, it would be instructive to make a comparative study of Sections 22, 23 and 23-A of the Indian Act in relation to the corresponding provisions of the British Act of 1907,

- (a) as it stood originally;
- (b) as it stands at present; and
- (c) as it would stand after amendment by the British Patents and Designs Bill, 1949.

35. For this purpose, reference is invited to Appendix III hereof, which contains relevant extracts from the Indian and British enactments and the pending Bill. A study of the relevant provisions of the Indian and British Statutes and the pending Bill will bring out in prominent relief numerous drawbacks of the provisions contained in the Indian Act. The nature of the said drawbacks and our suggestions for eliminating them are discussed below.

#### 1. Grounds on which complaint may be made.

36. One of the grounds on which a complaint may be made against the patentee under the Indian Act, is "that the patented article or process is manufactured or carried on exclusively or mainly outside India". It is obvious that a complaint on this ground may be made only if the patentee has

been working the patent *outside India*. A provision of this nature would be ineffective to ensure that the patented invention is worked to its full extent within this country, as it does not provide for a complaint against the patentee for the non-working of the patent in India.

37. This provision of the Indian Patents and Designs Act, 1911 was based on the corresponding provision in the British Act of 1907, as it stood originally; namely, "that the patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom." But, by the amendments incorporated by the British Act of 1919, this provision was replaced by the following:—

An application for relief against abuse of monopoly rights may be made—

- (i) "If the patented invention (being one capable of being worked in the United Kingdom), is not being worked within the United Kingdom on a commercial scale and no satisfactory reason can be given for such non-working"; [Section 27 (2) (a)].
- (ii) "If the working of the invention within the United Kingdom on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by the patentee or persons claiming under him, or by persons directly or indirectly purchasing from him, or by other persons against whom the patentee is not taking or has not taken any proceedings for infringement"; [Section 27 (2) (b)].

38. It has been found, however, that even the revised statement of grounds as given above, does not specifically provide that the patented invention, if it is capable of being commercially worked in the United Kingdom, should be commercially worked therein to the fullest possible extent. Accordingly, in the British Patents and Designs Bill, 1949, which is now before the British Parliament, it is proposed to further revise the grounds on which relief may be claimed. The suggested grounds are as follows:—

- (i) "That the patented invention, being capable of being commercially worked in the United Kingdom, is not being commercially worked therein or is not being so worked to the fullest possible extent.
- (ii) "That a demand for the patented article in the United Kingdom is being met to a substantial extent by importation.
- (iii) "That the commercial working of the invention in the United Kingdom is being prevented or hindered by the importation of the patented article." [C. 15 (1) & (2)].

39. As regards non-working of the patent in this country, we consider that the ground of complaint as provided in the Indian Patents and Designs Act of 1911 is manifestly inadequate to ensure that the patented invention is worked to its full extent in this country; and we would strongly recommend that the grounds of objection in this respect be amplified on the lines proposed in Great Britain in the British Patents and Designs Bill, 1949.

40. Another important point which strikes one is that, although Section 23 of the Indian Patents and Designs Act was based on the British Act of 1907, certain additional restrictions against the applicant for relief, which were not found in the British Act of 1907, had been laid down in the Indian Act. The effect of these restrictions has been to make it highly difficult if not practically impossible, for the applicant to claim the reliefs provided in that Section.

41. Thus, it is provided in Section 23(2) of the Indian Act that the applicant for relief under that Section should establish not only that the patented invention is being worked exclusively or mainly outside India, but also that—

- (i) he is prepared, and is in a position to manufacture or carry on the patented article or process in India; and
- (ii) the patentee refuses to grant a licence on reasonable terms.

42. These provisions may appear, at first sight, to be innocuous; but they are not really so. As a result of clause (i) quoted above, it would not be open to any one to ask for the revocation of a patent which is being abused, unless he himself is in a position to work the invention in India. In other

words, it would not be open to him to procure the patented product by importation from other countries where the article could be obtained at cheaper price.

43. Similarly, as a result of the provision contained in clause (ii) quoted above, a foreign patentee may effectively prevent the working of his patent in this country by other persons, even if he himself has not been working it here. It may be pointed out in this connection that, normally no one would invest capital in starting a new industry based on a patent held by another, unless he gets an "exclusive license" under the patent. Hence a foreign patentee, who does not wish that the article should be manufactured in India, may, by offering a non-exclusive license on very reasonable terms, prevent any person from proceeding under Section 23 for obtaining an "exclusive license" under the patent, and thereby effectively prevent the commercial working of the invention in India.

44. So far as we are aware such restrictive provisions are not to be found in the patent laws of any other country; and it is not unreasonable to say that these provisions were purposely included in the Indian Act in the interest of foreigners to the detriment of the people of this country. We are, therefore, of opinion that the Indian Act should be amended forthwith so as to remove these restrictions.

45. Another ground on which a complaint may be made against the patentee under the Indian Patents and Designs Act is that the demand for the patented article is not being met to an adequate extent and on reasonable terms. As stated already, the Indian Act contains what purports to be an "elucidation" of the circumstances in which it could be alleged that the demand for a patented article is not being met to an adequate extent and on reasonable terms. According to this "elucidation", it appears that the patentee would come within the mischief of this Section if by reason of his default, an existing trade or industry, or the establishment of a new trade or industry in India, is unfairly prejudiced. Such an "elucidation" appears to us to be not only unnecessary, but also open to the objection that it introduces an element of ambiguity, namely, as to whether there would be a valid ground for complaint in a case in which the patentee is not actually meeting the demand for the patented article to an adequate extent or on reasonable terms, but by his failure to do so, neither any existing trade or industry, nor the establishment of a new trade or industry in India, is unfairly prejudiced.

46. The "elucidation" referred to above was based on a similar elucidation contained in the British Act of 1907. But by the amendment introduced by the British Act of 1919 the said "elucidation" was omitted from the British Act and in its place were introduced the following two additional grounds on which a complaint may be made against a patentee—

- (i) "If by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of the United Kingdom or the establishment of any new trade or industry in the United Kingdom is prejudiced, and it is in the public interest that a licence or licences should be granted." [Section 27 (2) (d)].
- (ii) "If any trade or industry in the United Kingdom, or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee, whether before or after the passing of this Act, to the purchase, hire licence, or use of the patented article, or to the using or working of the patented process. [Section 27 (2) (e)]."

47. We recommend that Section 22 of the Indian Act should be similarly amended.

48. By Act of 1932, the following additional ground of objection was also introduced in the British Act:—

- 27 (2) (f) "If it is shown that the existence of the Patent, being a patent for an invention relating to a process involving the use of materials not protected by the patent or for an invention relating to a substance produced by such a process, has been utilised by the patentee so as unfairly to prejudice in the United Kingdom the manufacture, use or sale of any such materials."



This additional ground is proposed to be replaced in the British Patents and Designs Bill, 1949, by the following fresh grounds:—

- (1) "That by reason of the refusal of the patentee to grant a licence or licences on reasonable terms—
  - (i) a market for the export of the patented article manufactured in United Kingdom is not being supplied; or
  - (ii) the working or efficient working in the United Kingdom of any other patented invention is prevented or hindered; or
  - (iii) the establishment or development of commercial or industrial activities in the United Kingdom is otherwise prevented or hindered; Cl. 15 (1) & (2).
- (2) That by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process—
  - (i) the manufacture, use or sale of materials not protected by the patent is unfairly prejudiced; or
  - (ii) the establishment or development of commercial or industrial activities in the United Kingdom is otherwise prevented or hindered". Cl. 15 (1) & (2).

49. We are of the opinion that the Indian Act should be amended so as to include also these grounds of complaint against the patentee, and thus to bring the Indian Law into line with the British Patents and Designs Bill, 1949.

### 2. Period of grace allowed for working the Patents.

50. As regards complaints on the ground of non-working of the patent, the period of grace allowed by the patentee is as follows:—

- (i) In the Indian Act, it is provided that an application for relief against non-working in India could be made "at any time not less than four years after the date of the patent".
- (ii) In the British Act of 1907 as it stood originally, the period of grace allowed was the same as in the Indian Act.
- (iii) In the British Act as amended in 1919, the period of grace allowed is "three years from the date of sealing a patent." But a direction has been given to the Comptroller General that, if in his opinion the time, which has elapsed since the sealing of the patent, has been insufficient to enable the invention to be worked within the United Kingdom on a commercial scale, he may make an order adjourning the application for such period as will, in his opinion, be sufficient for that purpose.
- (iv) In the British Patents and Designs Bill, 1949, now pending before the British Parliament, it is provided that an application for a compulsory licence may be made "at any time after the sealing of a patent". It contains also a direction to the Comptroller General as given under (iii) above.

51. It has been represented to us by a large section of the public that the four year period laid down in the existing Indian Act is too long; and we consider that it would be a distinct improvement to bring the Indian Act in this respect into line with the proposed provision in the Bill of 1949.

### 3. Authority to whom an application for relief in respect of insufficient use, misuse or abuse of patent may be made.

52. Under the British Act of 1907 as it stood originally, the authority to whom applications complaining about the Patentee's working of the patent exclusively or mainly outside the United Kingdom could be made, was the Comptroller General. But the authority to whom applications complaining about the patentee's failure to meet the demand for the patented article to an adequate extent and on reasonable terms, could be made, was the Board of Trade. By the 1919 Act, however, jurisdiction in respect of this class of applications also was vested in the Comptroller General, and thus, since 1919 applications falling under both the categories are made to the Comptroller

General. No change in this respect is contemplated in the pending British Patents and Designs Bill, 1949.

53. Under the Indian Patents and Designs Act, applications of both the categories mentioned above, can be made only to the Central Government, and not to the Controller. The Central Government, however, may transfer to the High Court for disposal applications complaining about the patentee's failure to meet the demand for the patented article to an adequate extent and on reasonable terms.

54. In this connection, it is important to remember that proceedings before the Controller of Patents and Designs are comparatively expeditious and inexpensive. On the other hand, the Central Government does not have the machinery to deal with the above mentioned applications expeditiously, since, for dealing with them properly, it is generally necessary to examine witnesses and investigate complex questions of law and scientific controversy.

55. Where the Central Government refers the matter to a High Court, the parties are subjected to further hardships, such as are inseparable from protracted litigation in High Courts.

56. So far, there has been only one instance in which an application made to the Central Government, was transferred to the High Court for disposal. The proceedings in the High Court developed into a full dress trial, during the course of which, the applicant had to withdraw his petition, and there the matter ended, except for the fact that the applicant had not only to incur heavy expenditure in prosecuting this infructuous application, but also to pay heavy costs to the opposite party, who was alleged to have abused the patent rights. The reasons for this particular culmination what was undoubtedly an entirely *bona fide* complaint, may well be debatable. Our Committee should regard such a debate wholly beyond the scope of its enquiry. But we are satisfied, that the event is revelatory of the need for a radical change in the existing statutory provisions, since they evidently fail to achieve at least one of their underlying objects, namely, to aid a *bona fide* applicant in the task of making good his complaint.

57. It may be said, therefore, that so far as the forum of the tribunal before whom complaints on the ground of misuse or abuse of patent rights can be made, the provisions of the Indian Act are extremely unsatisfactory, and that if these sections are to fulfil their purpose, they must be amended so as to empower the Controller to deal with such applications in the first instance, as in Great Britain.

#### 4. Provisions as to appeals.

58. Under the British Act of 1907, there was a provision for appeal to the Board of Trade where the tribunal in the first instance was the Comptroller General. Under the British Act of 1919, which provided that applications of both the categories mentioned above should be disposed of in the first instance by the Comptroller General, all orders of the Comptroller General have been made subject to appeal to the High Court. Under the British Patents and Designs Bill, 1949, it is proposed that the first appeal from the Comptroller General, should lie to the Appeal Tribunal, and that a further appeal from the decision from this Tribunal should lie to the Court of Appeal in the High Court of England.

59. Under the Indian Act, since the tribunal in the first instance is the Central Government, there is no provision for an appeal. Hence, any party who feels aggrieved with the decision of the Central Government, has no opportunity of getting his case reviewed by another tribunal. Such a state of affairs is by no means satisfactory, and it is highly desirable that applications of the categories mentioned above should be considered not only by a tribunal in the first instance, but, if the aggrieved party so desires, at least by another higher tribunal also.

60. If, as suggested by us, such applications are to be dealt with in the first instance by the Controller, it is appropriate that an appeal should lie to the Central Government, which instead of itself dealing with it, should refer it to an *ad hoc* Special Tribunal consisting of—

- (i) a sitting or retired Judge of a High Court (as the President),

- (ii) a Barrister or Advocate of not less than ten years standing, preferably conversant with patent law and procedure, and
- (iii) a technical expert in the particular subject with which the patent in question is concerned.

