

17.17 hrs.

Title: Discussion on the Semiconductor Integrated Circuits Layout Design Bill, 2000.

MR. CHAIRMAN: The House shall now take up Item No. 15.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF

INFORMATION TECHNOLOGY (SHRI PRAMOD MAHAJAN): Sir, I beg to move:

"That the Bill to provide for the protection of the semiconductor integrated circuits layout-designs and for matters connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration."

Sir, the Semiconductor Integrated Circuits Layout-Design Bill, 2000 is a piece of legislation to protect the Intellectual Property Rights of the designers of Semiconductor Integrated Circuits. The design of such complex circuits involves a great deal of effort by skilled scientists and engineers. It is, thus, important that such efforts receive the protection of law from infringement.

The Bill provides for protection of layout-designs which are original in that they are the result of the creator's own intellectual efforts. For a Semiconductor Integrated circuit layout to receive protection under this Bill, it must first be registered with a Registrar. The registered layout design would receive protection against infringement under this Bill upto a period of ten years from the date of registration. This Bill provides for appeal to the Appellate Board against the order or decision of the Registrar.

The Bill provides appropriate penalty and punishment for dealing with wilful infringement of registered layout-designs.

The Bill was introduced in the Rajya Sabha on December 20, 1999. This was then referred to the Departmentally Related Standing Committee on Science and Technology, Environment and Forests. We are grateful to the Standing Committee for examining the Bill in depth over several sittings. The Standing Committee submitted its report on February 29, 2000. The Standing Committee had suggested several amendments to the Bill. We have accepted all the amendments suggested by the Standing committee except one with a minor change. The Rajya Sabha has already passed the Bill, with amendments as above, on 15 of May, 2000.

I would request this hon. House to pass the Bill, as passed by Rajya Sabha, unanimously.

MR. CHAIRMAN: Motion moved:

"That the Bill to provide for the protection of the semiconductor integrated circuits layout-designs and for matters connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration."

SHRI SHIVRAJ V. PATIL (LATUR): Sir, I may be permitted to speak on this Bill a little later, maybe after 15 minutes. Someone else, who wants to speak, may be given a chance. I have to just get my papers. I was thinking that this would not come up today.

SHRI E.M. SUDARSANA NATCHIAPPAN (SIVAGANGA): Mr. Chairman, Sir, this is a very important Bill. In the 21st Century, it is our duty to have the intellectual property right, which is a very important right, which gives a lot of money for the people who have this intellectual capacity to create.

Even though we are very late in bringing this type of legislation, which will bring benefit to the actual thinkers, we have done it in apt time. Therefore, I fully support this Bill except one Clause. I have just made a request to the hon. Minister to move it as a Government amendment. As a member in the Committee on Science and Technology, I gave a dissent note regarding this particular provision. This will be very helpful to the lawyers because in any intellectual property right, the growth of that particular area will be done only by the lawyers who are going to specialise in this particular field, and the decisions made by the Appellate Authority, which has been created, is also going to make laws, according to the growth of the days. Therefore, the lawyers are very important players in the growth of this particular intellectual property right enactment.

The next one is about the engineers, the software engineers or the hardware engineers, who are having some knowledge and who are going to put their knowledge in this particular field. I would like to draw the attention of the hon. Minister to article 124 (3)(b) of the Constitution of India, which prescribed a qualification for a Supreme Court judge. I quote article 124 (3)(b): "has been for at least ten years an advocate of a High Court..." That is the

qualification prescribed for a Supreme Court judge. I quote article 217 (2)(b) of the Constitution of India: "has for at least ten years been an advocate of a High Court..." This is the qualification to be appointed as a High Court judge. This is the constitutional provision, which I am quoting. I have made this point before the Select Committee also. This matter was not accepted at that time but subsequently there was an enactment, Information Technology Act, 2000. It was a very successful Act, which gave a great respect to the hon. Minister, to the Government and also to the nation. There, Section 50 provides the same Clause, which I had suggested in the previous meeting. Section 50 reads:

"The qualification of a Presiding Officer of a cyber Appellate Tribunal, unless he

(a) is, or has been, or is qualified to be, a judge of a High Court or "

This proposal has been accepted by the Legal Department and the same Ministry is now proposing this Bill. The earlier Bill had been referred to the Committee but subsequently it had come before this House and had also been adopted, and it became the Act, that is, Information Technology Act, 2000.

Only one lacuna is there, that is, now it has to go back to Rajya Sabha, if the House decides like that. We have to protect the interests of the millions of the lawyers who are looking at us how best we are going to bring new lawyer force in this intellectual property right regime. Therefore, I request the hon. Minister to make it as a Government amendment and the proposal may be taken as it is. I am just proposing Clause 34 (1)(a) in which this, "is qualified to be" is to be made as one of the amendments and also subsequently, in Clause 34 (3), "has been or at least ten years been an advocate of a High Court or any Court."

1725 hours (Shrimati Margaret Alva in the Chair)

I request that this may be taken as a general view. It is going to help specifically the legal fraternity which is now investing a lot of money in learning the Intellectual Property Rights. It is actually a growing law in the Western countries. Many people are studying, specialising in Master degrees. They are also doing research. Many people are going to foreign countries to learn the Intellectual Property Rights law. After having learnt, they attended seminars and presented

papers. Now, we are the pioneers in the world seminars. Especially, in UK and USA, we are leading people in Intellectual Property Rights law. Therefore, I request the Government, as a general gesture, to accept it as a Government amendment and make it here itself.

प्रो. रासा सिंह रावत (अजमेर) : स्थापति महोदय, मैं माननीय प्रमोद महाजन जी द्वारा अर्द्धचालक एकीकृत परिपथ अभिन्यास डिजाइन विधेयक, 2000 का पुरजोर समर्थन करता हूँ और मैं समझता हूँ कि यह बिल हमारे देश के वैज्ञानिकों, इंजीनियरों के लिए एवं सूचना तकनीक क्रांति, इलेक्ट्रॉनिक, माइक्रो-इलेक्ट्रॉनिक आदि के क्षेत्र में बहुत ही क्रांतिकारी परिवर्तन लाने वाला सिद्ध होगा। हमारा देश प्रतिभाओं में किसी से कम नहीं है। आज अमरीका की सैलीकॉन वैली के अंदर जो कुछ भी प्रगति हुई है, उसका बहुत कुछ श्रेय भारतीय विशेषज्ञों और वैज्ञानिकों को जाता है जो सूचना तकनीकी को क्षेत्र में पारंगत हैं। अन्य क्षेत्रों के अंदर भी भारतीय किसी से कम या पीछे नहीं हैं।

मैं यह कहना चाहूंगा कि विश्व वाणिज्यिक संगठन में जो हमारी पूर्ववर्ती सरकार ने हस्ताक्षर किये थे, उसके नियमों से हम बंधे हुए हैं। उसका तकाजा पूरा करने के लिए ही यह बिल लाया जा रहा है जिससे भारतीय हितों की रक्षा भी हो सके, तथा उसके प्रावधानों की पूर्ति भी हम कर सकें। पहले हम पेटेंट विधेयक और डिजाइन विधेयक के अंदर लेट हो गये थे, जिसके परिणामस्वरूप हमें डब्ल्यूटीओ का उलाहना भी सुनना पड़ा था। इसी संदर्भ में कॉपी राइट विधेयक, पेटेंट विधेयक, ट्रेड डिजाइन विधेयक आदि हमको लाना पड़ा। अन्तर्राष्ट्रीय संधियां या समझौते जो होते हैं विश्व समुदाय के नाते, उनके तकाजों को हमें पूरा करना पड़ता है। लेकिन जहां हम डब्ल्यूटीओ के तकाजों को पूरा करें वहीं हम राष्ट्रीय परिप्रेक्ष्य में राष्ट्रीय हितों को भी ध्यान रखें। सूचना क्रांति के क्षेत्र में या बौद्धिक सम्पदा राइट में, ट्रिप्स के मामले में हम अन्तर्राष्ट्रीय सम्मेलनों में जाते हैं। लेकिन यहां पर भी मौहाली वगैरहा में हमारे जो इस प्रकार के संस्थान हैं जहां पर सैमी-कंडक्टर वगैरहा विकसित किये गये हैं जिसके द्वारा एक माइक्रो-चिप्स या कम्प्यूटर चिप्स बनाने में लाखों करोड़ों रुपया खर्च होता है जबकि हमारे यहां आर्थिक संसाधनों का अभाव है, फिर भी अगर उनको आर्थिक संसाधन जुटाए जाएं तो वे यहां पर भी उन सभी चीजों का निर्माण कर सकते हैं।

यह एक ऐसा बिल है जिसके द्वारा अर्थ-नीति के क्षेत्र में भी बड़ा महत्वपूर्ण परिवर्तन आने वाला है। सभी जानते हैं कि आज भुंकर प्रतिस्पर्धा का जमाना है। इसलिए इस बिल के दोनों पहलुओं पर हमें विचार करना पड़ेगा - सूचना तकनीकी की दृष्टि से भी और व्यापारिक पहलुओं की दृष्टि से भी।

मैं समझता हूँ कि इस बिल में 6 चीजों का प्रावधान किया गया है। एक प्रोसेस ऑफ रजिस्ट्रेशन। सैमी कंडक्टर आदि के सम्बन्ध में जिस इंटीग्रेटेड सर्किट्स ले आउट डिजाइन का निर्माण होगा, उसके रजिस्ट्रेशन की क्या प्रक्रिया होगी? रजिस्ट्रेशन के बाद भारतीय प्रतिभाएं या भारतीय वैज्ञानिक या भारतीय कम्पनियां का अपना प्रोडक्ट तैयार किया जाएगा। वे उसका रजिस्ट्रेशन वगैरहा कर सकते हैं। इसके प्रोसेस का भी इसमें प्रावधान है। A mechanism for distinguishing lay out designs which are to be protected जिन ले आउट डिजाइन्स की रक्षा करनी है, इस प्रावधान के अन्तर्गत हमारे देश में उनकी पहचान के लिए क्या मेकैनिज्म अपनाया जाएगा, उसका भी प्रावधान किया गया है। Rules to prohibit registration of lay out designs which are not original and which have been commercially exploited. यह भी बहुत अच्छा प्रावधान है। ऐसे रजिस्ट्रेशन को रोकना, ऐसे डिजाइन जो मूल रूप से मौलिक नहीं हैं, जो किसी की नकल मात्र हैं, जिन का वाणिज्यिक दृष्टि से शोण किया गया है, उत्पाद किसी का और किसी ने नकल करके उसे ले लिया है, उस दृष्टि से इसमें रूल्स का प्रावधान किया गया है। Provision with regard to infringement of payment of royalty for registration of lay out designs. यह बहुत अच्छा प्रावधान किया गया है।

प्रो. रासा सिंह रावत (अजमेर) : स्थापति महोदय, मैं यह कह रहा था कि इस बिल में कई बातों का प्रावधान किया गया है। (व्यवधान) इसमें दंड का भी प्रा

वधान रखा गया है, अगर कोई जान-बूझ कर धोखा दे तो उसके लिए भी प्रावधान किया गया है।¹ (व्यवधान)

