CF/PP/PL attached.
MIS 6/9

Prime Minister: D

We are still awaiting the further material to be submitted by Sir Austin Bide. I understand that you discussed this with Mr Sparrow this morning and agreed that a study along the lines proposed would be useful.

JH
31/8.

RESTRICTED

Qa 06048

31 August 1982

To: PRIME MINISTER

From: JOHN SPARROW

Yes - but that need not delay an approach with Sir Austin Bide. I should like to see him

Protection of Intellectual Property

1. I have seen the correspondence which has followed Sir Austin Bide's recent letter to you, enclosing a paper on this subject. As it happens, I first learned of Sir Austin's concern about the protection of intellectual property over dinner with him and Keith Joseph back in April and, since writing to you, he has been good enough to send me a copy of his paper.

2. As you know, Robin Nicholson carries out his responsibilities as Chief Scientist from within the CPRS and he also relates very closely to ACARD. I believe that the questions raised by Sir Austin are important and it seems to me that there may well be a role here for either the CPRS or ACARD (or the two together) to undertake a study under Robin Nicholson's leadership.

3. On the surface, the subject appears suitable for a study. Innovation, of particular importance to the United Kingdom, may be suppressed by inadequate protection of intellectual property. Many industrialists feel that the patents system is on the verge of breakdown through its inability to deal with new technologies and with the differing requirements of the industrial world and the third world. Several Government Departments have an interest.

4. If you agree we will do sufficient work to see if our first impressions are correct and, if so, we will submit a draft remit to you in early October for a substantive study. In the meantime, and again if you agree, Sir Austin's nominees could perhaps be put in touch with us when they contact your Private Office.

5. I am sending a copy of this minute to Lord Cockfield.

JS.

RESTRICTED

RESTRICTED

C Prime Minister (2)

To note. As you requested I have arranged a meeting for you with Sir A Bide, Lord Cockfield and Robin Nicholson after your return from China.

PRIME MINISTER

I refer to John Sparrow's minute to you of 31 August concerning the protection of intellectual property. MLS 10/9

I can see that some study of the subject by the CPRS could be valuable but I think that John Sparrow's plan to consider feasibility before drafting a remit is a wise one. We will be happy to contribute our expertise to these preliminaries as well as to any resulting study. I must say that we here have little evidence to support industrialists' perhaps pessimistic view that the patents system is on the verge of breakdown through the supposed inability to deal with new technologies. On the other hand it is clear that pressure from the third world is a real and immediate problem. This is what lies behind the current Revision of the Paris Convention which caused Sir Austin Bide to write to you; the next discussion is in Geneva on 4 October and it would obviously be helpful to have any further information before then. The same issues have also been exercising ICI and in correspondence with Robin Ibbs, my Permanent Secretary has offered a meeting with the Association of British Pharmaceutical Industries. You may care to refer to this in any further contacts with Sir Austin Bide.

I might add that the pharmaceutical industry tends to be the target of activities by other countries and not just the Third World. This is because of the high cost of medicines, which is claimed - not always accurately - to justify the high level of drug company profits. The fact is that the cost often has to be met by Governments. It is for this reason that Sir Austin Bide is particularly sensitive on this issue. But it would be a mistake to think that the advantages of tightening up the patents system would all be in one direction.

I am sending a copy of this minute to John Sparrow.

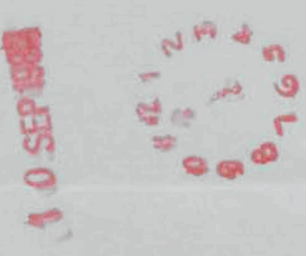
John Wakeham

[approved by the Secretary of State and signed in his absence]

Department of Trade

for LORD COCKFIELD

9 September 1982


10 SEP 1984

F

INTERNATIONAL PATENT PROBLEMS

1 The Paris Convention for the protection of industrial property broadly obliges member states to give national treatment in their patent system to nationals from other members. It operates much to the advantage of industrial trading nations. It has been severely criticised by UNCTAD as unfair to the developing countries ('the 77') in not assisting industrialisation; the Convention is undergoing a revision in conference (Geneva 1980, Nairobi 1981, reconvening now) to see how it can be modified to meet that criticism without pulling the basic fabric to bits. So far, the 77 have been willing to negotiate on possible amendments, though there is nothing that obliges them to remain members: UNCTAD stands ready with far-reaching alternatives.