The functions of this Tribunal shall be judicatory and not advisory, and its decision shall be final. The Tribunal will also have the power to award costs.

### PATENTS FOR FOOD OR MEDICINES

61. There is another matter of great importance requiring consideration at present. It has been represented to us from various quarters that in the field of Food and Medicine, the Indian Public are seriously victimised by the monopolistic use of Patent Rights by foreigners. In this connection our attention has been invited to the observation of the Panel on Fine Chemicals, Drugs and Pharmaceuticals, in paragraph 48 of their Report.

The relevant passage reads as follows:—

*“Existing patent laws:—Most of the important processes for the manufacture of drugs and fine chemicals urgently needed for the country are covered by foreign patents. Under the existing Patents Act it is practically impossible to obtain a compulsory licence from a foreign patentee. It is understood that so far there has not been a single case in India where a compulsory licence has been granted under the Patents Act. It is suggested that Section 22 and 23 of the present Patents Act should be revised in consultation with the Controller of Patents.”*

62. It has been suggested that Food, Medicines and surgical and curative devices should be available to the public at the lowest prices consistent with the patentees deriving a reasonable advantage from their patent rights; and, therefore, that patents in respect of inventions in this field should be subjected to the grant of compulsory licences by the Controller to any one who asks for them, unless it appears to him that there are good reasons for refusing such licences.

63. Our attention has also been drawn to the provision of sub-section (3) of section 38(A) of the British Act as it stands at present, which sub-section reads as follows:—

*in the case of any patent for an invention capable of being used for the preparation or production of food or medicine, the Comptroller shall, unless he sees good reason to the contrary, grant to any person applying for the same, a licence limited to the use of the invention for the purposes of preparation or production of food or medicine but not otherwise; and, in settling the terms of such licence and fixing the amount of royalty or other consideration payable, the Comptroller shall have regard to the desirability of making the food or medicine available to the public at the lowest possible price consistent with giving to the inventor due reward for the research leading to the invention.”*

In the proposed British Patents and Designs Bill 1949 this provision has been enlarged so as to include also within its scope inventions capable of being used as part of surgical or curative devices. To draw pointed attention to this matter, the Committee included Question Nos. 33 and 34 in the General Questionnaire (see Appendix I).

64. In the replies received to these Questions, the consensus of opinion is--

- (i) that patent protection should be granted for inventions in the field of food and medicine, both for new products and new processes, and
- (ii) that food, medicine and surgical and curative devices should be available at the cheapest price consistent with giving reasonable recompense to the patentee.

We are in entire agreement with these views.

65. As regards the question whether Food and Medicine patents should be subjected to the grant of "compulsory licences", the replies received may be classified into three categories, advocating respectively three different views as follows:—

- (i) Patents for food and medicine should be subjected to the grant of compulsory licences to any one who asks for them.
- (ii) Patents for food and medicine should be subjected to the grant of compulsory licences at the discretion of the Controller of Patents and Designs.
- (iii) There should be no special restrictions on patents in the field of food and medicine but if patent rights in respect of such patents are insufficiently used, or misused, or abused, such patents should be dealt with in the ordinary way; and where there can be no complaint against the patentee on any of the grounds just stated, the patent should not be subjected to the grant of compulsory licences.

66. We feel that a recommendation as to which of the three courses mentioned above would be most conducive to public interest, cannot be made without further investigation of several questions, such as—

- (i) what would be the effect of a system of granting compulsory licences in respect of Food and Medicine patents—
  - (a) on 'research' in the field of Food and Medicine industries;
  - (b) on the tendency to work in secrecy inventions in this field;
  - (c) on attracting capital for developing new inventions for creating a market for new products in this field; and
  - (d) on the risk of bringing new inventions into disrepute as a result of granting "compulsory licences" to unscrupulous manufacturers?
- (ii) If licences are to be granted at the discretion of the Controller.—
  - (a) what are the circumstances in which he should, or should not, exercise his discretion in favour of an applicant for licence;
  - (b) should licences be granted to others even if the patentee has been working the invention in India to its full extent, and has not been offending in any way against public interest; and
  - (c) should any statutory guidance be given to the Controller in respect of this matter?

67. These are questions on which we cannot make any final recommendations without examining them more fully, from theoretical as well as practical standpoint. We have hitherto had no opportunity to discuss these questions with those who are competent to express opinions thereon. At present, therefore, we are not in a position to make any specific recommendations on the three alternative courses referred to above on the question of subjecting Food and Medicine patents to the grant of compulsory licences.

68. We feel, however, that for this reason we should not defer our recommendation to Government to replace Sections 22, 23 and 23-A, of the Indian Patents and Designs Act, 1911, which, in our opinion, are wholly inadequate to prevent misuse or abuse of patent rights, particularly by foreigners, and which require immediate amendment. At a time when the country is making an all-out effort for the reconstruction and expansion of Indian industries, it is imperative that the Indian Patent Law should contain suitable provisions for ensuring that patented inventions are worked in this country to the full extent and that monopolistic rights are not exercised to the detriment of national interests.

69. We, therefore, recommend that legislation be undertaken forthwith to amend sections 22, 23 and 23-A of the Indian Patents and Designs Act, 1911, on the following lines:—

- (a) It should be open to any interested person to apply for a compulsory licence or revocation of the patent on any of the following

grounds, namely—

- (i) that the patented invention being capable of being commercially worked in India, is not being commercially worked therein to the fullest, possible extent ;
  - (ii) that the demand for the patented article in India is not being met to an adequate extent or on reasonable terms ;
  - (iii) that the commercial working of the invention in India is being prevented or hindered by the importation of the patented articles ;
  - (iv) that by reason of the refusal of the patentee to grant a licence or licences on reasonable terms, the commercial or industrial activities in India are prevented or hindered ;
- (b) for obtaining relief against abuse of patent rights,
- (i) it should be possible to institute proceedings before the Controller of Patents and Designs ; and
  - (ii) it should be possible to make an application at any time after the sealing of the patent ;
- (c) an appeal should lie from any order of the Controller ;
- (d) the appellate authority should be an *ad hoc* Special Tribunal nominated by the Central Government ;
- (e) the Special Tribunal should consist of—
- (i) a sitting or retired judge of a High Court (as the President),
  - (ii) a Barrister or Advocate of not less than ten years standing, preferably conversant with patent law and procedure, and
  - (iii) a technical expert in the particular subject with which the patent in question is concerned ;
- (f) the functions of the Special Tribunal should be judicatory and not advisory, and its decisions should be final ; and
- (g) the Special Tribunal should have the power to award costs.

70. We consider that if these sections are amended as suggested above, the glaring defects in the Indian Patent System would be removed to a large extent.

71. As regards the suggestion that the Indian Patents and Designs Act should contain a clear indication that in the case of Food and Medicine patents, patent rights should be exercised so as to ensure that food and medicine and surgical and curative devices are made available to the public at the cheapest price commensurate with giving a reasonable recompense to the patentee, we consider that, for the present, a provision to this effect could be appropriately included in the statutory directions given to the Controller for disposing of applications made to him complaining about insufficient use, misuse, or abuse of patent rights in India.

72. In Appendix IV to this Report, we have given a draft of the Sections which should replace Sections 22, 23 and 23-A as they stand at present.

TEK CHAND, *Chairman.*

GURUNATH BEWOOR.

S. D. MAHANT.

S. P. SEN.

S. S. SOKHEY.

K. RAMA PAL.

NEW DELHI ;

The 4th August, 1949.

## **GENERAL QUESTIONNAIRE.**

GOVERNMENT OF INDIA

MINISTRY OF INDUSTRY AND SUPPLY.

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PATENTS ENQUIRY COMMITTEE

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### **QUESTIONNAIRE**

**NOTE.**—The Questionnaire covers a wide field of inquiry in regard to the Indian Patent System and it is not intended that all those who are pleased to send replies should take the trouble of answering every question. Correspondents are requested to favour the Committee with their views and suggestions on matters in which they are particularly interested or concerned, or of which they have special knowledge. As, however, this is the first time that an inquiry of this kind is being made, the Committee will be grateful if the questionnaire is answered as completely as possible.

For the sake of convenience of correspondents and facility of reference, the questionnaire has been divided into two parts—GENERAL and SPECIAL. The number of the question to which the answer or memorandum relates may kindly be indicated clearly in each case.

Throughout the Questionnaire, the words "Present Act", 'Act' or Rules refer to the Indian Patents and Designs Act, 1911 and the Rules framed thereunder.

Replies to the Questionnaire may please be sent to the Secretary, Patents Enquiry Committee, Ministry of Industry and Supply, Jaisalmer House, Mansingh Road, New Delhi, so as to reach him as early as possible.

## Section I—General

The fundamental object of the patent system is to stimulate invention and to encourage development and adoption of new inventions for industrial purposes, so as to secure the benefits thereof to the largest section of the public.

It is said that the Indian Patent System has failed to achieve these objects for one or more of the reasons which are alluded to in the questions below:—

1. It is considered that the patent system has not been used in this country to the same extent as it has been used in other countries.

- (i) Do you agree with this view ;
- (ii) If so, how far would you attribute it to any of the following causes:—
  - (a) Inherent flaw in the fundamental basis of the patent system ;
  - (b) Defects of the working of the patent system in India ;
  - (c) Neglect of Research, both Fundamental and Applied ;
  - (d) Lack of inventive talent in India, quantitatively or qualitatively ;
  - (e) Predilection of the industrialists in the exploitation of new inventions in secrecy ;
  - (f) Lack of enterprise among Indian industrialists to exploit new inventions ;
  - (g) The backward state of Indian industries ;
  - (h) General ignorance in India, particularly among inventors and industrialists about the patent system and its working ;
  - (i) Any other contributory causes?

2. Complaints have been made in certain quarters that the Indian Patent System has been used to the detriment of Indian interests, for blocking free use of industrial processes for the development of Indian industries. Are these complaints justified?

If so, give a few particulars.

3. It has been suggested in certain quarters that the patent system hampers research on account of the following possible considerations:—

- (a) The profit motive associated with the patent system diverts the mind of the research worker from the true scientific attitude ;
- (b) The need for secrecy until application for a patent is made, is not conducive to the free exchange of ideas among research workers ;
- (c) The incentive for further research is damped because of a substantive patent owned by others.

Do you agree with any or all of the above suggestions ?

4. If you hold the view that the present patent system does hamper research, can you suggest any specific provision that can be made for overcoming the defect ?

5. What are the drawbacks of the Indian Patent System from the stand point of the inventor ?

6. What are the drawbacks of the Indian Patent System from the Stand point of the industrialist ?

7. What are the drawbacks of the Indian Patent System from the stand point of the Consumer ?

8. Has the Indian Patent System facilitated or hampered the raising of capital for industrial purposes ?

9. Has the Indian Patent System encouraged development of inventions for industrial purposes ?

10. What are the suggestions for making the Indian Patent System more attractive to industrialists ?

## Section II—Working of patented inventions in India.

11. It is generally considered that a proper legislation for patents and designs should contain a statement giving a clear indication of the purpose of the patent legislation; for example, the British Patent Act provides that "patents for new inventions are granted not only to encourage inventions but to secure that new inventions, so far as possible, be worked on a commercial scale in the United Kingdom without undue delay".

- (i) Has the absence of a similar provision in the Indian Act, encouraged foreigners to exploit their Indian Patents without working them in India on a commercial scale, or has it led to the abuse of Patent rights in any other way.

If so, give a few examples.

- (ii) Will a statement in the Indian Act on these lines provide an incentive to patentees to work their patents in India.
- (iii) Do patents granted to foreigners but not worked in India serve any public interest?

12. Under the present Act, there cannot be a complaint against the Patentee on the ground of non-working—if he fails to work the invention within a period of 4 years from the date of the Patent.

Do you consider this period;

- (a) too long, or  
 (b) too short, or  
 (c) reasonable.

13. Which of the following penalties for the non-working of a patent within the stipulated time would you favour:—

- (a) compulsory licence, or  
 (b) automatic forfeiture, or  
 (c) forfeiture after trial of compulsory licences?

14. It has been suggested that there is lack of contact between the patentee and the Patent Office after the grant of the patent, and that this affects the utility of the patent system. One suggestion that has been made in this connection is, that patentees should be required to file periodically statements mentioning whether the patented inventions are being worked commercially and also, to furnish other information for ascertaining the extent of the commercial working of the inventions. If the Patentee does not furnish the required information, the Controller should be authorised to refuse to accept the renewal fees in respect of such patent.

- (i) Is this desirable?  
 (ii) Is this necessary?