इसमें एक रजिस्ट्रार का प्रावधान किया गया है। उसका काम है, लेआउट डिजाइन का रजिस्ट्रेशन करना और उसके लिए जो मैकेनिज़म है, उसे तय करना। इसमें एपिलेट बोर्ड की व्यवस्था की गई है।² (व्यवधान) इसमें भौतिक सम्पदा की रक्षा करने के लिए जो प्रावधान किए गए हैं, मैं समझता हूँ कि अंतरराष्ट्रीय परिपेक्ष्य में जो विश्व व्यापार संगठन (WTO) है, उसके तकाजों को हम पूरा कर रहे हैं। मैं आपके माध्यम से सरकार से प्रार्थना करूँगा कि आप राष्ट्रीय परिपेक्ष्य में राष्ट्र के हितों को भी सर्वोपरि स्थान दें। आज हमारे देश में इन्फोर्मेशन टेक्नोलॉजी के क्षेत्र में बहुत क्रांतिकारी परिवर्तन आ गया है, लेकिन इन्फोर्सिबल टेक्नोलॉजी के नाम पर मशरूम की तरह जो कम्पनियाँ पनप रही हैं और शेयरों में जो उतार-चढ़ाव आ रहा है, उसके ऊपर थोड़ा ध्यान देने की आवश्यकता है। हमारे यहाँ एक और कमी है कि जहाँ सॉफ्टवेयर में सारी पूंजी लगाई जा रही है वहीं हार्डवेयर की तरफ ध्यान नहीं दिया जा रहा है, जब कि अमेरिका वगैरह में इसकी काफी उन्नति हुई है। वहाँ की पेंटियम कम्पनी दोनों का समन्वय करके चली है। इसलिए हम भी सॉफ्टवेयर के साथ-साथ हार्डवेयर की तरफ थोड़ा ध्यान दें तो ज्यादा अच्छा रहेगा।

महोदया, एक बड़ी विकट समस्या यह है कि अब तक हमारे देश में प्रोडक्ट पेटेंट पर कम ध्यान दिया जाता था और प्रोसेस पेटेंट पर हम ज्यादा ध्यान देते थे, क्योंकि हमारे पास इतना पैसा नहीं है। किसी प्रोडक्ट पर अमेरिका, इंग्लैंड या दूसरे जो पाश्चात्य देशों में जो अधिकार होते थे, उनका हम प्रोसेस पेटेंटाइजेशन करते थे और उसे अपनाते भी थे। जैसे हमारी दवाइयाँ हैं। दवाइयों का अधिकार उन देशों में हुआ, लेकिन उन दवाइयों के प्रोसेसिंग की प्रक्रिया हमने अपना ली। उसके बाद हम नयी दवाइयाँ तैयार करके बेचते रहे। इस कारण हमारी दवाइयाँ स्तब्धी मिल रही हैं। अब इसमें प्रोडक्ट पेटेंट की रक्षा का प्रावधान है, यह बहुत अच्छी बात है। इससे भारतीय प्रतिभाओं को अवसर मिलेगा और भारत के वैज्ञानिकों को अवसर मिलेगा। यहाँ के लेआउट डिजाइन, जिन पर यहाँ करोड़ों रुपए खर्च होते हैं, उन सब को सुरक्षा होगी, जब उनका प्रोडक्ट पेटेंट हो जाएगा। अगर हमने प्रोसेस पेटेंट की तरफ ध्यान नहीं दिया तो शायद हम कहीं इस दौड़ में पिछड़ न जाएं।

इसलिए आवश्यकता इस बात की है कि दोनों विकल्पों को हम खुला रखें ताकि हमारे देश को किसी प्रकार की हानि न उठानी पड़े, क्योंकि हमारे पास संसाधनों का अभाव है। हमारे यहाँ जो यह सारी प्रक्रिया शुरू हुई है, जो रिवर्स इंजीनियरिंग की प्रक्रिया है, क्या उसे प्रोसेस पेटेंट कराने में काम में नहीं ला सकते? क्योंकि इसके जरिये हमारे भौतिक सम्पदा अधिकार भी आड़े नहीं आयेंगे। अमेरिका, जापान और कनाडा ने ज्यादातर इसी प्रक्रिया को अपनाया है। रिवर्स इंजीनियरिंग की जो प्रक्रिया है उसको भी हम छोड़े नहीं, वह हमारे यहाँ चलती रहनी चाहिए। इसी के साथ हमारे उद्योग तंत्र को आर एंड डी के साथ जोड़ा जाये। जब हम इतना बड़ा क्रांतिकारी कदम उठा रहे हैं तो हमारे यहाँ अभी ऐसे जो उद्योग विकसित हो रहे हैं उनके साथ में आर एंड डी की प्रक्रिया भी रहे ताकि हमारे वैज्ञानिक अनुसंधानों की रक्षा भी हो सके। आपने मुझे बोलने का समय दिया, इसके लिए धन्यवाद।

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PROF. R.R. PRAMANIK (MATHURAPUR): Hon. Chairperson, I rise to support this Bill but with some amendments. I will confine my speech precisely and pointedly to the amendments which I have moved.

The Bill has been brought before this House by the Minister under international obligation. It is to be framed according to Section 6 of Part II of the Agreement of TRIPS relating to Layout Design of Integrated Circuits under articles 35, 36, 37 and 38, of the final Act of Uruguay Round which was framed in Marrakech in 1995. It is to be framed strictly according to the provisions under these four articles of TRIPS.

Now, here the Long Title and the Enacting Formula of this Bill which has been brought by the Minister before this House says: "The Semiconductor Integrated Circuit Layout Design Bill, 2000". Now, I want to ask the hon. Minister where from he has got the term, 'Semiconductor'. Why has it been included there? In the final Act of Uruguay Round under articles 35, 36, 37 and 38 nowhere the term 'Semiconductor' is used. It is 'Integrated Circuit Layout Design'. So, where from has he got the term 'Semiconductor'? There are many active elements in an integrated circuit. Why has he selected one of them? He has to give an answer as to why he has included Semiconductor in this Bill. It is to be framed according to the provisions under this article. He cannot add or subtract anything. It will be bad in law and it may be questioned in a court of law.

So, my first amendment to this Bill is that the word 'Semiconductor' should be omitted. It should be Integrated Circuit Layout Design. There are many active elements also. There is not only 'Semiconductor' but there are other active elements also. He cannot do that. So, it should be Integrated Circuit Layout Design. Now, wherever the word 'Semiconductor' has been mentioned in this Bill, it has to be omitted. My second amendment is that wherever the word 'Semiconductor' has appeared in the Bill, it should be omitted. Semiconductor cannot be brought in the Bill. It is not there in the final Act.

Now, in page 2, the definition is there for lines 22 to 24 because the Semiconductor Integrated Circuit is to be properly defined. It is a law. Therefore, it should be precise. It should be pointed and it should be without any ambiguity. Commas and semicolons have a different meaning in the language of law.

Here, 'integrated circuits' should be defined. This is my amendment. In clause 2 where definitions are given, nowhere 'integrated circuits' has been defined. We have to include the term 'integrated circuits' under definitions. I have said that:

"Integrated circuits mean products in final form or intermediate form in which the elements, (at least one of

which is an active element) some or all the interconnections are integrally formed (in and/or on a piece of material) and which intended to perform an electronic function."

Semiconductor is one of them and he has selected semiconductor only omitting others, which he cannot do. This is the correct scientific definition, the precise definition of 'integrated circuits'. This should be included in clause 2 where definitions are given.

In line 7 in this draft Bill at many places the words 'Chairman', 'Vice-Chairman' are there. I am a member of the Standing Committee on Science and Technology. I mentioned that these words should be replaced by 'Chairperson' and 'Vice-Chairperson'. We are pleading for the empowerment of women. If only the words 'Chairman' and 'Vice-Chairman' are kept in the Bill, then no lady can occupy that chair.

PROF. R.R. PRAMANIK : In the original Bill everywhere there were 'Chairman' and 'Vice-Chairman'. It was changed in the Standing committee. I admit that by mistake at one place it has come here. So, the word 'Vice-Chairman' should be replaced by 'Vice-Chairperson'.

Now I come to the appointment of the Registrar. Everywhere for appointment to a particular post qualifications are mentioned. But, in the case of the Registrar no minimum qualification is mentioned in the draft Bill.

Here it is mentioned: 'appoint a person to be known as the Registrar'. Who is that person? The Minister cannot pick up a man from the street and appoint him as the Registrar without the minimum qualification. When you elect a person to the post of the President, there is the minimum qualification. For the post of the Supreme Court Judge there is the minimum qualification. Even to become a Member of Parliament there is some minimum qualification. But in the case of the Registrar, there is no qualification. He can appoint any person to be known as the Registrar. So, my amendment is that 'appoint a person not below the rank of a Judge of a High Court or a senior IAS Officer in the Central Service to be known as the Registrar'. Because, if this is not clearly mentioned, then the power remains with the Minister or the bureaucracy to appoint any person suitable to him as the Registrar. It is a very high post. So, the Registrar must have the minimum qualification.

On Page-3, it is mentioned that the Central Government may appoint such officers with such designations as it thinks fit. But the Registrar is not there. Now the power rests with the Central Government. It may appoint such officers - which officers is not mentioned - with such designations. That means it depends upon the Minister. So, my amendment is that 'the Central Government may appoint such officers not below the rank of a Secretary in the Central Service with such designations as it thinks fit'. So, the minimum qualification should be there. He will act as the Acting Registrar in the absence of the Registrar.

On Page-4 there is a very important clause. Please see lines 22 and 23.

MR. CHAIRMAN : Are you going to go page by page speaking about all the amendments? Then you will speak for one hour. At least, have all the amendments been circulated?

PROF. R.R. PRAMANIK : Yes Madam, they have been circulated. I have moved the amendments and I will confine myself to those amendments and not to lecturing.

On Page-4, clause 7, sub-clause 3 where the original lay-out design has been created in execution of a commission by a contract of employment, the right of registration to such lay-out design under this Act shall belong in the absence of any contractual provision to the contrary to the person who commissions the work or to the employer. So, the right holder by this clause belongs to the employer, to the contractor who has got the money and not to the creator or the inventor of the innovation.

Under TRIPS Agreement, it is clearly mentioned that the intellectual property rights are claims of persons over creations of their minds. Intellectual property is a creation of the mind of the intellectual. The property being the creation of the intellect of the intellectual, the holders should be innovators and not the employers or the contractors. But, if sub-clause 3 is kept as it is, then the innovator will be deprived of all the rights of innovation.

Take for example the Raman's effect. It was discovered by Sir C.V. Raman who got the Nobel Prize for that. But the employer was a different person. That is there in the cultivation of science. The employer was one Shri Shah. But the credit went to Sir C.V. Raman and not to the employer. Innovation has been innovated by the inventor who is working under a contractor or under an employer. The rights of the holder should go to the innovator and not to the employer. If this clause is there, the innovator being a financially weak person, will get deprived of everything.

