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10 DOWNING STREET

From the Private Secretary

SIR ROBERT ARMSTRONG

Intellectual Property Rights

Dr. Nicholson's minute to you of 12 December, which you passed to me, sought the Prime Minister's approval to a Parliamentary announcement about the Green Paper on Intellectual Property Rights and Intervention.

The Prime Minister is content with the terms of the draft answer as slightly amended by you, and that an announcement should be made before the Recess. A Question has now been tabled, and we are in touch with Dr. Nicholson about timing.

I am sending a copy of this minute to Ruth Thomson (Department of Trade and Industry).

MR. D. BARCLAY

19 December 1983

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DRAFT WRITTEN PARLIAMENTARY QUESTION

To ask the Prime Minister whether the seminar on Science, Technology and Industry, that she chaired in September, will lead the Government to encourage a greater national awareness of the commercial value of ideas and inventions.

DRAFT WRITTEN ANSWER

The discussion at the seminar organised by the Government at Lancaster House in September showed that major developments are taking place in the generation, financing and exploitation of innovation. Few organisations, however, can afford to embark on expensive programmes of research and development without the assurance that ownership of the fruits of this will be safeguarded. That means that those individuals generating new ideas, whether in universities, companies, Government research establishments or even in schools, should take very seriously indeed the protection of those ideas - generally known as intellectual property - through patents, copyright and registered designs.

Dr R B Nicholson, Chief Scientific Adviser in the Cabinet Office, was asked to study whether the national system of intellectual property rights was well suited to encouraging innovation. I have [today] laid his report before the House as a consultative document.

The recommendations that Dr Nicholson makes are intended to improve the awareness of the value of intellectual property rights, their

accessibility and their usage particularly by individuals and small businesses.

The Government is seeking views widely before attempting to weigh the advantages and disadvantages of the actions proposed.

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Jms
19/12

PRIME MINISTER

INTELLECTUAL PROPERTY RIGHTS

You agreed last month to publication of a consultative document on intellectual property rights and innovation. You also agreed a draft introduction for your own signature inviting comments on the consultative document. Authorship of the document itself rests clearly with Dr. Nicholson.

Printed copies will be available to be laid before Parliament before the Recess.

Agree attached Written Answer?

Yes no

Yes no

Jms

16 December 1983



From the Secretary of the Cabinet

Mr. Barclay

I am content with
the proposals but the
Nicolson notes in his
minute of 12 December
attached. I have
very slightly modified
the proposed Writter
Answer.

RA

15. vii

W.0838

12 December 1983

SIR ROBERT ARMSTRONG

REPORT: INTELLECTUAL PROPERTY RIGHTS AND INNOVATION

You will recall that the Prime Minister has agreed to lay this report before Parliament as a Green Paper (David Barclay's minute to me of 8 November). She has also approved an introductory statement which will go over her own signature.

2. Departments have subsequently been consulted on the final wording of the text and a number of small alterations have been made in order to correct factual errors. I have also modified the discussion of compulsory licensing (paragraphs 5.11 - 5.22) and of the Paris Convention (paragraphs 5.26 - 5.28) to exclude any advocacy of exclusive licences. Both FCO and DTI believe that any such advocacy, bearing the imprimatur of the Prime Minister, even though the introduction makes the Government's position clear, might make negotiations within the Paris Convention more difficult. It is not an essential part of the report and I have therefore omitted it. DTI believe that similar arguments apply to transfer of know-how (paragraph 5.18) but this is already embodied in some existing legislations abroad and would appear to be permitted within existing UK patent law. Moreover, the discussion is a major part of the line of argument of the report and I would not wish to lose it without more substantial reasons. I have therefore left the reference but further modified the material to reduce DTI's concern to a minimum.

3. The final text of the report has now gone to HMSO with a request that it be ready to be laid before Parliament by 20 December. I attach a copy. Any last-minute alterations can be accommodated at the proof stage on 14 December.

4. I also attach:

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- i. A draft Parliamentary Question with which the Prime Minister might announce the publication of the Green paper

- ii. A draft press release.

5. If you are content with these perhaps you could forward this minute and attachments to Charlotte Stevens, the Prime Minister's Parliamentary Clerk.

6. I would like to suggest that John Stubbs and Bernard Ingham conspire to organise an off the record press briefing that I would give. The subject of the Green Paper is a complex one and may need explanation for there to be any press impact. I would also like to ensure that the link is made very firmly with the Prime Minister's seminar at Lancaster House, ie that the Government is exploring actively the ways to improve the climate for innovation and wealth creation.

- 7. Finally, I attach a letter which the Prime Minister might send to Sir Austin Bide on the day of Publication, with a copy of the Green Paper. I put the original suggestion for this study to the Prime Minister at the time of her meeting with Sir Austin, to discuss the importance of intellectual property, in September 1982. He referred again to the topic at the Prime Minister's seminar.