## Section III—Abuse of patent rights.

15. Is the Patent System, as it obtains in India at present, being misused or abused by the patentee?

If so, in what way?

16. It has been suggested that—

- (a) foreign concerns who own patent rights in India impose unreasonable terms for authorising the use of their patents;  
 (b) they charge exorbitant prices for patented articles;  
 (c) in some cases they adopt a "dog in the manger" policy, by not working the patents themselves and by not allowing others to work the patents on reasonable terms.

Is there any justification for these complaints?

If so, what remedies would you suggest?



17. Under the present Act, any person interested, may present a Petition to the Central Government, praying for the grant of a compulsory licence, or in the alternative, for the revocation of a patent on any of the following grounds :—

- (1) If by reason of the default of the patentee—
  - (a) to manufacture to an adequate extent the patented article ; or
  - (b) to carry on any patented process to an adequate extent ; or
  - (c) to grant licences on reasonable terms, any existing trade or the establishment of any new trade or industry in India, is unfairly prejudiced.
- (2) If any trade or industry in India is unfairly prejudiced by the conditions attached by the patentee to the purchase, hire or use of the patented article or to the using or working of the patented process.
- (3) If after four years of the date of the patent, the patented article is manufactured, or the patented process is carried on, exclusively or mainly outside India.

(The expression 'India' here refers merely to the Provinces in India, and does not include the Indian States.)

It has been represented that the aforesaid grounds are not sufficiently comprehensive, either to ensure that patented inventions are worked in India on a commercial scale, or that patent rights are not misused or abused. It has, therefore, been suggested, that the grounds of complaint should be enlarged, e.g., by including the following grounds also :—

- (a) If the patented invention (being one capable of being worked on a commercial scale in India) is not being so worked within India.
- (b) If the working of the invention within India on a commercial scale is being prevented or hindered by the importation of the article from abroad.
- (c) If there is scope for developing the export trade of the patented article, and any person willing to undertake its manufacture for export purposes has been unable to obtain a licence for this purpose from the patentee on reasonable terms.

What are your views ?

18. Under the existing procedure, applications for revocation or for compulsory licences under sections 22 and 23 of the Indian Act, can be made only to the Central Government, but it is open to the Central Government to refer the applications to a High Court.

- (i) Is this procedure satisfactory ?
- (ii) If not, is it desirable that such applications should lie in the first instance to the Controller of Patents, and that the decision of the Controller should be subject to an appeal ?
- (iii) If the answer to (ii) above is in the affirmative, should the appellate authority be—
  - (a) the Central Government ; or
  - (b) the High Court ; or
  - (c) a Special Tribunal presided over by a High Court Judge.

If so, make suggestions as to its Constitution.

- (iv) Have you any other reforms to suggest in this behalf

#### Section IV—Patents and research.

19. (i) Is it necessary to make any special provision in the Act to safeguard the interests of inventors during the stage of trials and experiments to test the practicability and utility of inventions before making their applications for Patents ?

(ii) If so, will it provide adequate safeguards if a provision is made in the Act that the patentability of an invention will not be prejudiced by the use

of the invention or by the publication of any printed description of the invention within one year prior to the date of the application ?

20. In regard to researches financed from public funds is it desirable that any resulting invention which is *prima facie* patentable should be—

- (i) published for free use by any one, or
- (ii) patented, and if so, in whose name or names,
- (iii) patented, but open to licences on a royalty basis to any one asking for them, or
- (iv) patented, but open to free licences to any one asking for them, or
- (v) patented, but open to free licences to selected parties only, or
- (vi) patented, but open to licences on royalty basis to selected parties only, or
- (vii) given free as trade secrets to selected parties, or
- (viii) sold as trade secrets to selected parties,
- (ix) exploited to the best advantage of the country through the medium of a National Patents Trust as envisaged in Question No. 94.

#### Section V—Publicity.

21. Has the patent system received adequate publicity in India ?

If not, what are the measures that should be taken to ensure effective publicity for it ?

22. Are the publications of the Patent Office conveniently available to the public :

- (a) for sale, and
- (b) for reference ?

23. Are the publications of the Patent Office sufficiently adequate and prompt to give effective publicity to patented inventions ?

If not, what steps should be taken to ensure proper publicity to such inventions ?

24. Is it necessary that special steps should be taken to give publicity to patents obtained by Indian inventors ?

25. Is there a sufficient number of Inspection Centres throughout the country where patent literature may be inspected under proper official guidance ?

26. Are the facilities provided in the existing Inspection Centres adequate ?

27. What steps should be taken to ensure greater publicity to patent literature ?

28. Under existing practice do applications for patents receive adequate and prompt publicity ?

If not, what steps should be taken to improve the position ?

29. Should the Patent Office give publicity to patented inventions—

- (a) by providing patent museum ;
- (b) by holding patent exhibitions ; and
- (c) by giving handsome prizes to patented inventions ?

#### Section VI—Patentable inventions.

30. There is no explicit statement in the Present Act, in regard to the subject matter for which a patent may be granted. From the various provisions of the Act, however, it can be inferred that a patentable invention should satisfy the following essential requirements:—

- (a) It should be a manner of new manufacture.
- (b) It should involve an "inventive step".

- (c) It should have utility ; and
  - (d) It should not be contrary to law or morality or to the hurt of trade.
- (i) Is it necessary that all these four requirements should be regarded as essential ?
  - (ii) If so, is it necessary that these requirements should be embodied explicitly in the Act ?
  - (iii) If not, should the scope of patent protection be enlarged so as to include—
    - (a) biological inventions, such as rotation of crops, new varieties of plants and fruits, more nutritive eggs, etc. ?
    - (b) Is it necessary that "inventive step" should be an essential requirement ?

31. At present, an invention which consists of the new use of a known substance cannot be patented unless, such new use constitutes a step in the process of manufacturing an article. For instance, the new use of a known substance as a disinfectant cannot be patented as it is not concerned with a "manufacture". In certain countries, however, the new use of known substances is patentable if it produces technical results.

It is suggested that the new use of a known substance as a disinfectant etc., should not be patented.

What are your views ?

32. At present, a new chemical compound cannot be protected *per se* but may be protected only when prepared by any special process which forms the subject matter of a patent. A specific provision to this effect is contained in the United Kingdom Act but is not contained in the Indian Act. In certain countries, however, a new chemical compound is patentable *per se*.

Which of these two courses would you favour ?

#### Section VII—Food and medicine.

33. Is it desirable to grant patents for—

- (i) process of preparing articles used as foods or medicines ;
- (ii) for articles used as food or medicines.

34. Under the present Act, there are no special restriction against the grant of patents for inventions relating to food and medicine. In certain countries, however, they are altogether excluded from patent protection.

In some other countries, patents are granted for such inventions subject to certain special restrictions. For example in the U.K. such patents are subject to the grant of compulsory licences by the Controller.

Which of these courses would you favour ?

#### Section VIII—Procedure and cost of obtaining patents.

35. The present Act provides for the following categories of patents—

- (a) ordinary patents, the normal term of which is 16 years from the date of the application for patent ;
- (b) patents claiming priority under reciprocal arrangements with the United Kingdom, His Majesty's Dominions and the Indian States ;
- (c) patents of addition ; and
- (d) secret patents.

Is it necessary to retain all these categories and or to provide for any other category of patents ?

36. At present an application for patent may be made without making the inventor a party to the application. Is any modification of this provision necessary for safeguarding the interests of the inventor ?

37. Is it desirable to provide that applications for patents pending in the Patent Office should be treated as "Special" with a view to ensure priority of action in any of the following:—

- (a) where there is apprehension of infringement,
- (b) where negotiations for raising of capital are mature,
- (c) where inventions are required for purposes of State, or
- (d) any others ?

38. Is it desirable that the Controller, in proceedings before him, should be given discretionary powers to extend the normal time limits provided in the Act ? If so, to what extent ?

39. It has been represented that the procedure for obtaining patents under the present Act is unduly complicated and costly.

If you agree, what remedies do you suggest ?

40. Are the 'fees' prescribed in the Indian Act and Rules in respect of the various proceedings under the Act,—

- (a) excessive, or
- (b) inadequate.

41. Under the present practice, it is necessary to pay an annual renewal fee from the fourth year of the patent.

Is this necessary or any change called for ?

42. In aid of impoverished inventors, should there be made available a procedure similar to the *informa pauperis* procedure allowed in civil suits ?

43. Are there any matters relating to practice or procedure which you think should be altered ?

If so, in what way ?

#### **Section IX—Examination of patent applications.**

44. Is it necessary that applications for patents should be officially examined apart from formalities ?

If so, is the standard of official examination which obtains at present in India sufficiently high to create among industrialists a sense of confidence in the validity of the patents granted in India ?

45. With regard to the examination of applications for patents prior to "acceptance"—

- (i) is it necessary to have a specific provision in the Act for compulsory search to ascertain whether the invention claimed has been wholly or in part claimed or described in any prior Indian Specification other than a Provisional Specification ?
- (ii) if so, how far back should the search be extended ?
- (iii) should the compulsory search be extended beyond Indian Specifications also ?

46. Should the state of public knowledge as a criterion of the novelty claimed for an invention be considered—

- (a) with reference to what was public knowledge on the date of the application ; or with reference to what was public knowledge a definite period (say, one year) prior to the date of application ; and
- (b) with reference to public knowledge within the realm or with reference to publicised technical literature of the world ?

47. What improvements can be made in the existing provisions of the law concerned with the official examination of applications for patents ?

**Section X—Opposition.**

48. Does the existing law provide adequate scope for opposing the grant of a patent on any applications "accepted" by the Patent Office?

If not, what are the drawbacks?

49. Is it desirable to throw open an "accepted" application for patent for criticism by interested public or by the Controller, apart from "opposition"?

50. Is it desirable to include any, and if so, which of the following also, among the grounds of "opposition" to the grant of a patent:—

- (i) that the invention fails to achieve the result claimed for it,
- (ii) that the invention has no inventive merit—
  - (a) on *prima facie* consideration;
  - (b) in view of prior user;
  - (c) in view of what is common knowledge in the art concerned.
- (iii) other grounds, if any, for widening the scope of opposition for the granting of patents?

51. Under the present Act, the time limit for filing a Notice of Opposition is four months.

Do you consider any modification necessary and if so, to what extent?

**Section XI—Date of patent.**

52. (i) At present a patent (other than a priority patent) is dated as of the date of the corresponding application for the patent.

Is any modification necessary?

(ii) If so, should it be reckoned—

- (a) from the date of filing the Complete Specification, or
- (b) from the date of notifying "acceptance" of the application for patent, or
- (c) from the date of sealing the patent.

53. (i) It has been suggested that it should be permissible to "post date" an application for patent at the applicant's request.

Is this desirable?

(ii) If so, what limit if any, for such post dating should be prescribed?

**Section XII—Term of Patent.**

54. Under the present law, the normal term of a patent is 16 years.

Is any modification of this period desirable?

55. If a patent has not been sufficiently remunerative during the term of sixteen years, it can under the present Act, be extended ordinarily by 5 years, but in special circumstances by 10 years.

Do you suggest any modifications? If so, what?

56. Is it desirable to permit more than one extension of the normal term?

If so, make specific recommendations.

57. Under the present law, where a patent for an invention has been applied for, or granted, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of his basic invention, he may apply that the patent for such improvement or modification should be a 'Patent of Addition'. A Patent of Addition differs from the ordinary patent in the following respects:—

- (a) No renewal fees need be paid in respect of it.
- (b) It will remain in force only for the duration of the substantive patent.

If the substantive patent is revoked, the authority revoking the said patent may order that the Patent of Addition shall become an independent patent, provided that its duration will not exceed the unexpired term of the substantive patent, and renewal fees are paid to keep it in force thereafter during the unexpired term.

At present there is no specific provision for the extension of the term of a Patent of Addition, independently of the extension of the term of the substantive patent, nor is there any indication whether the term of a Patent of Addition would be extended automatically on the extension of the term of the substantive patent.

It has been represented that these provisions are too stringent to give any substantial benefit to persons who resort to the Patent of Addition, and it has been suggested that the provisions relating to Patents of Addition should be modified as follows:—

- (a) The present Act should make it clear whether under its provisions, the term of a Patent of Addition would be extended automatically on the extension of the term of the substantive patent.
- (b) It should be possible for the patentee to maintain his Patent of Addition in force for the full term of sixteen years from its date by paying renewal fees after the expiry of the substantive patent.
- (c) The term of a Patent of Addition should be at least a minimum of ten years.
- (d) The term of a Patent of Addition should be extended automatically on the extension of the term of the substantive patent.
- (e) It should be permissible to make a separate application for the extension of the normal term of a Patent of Addition along with the application for the extension of the term of substantive patent.
- (f) It should be permissible to extend the normal term of a Patent of Addition independently of the substantive patent.
- (g) It should be possible for any person who is neither an applicant for a patent for the basic invention nor a patentee in respect of such basic invention, to apply for a Patent of Addition in respect of any improvement or modification of the said basic invention.
- (h) At any stage during the term of the substantive patent, it should be permissible for the patentee to convert his substantive patent into a Patent of Addition to any prior patent of his, if he so desires.
- (i) It should be permissible to the patentee at any time during the term of the Patent of Addition to convert it into a substantive patent, if he so desires.