In West Bengal there was a dispute between the landlord and the *bargadar* over the ownership of land. It was there when the Left came to power. According to the prevailing law at that time, the court took the statement of the landlord and the *bargadar* used to plead for the right of the land. The landlord said that he had cultivated the land

and the court took that statement.

Now, the *bargadar* is to say that it is not the landlord but he has cultivated the land. According to that law, many *bargadars* were deprived of their due share of land. When we came to power in West Bengal, we changed the theme. It is that the court will take the statement of the *bargadar* and the landlord is to prove in the court that the statement of the *bargadar* is not true. So, the onus will lie on the landlord. Here, to get the right of the innovation – if the sub-Clause is there- the onus lies on the inventor who is a weak person financially. Thus, in most of the cases, they will be deprived of their right. So, I want to amend it and make it

topsy-turvy. It should be upside down. It should be "to the person who invented such layout-design." I only wanted to give my amendment which will read like this:

"Where an original layout-design has been created in execution of a commission of a contract of employment, the right of registration to such layout-design under this Act shall belong, in the absence of any contractual provision to the contrary, to the person who invented such layout-design."

Whereas in the Bill, it is given as "to the person who commissioned the work or to the employer."

MR. CHAIRMAN : Prof. Pramanik, if you are going to explain each of your amendments - I do not know how many amendments are there in your name – then we will be sitting the whole night only on your amendments.

PROF. R.R. PRAMANIK : No, madam. Not the whole night.

MR. CHAIRMAN: You speak generally and when each amendment will be put to the vote of the House, then you may speak on it.

PROF. R.R. PRAMANIK : I am explaining only to make the Minister understand.

MR. CHAIRMAN: Each speaker cannot take one hour to speak.

PROF. R.R. PRAMANIK: It is a very complicated Bill. I am explaining only to make the Minister understand.

MR. CHAIRMAN: I know it. But if you are going to explain each of your amendments for 15 minutes, then where is the time? You are a Member of the Standing Committee. It has been discussed there also. The amendments are circulated.

PROF. R.R. PRAMANIK : I tried there but I failed.

MR. CHAIRMAN: These amendments have not been accepted in the Committee. You are moving them now.

...(Interruptions)

MR. CHAIRMAN: Each Party has got a limited amount of time. You alone cannot take one hour.

PROF. R.R. PRAMANIK : I have spoken for only 15 minutes. I seldom speak, Madam.

MR. CHAIRMAN: You have to speak generally on the Bill and not clause by clause. One Member cannot take one hour to speak just on the amendments.

PROF. R.R. PRAMANIK : I will confine myself only to my amendments.

MR. CHAIRMAN: Each amendment is taking so much time. There are so many more amendments. You cannot make a speech on each amendment.

PROF. R.R. PRAMANIK : It is not a speech. I am speaking only on my amendments.

MR. CHAIRMAN: I know that. There are 18 more of your amendments. I want to know by what time you are going to conclude.

...(Interruptions)

MAJ. GEN. (RETD.) B.C. KHANDURI (GARHWAL): Madam, you have to restrict the time of the Party, whether he wants to speak on the amendments or a general speech.

PROF. R.R. PRAMANIK : On page 6, clause 18, I have an amendment as:

"A registered layout-design is infringed by a person who, not being the registered proprietor of the layout-design or a registered user thereof,--

(a) wilfully and knowingly does any act."

MR. CHAIRMAN: Each Member cannot take one hour on amendments.

...(Interruptions)

PROF. R.R. PRAMANIK : I am sorry to say that much of my time is lost by interruptionsâ€¦...(Interruptions)

MAJ. GEN. (RETD.) B.C. KHANDURI : Madam, would you tell us as to how much more time is left for his Party?... (Interruptions)

PROF. R.R. PRAMANIK : Only the person in the Chair will have to conduct the House and not you.... (Interruptions)

MR. CHAIRMAN: I cannot give one hour to each Member to speak. I can restrict it to only 15-20 minutes. But you have spoken for 35 minutes.

...(Interruptions)

MAJ. GEN. (RETD.) B.C. KHANDURI : Madam, you must give a ruling on this.... (Interruptions)

SHRI HANNAN MOLLAH (ULUBERIA): Shri Khanduri, you cannot gag the Member. You cannot curtail the speech of the hon. Member.... (Interruptions)

MAJ. GEN. (RETD.) B.C. KHANDURI : It is not correct. I am asking the Chairperson and not you.... (Interruptions)

MR. CHAIRMAN : Prof. Pramanik, I am giving you another five minutes to conclude your speech. You can make use of it properly. Do not get it disrupted.

...(Interruptions)

PROF. R.R. PRAMANIK : Madam, please ask the hon. Member not to disturb me.... (Interruptions)

MR. CHAIRMAN: Prof. Pramanik, I am giving you five minutes to conclude.

PROF. R.R. PRAMANIK : Now, I draw your attention to page 12, line 3. The hon. Minister has said that by mistake the expression "Vice-Chairperson" has come in. So, my point is that it should be worded as "unless he or she". In the case of the Chairperson, the expression "she" is not there. If it is not made so, a lady will not be able to come to that post. So, it should be "he or she".... (Interruptions)

SHRI PRAMOD MAHAJAN: You may include "it" also!

PROF. R.R. PRAMANIK : So, my point is that wherever "he" is there, there should be "he or she". It is a law. We must understand the complications of the law.

I now come to the next point. Mr. Minister, in page 12, you have also mentioned that a person should have held a post equivalent to the post of Joint Secretary to the Government of India or any higher post for at least five years.

Madam, as you are impatient, I will conclude now by saying this.

MR. CHAIRMAN: I am not impatient. I am just telling you that there is a limited time for each Member. That is all.

PROF. R.R. PRAMANIK : I will conclude now. Please see page 12 – clause 34, sub-clause (6). It has been mentioned:

"No appointment of a person as the Chairperson shall be made except after consultation with the Chief Justice of India. "

So, the President has to appoint the Chairperson in consultation with the Chief Justice of India. In Chapter IV – The Union Judiciary, the Constitution says:

"Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of

sixty-five years "

So, only for the Judiciary, the President has to consult the Chief Justice of India. But here, for the appointment of a Chairperson of a Tribunal also, the President has to consult the Chief Justice. Therefore, if the clause is there, the President has to consult the Chief Justice of India for the appointment of a Chairperson of a Tribunal. I think it is too much for the President. So, I think you have to omit clause (6) It should not be binding on the President for the appointment of a Chairperson of a Tribunal in consultation with the Chief Justice of India.

Then, clause 35 (b) says:

"in the case of Member, the age of sixty-two years"

The point is everywhere the age of retirement is 65 years. Here, why is it made 62 years? My amendment is that for sixty-two years, you should substitute it by 65 years. For the Chairperson and for the Vice-Chairperson, it is 65 years. But for the Member only it is 62 years. Why is this injustice meted out to the Member? It should be 65 years for a Member of the Tribunal.

Madam, with these words, I conclude. If I have taken much time, I am sorry. I think you will appreciate my position. I never speak. I seldom speak. Today, I have spoken on the technical point. My party has asked me to speak. I seldom speak. Thank you very much.

MR. CHAIRMAN: I appreciate your very clear points. Thank you very much.

Now, Shri Subodh Mohite to speak. How much time are you going to take?

MR. CHAIRMAN : Mr. Minister, you better note his amendment.

SHRI PRAMOD MAHAJAN: It is true that the Standing Committee has mentioned it. In the original Bill everywhere it was changed from Chairman to Chairperson. Inadvertently in one clause it is remaining. If the House so wishes, we can accept that and send it back to Rajya Sabha.

MR. CHAIRMAN: I think the House will accept it.

SHRI PRAMOD MAHAJAN: I do not understand one thing. When I went through the Hindi version, Hindi does not have one common word as 'person'. It is अध्यक्ष या उपाध्यक्ष only. There is nothing like 'person' in Hindi which can denote both genders. It can be अध्यक्ष and not 'person'. In law you cannot say अध्यक्ष या अध्यक्ष। जब हिन्दी में लिखेंगे तो क्या लिखेंगे? इंग्लिश में चेयरपर्सन कहेंगे। I do not have the exact translation of 'Chairperson' in Hindi. Hindi either understands अध्यक्ष या अध्यक्ष। It does not understand 'Chairperson'.

Anyway if the House wishes, we will have to go back to Rajya Sabha. I do not have any objection because at twenty-five or thirty places I have changed that and only inadvertently at one place it remains. If you go through the whole Bill, it is not that you find this word everywhere. The word 'Chairperson' is mentioned everywhere. At one point the Committee missed it and that is why it is there like that.

श्री सुबोध मोहिते (रामटेक) : स्थापति महोदया आपको धन्यवाद कि आपने मुझे बोलने का अवसर दिया। इससे मुझे कुछ सीखने का मौका मिलेगा।

स्थापति महोदया, मैं अर्द्धचालक एकीकृत परिपथ अभिन्यास डिजाइन विधेयक, 2000 जो सदन में प्रस्तुत किया गया है, इस पर डिस्कस नहीं करना चाहता हूँ क्योंकि इसे पास करना है। यह तो डब्ल्यू.टी.ओ. की कमिटीमेंट है।

इसलिए मैं खासकर मंत्री जी को यहां पर धन्यवाद देता हूँ कि वे यह बिल टाईमली लेकर आये हैं। मैं इस बिल का सपोर्ट करता हूँ लेकिन सपोर्ट करते-करते मैं उनसे माफी भी मांगना चाहता हूँ। इस बिल में जो डिस्पैरेटीज हैं, सपोर्ट करना अलग बात है लेकिन इसकी जो खामियां हैं, वह भी मैं हाउस के सामने रखना जरूरी समझता हूँ। इसलिए माफी के साथ मैं इस बिल पर कुछ वक्तव्य देना चाहता हूँ। इसका यह मतलब नहीं कि मैं मंत्री जी को क्वांटिफाइज करना चाहता हूँ। इस बिल के अंदर जो त्रुटियां हैं, जिस पैटर्न में यह बिल रखा गया है, मेरे ख्याल से वह पैटर्न ठीक नहीं है। Rajya Sabha has already passed this Bill. 15 मई, 2000 को यह बिल पास कराया गया है। इस बिल के संबंध में माननीय सदस्य ने जो बातें रखी गयी हैं, उनको मैं बहुत ध्यान से सुन रहा था। जब एक बिल हाउस में आता है तो बिल के अंदर हर वर्ड की अपनी इम्पोर्टेंस होती है, हर पैराग्राफ की अपनी इम्पोर्टेंस होती है, हर सेन्टेन्स की अपनी इम्पोर्टेंस होती है। कई एक्सपर्ट्स के हाथ से यह बिल हाउस में आता है। Every word is of vital importance. जो फैक्टुअल ऐरर्स हैं, उन्होंने बताया है कि यह बिल जिस चीज के लिए लाया जा रहा है, जिस ऑब्जेक्ट के लिए यह बिल लाया गया है, उसके स्पेलिंग ही गलत हैं। मैं पेज नम्बर के साथ आपको यहां पर बताना चाहूंगा कि जिस ऑब्जेक्ट के लिए यह बिल लाया गया है, जो ऑरिजन वर्ड है। The object of the Bill is to protect the original thing. Page 4(a) – उस ऑब्जेक्ट की अगर स्पेलिंग चेंज हो जाये जिस ऑब्जेक्ट के लिए यह बिल लाया गया है, तो It is not proper to change the origin. वैसे इसमें काफी मिसटेक्स हैं। प्रिंटिंग मिसटेक नहीं है बल्कि इसका ऐम ही चेंज हो रहा है। There are a lot of mistakes. I can only show the page Nos.4, 9, 11 and 12 where we can find the mistakes. At page 9, instead of 'requested', it is printed as 'regested'. माननीय सांसद ने यहां पर जो भूमिका रखी है, मैं समझता हूँ कि यह बिल एक जेंडर बायस्ड (gender biased) बिल है, मैन डोमिनेटेड बिल है। जहां पर चेयरपर्सन की बात कर रहे थे तो सिर्फ चेयरमैन टू चेयरपर्सन अमेंडमेंट करने से काम नहीं चलेगा। मैं पेज नम्बर के साथ आपको बतलाऊं कि यहां पर फीमेल को नेगलेक्ट किया गया है, ऐसी बात मैं नहीं