2 The most difficult problem is Article 5A; the present text says that if the monopoly right given by a patent is abused, the member state concerned may confer that right exclusively (ie cutting out the original owner) on someone else. 'Abuse' is not defined: but failure to work the patent locally - ie using it to protect the local market for patented goods made elsehwere - is quoted as an example which permits not an exclusive compulsory licence, but a compulsory licence enabling another manufacturer to use the patent in competition with the owner.

3 An amended text was agreed in Nairobi with only the USA dissenting. This says that a developing country (only) may grant an exclusive compulsory licence if the patent right is abused and failure to work locally is a constituent part of the abuse.

4 This new text was seen to have these advantages:

i) It makes a concession probably more optical than real to the 77 and therefore - for the moment - keeps them in as member states;

ii) It forbids developed countries to grant such licences at all;

iii) Its acceptance therefore stopped an attempt by 6 developed countries to get for themselves a concession meant only for the developing;

iv) It held back Scandinavian willingness to give the 77 a good deal more;

v) The European Community were kept together (Italy tried to break away, as one of the 6).

5 US industry has been opposed to any mention in the revised text of an exclusive compulsory licence; important sections of British industry (especially pharmaceuticals) have recently come round to

that view; the 77 remain insistent that a new text must give some recognition to the possibility of such a licence. We have succeeded for the moment in postponing any further formal discussion, while the USA and the 77 ponder.

6 Other Matters

Voting procedures in the Convention. Unanimity was in previous revisions required; de facto it has gone, and now 13 dissentient votes are required to block an amendment. The USA did not challenge the legality of the change when it was made, so probably unanimity has gone de jure as well

Inventor's certificates in the Convention. This is the Soviet (alleged) equivalent of a patent. It is of no value to us, but is formally recognised in the Convention (since 1967) simply to establish a priority date for an invention; no change is under negotiation.

Local attacks on patent law. A number of countries (Brazil, India, Costa Rica) are pretty unscrupulous in their treatment of patents; we do our best to keep them in line; when we can refer to the requirements of the Paris Convention we have a base for argument, but (a) India and Costa Rica are not members, and (b) retaliation, in dealings with countries which have little interest in getting UK patents, is a boomerang with a very sharp edge.

Community Patent Convention. This is a plan for a single patent covering the Community to be granted by the European Patent Office; it is held up by constitutional difficulties in other member states.

Italy Pharmaceuticals used to be unpatentable; the Court decided in 1978 that this was wrong, and the Italian Government have been trying since then to frame a law which would give some safeguard to manufactuers who had planned to operate under the old law. We have made representations to try to ensure that the legislation conforms fully with Italy's international obligations.

Spain We were the first member state to point out that Spanish patent law (which reduces even the protection expected to be gained from a Spanish patent - which is not much - by derogations in favour of local manufacture) is unacceptable in a member of the Community. This is now the Community's position in the accession negotiations: the problem is to devise a proper transitional regime, and we are in close touch with British industry about the terms.

7 Generally, the international patent system protects the export markets of industrial nations: 4% of world patents are held in the Group of 77, of which 90% are held by firms in the industrialised

world, and of that 90% only 10% are worked locally - the rest protect exports to the 77. If the 77 decided to go for an UNCTAD-type system, there are plenty of potential accomplices to supply goods now protected (eg Hungary for pharmaceuticals). To decide where our advantage lies at any one moment is not easy and we rely heavily on our consultations with industry to help us; to negotiate on our own is practically impossible; the Community power block is our best base.

Department of Trade

11 October 1982