Do you favour any of these suggestions

58. Applications for an extension of the term of a patent are at present either disposed of by the Central Government itself or are referred to the High Court, without hearing the patentee or other interested parties.

Is it necessary to modify this procedure in any way, e.g., by extending the jurisdiction of the Controller or by including in that of a Special Tribunal?

### Section XIII—Patent rights.

59. (i) Does the Act confer adequate rights on the patentee to make it worth while for him to take out a patent?

- (ii) If not, what are the drawbacks?
- (iii) How can they be remedied?

60. In the case of co-ownership of a patent, where a patent has been granted to two or more persons jointly—

- (i) should each co-grantee be entitled to use the invention for his own benefit without accounting to the other;
- (ii) should each of them be entitled to grant a licence to a third party without the consent of the other;

- (iii) should each of them be entitled to assign his interest in whole or in part without the concurrence of the other ;
- (iv) for the purpose of devolution of legal interest should they be treated as "joint tenants", or as "tenants-in-common" ;-
- (v) what interest, if any, should devolve upon the legal representatives of a deceased co-proprietor of a patent ;
- (vi) In respect of (i), (ii), and (iii) above what course should be open to the co-patentees in case of disagreement between themselves ?

61. In a case where the patent was granted to a single grantee and if subsequently, by assignment, inheritance, or otherwise it devolves upon two or more persons jointly—

- (i) should the position be the same as in the case where the original grant had been made jointly in favour of two or more co-grantee ; or
- (ii) should there be any distinction in regard to any or all of the matters mentioned in the previous question ?

62. It has been suggested that the Patent System creates a monopoly, and that to avoid this, all patents should be subject to compulsory non-exclusive licences to any one who asks for them.

What would be the effect of such a condition—

- (i) on the flow of inventions ;
- (ii) on incentive to development and commercial exploitation of patents ;
- (iii) on the tendency of inventors to keep their inventions secret ; and
- (iv) on the interests of the general public ?

63. Do the restrictions imposed under Sections 17 and 18 of the Indian Act in respect of amendment proceedings cause any hardship on applicants and patentees, and thus prevent them from receiving the full benefit of the inventions ?

If so, how can this be remedied ?

64. In the case of products made by a chemical process, should it be permissible to allow patents for the products at large, or should the scope of protection be restricted to products of the particular process invented ?

#### **Section XIV—Register of patents.**

65. (i) Should notification in the Register of Patents of all matters affecting the proprietorship or validity of each individual patent be made compulsory ?

(ii) If so, should any time limit be prescribed within which such notification should be made ?

(iii) What should be the penalty for failure to notify any matter ?

#### **Section XV—Marking of patented products.**

66. Should marking of patented articles be made compulsory ?

67. Does the Act give adequate direction as to the marking of patented articles ?

#### **Section XVI—Patents and government user.**

68. Under Section 21 of the Act, as it existed before 1930, Government had the right to use an invention for the purpose of the Crown, "either without payment or on such terms as it may consider reasonable".

Under the Indian Patents and Designs (Amendment) Act, 1930, this Section was substituted by a new Section.

As regards user of an invention, the new Section provided that any Department of the Government may, at any time after the application, make, use or exercise an invention for the service of the Crown, by themselves,

or by such of their agents, contractors or other authorised person, after giving prior notice to the applicant or patentee. The terms on which the invention was to be used were to be decided by mutual agreement between the parties either before or after the use. In cases of dispute in regard to the making, use or exercise of the invention or the terms therefor, the matter was to be referred to a High Court.

Where, however, the patentee was himself a Government servant and the patented invention was concerned with his duties as a Government servant, the Government had the final voice in settling the terms.

It has been represented that Section 21 of the Act as it stands at present, has deprived Government of the favourable position they had before 1930, "to the great disadvantage of the country" and that in view of the backward industrial stage in the country. Government should be given the right, as before, to make, use or exercise an invention either without payment or on such terms as it may consider reasonable, rather than go through the elaborate procedure in regard to terms provided under the amended Act.

Is this desirable ?

If so, do you consider that any special safeguards should be provided in the Act to ensure that patentee get adequate compensation from Government in respect of the exploitation of their inventions for Government purposes.

### Section XVII—Patent Litigation (Infringement, Revocation, etc.)

69. Does the Act contain—reasonable facilities for enforcement of patent rights ?

70. Under the present Act, if any person who claims to have an interest in a patent threatens any other person with any legal proceedings or liability on the ground of alleged infringement of the patent (as against an action for infringement commenced and prosecuted after due diligence) but does not actually institute legal proceedings, then any aggrieved party can bring a suit against the former in a District Court and obtain an injunction against the continuance of such threats and also recover such damage, if any, he had sustained, provided the alleged infringement is not in fact an infringement of the patent.

(i) Do you consider that this provides adequate safeguards for protecting the public from being harassed by patentees by groundless threats ?

(ii) Do you consider that there should also be a provision by which the aggrieved party could ask for the revocation of the patent in such a case ?

71. Where a patented invention relates to the production of a new substance, is it desirable to have a legal provision, that in the absence of proof to the contrary, any substance of the same composition and constitution should be deemed to have been produced by the patented process ?

72. What should be the relief available to the patentee in respect of infringement of patent rights—

(a) Should the patentee be entitled only to ordinary civil remedies ;  
or

(b) Should the infringement of patent rights be made a penal offence ;  
or

(c) Should the patentee be entitled not only to damages but also to account of profit and to destruction or delivery up of the infringing goods ?

73. Is it desirable to empower—

(a) Un-registered proprietors, and

(b) Licencees.

to institute infringement suits ?

74. Under the present Act, infringement proceedings may be instituted in the court of the District Judge in the mufasil except in the Presidency towns where such suits are filed in the original side of the High Court. But



where a suit has been instituted in a District Court, if a counter claim for revocation of a patent is made by the defendant, the suit, along with the counter claim should be transferred to the High Court for a decision.

Do you suggest any modification ?

75. (i) Does the present Act provide a simple and inexpensive procedure for the revocation of Patents on the ground that they are invalid ?

(ii) If not, how could the procedure be simplified ?

75A. Should any person have an option to make to the Controller an application for revocation of a patent on the grounds other than "abuse of patent rights" ?

If so, what time limit do you propose for such a proceeding ?

76. Under the present Act, an application for revocation of a patent may be made at any time during the currency of a patent.

Is this satisfactory or would you suggest a time limit after which the patent should be protected save on the grounds of the fraud, or abuse of patent rights, or an allegation that it is mischievous or otherwise prejudicial to the interests of the public ?

77. Should the Controller be empowered to revoke *suo moto* a patent on any of the grounds on which the application for patent could have been refused by him prior to its "acceptance" ?

If so, should there be a time limit for such a proceeding ?

78. Should the appellate authority in respect of Revocation proceedings initiated before the Controller be—

- (i) the Central Government ; or
- (ii) a High Court ; or
- (iii) a Special Tribunal and if so, make suggestions as to its constitution.

79. Under the present Act, revocation proceedings may be instituted only in a High Court.

- (i) Is this provision satisfactory ?
- (ii) If not, what modification of the present practice do you suggest particularly with a view to—
  - (a) reducing the cost of such litigation ;
  - (b) reducing the time taken in arriving at a just decision on the issues raised ;
  - (c) ensuring that the patent specifications and other documents are properly interpreted ;
  - (d) ensuring that questions pertaining to novelty, subject matter, utility or sufficiency of the description are correctly determined.

#### Section XVIII—Patent office.

80. Is the location of the Patent Office at Calcutta convenient ?

81. Is there need for establishing branches of the Patent Office at other important industrial centres ?

82. Are the facilities now available for patent searches about Indian and foreign patent literature adequate ?

83. Should the Patent Office make arrangements for giving publicity to patents available for sale or for licensing ?

84. Should the Patent Office maintain a Register of "what is wanted" in the various industries ?

85. Should there be a greater number of inspection centres spread over all the important industrial centres ?

86. Is there any need for a Public Relations Department in the Patent Office ?

If so, what should be its functions ?

87. What further service can be rendered to the public by the Patent Office ?

### Section XIX—Patent agents.

88. The profession of Patent Agents calls for a highly specialised knowledge of Patent Law, and a good background of technical knowledge, (e.g. engineering) and a high standard of personal integrity. Hence, in most countries, persons are not allowed to practise as Patent Agents unless the Government is satisfied about their qualifications. As the value of a patent will depend as much on the proper drafting of the documents as on the merit of the invention, a proper control of the profession is generally considered desirable.

In India, there is no control over this profession at present.

(i) Do you agree that the profession of Patent Agents in India should be regulated ?

(ii) If so,

(a) is it necessary to maintain a Register of Patent Agents ;

(b) what should be the criteria for eligibility to registration as a Patent Agent ;

(c) who should be the Registering Authority ;

(d) how should registration be regulated ;

(e) should any special consideration be shown to those who have been hitherto practising as Patent Agents ?

89. What should be the privileges of Registered Patent Agents ?

90. Should the profession of Patent Agents be restricted to registered Patent Agents only ?

91. Should members of the legal profession be permitted to act as Agents, without getting themselves registered as Patent Agents ?

92. What should be done with regard to individuals and firms that have hitherto been acting and appearing in proceedings under the present Act ?

93. Should practising as Patent Agents by unregistered persons and firms be prohibited ?

### Section XX—National patents trust

94. In connection with State owned and State subsidised inventions, steps have been taken in the United Kingdom to have a central body known as the National Research Development Corporation to take out patents for suitable inventions and to exploit such patents as a public asset.

It has also been provided in the United Kingdom that such central body can undertake exploitation of patents dedicated to it by private parties.

A comparable institution, namely, the Canadian Patents and Development Ltd. was established in Canada last year. It is a Crown-Company organised under the Research Council Act to exploit in the public interest the results of research done in Government laboratories and universities.

Proposals to have public bodies of this nature are under consideration in other countries also.

Is there any need for setting up a National Patent Trust in India on similar lines ?

If so, what should be its constitution and functions ?

95. Is it necessary that there should be state agencies to examine the possibility of exploiting patents and to give expert advice to inventors and patentees and supply technical information to inventors ?

If so, should this function also be entrusted to a National Patents Trust ?

**Section XXI—Inter state and international arrangements.**

96. Indian Patents are at present not protected in Indian States. Some of which have their own patent systems. The patents granted by these States are not protected outside their boundaries. In most of the acceded States, there is no patent system whatever.

It has been suggested that the protection given under an Indian patent should extend throughout the Indian Union including all the acceding States.

Do you agree ?

If so, would you agree to reciprocal protection in India to patents granted by such acceding States ?

97. At present, Section 78(A) of the Indian Act provides for India's participation for the purpose of reciprocal arrangements with the United Kingdom, His Majesty's Dominions and the Indian States, for purposes of "Priority".

Do you consider that such an arrangement is in the interests of the country ?

If not, what modifications would you suggest ?

98. Where an applicant has made two or more applications for foreign patents in respect of 2 or 3 inventions which are cognate with one another, he could claim "priority" in India only if he makes a separate application in respect of each of these inventions. Most of the countries have provided that in such a case, a single application may be made claiming "multiple priorities".

Do you consider that Section 78(A) of the present Act should be enlarged to provide for "multiple priorities" ?

99. At present an inventor who makes an improvement after filing an application for patent abroad, cannot claim "Priority" in respect of the original invention, if he incorporates in the Indian application, the subject matter of both the inventions.

It is provided in many countries that in such a case, it should be permissible to allow "Priority" in respect of that part of the invention for which there is a corresponding foreign application.

It has been suggested that India should also provide for the granting of "Partial priorities"

Do you agree ?

100. If two different applications for patents in respect of inventions which are cognate are made in two different countries and if both the inventions are assigned to a third party, in certain countries it is permissible to the third party to include both the inventions in one and the same application filed in another country and still claim "Priority".

It has been suggested that similar arrangements for "Mixed Priorities" should be made in India also.

Do you agree ?

101. There is an International Convention for the Protection of Industrial Property. Practically every country which has a Patent System has joined the Conventions. India is not yet a party to the Convention.