बोलूंगा। Madam, you are the Chairperson of the Women Empowerment Committee. इसलिए खुशी की बात है कि यह बिल आपके सामने पेश हो रहा है। पेज नम्बर 11 में आप चेयरमैन को चेयरपर्सन काउंट करके काम नहीं चलेगा। इसकी जो क्वालीफिकेशन दी गयी है, पेज नम्बर 12 में प्वाइंट नम्बर 34 में हर जगह लिखा गया है कि The person shall not be qualified for appointment as Chairperson unless he/she... In every place, you have to introduce he/she. This is the routine practice. इसी पेज पर जो प्वाइंट नम्बर चार है, वह वाइटल प्वाइंट है। यह बड़ा दुर्भाग्य है कि इतनी बड़ी मिसटेक उन एक्सपर्ट्स के हाथ से हो रही है।

दूसरा टेक्नीकल मुद्दा है। This is not only a preliminary point but also a technical point. लेकिन जो टेक्नीकल मुद्दा है, यहां पर मैं बताने जा रहा हूँ कि There is an international paper – International Semi-Conductor Topography Legislation. यह इंटरनेशनल पेपर है। मैं जब भी बोलता हूँ, एकदम लॉजिक के साथ बोलता हूँ। जो ऑरीजन प्रोटेक्ट करने की बात हम कर रहे हैं। What is the definition of 'origin'? इंटरनेशनल ग्लोबलाइजेशन की जो बात करते हैं, तो यूरोपियन कंट्रीज ने जो कान्सैट एडॉप्ट किया है, What is the original thing? Europeans had accepted the option paper No.2 – Creator's Own Intellectual Property. This is the definition of original things in European countries.

यूनाइटेड स्टेट्स और आस्ट्रेलिया में जो डेफिनिशन एडॉप्ट की गई है, वह इंडस्ट्री में कॉमन नहीं है। इंडिया ने जो डेफिनिशन एडॉप्ट की है, पृष्ठ 4 क्लॉज 7 प्वाइंट 2, एक बात मेरी समझ में नहीं आ रही कि जब यूनाइटेड स्टेट्स, आस्ट्रेलिया की अपनी अलग डेफिनिशन है, हमने क्यों दोनों प्वाइंट्स को क्लब करके ऑरीजिन की डेफिनिशन बनाई - मैं मंत्री जी से खास तौर से इसका उत्तर चाहता हूँ।

दूसरा वाइटल प्वाइंट रजिस्ट्रेशन का है। मंत्री जी अपने भाषण की शुरुआत में बोल रहे थे कि हम दस साल के लिए रजिस्ट्रेशन देंगे। मंत्री जी का एक-एक शब्द अभी भी मेरे ध्यान में है। उन्होंने कहा from the date of registration, लेकिन बिल में लिखा हुआ है - date of filing of the application. इसकी क्लैरीफिकेशन होनी चाहिए कि डेट ऑफ फाइलिंग से दस साल देंगे या डेट ऑफ रजिस्ट्रेशन से देंगे। अगर आप डेट ऑफ फाइलिंग से देते हैं तो क्या उसे बिजनेस करने की अथॉरिटी रहेगी। मान लीजिए वह बिजनेस करता है और अगर डेट ऑफ फाइलिंग तथा रजिस्ट्रेशन में छः महीने का गैप होता है, और यदि उसकी ऐप्लीकेशन रिजेक्ट हो जाती है तो क्या उसका बिजनेस इल्लिगल होगा। उसने रजिस्ट्रेशन के समय तक जो इल्लिगल बिजनेस किया, उसकी रिसर्पोसिबिलिटी किसकी होगी।

क्लॉज 68 में हम बड़े गर्व से कहते हैं - नेशनल सिक्युरिटी - जिसमें लिखा है --

In the interest of the security of the country, the Government of India may cancel any registration in the interest of the nation. लेकिन बड़े दुख की बात है कि नेशनल सिक्युरिटी की बात तो हम कर रहे हैं लेकिन नेशनल सिक्युरिटी को हमने मिसलेनियस में डाल दिया है। क्या नेशनल सिक्युरिटी मिसलेनियस आइटम हो सकता है? इसलिए मैंने पहले कहा कि जिस पैटर्न में यह बिल लाया गया है, वह ठीक जम नहीं रहा है। जो डिजाइन बिल लाया गया है, वह हार्डवेयर बिल है, सॉफ्टवेयर में तो हम काफी आगे निकल गए हैं, हार्डवेयर में कम्पैरेटिवली लैप्स कर रहे हैं। इस बिल का इस देश के भावी विकास से गहरा संबंध है। इस बिल को लाकर हम अपने देश का कितना इंटरैस्ट प्रोटेक्ट कर रहे हैं। This is the main point. This is the theme of the Bill. What is the main benefit to the nation through this Bill? मंत्री जी अपने जवाब में इसका भी खुलासा करें।

मैं यहां चार प्वाइंट रखूंगा जिनकी क्वैरी मेरे दिल में आ रही है। मंत्री जी कम्पीटेंट हैं, वे इस बात को क्लैरीफाई करेंगे। मेरी पहली क्वैरी यह है कि अगर आज की सिचुएशन देखें तो जो हार्डवेयर है, हम सोनी, सैमसंग का टी.वी. लाना चाहते हैं, 90 प्रतिशत हार्डवेयर कम्पनीज मल्टी नेशनल कम्पनीज हैं, मेरा सवाल यह है कि इंडियन इन्वैन्टर्स को प्रोटेक्ट करने का बिल में क्या प्रोवीजन है। क्लॉज 67 में जो कुछ दिया है लेकिन उससे वह पूरी तरह प्रोटेक्ट नहीं हो रहा है। स्मॉल और मीडियम लेआउट वाले जो डिजाइन हैं, मल्टी नेशनल्स को प्रोटेक्शन देने के बाद वे सिक हो जाएंगे, क्लोज हो जाएंगे। उनके लिए इस बिल में क्या सिक्युरिटी है।

पब्लिक सेक्टर, जिसके डिसइन्वैस्टमेंट की चर्चा काफी महीने से चल रही है, मैं बताना चाहूंगा कि पब्लिक सेक्टर यूनिट्स, जैसे मैट्रॉन और कैल्ट्रॉन, जहां लैक ऑफ डिजाइन, लैक ऑफ टेक्नोलॉजी है, हार्वर कॉस्ट है, हमारे पब्लिक सेक्टर यूनिट्स को प्रोटेक्ट करने की कोई बात इस बिल में नहीं है। How are we going to protect the public sector units after the passing of this Bill? This is my main question. क्या आपने बिल लाने से पहले ऐनालैसिस किया है कि इंडिया में जितने इन्वैन्टर्स हैं, इंडियन्स ने जो इन्नोवेशन किया है, उसे आईडैन्टीफाई करके ऐनालैसिस किया है, आपके पास कितने आईडैन्टीफाइड यूनिट्स हैं, उन्हें आप कैसे प्रोटेक्ट कर रहे हैं।

1900 Hrs.

इस बिल का मैंने पहले समर्थन किया है। लेकिन सबसे पहले जब नेशनल इंटरैस्ट की बात आती है तो जो पाइंट्स मैंने रखे हैं, उन चारों पाइंट्स पर गौर करना बहुत जरूरी है। मेरे दिल में प्रमोद महाजन जी का बहुत आदर है। मैं तो उन्हें पी.एम. के नाम से जानता हूँ, पहले पी.एम. अटल बिहारी वाजपेयी जी और दूसरे पी.एम. प्रमोद महाजन, पी.एम. मतलब प्रमोद महाजन। उनके बारे में मेरे दिल में बहुत आदर है। He is a very competent Minister. ये पहले भी आई.टी. का बिल लाये थे। Within the completion of six months, no Minister has introduced a Bill on IT which is such a complicated subject. हर वर्ड ये देख भी नहीं सकते, लेकिन मैं इस सदन के माध्यम से चाहता हूँ कि वहां जो आफिसर्स बैठे हैं, वे अभी देख रहे हैं, इसके बाद वे प्रमोद महाजन जी से चर्चा करेंगे। इस प्रकार की मिसटेक फिर न हो कि एक तरफ हम 33 परसेंट वीमेन के रिजर्वेशन की बात करते हैं और यहां पर वीमेन चेयरपर्सन का कोई नाम ही नहीं है, फिर 33 परसेंट रिजर्वेशन की बात करने का मतलब क्या रहा। इसलिए इन सब बातों को ध्यान में रखते हुए मैं चाहता हूँ कि technology has no life, इन सब बातों का आप टाइमली स्टैप लेकर कंसेक्शन करेंगे।

इन सब बातों का समर्थन करते हुए माफी मांगकर मैं अपने शब्दों को समाप्त करता हूँ। जयहिन्द

सभापति महोदय : बहुत-बहुत धन्यवाद कि आपने महिलाओं की इतनी बातें कहीं।

SHRI SHIVRAJ V. PATIL (LATUR): Madam, I would like to be very brief. The first point I would like to take up is the gender equality involved in this Bill. In fact, there is the General Clauses Act which says that 'man' includes 'woman'.

MR. CHAIRMAN : That no longer holds good, Shri Patil.

SHRI SHIVRAJ V. PATIL : We can amend the General Clauses Act and say 'woman' includes 'man'. But if the word 'Chairperson' is included, there is no difficulty in appointing a lady Member as the Chairperson or a Member of the Board. So, there should not be any apprehension that the ladies will not be allowed to participate in the development of this aspect of electronics. We should keep in mind that there is the General Clauses Act and it protects the interests of the women also.

I am indeed happy that these Bills are being introduced in the House. The Information Technology Bill has been passed. The Chemical Weapons Convention Bill has been passed just a few minutes before. We have taken up the Semiconductor Integrated Circuits Layout Design Bill. I am sure, - if not in this session, in the next session - the Biodiversity Bill will be introduced and we will take up that Bill also for consideration. All these Bills have their own characteristics. They have international implications. They are being brought before the House in accordance with the international agreements. When this Bill will be passed, the international agreements will be used in our country in a manner to support those who are in this field.