RBN

ROBIN B NICHOLSON

cc: Mr B Ingham, No 10
Mr J Stubbs, MPO Press Office
Ms Ruth Thompson, PS/Secretary of State
for Trade and Industry

DRAFT WRITTEN PARLIAMENTARY QUESTION

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accessibility and their usage particularly by individuals and small businesses.

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DRAFT PRESS RELEASE

The Prime Minister today published a Green Paper [consultative document] dealing with the value to the nation of its ideas and inventions and the ways that they can be protected to allow commercialisation and wealth creation.

The Green Paper (Cmnd) contains a report entitled "Intellectual Property Rights and Innovation" by Dr R B Nicholson, the Chief Scientific Adviser in the Cabinet Office. A summary of the report is attached.

[In reply to a Question in Parliament from]
the Prime Minister said:

"The discussion at the seminar organised by the Government at Lancaster House in September showed that major developments are taking place in the generation, financing and exploitation of innovation. Few organisations, however, could afford to embark on expensive programmes of research and development without the assurance that ownership of the fruits of this will be safeguarded. That means that those individuals generating new ideas, whether in universities, companies, Government research establishments or even in schools, should take very seriously indeed the protection of those ideas - generally known as intellectual property - through patents, copyright and registered designs.

"Dr R B Nicholson, Chief Scientific Adviser in the Cabinet Office,

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was asked to study whether the national system of intellectual property rights was well suited to encouraging innovation. I have [today] laid his report before the House as a consultative document.

"The recommendations that Dr Nicholson makes are intended to improve the awareness of the value of intellectual property rights, their accessibility and their usage particularly by individuals and small businesses. ~~The Government welcomes this contribution to such an important subject.~~

~~"But this is a complex area and~~ ^{the} Government is seeking views widely before attempting to weigh the advantages and disadvantages of the actions proposed."

The Secretary of State for Trade and Industry will be co-ordinating the Government's response to the Chief Scientific Adviser's report and comments should be sent to him at 1 Victoria Street, London SW1H 0ET.

Note to Editors

1. The seminar at Lancaster House took place on 12 September and was entitled "Science, Technology and Industry".

The purpose was to discuss the creation of wealth from science and technology which is a major component of the Government's aim to create an economy which provides stable prices, lasting prosperity and employment for the British people. The seminar considered the generation, financing and exploitation of innovation based on science and technology.

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The seminar was chaired by the Prime Minister and attended by 250 senior individuals from industry, the City, universities, and from Government and the Civil Service.

2. The role of the Chief Scientific Adviser, Cabinet Office (formerly the Chief Scientist, Central Policy Review Staff) is described in the White Paper "Science in Government" (Cmd 8591). Broadly it is to provide scientific and engineering advice to the Prime Minister and the Cabinet Office. He sits on the principal Committees which deal with the scientific and technological issues which come before Government, except for those which are solely the concern of a single Department. He is the Government's scientific representative on many international occasions.

INTELLECTUAL PROPERTY RIGHTS AND INNOVATION

A report by the Chief Scientific Adviser, Cabinet Office

SUMMARY

1. New products, new services, and new manufacturing processes, no less than artistic works or scientific advances, have an idea as their origin. If the idea can be recorded and defined in some way it becomes a property - intellectual property - which can be bought and sold. It can be legally protected against uninhibited copying by use of intellectual property rights such as patents, registered designs, trade marks and copyright.
2. A nation such as the United Kingdom relies heavily on getting value from its intellectual property. We have a limited raw material base and a small home market. But we have a good education system, a tradition of world-leading inventions and of involvement in international trade. The ability to claim ownership of ideas is a vital step in securing a profit on them.
3. The overall structure of our intellectual property system is in line with that of most other countries: and in some areas it works well, particularly for the larger companies. But nationally, compared to our main competitors, there is insufficient awareness of the importance and value of intellectual property rights. The rights are relatively inaccessible because their use is complex, costly and time consuming. The procedures give the impression of an arcane world rather than of a modern technological Britain. While the Government devotes considerable resources to encouraging innovation generally, it does not give adequate priority to providing the system of intellectual property rights that British business requires.
4. This report considers how best to support the commercialisation of ideas, and in particular how to help small but enterprising firms. They are least able to utilise the present rights but may need them most to protect their main asset - an innovatory product. Larger competitors will have more legal resources as well as greater manufacturing capability and an established position in the market.
5. We are not recommending a fundamental overhaul of the system but we are suggesting a package of changes which fall into three main categories:

5.1 Awareness and accessibility

Little would be gained by changes to the intellectual property system unless those able to make commercial use of it in fact do so. To encourage this, we recommend:

- the Patent Office being given a new look, freed of civil service constraints, and given broader terms of reference as a separate statutory body. It should be self-supporting from fees and free to finance investment programmes. The Secretary of State for Trade and Industry should retain the power to issue directives and appoint a management board and advisory committees.
- more active promotional work by the Patent Office - to market the importance of property rights to those with exploitable ideas, and also the use by others of published patents and registered designs as a national technical database;
- a review of the monopoly right of representation held by registered patent agents - to consider allowing others to function as paid representatives of inventors, to bring more price flexibility and to leave the choice with the customers of the property system;
- a Whitehall Liaison Group - bringing the interests of all relevant Departments more clearly into the discussion of domestic and international issues, but also requiring Departments to realise the importance of intellectual property rights for innovation.

5.2 Coverage and consistency

Rights should be available where they would support commercial exploitation. We have drawn on the rights available to overseas business and recommend:

- the extension of registered trade marks to cover service marks - intended to give the service industries the same rights as manufacturers, as is generally the case abroad, and to respond to the growing economic importance of the service sector;
- the introduction of a registered inventions scheme - to give a more readily accessible form of protection; of particular benefit to small businesses;

- the amendment of the design copyright laws - to remove an anomaly whereby certain mass produced articles are over-protected.

5.3 Promoting use and limiting abuse

It should be easier for the rights to be used and defended on the one hand and for any abuse to be corrected on the other. Exploitable ideas should not lie dormant. We recommend:

- an improved right to have a patent re-examined - to be modelled on a new US right which offers an expeditious way of resolving certain disputes without costly and lengthy proceedings;
- a more effective form of compulsory licence - which is the principal way of liberating unused invention and curbing abuse of monopoly;
- a more thorough attention to the interests of British business in international discussions - in particular over European Commission moves on anti-trust regulations and negotiations within the Paris Convention;
- new rights for employee inventors - to allow them to take over their own invention if the employer is not intending to exploit it.

6. Many of these recommendations will be more beneficial to individual innovators and to small, entrepreneurial companies than to the big battalions. But the latter are relatively more satisfied with the system and, where they are not, have the leverage to negotiate deals between themselves. Our proposals should widen the opportunities for the smaller companies who depend more on the domestic legislation.

7. Finally, though each of the individual measures above is desirable, taken alone they would not each command a high priority for legislative time. However taken together in one bill they could form the core of a coherent and forward-looking statement of Government policy on innovation and commercial awareness in this country. It would be highly relevant to the Government's policies for economic recovery. The themes of the statement would be the individual's role in the exploitation of ideas and the awareness of the value of the nation's intellectual property. We recommend:

an Intellectual Property and Innovation Bill - to bring together the new measures proposed in this report and to form the core of a major statement of policy.

DRAFT LETTER FROM PRIME MINISTER TO SIR AUSTIN BIDE, Chairman, Glaxo Holdings Ltd, 6-12 Clarges Street, London W1Y 8DH

for David

INTELLECTUAL PROPERTY RIGHTS AND INNOVATION

I thought that you would be interested to see the enclosed Green Paper which I laid before Parliament ~~today~~.

We met with Lock Cockfield in September 1982 to discuss the importance of intellectual property rights and I recall that you raised the subject again at my seminar in Lancaster House recently. Dr Nicholson was asked to study whether the intellectual property rights system was best suited to encouraging innovation. The recommendations that he makes are intended to improve the awareness of the value and importance of those rights, their accessibility and their usage.

We shall be seeking comments widely and the Department of Trade and Industry will take the lead in formulating the Government's own views. I hope that you feel that the report is a useful contribution to this important, though too often overlooked, subject.



Mr. Bayliss

CABINET OFFICE

~~Central Policy Review Staff~~

70 Whitehall, London SW1A 2AS Telephone 01-2337089

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22 December 1983

Mr A N Devereux
Principal Director of Patents
Procurement Executive
Ministry of Defence
Empress State Building
Lillie Road
London SW6 1TR

*Dub
23/12*

Dear Devereux,

INTELLECTUAL PROPERTY RIGHTS AND INNOVATION

*- will request
if required*

Thank you for your letter of 16 December about this report. I have to say that I received it on 20 December just three hours before the Prime Minister laid the report before Parliament as Cmd 9117; revisions to the text were clearly not possible!

However, I would want to stick to the existing text in any case. I do realise how much your Department is doing to license technology, though not all Departments are as active. But the essential point is that potential licensees should have effective rights to balance the temporary monopoly of a patent whether they are dealing with an organisation that extends goodwill to them or not. Crown establishments should not be excluded from the provisions.

Copies go to the recipients of your letter.

*Yours sincerely,
Robin Nicholson*

ROBIN B NICHOLSON
Chief Scientific Adviser