One of the objects of the Convention is to confer "Priorities" on applications for Patents originating in any one of the member countries. By virtue of this Priority any person who first applies for a patent in any one of the member states on a particular date, would, if he applies later for a patent in any of the other member states, be entitled to claim that his patent in the latter states should be dated as of the date of the patent in the state of origin. For claiming such Priority, however, it is necessary that the later application should be made within one year of the "Priority" date claimed.

It is to be noted that the "Priority" referred to above does not necessitate that each member country should recognise the patents granted in other member countries.

It has been represented that Indian inventors who seek to obtain patents in foreign countries are at present handicapped for want of this "Priority"

and certain other privileges extended to members of the Convention. It has, therefore, been suggested that India should also join the Convention.

Do you agree ?

**Section XXII—Designs**

102. Does the Act provide a convenient system for the registration of industrial designs and for the publication of Registered Designs ?

If not, what are the drawbacks of the present system of Registration of Designs and how can they be eliminated ?

103. The normal term of copy right in respect of Registered Designs is 5 years ; but such term may be extended by two periods of 5 years each.

Are these periods adequate ?

104. Does the Act give a clear line of demarcation between industrial designs and artistic designs ?

## SPECIAL QUESTIONNAIRE FOR THE PROVINCIAL GOVERNMENTS.

Government of

### PART I.

(Use of Patents in the service of the Crown).

105. (i) Section 21 of the Indian Patents and Designs Act provides that any Government Department may, by themselves or by their agents and contractors make, use or exercise any patented invention in the service of the Crown on such terms as may be agreed on between the patentee and the Department concerned, either before or after the use thereof.

Did your Government during the past ten years have any occasion to make use of these powers and privileges ?

(ii) If so,

- (a) please give particulars of the patents concerned, and of the terms under which the patents were so used.
- (b) Were the terms for the use of the patents in question settled with the patentees *before* the commencement of the use, or *after* such commencement ?
- (c) Has there been any dispute as to the terms of any agreement or licence concluded between the patentee and your Government ?
- (d) Has there been any occasion where the matter in dispute was referred to a High Court for decision, and, if so, with what results ?
- (e) If the answer to (d) is in the affirmative, was the validity of the patent questioned in any particular case ?

106. Section 21 further provides that where a patented invention has, before the date of the patent, been duly recorded in a document by, or tried by, or on behalf of any Government Department, the Department concerned may use the invention free of any royalty, notwithstanding the existence of the patent.

Did your Government, during the past ten years, have any occasion to take advantage of this provision of law ?

107. With reference to Question No. 68 of the General Questionnaire, does your Government consider the existing provisions of Section 21 of the Indian Patents and Designs Act in any way inadequate or unsatisfactory for safeguarding the interests of the Government ?

### PART II.

(Inventions by Government servants).

108. So far as the Patents Enquiry Committee is aware, the following is a complete list of the Research Institutions under your Government:—

- 1.
- 2.
- 3.

etc. etc.

Is this list complete ?

109. Has your Government issued any special orders for regulating the patenting of inventions made by its employees ?

If so, please give particulars.

110. Has your Government refused permission to any of its employees to apply for a patent for any invention made by him ?

If so, please give particulars.

111. As regards the inventions evolved in the Research Institutions under your Government, what is the policy of your Government in regard to—

- (a) publishing the inventions for the free use of the public, without seeking patent protection ;
- (b) exploiting the inventions for profit, under patent protection ;
- (c) exploiting the inventions for profit by adopting secrecy methods?

112. Has your Government exploited any invention for profit?

If so, please give particulars.

113. Has your Government, during the past ten years, made any *ex gratia* award to any inventor or patentee—

- (a) for the use of any patented invention of his by your Government ;
- (b) for the use of any unpatented invention by your Government ;
- (c) for compensating the inventor where your Government has refused him permission to take out a patent?

If so, please give particulars.

114. Has your Government any suggestions to offer for reforming the Patent System in its incidence on—

- (a) researches financed or aided by the Government;
- (b) rights of the Crown ; and
- (c) inventions made by Government servants ?

## SPECIAL QUESTIONNAIRE FOR PATENTEES

Name and address of the Patentee.

121. Please give a complete list of the Indian Patents taken out by you.
122. Have any of your patents been utilised for industrial purposes? If so, please give particulars as to—
- (a) the serial numbers of the patents, and
  - (b) the extent of user.
123. Have you granted licences in respect of any of your patents? If so, please give particulars as to—
- (a) the serial numbers of the patents, and.
  - (b) if you have no objection, the terms of the licence agreements.
124. Have you taken out any patents in Indian States or foreign countries? If so, please give particulars.
125. Have any of your patents been worked in Indian States or foreign countries? If so, to what extent?
126. Did you have any special difficulty in taking out patents for your inventions? Have you any suggestions to make in this regard?
127. Have you met with any difficulties for exploiting your inventions? If so, please give reasonable particulars?
128. In your opinion, in what ways can the State help a patentee in exploiting his patents?
129. On the whole, has it been worthwhile for you to take out patents for your inventions? Please give particulars.
130. Have you had any occasion to apply for the extension of the term of any of your patents? If so, please give the serial numbers of the patents concerned.
131. Has there been any litigation in connection with any of your patents? If so, please give full particulars of the results.

**SPECIAL QUESTIONNAIRE FOR FIRMS OR INDIVIDUALS PRACTISING AS PATENT AGENTS**

Name and address.

136. How long have you been practising as a Patent Agent ?

137. Is yours a proprietary concern, or a partnership firm, or a limited company ?

138. (a) If yours be a proprietary concern, please give the name or names of the proprietor(s), and his/their qualifications for the profession.

(b) If yours be a partnership firm, please give the names of the partners and their qualifications for the profession.

(c) If yours be a limited company please give names of the Directors and their qualifications for the profession.

139. Do you maintain a standard schedule of the fees charged from clients in connection with your professional services ? If so, could you please supply a copy of it ?

140. Have you any special arrangements with the Patent Agents or Attorneys whereby your clients can have patent protection—

(a) in Indian States ; and

(b) in foreign countries ?

141. If you have no objection, please disclose, in confidence the volume of work which you had done during the past five years in connection with—

(a) applications for patents in India ;

(b) applications for patents in Indian States ;

(c) applications for patents in foreign countries ; and

(d) patent litigation in India.

142. With reference to Question No. 88 of the General Questionnaire and more particularly to sub-clause (b)—

(a) what qualifications, educational, technical or special, do you consider essential ?

(b) what policy, if any, do you suggest with regard to the apprenticeship of a patent agent ?

143. If you consider that apprenticeship is necessary before registration of a candidate as a Patent Agent—

(a) what should be the period of apprenticeship ; and

(b) will you be willing and prepared to take pupils for apprenticeship ?  
If so, on what terms ?



GOVERNMENT OF INDIA  
MINISTRY OF INDUSTRY AND SUPPLY PATENTS ENQUIRY COMMITTEE

**Supplement to General Questionnaire**

(Special Questionnaire for Industrialists)

151. Name of concern.
152. Business address.
153. Location of factory.
154. Is the concern a Limited Company or a Private firm?
155. Industries with which the concern is mainly concerned.
156. The year in which the Company was promoted.
157. The year in which the factory was established.
158. The year in which the factory commenced production.
159. Details of goods produced (basic and by-products).
160. (i) Is there a regular research department in the concern?  
(ii) If so, what is the number of persons employed?
161. (i) Are there pilot plant facilities for experimenting and developing inventions?  
(ii) If so, give details in regard to
  - (a) the expenditure on industrial research—
    - (A) on employees' remuneration
    - (B) facilities to the employees for research.
    - (C) equipment.
  - (b) the number of inventions made by the research department;
  - (c) the number of such inventions for which patents have been taken; and
  - (d) the number of patents which have been commercially exploited, and the serial numbers of the patents.
162. (i) Do you or did you, at any time, hold any Indian patents in regard to the goods you produce?  
(ii) If so, give serial numbers of the patents.  
(iii) Do you hold any other Indian patents?  
(iv) If so, give details.  
(v) How many of the patents mentioned above have been commercially exploited?  
(vi) If they have not been commercially exploited, what were the reasons? Please give full details of the difficulties met with by you.
163. (i) Did you, at any time, feel the need for raising capital from outside for the exploitation of patents?  
(ii) If so, with what results?
164. Have your patents been, on the whole, profitable?
165. What incentive do you provide to your employees to evolve inventions.
  - (a) bonus; or
  - (b) percentage of share in the profits of the concern; or

(c) share in the royalty; or

(d) other means?

166. What is your practice in regard to remunerating your employees in regard to their inventions when they have been the result of—

(a) a part of their specific duty i.e., during researches for which they are employed,

(b) their own initiative by utilising the facilities available to them in the course of their duties, and

(c) their own initiative and without any facilities.

167. With regard to taking out patents, is it your practice—

(i) to take them in the name of the inventors only; or

(ii) to take them in your name jointly with the inventors; or

(iii) to take them without making the inventors a party to the patent?

168. Please give the number of applications made by you for grant of patents and the number—

(i) which were refused as the result of official examination,

(ii) on which effective objections were raised on the ground of lack of novelty of the invention,

(iii) on which effective objections were raised on the ground of defective drafting of the documents,

(iv) in which the grant of patent was "opposed"; and

(v) which were completed by the grant of patents.

169. Please give the serial numbers of your applications for patents which were accompanied by—

(i) Complete Specifications; or

(ii) Provisional Specifications.

170. Do you generally make any experiments or trials to test the practicability of the invention before making an application for the patent?

171. What was the usual time lag—

(i) from the conception of the invention to the stage of Filing the application for patent;

(ii) from the Filing of the application to the stage of Accepting the Application;

(iii) from the stage of Accepting the application to the stage of Sealing the patent;

(iv) from the stage of Sealing the patent to the stage of industrial exploitation of the patent.

172. (i) Were your patents profitable during the term of the patent; or

(ii) Did you have to apply for extension of the term?

(iii) If so, for what periods and with what results?

173. What is the proportion of your patents in respect of which

(i) assignments have been made; or

(ii) exclusive licences have been granted; or

(iii) non-exclusive licences have been granted.

174. Has any compulsory licence been taken on your patents?

175. (i) Are you particular to use your patents for enforcing monopoly rights; or

(ii) Are you prepared to grant licences on royalty basis?

176. Have you had recourse to exploitation by secrecy?

177. (i) Have you published any of your inventions for free use?  
(ii) If so, how many? Give details of the patents.
178. Do you issue free licences to any one asking for them?
179. (i) Have you given away your inventions as trade secrets?  
(ii) If so, on what terms?
180. What are the arrangements by which you keep yourself informed about the latest technical developments in regard to industry in general, and in particular in respect of the goods you produce, or for which you hold a patent?
181. Do you receive a regular supply of patent literature in respect of your industry  
(a) Indian, and  
(b) foreign?
182. Have you found the patent literature helpful to you  
(a) in making new inventions,  
(b) for solving your technical problems,  
(c) for expanding your industry, and  
(d) for watching the activities of your rivals in the industrial field?
183. (i) Are you aware of any "fencing" patents taken out by your rivals?  
(ii) If so, how have you met the situation?
184. (i) Has the validity of any of your patents been challenged?  
(ii) If so, on what grounds and with what results?
185. (i) Have you had occasion to institute infringement suits in respect of patents held by you?  
(ii) If so, with what results?
186. (i) Have you ever appeared as a defendant in infringement suits?  
(ii) If so, with what results?
187. (i) Have you ever been groundlessly threatened with infringement proceedings?  
(ii) If so, with what results?
188. (i) Have any of your patents been revoked?  
(ii) If so, on what grounds
189. Have you been keeping yourself in contact with the Patent Office after the grant of the patent?
190. Do you notify to the Patent Office any change of interest etc., in the patent for entry in the Register of Patents?
191. (i) Has the Register of Patents helped you in legal proceedings?  
(ii) If so, how?
192. Do you mark the patented goods produced by you?
193. Have any of your Industrial Designs been registered under Section 43 of the Act?
194. (i) Have you had occasion to institute Piracy suits in respect of your Registered Designs?  
(ii) If so, with what results?
195. Were any proceedings instituted against you for cancellation of Registration?
196. (i) Have you had occasion to extend your copy-right?  
(ii) If so, for what periods?

197. (i) Does any foreign concern hold basic patents in respect of the goods you produce?

(ii) Have such patents been misused or abused? Give details in so far as it has come to your knowledge.

(iii) Has your industry suffered on account of unfair use of patent rights by foreigners?

198. Has any patentee adopted a 'dog in the manger policy' in the field of industry in which you are interested?

199. Do you hold any patents in respect of food or medicine?

200. Do you take out your patents directly or through Patent Agents?

201. Have you had occasion to deal with Patent Agents who have taken unfair advantage of your dealings with them.

202. (i) Were any of your patents used by Government for their purpose?

