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From the Private Secretary

12 October 1982

Dear John,

The Prime Minister, together with Lord Cockfield, met Sir Austin Bide today to discuss his letter to her of 19 July about intellectual property. Dr. Nicholson was also present.

The Prime Minister said that she had considerable sympathy with Sir Austin's argument that in our efforts to maintain the patent system worldwide we might be conceding too much to the developing countries. She recognised the desirability of maintaining the integrity of the patent system and indeed it was in the longer term interests of the developing countries themselves that the system did not break down. Such an objective was, however, compatible with a tougher negotiating stance than we appeared to have been taking.

Lord Cockfield said that the problem was essentially one of enforceability; unless the developing countries saw some advantage in maintaining the patent system they might well break away from it leaving British industry with no protection in such countries. The judgement to be made was the balance between pursuit of our own legitimate interests on the one hand and on the other persuading the developing countries that their own interest lay in the preservation of the system. The difficulty in the latter course was that over 99% of present patents were held by the developed countries. The rest had been the target of a systematic campaign by UNCTAD to undermine their faith in the patent system. Lord Cockfield further explained that the principal concession which had been made in the draft Convention was more apparent than real. The right to grant an Exclusive Compulsory Licence was already available to all countries in the 1967 Stockholm text of the Convention. The latest draft defined the circumstances in which such Licences might be granted; indeed it limited their ambit to developing countries only against the wishes of a number of developed countries. It was nevertheless possible that the closer definition of these rights might well lead developing countries to use them whereas in the past by design or ignorance they had not done so.

The Prime Minister said that there was a real risk that Exclusive Compulsory Licences would be much more extensively used under the new draft. The UK should therefore join the United States in seeking to avoid the final adoption of the draft despite the abrogation of the unanimity rule. The best course forward

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would be to seek an extension of the standstill on the new draft which the US had secured and in the interim to mount an extensive campaign of education of those developed countries which had supported the Group of 77 and of those developing countries who had most to gain in the longer term by the maintenance of the integrity of the existing patent system. If it seemed likely that such a stand would break up the Geneva Conference and lead to the establishment of a separate Convention, the question of our negotiating stance should be reconsidered by Ministers.

I am sending a copy of this letter to Jonathan Spencer (Department of Industry) and to Robin Nicholson (CPRS).

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Yours ever,

Tim Fisher.

John Rhodes, Esq.,
Department of Trade.

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10 DOWNING STREET

From the Private Secretary

12 October 1982

Dear John,

I attach a note of the meeting between the Prime Minister, your Secretary of State and Sir Austin Bide on intellectual property. As you will see, the meeting did not consider the CPRS proposal for a study of intellectual property although it did touch briefly on the longer term issues which Dr. Nicholson's minute of 11 October raised. The Prime Minister has now agreed that Dr. Nicholson should now discuss the draft remit with your Secretary of State and other interested Ministers with a view to putting proposals for such a study to her as soon as possible.

I am sending a copy of this letter to Dr. Nicholson.

*Yours ever,
The Sec.*

John Rhodes, Esq.,
Department of Trade.

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