My objection to these Bills is that the titles of these Bills do not convey the meaning of the activities they are covering. The Information Technology Bill did not convey as to what it contains. The Chemical Weapons Convention Bill also does not convey that meaning. The Semiconductor Integrated Circuits Layout Design Bill also does not convey the meaning of the contents of the Bill. It would have been proper if these titles would have been a little different conveying the meaning of the activities which are going to be controlled or promoted through these Bills. I do not want to say anything more than this.

Fortunately for us, these Bills are going to support the knowledge-based industry.

They are going to help those people who are in the business or industry of producing knowledge, using knowledge or trading in knowledge.

Now, this is a very good idea because 21st Century is going to be a Century of the knowledge based industry. The knowledge is going to be one of the most expensive things of the world. Nothing is going to be more expensive than the knowledge and we are taking steps in the direction of protecting, preserving and promoting this knowledge.

This Bill is mainly meant for giving protection to those persons who are in the software business or production. It does not touch upon the hardware business or industry. If we really want to develop this area, it would be necessary for us to pay attention to the software as well as to the hardware. I do not know whether the Government is going to come up with another Bill or another policy or some design or some plan to promote the hardware industry in electronics. In my opinion this Bill gives protection to those who are in the business and industry of producing software. But, I think, something more could have been done in this respect.

I am in full agreement with the hon. Member from West Bengal. She was distinguishing between the inventor and the promotor. The inventor is a person who is using his brain to produce knowledge and the promotor is a person who is providing facilities or funds for production of knowledge. As far as the production of knowledge is concerned in the present day world, the brains are important and the funds are also important. People may have brains and yet they may not have funds to produce knowledge. So, there has to be synthesis between brain and fund to produce knowledge in the present day world.

Is there anything in this Act, which is really providing protection to those persons who are going to use their brains to invent and discover new things. I have not seen anything which can give that kind of protection. The protection is provided to the proprietor and the proprietor is one who is providing facilities and funds.

1908 hours (Shri Basu Deb Acharia *in the Chair*)

If there is anything and if the hon. Minister is in a position to point out that this provision can protect the inventor, we would be very happy about it. But if it is not there, if not today, let us apply our mind and let us modify this Bill in future to give protection to those who are really using their brains to produce this kind of knowledge because this is a knowledge based industry and the knowledge is coming out of the brains. Funds are required. Without funds they cannot do anything at all in the present day world in electronics or genetics or in advanced technology or science. But without brains they will not be able to do anything at all. Let us apply our minds to this aspect and if there is something which can give protection, it is very good; if it is not then let us do something more to it.

My next point, which I want to make is that let us have a long term plan for the development of this knowledge also. This is a regulatory authority. This is giving protection and preserving the knowledge which has already been produced. But we should not stop here. We should promote the knowledge and we should create facilities for producing this kind of knowledge.

What is it that we are going to do? We may not do it through the laws, we may do it through the policies also, and

we can come up with the policies. But what is required in this respect is a long-term policy. Then, what is required is a long-term plan. What is required is a machinery for developing that knowledge. What is required is the funds. Where are the funds going to come from? Now, these days, the funds are coming from the Government only. I know personally that for technological development and scientific development, the funds are coming only from the Union Government, not even from the State Governments. Only the Union Government is spending the funds on technological development and scientific development. The State Governments are also not spending the money. The public sector units are not spending the money. The private sector units are also not spending any money on technology development. Now, if we want to give any impetus or any encouragement to this, it would be necessary at least for some time to come, for the Union Government to take concrete steps in this respect and provide the facilities, funds, plans, and policies for this purpose.

Somebody spoke about the hardware industry. My respectful submission to this House and, through this House, to the Minister is that we should take some concrete steps in this respect. Silicon Valley can be an example for us to follow or we can do better than Silicon Valley also. There are some Technology Parks which are being developed in Andhra Pradesh, in Karnataka, and in some other States also. They are going to help us. We should encourage them but something more than that is required. What is required is a long-term plan for hardware development also. A lot of funds would be required and those funds may come either from the multi-national corporations or from the Government of India. I am not sure whether the public sector and the private sector would be able to spend the money in this. They can spend the money on things which are not visible as a horizon but are some things which have already been done. Now, we can have big chunks of land in different States and specially in a State like *Uttaranchal*, Arunachal Pradesh, where it is not possible to have the textile industry or the coal-based industry, but the electronic industry can be developed. There, let the roads be planned, let the electricity be provided, let the transport facility be given to them, let there be plots made and sold to the private sector, and let them come there and assemble the electronic goods. That would be the first step. Then, the second step would be to have the components manufactured by them in that area. The third step would be to give them the facility to develop the material which is required for making the components. The last step would be to give them the technology, to give them the facility to develop the technology, and the knowledge required for this purpose. This kind of an effort is going to require a very long-term planning, a clear policy, and a lot of funds. If the Government of India is in a position to do that, later on if the State Governments help, and later on if the public sector industry and the private sector industry are going to help, that will help us to develop the hardware industry in this area also.

I think, it is not necessary for me to say anything more than this on this Bill. Now, the Bill has come. We do have objections to some of the points. It will not be necessary for us to speak on all the issues separately and differently. Now, the Bill says that the number of members of the Appellate Board would be decided by the Government. It could have been mentioned in the Bill also. But supposing the Government decides on the number of members, well, let them do it.

But afterwards this Bill may be found to be suffering from some defects. As and when those defects become visible, we can certainly modify these things. But the steps are very welcome. They deserve all the support. I am sure the speeches made by the hon. Members are supportive of this Bill.

SHRI M.V.V.S. MURTHI (VISAKHAPATNAM): Mr. Chairman, Sir, I rise to support the Semiconductor Integrated Circuits Layout Design Bill, 2000. Relatively, this is a new law in the emerging field of intellectual property rights. This became necessary in view of the WTO agreements which we have entered into since 1994 onwards. The fast emerging field is information technology. Our Indians are working everywhere. Most of the developing and developed countries are also inventing several design circuit boards. Unless their intellectual property rights are protected, it is going to be a confusion. You know there is piracy in every field in our country. So, this Bill takes care. Unless you protect, there will be no comprehensive activity that could grow in our country. New entrepreneurs, mostly the small entrepreneurs, have several designs. They have invented. Just because they are not able to patent them, they are approaching the large industrial houses. By virtue of approaching the large industrial houses, they do not get proper remuneration for their intellectual property rights. But this Act protects their intellectual property rights to be properly harnessed, and really market them in the world market.

Our Indian scientists, particularly, in the information technology are second to none. They are first rate people. Whatever the present inventions that are taking place in the circuit boards in the Silicon Valley are being piloted by Indian entrepreneurs, Indian students and those Indians who have gone abroad. They are making all this success. Unless you make this sort of protection in our country, they cannot come back to India and work for themselves. By making this law, we will be protecting them to come to India, stay in India and invent. They could protect such inventions. Just now we have received an amendment from the hon. Minister to be made in clause 2 on page 3. In clause 2, *for* "Vice-Chairman" means the Vice-Chairman', an amendment has been moved to *substitute* "Vice-Chairperson" means the Vice-Chairperson'. Such things should have been done at the homework level. These are all technicalities. Technical mistakes ought not have occurred. Most of the hon. Members who spoke on this Bill

pointed out that there appears to have many gender, grammatical and punctuation mistakes. The Hon'ble Minister could have given one more reading to these things while coming to both the Houses. I think the Bill has to go to Rajya Sabha again with this amendment to make these changes. 'This is a delay. In the age of information technology, we are making delays even in the Bill of Information Technology. So, I hope in future the hon. Minister will take care to see that such mistakes do not occur.

These innovations, knowledge-based innovations particularly, are a welcome sign. I heartily support that this Bill should be passed at the earliest and our Indian scientists and our Information Technology based industries will be protected for their inventions.

SHRI G.M. BANATWALLA (PONNANI): Mr.Chairperson, the Semiconductor Integrated Circuits Layout Design Bill, 2000 is before the House. The Bill has been considered by the Standing Committee on Science and Technology. We do understand that the Bill is indeed to fulfil our international obligations. India is a signatory to the TRIPS Agreement and in order to fulfil our commitments under the TRIPS Agreement, in order to fulfil our commitment to the WTO we have this Bill before us.

But in our eagerness to fulfil our commitments to the WTO and under the TRIPS Agreement, we have also to take necessary steps to see that the national interests are safeguarded. It must be appreciated that in our eagerness to fulfil our international obligations we have also to protect the interests of our own registered proprietors. It must be appreciated that as compared to the developed countries, India is at a different stage of development and progress. Therefore, considerable attention has to be paid to the protection of our own interests.

The developed countries are protecting their own interests but here as we go through the Bill we find that unfortunately there are several gaps. There are many gaps in the level of protection that has been provided under the Bill. Even where the WTO agrees, even where the TRIPS Agreement lays down certain safeguards, I do not know why the Government has thought of throwing those safeguards to the winds. We want to be more loyal than the King Himself is!

I may point out that under Clause 15 of the Bill the period of protection of layout-designs of integrated circuits is restricted to ten years. It is only for 10 years that the registered proprietors will have the benefit of registration; no further. What does the intellectual property rights mean, what the international standards are, should be considered. Article 38 of TRIPS says that "the protection shall not end before the expiration of the period of 10 years."

So, this ten-year period laid down in TRIPS is the minimum period. The article 38 clause 3 says:

"That a member may provide that protection shall lapse after 15 years after the creation of the lay-out designs. "

So, while WTO permits to have a period up to 15 years, we want to restrict under our law, the period only up to ten years. I would like to ask the Government to kindly clarify whether such reduction and restriction to ten years is justified, at least, in the national context.

Sir, only a few days before, we had passed the Designs Bill and that Designs Bill provided that initially the registration will be for ten years, but it can be renewed for five more years. Thus, the benefits of registration can be obtained under the Designs Act now for a period of 15 years.

Now, here, a lot of funds is involved in the creation of a lay out design and the period of the benefit of registration is limited only to ten years. This is a matter of serious consideration. I plead with the Government that though the Bill may provide for registration benefits initially for ten years, we should also have a provision that this period of registration, after ten years, can be increased up to 15 years as the WTO permits, as the TRIPS Agreement article 38, clause (3) itself permits.

Another point has already been made out very distinctly and very clearly and that is the interest of both the promoter and the inventor. The promoter has the funds. Are we to be so glamourised by funds and the capitalist attitude that all the benefits under the Bill are to be restricted only for the promoter? I do understand that a person has taken up the employment under the condition that the benefits of registration of its invention would go to the employer. But, then, we have to be fair and reconcile and see that justice is done both to the promoter and to the

inventor. Otherwise our Bill, unfortunately, would remain a rather unbalanced Bill in the scale of justice. This is a subject, I can understand, which can be further probed into and considered by the Government. I hope the Government, the Ministry or the Department concerned will consider what kinds of provisions can be made under the Act later on, through amendments, so as to see that this unbalanced nature of the provisions properly sorted out.