(ii) If so, with what results? Give details.

203. (i) How were you compensated for these patents?

(ii) Was the compensation reasonable?

204. (i) Had you any occasion to take the matter of higher compensation to the High Court?

(ii) If so, with what results?

## SPECIAL QUESTIONNAIRE FOR RESEARCH INSTITUTIONS

Name and address of the Institution.

210. Has the Institution arrangements for fundamental research as well as for applied research?

211. As regards the inventions evolved in the Institution what is the policy of the Institution in regard to—

- (a) Publishing the inventions for the free use of the public without seeking any patent protection;
- (b) Exploiting the inventions for profit, under patent protection?
- (c) Exploiting the inventions for profit, by adopting secrecy methods?

212. (a) Has the Institution attempted to exploit any patents or unpatented invention for profit?

(b) If so, please give particulars.

213. (a) Has the Institution taken out patents in Indian States and foreign countries?

(b) If so, please give particulars.

214. (a) Has the Institution granted any licences under any of its patents or assigned them outright to any industrialist?

(b) If so, please give particulars.

215. How, if at all, does the Institution remunerate inventors working in your Institution?

216. (a) Does the Institution undertake researches financed by private individuals?

(b) If so, under what terms.

217. Please give a list, as complete as possible, of the Institution's inventions classified under the categories mentioned in the question No. 211.

218. If the Institution has adopted a policy of exploiting inventions under patent protection, what is the agency through which the necessary transactions are carried out?

219. How many of the inventions of your Institution, whether patented or not,

- (a) have been, or are at present being worked on a commercial scale;
- (b) are being developed for commercial working;
- (c) have been found to be unsuitable for commercial working, subsequent to taking out patents for them?

220. What are the facilities available to research workers engaged by the Institution for consulting—

- (a) Indian Patent literature.
- (b) Foreign Patent literature.

221. Does the Institution undertake to give technical advice to private inventors, or to provide facilities for developing their inventions for industrial purposes?

222. It has been suggested that the Patent System has become obsolete under modern conditions of—

- (a) group research,
- (b) research on a large scale being a responsibility of the State, and
- (c) the Government's policy of giving discriminating protection by tariffs and controls.

Has the Institution any comments to offer on these views?

223. Has the Institution any suggestions to offer for reforming the Indian Patent System or for more advantageously exploiting the results of researches financed from public funds?

*Table comparing Indian and British statutory provisions which aim at preventing the misuse or abuse of Patent Rights.*

Provisions of the Indian Act, as it exists at present.	Provisions of the British Act of 1907, as it stood originally.	Provisions of the British Act of 1907, as it stands at present.	Provisions of the British Act of 1907 as it would stand after amendment as proposed in the Patents and Designs Bill, 1949.
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*(a) Grounds on which an application for relief may be made.*

Under the Indian Act an application may be made on one or both of the two following grounds :—

- (1) That the demand for a patented article in British India is not being met to an adequate extent and on reasonable terms.
- (2) That the patented article or process is manufactured or carried on exclusively or mainly outside British India.

But as regards ground (1), it is provided that the demand for a patented article shall not be deemed to have been met to an adequate extent and on reasonable terms—

- (a) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its

Under the British Act of 1907 as it stood originally, an application may be made on one or both of the two following grounds :—

- (1) That the reasonable requirements of the public with respect to the patented invention have not been satisfied, and
- (2) that the patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom.

But as regards item (1) above, it is provided that the reasonable requirements of the public should not be deemed to have been satisfied —

- (a) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which

The monopoly rights under a patent shall be deemed to have been abused in any of the following circumstances :—

- (a) If the patented invention (being one capable of being worked in the United Kingdom, is not being worked within the United Kingdom on a commercial scale, and no satisfactory reason can be given for such non-working;
- (b) If the working of the invention within the United Kingdom on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by the patentee or indirectly purchasing from him, or by other persons against whom the patentee is not taking or has not taken any proceedings for infringement

The grounds upon which application may be made for a licence under the amended Act would be as follows :—

- (a) that the patented invention, being capable of being commercially worked in the United Kingdom, is not being commercially worked there or is not being so worked to the fullest possible extent ;
- (b) that a demand for the patented article in the United Kingdom is not being met on reasonable terms or is being met to a substantial extent by importation ;
- (c) that the commercial working of the invention in the United Kingdom is being prevented or hindered by the importation of the patented article .

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efficient working, or to carry on the patented process to an adequate extent or to grant licences on reasonable terms, any existing trade or industry or the establishment of any new trade or industry in India is unfairly prejudiced, or

(b) if any trade or industry in British India is unfairly prejudiced by the conditions attached by the patentee to the purchase, hire or use of the patented article or to the using or working of the patented process.

(2)

are necessary for its efficient working, or to carry on the patented process to an adequate extent or to grant licences on reasonable terms, any existing trade or industry or the establishment of any new trade or industry in the United Kingdom is unfairly prejudiced, or the demand for the patented article or the article produced by the patented process is not reasonably met ; or

(b) if any trade or industry in the United Kingdom is unfairly prejudiced by the conditions attached by the patentee before or after the passing of this Act to the purchase, hire, or use of the patented article or to the using or working of the patented process.

(3)

(c) If the demand for the patented article in the United Kingdom is not being met to an adequate extent and on reasonable terms ;

(d) If, by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of the United Kingdom or the trade of any person or class of persons trading in the United Kingdom, or the establishment of any new trade or industry in the United Kingdom, is prejudiced, and it is in the public interest that a licence or licences should be granted ;

(e) If any trade or industry in the United Kingdom, or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee, whether before or after the passing of this Act, to the purchase, hire, licence, or use of the patented article, or to the using or working of the patented process ;  
If it is shown that the existence of the patent, being

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(d) that by reason of the refusal of the patentee to grant a licence or licences on reasonable terms—

(i) a market for the export of the patented article manufactured in the United Kingdom is not being supplied or

(ii) the working or efficient working in the United Kingdom of any other patented invention is prevented or hindered ; or

(iii) the establishment or development of commercial or industrial activities in the United Kingdom is otherwise prevented or hindered ;

(e) that by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process—

(i) the manufacture, use or sale of materials not protected by the patent is unfairly prejudiced ; or

(ii) the establishment or development of commercial or industrial activities in the United Kingdom is otherwise prevented or hindered.



a patent for an invention relating to a process involving the use of materials not protected by the patent or for an invention relating to a substance produced by such a process, has been utilised by the patentee so as unfairly to prejudice in the United Kingdom the manufacture, use or sale of any such materials.

*(b) Period of grace during which the patentee is protected from complaints against him as to misuse or abuse of patent rights.*

Where the complaint is on the ground that the invention has been worked exclusively or mainly outside India an application may be made only after 4 years from the date of the patent.

Where the complaint is on the ground that the invention has been worked exclusively or mainly outside United Kingdom an application may be made only after 4 years from the date of the patent.

A complaint against a patentee on any of the grounds provided in the Act can be made only after 3 years after the sealing of the patent in question.

There is no period of grace allowed during which the patentee is protected from a complaint against him on any of the grounds specified, but, indirectly, some protection is given to him by the statutory directions which give the Comptroller General discretionary powers to decide whether the application against the patentee should be adjourned.

*(c) Authority to whom the application should be made*

Under the Indian Act the authority to whom the complaint should be made on either of the two grounds set forth above is the Central Government.

Under the British Act of 1907 as it stood originally, where the complaint is that the reasonable requirements of the public have not been satisfied, the application should be made to the Board of Trade ; but where the complaint is that the patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom the application should be made to the Comptroller General.

Comptroller General of Patents and Designs, irrespective of the ground on which the complaint is made.

Comptroller General of Patents and Designs, irrespective of the ground on which the complaint is made.

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efficient working, or to carry on the patented process to an adequate extent or to grant licences on reasonable terms, any existing trade or industry or the establishment of any new trade or industry in India is unfairly prejudiced, or

- (b) if any trade or industry in British India is unfairly prejudiced by the conditions attached by the patentee to the purchase, hire or use of the patented article or to the using or working of the patented process.

(2)

are necessary for its efficient working, or to carry on the patented process to an adequate extent or to grant licences on reasonable terms, any existing trade or industry or the establishment of any new trade or industry in the United Kingdom is unfairly prejudiced, or the demand for the patented article or the article produced by the patented process is not reasonably met ; or

- (b) if any trade or industry in the United Kingdom is unfairly prejudiced by the conditions attached by the patentee before or after the passing of this Act to the purchase, hire, or use of the patented article or to the using or working of the patented process.

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(c) If the demand for the patented article in the United Kingdom is not being met to an adequate extent and on reasonable terms ;

- (d) If, by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of the United Kingdom or the trade of any person or class of persons trading in the United Kingdom, or the establishment of any new trade or industry in the United Kingdom, is prejudiced, and it is in the public interest that a licence or licences should be granted ;

- (e) If any trade or industry in the United Kingdom, or any person or class of persons engaged therein, is unfairly prejudiced by the conditions attached by the patentee, whether before or after the passing of this Act, to the purchase, hire, licence, or use of the patented article, or to the using or working of the patented process ;  
If it is shown that the existence of the patent, being

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(a) that by reason of the refusal of the patentee to grant a licence or licences on reasonable terms—

(i) a market for the export of the patented article manufactured in the United Kingdom is not being supplied or

(ii) the working or efficient working in the United Kingdom of any other patented invention is prevented or hindered ; or

(iii) the establishment or development of commercial or industrial activities in the United Kingdom is otherwise prevented or hindered ;

(e) that by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process—

(i) the manufacture, use or sale of materials not protected by the patent is unfairly prejudiced ; or

(ii) the establishment or development of commercial or industrial activities in the United Kingdom is otherwise prevented or hindered.

a patent for an invention relating to a process involving the use of materials not protected by the patent or for an invention relating to a substance produced by such a process, has been utilised by the patentee so as unfairly to prejudice in the United Kingdom the manufacture, use or sale of any such materials.

*(b) Period of grace during which the patentee is protected from complaints against him as to misuse or abuse of patent rights.*

Where the complaint is on the ground that the invention has been worked exclusively or mainly outside India an application may be made only after 4 years from the date of the patent.

Where the complaint is on the ground that the invention has been worked exclusively or mainly outside United Kingdom an application may be made only after 4 years from the date of the patent.

A complaint against a patentee on any of the grounds provided in the Act can be made only after 3 years after the sealing of the patent in question.

There is no period of grace allowed during which the patentee is protected from a complaint against him on any of the grounds specified, but, indirectly, some protection is given to him by the statutory directions which give the Comptroller General discretionary powers to decide whether the application against the patentee should be adjourned.

*(c) Authority to whom the application should be made*

Under the Indian Act the authority to whom the complaint should be made on either of the two grounds set forth above is the Central Government.

Under the British Act of 1907 as it stood originally, where the complaint is that the reasonable requirements of the public have not been satisfied, the application should be made to the Board of Trade ; but where the complaint is that the patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom the application should be made to the Comptroller General.

Comptroller General of Patents and Designs, irrespective of the ground on which the complaint is made.

Comptroller General of Patents and Designs, irrespective of the ground on which the complaint is made.

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*(d) Provisions as to the transfer of applications to Court.*

The Indian Act provides that where the complaint is on the ground that the demand for the patented article is not being made to an adequate extent or on reasonable terms, the Central Government may, as it thinks fit, either dispose of the petition itself or refer it to a High Court for decision.

The British Act of 1907 as it stood originally provides that if the parties do not come to an agreement between themselves the Board of Trade, if satisfied that a *prima facie* case has been made out, shall refer the petition to the High Court; and if the board are not so satisfied they may dismiss the petition.

Nil.

Nil.

*(e) Provisions as to appeals.*

In the Indian Act there is no provision as to appeals.

In the British Act of 1907 as it stood originally there was a provision that any decision of the Comptroller on an application made on the ground that the patented article or process as manufactured or carried on exclusively or mainly outside the United Kingdom, shall be subject to appeal to the High Court. But there was no provision for appeal where the ground of complaint was that the reasonable requirements of the public with respect to the patented invention have not been satisfied.

All orders of the Comptroller are subject to appeal to the High Court of England.

A first appeal to the Appeal Tribunal.  
A second appeal to the Court of Appeal.