Sir, it is surprising that there is no provision in the Bill for compensation to the registered proprietor of a lay-out design by a person who infringes his rights. Somebody infringes upon the rights of a registered proprietor. He may be punished by court; he may go to jail; or he may pay the fine or both.

That is a different aspect. But due compensation should also come and should also be paid by the person held guilty of contravention of the provisions of the Act, person held guilty of infringing upon the rights of a registered proprietor. The person has to be obliged to pay compensation to the registered proprietor also. We had such provision in the Designs Bill, to which I had referred. Even article 44 of the TRIPS Agreement itself contemplates payment of compensation or damages suffered by the registered proprietor. I do not know why this particular provision for the payment of compensation or damages to the registered proprietor by a person who infringes upon his rights, has not been laid down in clear-cut words. This is a very important deficiency, as I say, of the Bill that we have.

Now, Sir, look at the restrictions with respect to registration of the lay-out designs. Clause 7 provides, *inter alia* that a lay-out design which has been commercially exploited anywhere in India or in a Convention country, shall not be registered. So, if a lay-out design has been commercially exploited, then it cannot be registered any further. One can understand that particular provision. But now there is an exception made that where the design has been exploited for not more than two years from the date of registration of the application, then that registration can be granted. So, two-year exemption is there. Here, a particular injustice will be done to a person who has registered his design before the commencement of the Act, say, under the Registration Act. After the present Bill gets enacted and becomes an Act, that registration comes to an end. He may have enjoyed the benefits of registration hardly for 2, 3, 4, 5, 6, or 7 years and not for 10 years. But then, he is helpless. Under the provisions of the present Bill, he will not get the registration and, therefore, that will be doing grave injustice to the person concerned. I, therefore, submit that there he has not been in a position to exploit his design commercially for a period of ten years, then, in conformity with the pattern of giving the benefits of registration for a period of ten years, the applicant must be able to enjoy the registration benefits for the balance number of years. There is a need to provide that under such cases a lay-out design may be registered under the present Bill.

Take up the question of clause 56 which deals with offences and penalties. We are told that any person who contravenes knowingly and wilfully – I emphasise the words 'knowingly and wilfully' – the provisions of the Act, he is punished.

We all know very well how difficult it would get to prove the word 'wilfully'. A person, who not merely contravenes the provisions of the Bill but who knows that he is contravening and then wilfully tries to contravene the provisions of the Bill is liable for punishment. This will create lots of complications in courts of law.

MR. CHAIRMAN : Please conclude now.

SHRI G.M. BANATWALLA : Yes sir. Let us go to the very wording in the TRIPS. What are the wordings in the TRIPS? What are the wordings given to us by the WTO? Article 37 of the TRIPS laid down by the WTO, which we have agreed to, itself says : "Who did not know or had no reasonable grounds to know".

So, a person should be held guilty of contravention – a person, except one, who did not know or had no reasonable grounds to know that he is infringing upon somebody's right is liable to punishment. A person knowing that he is contravening and is still not liable to punishment, is something very wonderful way of going through it in addition to his knowledge that he knew that he is contravening. We have also to prove in the court of law that he not only knowingly but also wilfully contravened the provisions of the law.

This is not legal language. I think these words were not in the original Bill. Somehow, later on, from somewhere, they have come. I do not know whether they have come from the Rajya Sabha. But then, let us correct it. The real legal language and the language accepted by WTO, the language accepted by TRIPS is that a person, except one, who "did not know or had no reasonable grounds to know", then he is supposed to have contravened it.

In your own Bill, under clause 18, sub-clause 5, you have correctly used the term as "person who did not know or had no reasonable grounds to know". So, you have used that TRIPS or acceptable legal language in your own clause 18(5) and here you are using a different language altogether creating confusion.

MR. CHAIRMAN : Please conclude now.

SHRI G.M. BANATWALLA : Sir, we are on a legislation which is the principal business of the House.

MR. CHAIRMAN : Yes.

SHRI G.M. BANATWALLA : You look at the studies of how Parliament functions and the studies will tell us that during the past two decades, slowly and gradually the time that is given to legislation is shrinking and decreasing. It is considered as an adverse reflection on the functioning of the Parliament.

MR. CHAIRMAN : This is also because of the Standing Committees.

SHRI G.M. BANATWALLA : But here we are restricting ourselves in cases of legislation which is the principal business of this House.

Anyhow, I will not be going any further. I will be moving the amendments and then if you wish, at each and every amendment, I will speak in order to clarify my amendment if you so wish. Right now I can conclude by referring to

SHRI PRAMOD MAHAJAN: You have already spoken on one amendment.

SHRI G.M. BANATWALLA : There the Minister of Parliamentary Affairs is very vigilant.

Sir, I would conclude by saying that under clause 10 (5) the Registrar may reject an application on grounds which have not been taken up when he was hearing the parties.

The only point is that in case he rejects an application on grounds not taken up by the parties, then those grounds must also be brought to the knowledge of the parties concerned and they should be heard.

Sir, the Bill may have a number of deficiencies, but we know that we are on a plain, on matters which are still to develop and take shape. Under this particular impression, I support the Bill with the hope that the points raised by me shall receive their due consideration.

SHRI PRAMOD MAHAJAN: Sir, at the outset, I would like to thank those seven Members who participated in this debate and rest sitting here without participating ..

MR. CHAIRMAN : And listening.

SHRI PRAMOD MAHAJAN: I must thank them more than those who spoke. Though about an hour was given to this Bill, we have almost taken more than two hours.

I am really happy that many points made were worth consideration. Now, I do not have the legal or language competence to meet out the arguments of Shri Banatwalla or Prof. Pramanik, but with all *pramanikpana*, with all honesty, I would like to react to all the points raised and put up the Government's viewpoint on them.

Sir, the first speaker hon. Shri Natchiappan has made a point that as far as selection of persons on the Appellate Board is concerned, we have said that somebody who is or has already been a judge should be appointed. Even in the Standing Committee Report, he made his point very forcefully and not only that, the Standing Committee Report shows that he put up a two-line Note of Dissent to the Standing Committee for not accepting his viewpoint. But I respectfully disagree with him when he says that I am taking away the chance of millions of lawyers. Frankly Sir, in this Tribunal, there may be about half-a-dozen people. So, it is a question only of half-a-dozen people whether I appoint ex-judges or present judges or persons who are capable of judging. So, it is not a question of millions of lawyers being prohibited from being here. Theoretically, it may be right, but practically, we are appointing only about half-a-dozen people on this Board. Here, looking at the importance of technical and legal angle which they will have to look into, we thought that we should select a person who has already gone through a selection process. That is why, neither the Standing Committee nor the Government could accept the suggestion made by him. Though he put up a Note of Dissent to the Standing Committee Report, here, he will agree with me that I am not taking away the right of any lawyer because even judges were lawyers one term or the other. So, I am not taking away the rights of the lawyers. It is nothing like 'government against lawyers'. The only thing is that we thought that it will be better to choose persons who have already gone through a selection and nothing more than that. So, respectfully, I cannot agree to his amendment or suggestion. As I said, I hope that he will respect the Standing Committee's decision and the decision of the other House.

Secondly, Sir, श्री रासा सिंह रावत जी ने कहा कि हम विश्व व्यापार संगठन के कारण इसे ला रहे हैं। यह सच्चाई है और यह सारी दुनिया जानती है कि हम विश्व व्यापार संगठन में हस्ताक्षर कर चुके हैं और उस हस्ताक्षर के कारण उससे मिले-जुले कानून बनाना हमारा काम है और उस प्रकार से हम कानून बना रहे हैं।

लेकिन मैं इसमें केवल इतना ही कहना चाहता हूँ कि हम कानून बनाते समय जल्दबाजी नहीं कर रहे हैं। आपको याद होगा कि विश्व व्यापार संगठन की संधि पर हमने 1995 में हस्ताक्षर किए थे और 31 दिसम्बर, 1999 से पहले हमको ये कानून बनाकर तैयार करने थे, परन्तु हमने इस बारे में ऐसी कोई जल्दबाजी नहीं की कि विश्व व्यापार संगठन ने कह दिया, तो हमने तुरन्त कानून बना दिए। बल्कि उस तिथि को बीते हुए भी आठ-नौ महीने गुजर गए हैं। हमने कानून बनाए, संसद में रखे, संसद की स्थाई समिति ने उस पर अध्ययन किया और उसके अध्ययन के बाद अब पारित करना चाहते हैं। इस बात को मैं विनम्रता पूर्वक कह सकता हूँ कि हम विश्व व्यापार संगठन के कहने पर जल्दबाजी में कोई कानून नहीं बनाना चाहते हैं। Though it is true that it is a part of the WTO Agreement, yet at the same time we are not blindly following it. On the contrary, Shri Banatwalla was saying that we are not following where we should follow the TRIPS.

Sir, secondly in regard to the issue raised by him about the product and process patent, I would like to submit that this does not come under this Law. So, it is a different Patents Law and whenever it would come for a discussion, I think, the House would have the privilege of his views on it, and then the House could take a decision on that. So, as far as this Semiconductor Integrated Circuits Layout Design Bill is concerned, the process and products are not really part of it.

Sir, he has also raised one very important point about reverse engineering. I totally agree with him that reverse engineering should be permitted. If you look at clause 18(8) of the Bill, you would see that this clause provides for reverse engineering. In this clause we say 'layout design which is identical'. When you use the word 'layout design which is identical' it provides for reverse engineering. So, as he has suggested that reverse engineering should be permitted, I would like to submit that this has already been permitted and his point has been well taken before even he made it.

Sir, Prof. Pramanick has made very important points as far as this Bill is concerned. He also had the privilege of being a Member of the Standing Committee. He very forcefully made all these points in the Standing Committee as well. But unfortunately, the Standing Committee could not agree with him. He knowingly did not attach any note of dissent on the wording of this Bill. Shri Banatwalla is a little upset about it. I think, this is the contribution of Prof. Pramanick to the Committee. The Committee accepted it on his insistence. So, it is not that the Committee did not take advantage of his knowledge in this. But I can only say that, I am not an expert as he is, if you talk about integrated circuits, these are basically used on Silicon which is a semiconductor. That is why we have used the wording as the 'Semiconductor Integrated Circuits Layout Design Bill'. I do not think it makes much of a difference by deleting or adding a word.

Sir, I totally agree with Shri Shivraj Patil – he said this even when he spoke on the Information Technology Bill – that we should find out the title of the Bill in such a way that just by reading the title, a layman should be able to understand what law we are talking about. He has given a few examples. I do not have his

legal competence, but I can only talk from the point of view of the Legislative Department that while framing the titles of the Bills they should take proper care to see that the names should, as far as possible, be able to tell the whole meaning of the law. That point is well taken.

PROF. R.R. PRAMANIK : Sir, semiconductor is one of the active elements. There are other active elements also. In the final Act of the Uruguay Round, there are only 'integrated circuits layout design'. Nowhere is there any mention of 'semiconductor'. Semiconductor is one of the many active elements. Then, why is it only semiconductor? There are capacitors also. Then, why is it only semiconductors?