(f) *Reliefs that may be granted.*

- (a) The Central Government may make an order revoking the patent either—
- (i) forthwith or
  - (ii) after such reasonable interval as may be specified in the order, unless in the meantime it is shown to its satisfaction that the patented articles or process is manufactured or carried on within British India to an adequate extent or
- (b) The Central Government may order the patentee to grant a licence to the applicant which may be a licence exclusive to him or otherwise as the Central Government may direct.
- (a) The authority may make an order revoking the patent either—
- (i) forthwith ; or
  - (ii) after such reasonable interval as may be specified in the order, unless in the meantime it is shown to its satisfaction that the patented article or process is manufactured or carried on within the United Kingdom to an adequate extent or.
- (b) The authority may order the patentee to grant a licence to the applicant which may be a licence exclusive to him or otherwise as the authority may direct.
- (a) The Comptroller General may order the patent to be indorsed with the words "licences of right" and thereupon the same rules shall apply as are provided in this Act in respect of patents so indorsed, and an exercise by the Comptroller of this power shall entitle every existing licensee to apply to the Comptroller or an order entitling him to surrender his licence in exchange for a licence to be settled by the Comptroller in like manner as if the patent had been so indorsed at the request of the patentee, and the Comptroller may make such order; and an order that a patent be so indorsed may be made notwithstanding that there may be an agreement subsisting which would have precluded the indorsement of the patent at the request of the patentee.
- (b) He may order the grant to the applicant of a licence on such terms as the Comptroller may think expedient, including a term precluding the licensee from importing into the United Kingdom any goods the importation of which, if
- (a) The Comptroller General may order the grant to the applicant of a licence under the patent upon such terms as the Comptroller thinks fit.
- (b) Where an order for the grant of a licence under a patent has been made, any person interested may, at any time after the expiration of two years from the date of that order, apply to the Comptroller for the revocation of the patent upon any of the grounds on which the application for the licence as based; and if upon any such application the Comptroller is satisfied—
- (a) that any of the said grounds are established; and
  - (b) that the purposes for which an order may be made on the application could not be achieved by the making of any such order as is authorised to be made in pursuance of such an application, he may order the patent to be revoked.
- (c) He may order the patent to be endorsed with the words "licences of right". Where the Comptroller orders the grant of an exclusive licence, he may direct that the licence shall operate—
- (a) to deprive the patentee of any right which he may have as

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made by persons other than the patentee or persons claiming under him, would be an infringement of the patent and in such case the patentee and all licencees for the time being shall be deemed to have mutually covenanted against such importation. A licencee under this paragraph shall be entitled to call upon the patentee to take proceedings to prevent infringement of the patent, and if the patentee refuses, or neglects to do so within two months after being so called upon, the licencee may institute proceedings for infringement in his own name as though he were the patentee, making the patentee a defendant. A patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings. Service on him may be effected by leaving the writ at his address for service given on the register ;

patentee to make, use, exercise or vend the invention ;

(b) to revoke all existing licences in respect of the invention.

- (c) If the Comptroller is satisfied that the invention is not being worked on a commercial scale within the United Kingdom, and is such that it cannot be so worked without the expenditure of capital for the raising of which it will be necessary to rely on the patent monopoly, he may, unless the patentee or those claiming under him will undertake to find such capital, order the grant to the applicant, or any other person, or to the applicant and any other person or persons jointly, if able and willing to provide such capital, of an exclusive licence on such terms as the Comptroller may think just, but subject as hereinafter provided ;
- (d) He may order the grant of licences to the applicant and to such of his customers and containing such terms as the Comptroller may think expedient :
- (e) The order granting an exclusive licence shall operate to take away from the patentee any right which he may have as patentee to work or use the invention and to revoke all existing licences, unless otherwise provided in the order, but on granting an exclusive

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licence]the Comptroller may, if he thinks it fair and equitable, make it a condition that the licence shall give proper compensation to be fixed by the Comptroller for any money or labour expended by the patentee or any existing licencee in developing or exploiting the invention.

*(g) Directions given in the statute for giving relief to applicants.*

The Indian Act contains the following directions for dealing with applications for relief:—

(a) If the Central Government is of opinion, or, where a reference has been made under sub-section (2) to a High Court, that Court finds that the demand for the patented article in British India is not being met to an adequate extent and on reasonable terms, the patentee may be ordered to grant licences on such terms as the Central Government or the High Court, as the case may be, may think just, or, if the Central Government or the

(a) Where any such petition is referred by the Board of Trade to the Court, and it is proved to the satisfaction of the court that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered by the court to grant licences on such terms as the court may think just, or, if the court is of opinion that the reasonable requirements of the public will not be satisfied by the grant of licences, the patent may be revoked by order of the court;

(1) If the Comptroller is of opinion that the time which has elapsed since the sealing of the patent has by reason of the nature of the invention or for any other cause been insufficient to enable the invention to be worked within the United Kingdom on a commercial scale, the Comptroller may make an order adjourning the application for such period as will in his opinion be sufficient for that purpose.

(2) For the purpose of determining whether there has been any abuse of the monopoly rights under a patent, it shall be taken that patents for new inventions are granted not only to encourage

The powers of the Comptroller upon an application for compulsory licence shall be exercised with a view to securing the following general purposes, that is to say:—

(a) that inventions which can be worked on a commercial scale in the United Kingdom shall be worked therein without undue delay and to the fullest possible extent;

(b) that the inventor or other person beneficially entitled to a patent shall receive reasonable remuneration having regard to the nature of the invention;

(c) that the interests of any person for the time being working or developing an invention in the



High Court is of opinion that the demand will not be adequately met by the grant of licences, the patent may be revoked by order of the Central Government or the High Court.

Provided that an order of revocation shall not be made before the expiration of four years from the date of the patent, or if the patentee gives satisfactory reasons for his default.

(b) Where the application is based on the ground that the patented article is manufactured exclusively or mainly outside India, the Central Government, before granting any relief to the applicant, should satisfy itself

(i) that the applicant is prepared, and is in a position, to manufacture or carry on the patented article or process in India, and

(ii) that the patentee refuses to grant a licence on reasonable terms.

(c) No order revoking patent shall be made under the last sub-section which is at variance with any treaty, convention, arrangement or engagement with any foreign country or British possession.

(d) The Central Government may, on the application of the patentee, extend the time limited in any order made under sub-section (2),

Provided that an order of revocation shall not be made before the expiration of three years from the date of the patent, or if the patentee gives satisfactory reasons for his default.

(b) After such reasonable interval as may be specified in the order, unless in the meantime it is shown to his satisfaction that the patented article or process is manufactured or carried on with in the United Kingdom to an adequate extent:

Provided that no such order shall be made which is at variance with any treaty, convention, arrangement, or engagement with any foreign country or British possession.

(c) If within the time limited in the order the patented article or process is not manufactured or carried on within the United Kingdom to an adequate extent, but the patentee gives satisfactory reasons why it is not so manufactured or carried on; the Comptroller may extend the period mentioned in the previous order for such period not exceeding twelve months as may be specified in the subsequent order.

invention but to secure that new inventions shall so far as possible be worked on a commercial scale in the United Kingdom without undue delay.

(3) In settling the terms of any such exclusive licence, due regard shall be had to the risks undertaken by the licensee in providing the capital and working the invention, but, subject thereto, the licence shall be so framed as—

(a) to secure to the patentee the maximum royalty compatible with the licensee working the invention within the United Kingdom on a commercial scale and at a reasonable profit;

(b) to guarantee to the patentee a minimum yearly sum by way of royalty, if and so far as it is reasonable so to do, having regard to the requisite for the proper working of the invention and all the circumstances of the case;

(4) In addition to any other powers expressed in the licence or order, the licence and the order granting the licence shall be made revocable at the discretion of the Comptroller if the licensee fails to expend the amount specified in the licence as being the amount which he is able and willing to provide for the purpose of working the invention on a commercial scale within the United Kingdom, or if he fails so to

United Kingdom under the protection of a patent shall not be unfairly prejudiced.

Subject to the foregoing considerations, the Comptroller shall, in determining whether to make an order in pursuance of any such application, take account of the following matters, that is to say:—

(a) the measures already taken by the patentee or any licensee to make full use of the invention;

(b) the ability of any person to whom a licence would be granted under the order to work the invention to the public advantage; and

(c) the risks to be undertaken by that person in providing capital and working the invention if the application is granted; but shall not be required to take account of matters subsequent to the making of the application.

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clause (ii), for such period not exceeding two years as it may specify in a subsequent order, or revoke any order made under sub-section (2), clause (ii), or any subsequent order if sufficient cause is in its opinion shown by the patentee.

work the invention within the time specified in the order.

(5) Where a patent has been endorsed with the words "Licences of Right" in settling the terms of any such licence the Comptroller shall be guided by the following considerations—

(i) he shall, on the one hand, endeavour to secure the widest possible user of the invention in the United Kingdom consistent with the patentee deriving a reasonable advantage from his patent rights ;

(ii) he shall, on the other hand, endeavour to secure to the patentee the maximum advantage consistent with the invention being worked by the licensee at a reasonable profit in the United Kingdom ;

(iii) he shall also endeavour to secure equality of advantage among the several licensees, and for this purpose may, on due cause being shown, reduce the royalties or other payments accruing to the patentee under any licence previously granted ;

Provided that, in considering the question of equality of advantage, the Comptroller shall take into account any work done or outlay incurred by any previous licensee with a view to testing the commercial scale in the United Kingdom.

In deciding to whom such an exclusive licence is to be granted the Comptroller shall, unless good reason is shown to the contrary, prefer an existing licensee to a person having no registered interest in the patent.

## APPENDIX IV.

### Section 22.

(1) At any time after the sealing of a patent, any person interested may apply to the Controller for a licence under the patent upon any one or more of the grounds specified in sub-section (2) of this section.

**Compulsory licences or revocation in case of abuse of insufficient use of patent rights.**—An application under this section may be made on any of the following grounds:—

- (a) that the patented invention, being capable of being commercially worked in India, is not being commercially worked therein, or is not being so worked to the fullest possible extent;
- (b) that the demand for the patented article in India is not being met to an adequate extent or on reasonable terms;
- (c) that the commercial working of the invention in India is being prevented or hindered by the importation of the patented article;
- (d) that by reason of the refusal of the patentee to grant a licence or licences on reasonable terms;
  - (i) a market for the export of the patented article manufactured in India is not being supplied; or
  - (ii) the working, or efficient working in India of any other patented invention is prevented or hindered; or
  - (iii) the establishment or development of commercial or industrial activities in India is otherwise prevented or hindered;
- (e) that by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process—
  - (i) the manufacture, use or sale of materials, not protected by the patent is unfairly prejudiced; or
  - (ii) the establishment or development of commercial or industrial activities in India is otherwise prevented or hindered.

(3) An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent and no person shall be estopped from alleging any of the matters specified in sub-section (2) of this section by reason of any admission made by him, whether in such a licence or otherwise, or by reason of his having accepted such a licence.

(4) Subject as hereinafter provided, the Controller may, if satisfied that any of the grounds aforesaid are established, order the grant to the applicant of a licence under the patent upon such terms as he thinks fit:

Provided that—

- (a) where the application is made on the ground that the patented invention is not being commercially worked in India, and it appears to the Controller that the time which has elapsed since the sealing of the patent has for any reason been insufficient to enable it to be so worked, he may by order in writing adjourn the application for such period as will in his opinion give sufficient time for the invention to be so worked;
- (b) any licence granted under this section on the ground that a market for the export of the patented article is not being supplied shall contain such provisions as appear to the Controller to be expedient for restricting the countries in which the patented article may be sold by the licensee;
- (c) no order shall be made under this section in respect of a patent on the ground that the working or efficient working in India

of another patented invention is prevented or hindered unless the Controller is satisfied that the patentee in respect of that other invention is able and willing to grant to the patentee a licence in respect of that other invention on reasonable terms.

(5) Where the Controller is satisfied, on application made under this section, that the manufacture, use or sale of materials not protected by the patent is unfairly prejudiced by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, he may, subject to the provisions of this section, order the grant of licences under the patent to such customers of the applicant as he thinks fit as well as to the applicant.

(6) Where an application under this section is made by a person being the holder of a licence under the patent, the Controller may, if he makes an order for the grant of a licence to the applicant, order the existing licence to be cancelled, or may, if he thinks fit, instead of making an order for the grant of a licence to the applicant, order the existing licence to be amended.

(7) Where on an application under this section the Controller orders the grant of an exclusive licence, he may direct that the licence shall operate—

- (a) to deprive the patentee of any right which he may have as patentee to make, use, exercise or vend the invention;
- (b) to revoke all existing licences in respect of the invention.