SHRI PRAMOD MAHAJAN: Sir, to the best of my knowledge, subject to correction, even advanced countries like the USA and Japan when they followed this TRIPS Agreement and made laws, they also have used the word, 'semiconductor'.

I do not think deleting 'semiconductor' and using 'integrated circuits' will make a difference.

As far as the word 'chairperson' is concerned, I already explained that the Committee suggested us to change the word 'chairman' to 'chairperson'. This applies only to the English language. In the Hindi language it still remains as 'adhyaksh'.

SHRI SATYAVRAT CHATURVEDI (KHAJURAHO): The word 'chairman' has no gender to it.

SHRI PRAMOD MAHAJAN: It has no gender to it but the Standing Committee insisted on it and we accepted the amendment. We changed the word at 50 places in the Bill. Inadvertently, it was left unchanged at one place. I am moving an amendment to change it. I am sure the Rajya Sabha will agree to it.

Sir, I respectfully submit to Shri Subodh Mohite that the word 'he' or 'she' does not make a difference. Shri Shivraj Patil has already helped me in this regard. He has given me advice and helped me without charging me any fee, by saying that in the General Purpose Clauses Act 'he' includes 'she', though it should be the other way round. Normally 'she' includes 'he' and 'woman' includes 'man'. But in the General Purpose Clauses Act 'man' includes

'woman' and 'he' includes 'she'. In the Standing Committee also it was debated upon. It was brought to their notice that this was the reason behind the usage of the word and that there was no gender bias in it.

I would like to make one point in this regard. The test really lies for the country in appointing more women as 'chairpersons'. Even if the word 'chairman' in every Bill is changed to 'chairperson', if men only are continued to be appointed to these posts, the word 'chairperson' will remain in the Bill and no woman would be happy about it. So, whether you call the post as 'chairman' or 'chairperson' the difference is only notional and not practical. I think, the women in the country are more interested in getting appointed on different Committees than merely the post being called 'chairperson'. Anyway, we have already changed it.

As far as the Appellate Tribunal is concerned, these are statutory appointments. Naturally, qualifications and other eligibility conditions in regard to statutory posts are mentioned in the Bill itself. Normally the rules take care of the posts like Registrar. It happened not in this law only but in all other laws like Patents Act, Copyright Act, Trademarks Act, etc. I can take the names of umpteen laws in which such posts are not of statutory or quasi-judicial nature. These posts are always decided upon by the Government by making provisions under the rules and we have taken care of the same. As such I do not expect the Member to agree with me but I am submitting the Government viewpoint on this issue.

A very important point was raised by Shri Pramanik, Shri Banatwalla and Shri Shivraj Patil. I would like to take a little time of the House on this point because it is a very important point. The point relates to the question of the inventor *versus* the proprietor, or financier, or promoter. It is true after all that any intellectual property is the creator's property and naturally the whole credit of any invention should go to its creator. However, as somebody rightly said, one needs money also to get his creation into commercial use. What we did here is, we followed the general practice in this business not only in our country but all over the world. All over the world, those who have the brightest brains either work in different companies or are commissioned by different companies to invent things. Money is spared for them to do their work. Sometimes money goes down the drain without a person inventing anything and sometimes something is invented very cheaply. Sometimes you spend a few thousand dollars to get an invention and sometimes you spend billions of dollars and do not get anything out of it. Under such circumstances, normally the person who is the promoter, or who is running the company, or who has commissioned the job, gets the intellectual property right and not the inventor.

Now, here what we have done, I would like really the House to try to understand. If I am making mistakes, Shri Shivraj V. Patil can correct me.

In clause 7(3), we have said:

"Where an original layout-design has been created in execution of a commission or a contract of employment, the right of registration to such layout-design under this Act shall belong, in the absence of any contractual provision to the contrary, to the person who commissioned the work or to the employer. "

But suppose, somebody with his brightest brain makes a contract with his employer or a person who has commissioned, and says, 'look, I can work with you only and only if the right comes to me'. Then, what will happen? Even then under this Bill, if he has a contract, he can have a property right. But if he does not have that kind of a thing – normally, as I said, business practice says -- it should go to the employer or the person who commissioned.

SHRI SHIVRAJ V. PATIL : Well, think, you are certainly following the international practice. But is it necessary for us to follow the international practice in all cases? We can go a step ahead of what other countries are doing. Now, here, as per this clause, as you rightly said, if there is a contract, it says that "certain share of the profit shall go to the inventor." It will go to the inventor because that would be registered.

But as the situation stands, as the things are there in our country and outside also, it is the money which is dominating. In fact, in the knowledge based industry or in this area where knowledge is important and the man who is inventing is more important, will it be beyond our ingenuity to have a law which really protects the interests of the person who is really responsible for creating the knowledge?

SHRI PRAMOD MAHAJAN: Sir, I would love the inventor to get the entire credit...(Interruptions)

PROF. R.R. PRAMANIK : Sir, on this clause 7(3), my amendment was there. This clause 7(3) says, "Where an original lay-design has been createdâ€".

SHRI PRAMOD MAHAJAN: I have not come to the amendment. I am just mentioning it generally.

PROF. R.R. PRAMANIK : In the clause 7(3) in place of "to the person who commissioned the work or to the employer" you may substitute "to the person who invented." That is my amendment.

Here, this protection is given to the employer. Now, the intellectual property is the creation of intellect. So, the real protection should go to the inventor and not to the employer. The employer can get his share by a contract. The provision is there about this contract.

So, in the intellectual property, the right of registration should go to the holder of right, and the holder of the right is the inventor, not the employer. So, what is the harm if we change the wording "to the person who commissioned the work or to the employer" by "to the person who invented"?

SHRI PRAMOD MAHAJAN: Sir, let us agree to disagree. As I said, if the law gives all rights to the inventor, I am afraid...*(Interruptions)*

PROF. R.R. PRAMANIK : The contract is there. If there is a contract, that would be shared by the employer. Then, the employer would get the share. It has been mentioned there.

SHRI PRAMOD MAHAJAN: As I have already said, if he enters into a contract with his employer or a person who commissioned, then the contract will prevail.

SHRI G.M. BANATWALLA : He is not equal to the proprietor.

SHRI PRAMOD MAHAJAN: Firstly, as far as the contract is concerned, that will prevail. So, we are not taking *suo motu* the right of the inventor and putting into the proprietor or the employer....*(Interruptions)*

SHRI G.M. BANATWALLA : Inventor is a weak party. Give him protection.

SHRI PRAMOD MAHAJAN: That is why I said that let us I agree to disagree. I too agree with you, Sir, that it is a weak party. But at the same time, this weak party, to produce something worth intellectual property right needs money. Suppose, by law, I make it and tomorrow the companies do not come forward to make financing, then again, there will be a problem.

So, if he thinks that he has something which he can make a contract, maybe with some noble ideas, he can, even under this law, make a contract and get money whatever he wants with it. But I cannot *suo motu* say that the employer or the person who is commissioning, will not have anything, and everything will be left to the inventor. That is not an international practice.

PROF. R.R. PRAMANIK : In the sub-clause, a provision is there, and the employer will get his share.

MR. CHAIRMAN : Hon. Members, please listen to the hon. Minister. Let the hon. Minister first complete. Afterwards, if there is any clarification, you may ask for it.

2000 hrs.

SHRI PRAMOD MAHAJAN: I think, I have already answered most of the points.

The hon. Member asked why the age was kept at 62 years and why it was not kept at 65 years. In all Appellate Boards and Tribunals, it is the normal practice to keep it at 62 years. Left to me, I would like to come a little down but not go to the upside of 65 or 70. This is the youngest industry in India. So, let us appoint people who are younger. Please do not ask me to raise the age from 62 years to 65 years.

I now come to the point raised by hon. Member Shri Subodh Mohite. As he rightly said, there are some spelling mistakes in this. Though the Minister may not directly see it, when it comes to the House, he is the person responsible even for spelling mistakes. I apologise for the 'original' spelling mistakes! In fact, there is a mistake here in the spelling of the word 'original'.

He has also asked whether he would have the right from the time of registration or from the time of filing the application. He will have the right from the time of filing of the application for ten years. But it will be given to him only if he is registered. If for any reason he is not registered, mere filing does not give him a right.

He went almost very much by the words. He pointed out the fact that 'National security' is mentioned under 'Miscellaneous'. When you write a law you have a subject heading for each subject and when there is no subject heading is left, you give the subject heading 'Miscellaneous'. We are not treating 'National security' as a 'Miscellaneous' item. It is a very important subject. But under the available subject headings, it naturally comes in at 'Miscellaneous' because of the style of writing. I hope, he would accept this.

Shri Shivraj V. Patil has mentioned about the title of the Bill. I have already explained it. He has said that this Bill

protects 'designs', which is normally a software activity but semi-conductor layout-design does not get converted into chips, which is a hardware activity. This Bill does not support only the software activity but it supports both. I have taken your point – though it might not be directly related to the present Bill – that India has to concentrate on IT if we have to really become a global power in information technology. We are already a global power in software. But if you look at the hardware aspect, we are definitely lagging behind. For some country to be a real global power or an influential global player, the development could not be lop-sided. So, we have to concentrate on hardware also. He knows that hardware means a lot of investment. It is not so easy to have that kind of an investment but definitely at the Government, public sector or private sector level, we will have to take initiatives to strengthen the hardware development in this country.

He has made a lot of good suggestions. He has said that in areas like the North-East, where we cannot have other kinds of businesses though we have educated people and a good environment, we should exploit the conditions.

Shri M.V.V.S. Murthi has also spoken about gender and grammar. I think, I have answered it.

Lastly, I come to the very important points made by Shri G.M. Banatwalla. I am not coming to these points lastly deliberately but he was the last to speak on this Bill. I have already told that this is a WTO compliance but on our own terms. He has raised three or four points about inventors and promoters. I have already explained the position. He has asked why there should be a provision of ten years when the TRIPS agreement permits us to have it for 15 years. It is a very valid question. I am not sure whether I should articulate very freely in this House but I will try to answer it.

The first thing is that this is a fast moving technology where the life cycle is a cycle, which has come down from 6-8 years to 3-5 years. Really, ten-year period is also a lifetime as far as this technology movement is concerned. So, ten-year period is more than that.

As I said, I am trying to articulate, but at the same time, I have little hesitation, and I request the hon. Members to understand what I am trying to tell. This is in India's interest. I do not want somebody to register in this country and get a right for 15 years. If you look at the proportion of registration done by the Indians and the non-Indians, Indians do not dominate the technology or inventions of this nature. If I give that right, which TRIPS permits me to give, it is for all. I am not fighting on whether it should be 10 years or 15 years. If I give a right for 15 years, it is not that it is a right only for Indians. Anybody who registers here would get that right for 15 years, which I really do not want to give because most of us use it and not invent it.

I cannot be clearer than this in the House and I hope, the House will appreciate that using 'ten-year period' is a pro-India line because that will go in our favour. It is because if somebody registers here, he will get only a ten-year protection, instead of a fifteen-year protection. So, on the eleventh year, anybody and everybody in India can use and I think, this goes in India's favour. That is the precise reason why I used it.