(8) The licensee under any licence granted in pursuance of this section shall (unless, in the case of a licence the terms of which are settled by agreement, the licence otherwise expressly provides) be entitled to call upon the patentee to take proceedings to prevent any infringement of the patent; and if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as if he were patentee, making the patentee a defendant:

Provided that a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(9) The powers of the Controller upon an application under this section shall be exercised with a view to securing the following general purposes, that is to say:—

- (a) that inventions which can be worked on a commercial scale in India shall be worked therein without undue delay and to the fullest possible extent;
- (b) that the inventor or other person beneficially entitled to a patent shall receive reasonable remuneration having regard to the nature of the invention;
- (c) that the interests of any person for the time being working or developing an invention in India under the protection of a patent shall not be unfairly prejudiced;
- (d) that food, medicines, and surgical and curative devices shall be available to the public at the lowest prices consistent with the patentees' deriving a reasonable advantage from their patent rights.

(10) Subject to the foregoing subsection, the Controller shall, in determining whether to make an order in pursuance of any such application, take account of the following matters, that is to say:—

- (a) the measures already taken by the patentee or any licensee to make full use of the invention;
- (b) the ability of any person to whom a licence would be granted under the order to work the invention to the public advantage; and
- (c) the risks to be undertaken by that person in providing capital and working the invention if the application is granted;

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

(11) Where an order for the grant of a licence under a patent has been made in pursuance of an application under this section, any person interested may, at any time after the expiration of two years from the date of that order, apply to the Controller for the revocation of the patent upon any of the grounds specified in subsection (2) of this section; and if upon any such application the Controller is satisfied—

- (a) that any of the said grounds are established; and
- (b) that the purposes for which an order may be made in pursuance of an application under this section could not be achieved by the making of any such order as is authorised to be made in pursuance of such an application,

he may order the patent to be revoked.

(12) An order for the revocation of a patent under this section may be made so as to take effect either unconditionally or in the event of failure to comply, within such reasonable period as may be specified in the order, with such conditions as may be imposed by the order with a view to achieving the purposes aforesaid; and the Controller may, on reasonable cause shown in any case, by subsequent order extend any period so specified.

(13) Any order under this section for the grant of a licence shall, without prejudice to any other method of enforcement, have effect as if it were a deed, executed by the patentee and all other necessary parties, granting a licence in accordance with the order.

(14) No order shall be made in pursuance of any application under this section which would be at variance with any treaty, convention, arrangement or engagement with any foreign country.

(15) In this section the expression "patented article" includes any article made by a patented process.

### SECTION 23.

(1) **Appeals from orders under Section 22.**—Any person aggrieved by an order of the Controller under Section 22 of this Act, may prefer an appeal to the Central Government.

(2) On receipt of such appeal the Central Government shall appoint an ad hoc Special Tribunal for hearing and deciding it:

Provided that no appeal shall lie from any order passed by the Controller with the consent of the parties before him.

(3) The Special Tribunal shall consist of—

- (i) a sitting or retired judge of a High Court, who will be the President of the Tribunal,
- (ii) a Barrister or an Advocate of not less than ten years standing, preferably conversant with patent law and procedure, and
- (iii) a technical expert in the subject with which the patent in question is concerned.

(4) Subject to such conditions and limitations as may be prescribed, the Special Tribunal shall have power—

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial to the Controller;
- (d) to take additional evidence or to require such evidence to be taken by the Controller;
- (e) to pass and make any order which ought to have been passed or made and to pass or make such further or other orders as the case may require, and this power may be exercised by the Special Tribunal notwithstanding that the appeal is as to part only of the order and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

(f) to determine, if the evidence on the record is sufficient, any issue of facts necessary for the disposal of the appeal which has not been determined by the Controller or which has been wrongly determined by the Controller by reason of any illegality, omission, error or defect.

(5) The appeal shall be decided in accordance with the opinion of such judges or of the majority (if any) of such judges.

(6) Where there is no such majority which concurs in a judgement, varying or reversing the order appealed from, such order shall be confirmed.

(7) Subject to such conditions and limitations as may be prescribed, the costs of and incident to all proceedings before the Special Tribunal shall be in the discretion of the Tribunal and the Tribunal shall have full power to determine by whom and to what extent such costs are to be paid and to give all necessary directions for the purpose aforesaid.

(8) Where the Tribunal directs that any cost shall not follow the event, it shall state its reasons in writing.

## ANNEXURE B

(i) *Places visited and persons and associations interviewed by the Patents Enquiry Committee.*

### CALCUTTA :

- |                                 |   |
|---------------------------------|---|
| (1) Shri K. Seshagiri Rao       | Controller of Patents and Designs.  |
| (2) Dr. B. N. Ghosh             | } Representing the Indian Chemical Manufacturers' Association.  |
| (3) Shri Madanlal H. Vakil      |   |
| (4) Shri C. D. Thakkar.         |   |
| (5) Shri G. Chakravarty.        |   |
| (6) Dr. U. P. Basu.             | } Representing the Patents, Designs & Trade Mark Review.  |
| (7) Shri K. M. Saha.            |   |
| (8) Mr. D. H. Remfry            | } Patent Agents   |
| (9) Mr. E. D. O. Bernier.       |   |
| (10) Mr. W. F. DePenning.       |   |
| (11) Shri L. S. Davar.          | } Patentees   |
| (12) Shri G. Basu               |   |
| (13) Mr. Walter P. Warren       |   |
| (14) Shri S. K. Dhar            |   |
| (15) Shri Rajindra Prasad Verma |   |
| (16) Shri C. S. Pai             | } Representing the Patent Office Society.   |
| (17) Shri B. G. Ray.            |   |
| (18) Shri R. Narain             |   |
| (19) Shri A. Sinha.             |   |
| (20) Shri R. K. Vaish           | Late Examiner of Patents and Assistant Registrar of Trade Marks.  |
| (21) Shri V. N. Damodaran       | Formerly Superintendent of the Patent Office, at present in the employ of M/s Depenning and Depenning, Patent Agents, Calcutta. |
| (22) Shri H. N. Ghosh           | Deputy Controller of Patents & Designs.   |
| (23) Dr. N. N. Chatterjee.      | Examiner of Patents-in-charge.  |
| (24) Shri C. S. Pai.            | } Examiners of Patents.   |
| (25) Shri A. Bose.              |   |
| (26) Shri B. G. Ray             |   |

### BOMBAY :

- |                          |   |
|--------------------------|---|
| (1) Shri K. Shavaksha    | Registrar of Trade Marks                              |
| (2) Shri M. A. Chaudhry. | Patentee.   |
| (3) Shri R. G. Saraiya.  | } Representing the Indian Merchants Chamber.          |
| (4) Mr. A. C. Ramalingam |   |
| (5) Shri P. Sarabhai     |   |
| (6) Dr. K. Ganapathy     | } Representing the Indian Pharmaceutical Association. |
| (7) Dr. M. V. Shirsat.   |   |
| (8) Dr. M. L. Korana.    |   |
| (9) Dr. D. S. Bhate      |   |

### POONA :

- |              |   |
|--------------|---|
| Dr. Gharpure | Curator, Lord Reay Maharashtra Industrial Museum. |
|--------------|---|



(iv) *Places visited and persons and associations interviewed by the Member Secretary of the Patents Enquiry Committee.*

**CALCUTTA :**

- (1) The Indian Chamber of Commerce.
  - (2) The Bengal Chamber of Commerce.
  - (3) The Indian Chemical Manufacturers' Association.
  - (4) Indian Association for the Cultivation of Science.
  - (5) The Institute of Chemists.
  - (6) The Indian Chemical Society.
  - (7) The Bengal Immunity Research Society.
  - (8) The Patent Office Society.
  - (9) Controller of Patents and Designs.
  - (10) The Director of Industries and other Technical Officers of the Government of Bengal.
  - (11) M/s. L. S. Davar & Co.
  - (12) M/s DePenning & Depenning.
  - (13) M/s P. Lodge & Co.
  - (14) M/s Remfry & Sons.
  - (15) Shri Rajendra Prasad Verma.
  - (16) Usha Trading Co.
  - (17) Mr. Ghosh.
- |  |                |
|--|----------------|
|  | Patent Agents. |
|  | Patentee.      |
|  | Manufacturers  |
|  | Inventor       |

**JEMSHEDPUR:**

- (1) The Tata Iron & Steel Co.
- (2) The Steel Wire-& Nail Products.
- (3) The Tata Locomotive Manufacturing Co.
- (4) The Tata Tinplate Co.
- (5) The Metallurgical Research Institute.
- (6) The Refractories Laboratory.
- (7) The Metallurgical Inspectorate.

**BOMBAY:**

- (1) The Bombay Millowners' Association.
- (2) The Indian Pharmaceutical Association.
- (3) The Indian Merchants' Chamber.
- (4) Representative of the Tariff Board.
- (5) The Manager, Association of British Chemical Manufacturers.
- (6) Dr. Hamied, Managing Director, Cipla.
- (7) The Vijay Glass Works.
- (8) Prof. K. Venkataraman, Director of the Department of Chemical Technology, Bombay University.
- (9) Mr. J. Stoodley, The United Kingdom Trade Commissioner in Bombay.
- (10) Mr. R. D. Chandorkar (inventor and industrialist).
- (11) Mr. E. Lindenberger of Bombay Glass Works Ltd.
- (12) Mr. A. Schwarz of the Indian Metal Co. Ltd.
- (13) Mr. Frank T. Cooper (Patentee).
- (14) Mr. B. K. Bose, the Chief Assayer of the Indian Government Mint.

**POONA:**

- (1) Scientists, Meteorological Department.
- (2) Dr. Gharpure, Curator, Lord Reay Maharashtra Industrial Museum.

**AHMEDABAD:**

Ahmedabad Millowners' Association.

**AJMER:**

- (1) Shri R. K. Vaish, Late Examiner of Patents and Assistant Registrar of Trade Marks.
- (2) Deputy Chief Engineer of the B.B. & C.I. Railway Workshop.

**WALTAIR:**

- (1) The Heads of the Departments of Physics, Chemistry, Geology, Technology, etc. of the Andhra University.
- (2) The Vice-chancellor of the Andhra University.
- (3) Chemical & Technical Association of the Andhra University.

**MADRAS:**

- (1) Dr. Dey and other Scientists engaged in industrial research.
- (2) Shri S. S. Pani.
- (3) M/s Madras Enamel Works Ltd.

**TRIVANDRUM:**

- (1) The Director of Research.
- (2) The Professor of Applied Chemistry.
- (3) The Controller of Patents & Designs, Travancore.

**COCHIN:**

- (1) The Indian Chamber of Commerce.
- (2) The Director of Industries and Controller of Patents & Designs.

**BANGALORE:**

- (1) Dr. C. V. Raman.
- (2) The Director and the Heads of Departments of the Indian Institute of Science.
- (3) The Mysore Chamber of Commerce.
- (4) The Director, Indian Dairy Research Institute.
- (5) The Director of Industries and Commerce and Controller of Patents and Designs.
- (6) The Registrar of Trade Marks, Mysore.
- (7) The Manager, Government Porcelain Factory.
- (8) Mr. J. V. Ray (Inventor and Patentee).

**HYDERABAD:**

- (1) The Secretary and the Deputy Secretary, Department of Industries and Commerce, Government of Hyderabad.
- (2) The Chief Civil Administrator.
- (3) Director of Research, Osmania University.
- (4) Scientific and Research Workers' Association.

## ANNEXURE C

(i) Table showing the number of meetings of the Plenary Committee attended by the Chairman & Member of the Committee.

Name	Meetings attended at Delhi	Meetings attended at Calcutta	Meetings attended at Bombay	Total numbers of meetings attended
1. Dr. Bakshi Tek Chand	8	*	*	8 (16 days, in addition to 94 days of discussions with Member-Secretary.)
2. Shri Gurunath Bewoor	8	1	1	10 (25 days)
3. Major General S.S. Sokhey	3	..	1	4 (6 days)
4. Mr. N. Barwell	3	1	..	4 (8 days)
5. Shri S. P. Sen	8	1	1	10 (24 days)
6. Shri S. M. Basu	..	1	..	1 (5 days)
7. Dr. S. D. Mahant	7	1	1	9 (22 days)
8. Shri K. Rama Pai	8	1	1	10 (25 days)

(ii) Table showing the number of the Sub-Committee meetings of the Committee attended by the Chairman & Members of the Committee.

Name	Sub-Committee meetings attended at Delhi	Sub-Committee meetings attended at Calcutta	Total number of Meetings attended
1. Dr. Bakshi Tek Chand	1	*	1 (1 day)
2. Mr. N. Barwell	1	1	2 (3 days)
3. Shri S.P. Sen	..	1	1 (2 days)
4. Shri S.M. Basu	..	1	1 (2 days)
5. Dr. S.D. Mahant	..	1	1 (2 days)
6. Shri K. Rama Pai	1	1	2 (3 days)

\* The Chairman could not attend owing to illness.