SHRI M.V.V.S. MURTHI : What is the international practice?

SHRI PRAMOD MAHAJAN: It is also ten years. Many countries have done it.

SHRI M.V.V.S. MURTHI : So, you cannot make any changes in that.

SHRI PRAMOD MAHAJAN: As far as the issue of compensation is concerned, I can say that there are two types of things done here. The first thing is that if somebody unknowingly infringes the intellectual property right, then, we have provided that (a) he can go for a settlement; (b) if he cannot go for a settlement, he can go for an appeal, where the Appellate body can give him a royalty. Suppose he says, "No, I do not do it", then, the Criminal Procedure Code is there. In the Criminal Procedure Code, both the things are written – that there can be imprisonment or/and fine. This is what we usually write in such kind of legislation. I am sure – if you look at this kind of legislation – nobody would like to face imprisonment. I am very sure that, even the provision of imprisonment to the type of people we are likely to deal with in this kind of legislation, they will go for a settlement of royalty instead of going to jail even for one day.

As far as giving compensation out of that penalty is concerned, I would say this. Hon. Member, Shri Banatwalla has moved one amendment saying that we should say that out of this penalty, compensation should be given to the person whose right has been infringed. I can only draw the attention to Section 357 of Cr.P.C., which talks about 'order to pay compensation.' In that 'order to pay compensation', it says, when a court imposes a sentence of fine or a sentence inclusive of death of which fine forms a part, the court may, when passing judgement order the whole or any part of the fine recovered to be applied, or in payment of any person, compensation for any loss or injury, and so on and so forth.

There is already such a provision and so, we thought that making another provision here was not necessary.

I tried my level best to answer; I do not want to say 'answer', but I tried to give the clarifications of the Government to the objections raised here.

I again thank all the hon. Members for supporting it. I hope that late in the night, Shri Banatwalla and Prof. Pramanik will not insist on moving their amendments; I hope that the House will pass it only with the amendment of the Government.

MR. CHAIRMAN : The question is:

"That the Bill to provide for the protection of the semiconductor integrated circuits layout-designs and for matters connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration. "

The motion was adopted.

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MR. CHAIRMAN: The House shall now take up clause by clause consideration of the Bill.

Clause 2 Definitions

Amendment made:

Page 3 line 7,-

for "Vice-Chairman means

the Vice-Chairman"

substitute "Vice-Chairperson

means the Vice-Chairperson" (28)

(Shri Pramod Mahajan)

MR. CHAIRMAN : Prof. R.R. Pramanik, are you moving your amendments?

PROF. R.R. PRAMANIK : Yes, I am moving the amendments.

I beg to move:

Page 2,--

for lines 22 to 24 substitute –

`"integrated circuits' means Integrated circuits are defined as products in final form or intermediate form, in which the elements (at least one of which is an active element), and some or all of the interconnections are integrally formed (in and or on a piece of material) and which are intended to perform an electronic function." (14)

Page 3, line 7, --

for "Vice-Chairman"

substitute ``"Vice-Chairperson"' (15)

MR. CHAIRMAN: I shall now put amendments No. 14 and 15 moved by Prof. R.R. Pramanik to the vote of the House.

The amendments were put and negatived.

MR. CHAIRMAN: The question is:

"That clause 2, as amended, stand part of the Bill".

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 3 Registrar of Semiconductor

Integrated circuits Layout Design

MR. CHAIRMAN: Prof. R.R. Pramanik, are you moving your amendments?

PROF. R.R. PRAMANIK: Yes, I am moving my amendments.

I beg to move:

Page 3, lines 13 and 14, --

for "appoint a person to be known as the Registrar"

substitute "appoint a person not below the rank of a Judge of a High Court or a senior IAS Officer in the Central Service to be known as the Registrar " (16)

Page 3, lines 16 and 17, --

for "The Central Government may appoint such officers with such designations as it thinks fit "

substitute "The Central Government may appoint such other officers not below the rank of a Secretary in the Central Service with such designations it thinks fit " (17)

MR. CHAIRMAN: I shall now put amendments No. 16 and 17 moved by Prof. R.R.Pramanik to the vote of the House.

The amendments No. 16 and 17 were put and negatived.

MR. CHAIRMAN: The question is:

"That clause 3 stand part of the Bill".

The motion was adopted.

Clause 3 was added to the Bill.

Clauses 4 to 6 were added to the Bill

Clause 7 Prohibition of registration of

Certain layout designs

MR. CHAIRMAN: Shri G.M. Banatwalla, are you moving your amendment?

SHRI G.M. BANATWALLA : No.

MR. CHAIRMAN: Prof. R.R.Pramanik, are you moving your amendment?

PROF. R.R. PRAMANIK :Yes, I am moving my amendment.

I beg to move:

Page 4, lines 22 and 23, --

for "to the person who commissioned the work or to the employer"

substitute "to the person who invented such layout-design" (18)

MR. CHAIRMAN: I shall now put amendment No. 18 moved by Prof. R.R.Pramanik to the vote of the House.

The amendment No. 18 was put and negatived.

MR. CHAIRMAN: The question is:

"That clause 7 stand part of the Bill".

The motion was adopted.

Clause 7 was added to the Bill.

Clause 8 Application for registration

MR. CHAIRMAN: Shri G.M. Banatwalla, are you moving your amendment?

SHRI G.M. BANATWALLA (PONNANI): Yes, I am moving my amendment.

I beg to move:

Page 4, line 38,--

after "Registrar may" insertâ€

"by a written and reasoned order" (10)

MR. CHAIRMAN: I shall now put amendment No. 10 moved by Shri G.M.Banatwalla to the vote of the House.

The amendment was put and negatived.

MR. CHAIRMAN: The question is:

"That Clause 8 stand part of the Bill".

The motion was adopted.

Clause 8 was added to the Bill.

Clauses 9 and 10 were added to the Bill.

Clause 11 Opposition to registration

MR. CHAIRMAN: Shri G.M. Banatwalla, are you moving your amendments?

SHRI G.M. BANATWALLA: Yes, I am moving my amendments.

I beg to move:

Page 5, --

after line 24, insert –

"Provided that the decision shall be in writing and reasoned:

Provided further that where the Registrar considers any ground of objection not relied upon by the opponent, the parties to the proceedings shall be offered the opportunity to be heard on it." (6)

Page 5, line 27, --

after "security" insert –

"as per the prescribed norms" (11)

MR. CHAIRMAN: I shall now put amendments No. 6 and 11 moved by Shri G.M. Banatwalla to the vote of the House.

The amendments No. 6 and 11 were put and negatived.

MR. CHAIRMAN: The question is:

"That clause 11 stand part of the Bill".

The motion was adopted.

Clause 11 was added to the Bill.

Clauses 12 to 14 were added to the Bill.

Clause 15 Duration of registration

MR. CHAIRMAN: Shri G.M. Banatwalla, are you moving your amendment?

SHRI G.M. BANATWALLA : Yes, I am moving my amendment.

I beg to move:

Page 6, --

`after line 21, insert –

"(2) If, before the expiration of the said ten years, application for the extension of the period of registration of the lay-out design is made to the Registrar in the prescribed manner, the Registrar shall, on payment of the prescribed fee, extend the said period for a second period of five years from the expiration of the original period of ten years."

(3) Where a lay-out design has ceased to have effect by reason of failure to pay the fee for its extension of registration under sub-section (2), the owner of the such lay-out design or his legal representative may, within one year from the date on which the lay-out ceased to have effect, make an application for the restoration of the lay-out design in the prescribed manner on payment of such fee as may be prescribed.

(4) An application under sub-section (3) shall contain a statement, verified in the prescribed manner, fully setting out the circumstances which led to the failure to pay the prescribed fee, and Registrar may require from the applicant such further evidence as he may think necessary.

(5) If, after hearing the applicant in cases where the applicant so desires or the Registrar thinks fit, the Registrar is satisfied that the failure to pay the fee for extension of the period of registration was unintentional and that there has been no undue delay in the making of the application, the Registrar shall upon payment of any unpaid fee for the extension of the period of registration together with prescribed additional fee restore the registration of the design.

(6) The Registrar may, if he thinks fit as a condition of restoring the lay-out design, require that any entry shall be made in the register of any document or matter which under the provisions of this Act, has to be entered in the register but which has not been so entered.

(7) Where the registration of a design is restored, the rights of the registered owner shall be subject to such provisions as may be prescribed and to such other provisions as the Registrar may think fit for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by contract or otherwise to avail themselves of, the benefits of applying the lay-out design between the date when the registration of the layout-design ceased to have effect and the date of restoration of the registration of the layout-design.

(8) No suit or other proceeding shall be commenced in respect of infringement of the registered layout-design committed between the date on which the registration of the layout-design ceased to have effect and the date of the restoration of the layout-design." (7)

MR. CHAIRMAN: I shall now put amendment No. 7 moved by Shri G.M. Banatwalla to the vote of the House.

The amendment No. 7 was put and negatived.

MR. CHAIRMAN: The question is:

"That clause 15 stand part of the Bill."

The motion was adopted.

Clause 15 was added to the Bill.

Clauses 16 and 17 were added to the Bill.

Clause 18 Infringement of layout design

PROF. R.R. PRAMANIK : Sir, I beg to move:

Page 6, line 36,-

for "does any act"

substitute "wilfully and knowingly does any act" (19)

Page 6, line 40,-

for "does any act"

substitute "wilfully and knowingly does any act" (20)

MR. CHAIRMAN: I shall now put amendment Nos.19 and 20 to clause 18 moved by Prof. R.R. Pramanik to the vote of the House.

The amendments were put and negatived.

MR. CHAIRMAN: The question is:

"That clause 18 stand part of the Bill."

The motion was adopted.

Clause 18 was added to the Bill.

Clauses 19 to 33 were added to the Bill.

Clause 34 Qualification for appointment
As Chairperson, Vice Chairperson, or
Other Members

SHRI E.M. SUDARSANA NATCHIAPPAN : Sir, I beg to move:

Page 12, line 4,-

after "been,"

insert "or is qualified to be," (1)

Page 12,-

after line 11, insert-

"(c) has been a practising Advocate of not less than ten
year's standing." (2)

PROF. R.R. PRAMANIK (MATHURAPUR): Sir, I beg to move:

Page 12, line 3,-

for "unless he"

substitute "unless he or she" (21)

Page 12, lines 6 and 7,-

for "unless he"

substitute "unless he or she" (22)

Page 12, line 12,-

for "unless he"

substitute "unless he or she" (23)

Page 12, line 16,-

for "unless he"

substitute "unless he or she" (24)

Page 12, line 19 and 20, -

*omit "and has held a post equivalent to the post of Joint Secretary
to the Government of India or any higher post for at least five
years" (25)*

Page 12,-

omit lines 24 and 25 (26)

MR. CHAIRMAN: I shall now put Amendment Nos. 1 and 2 moved by Shri Sudarsana E.M. Natchiappan and Amendment Nos. 21, 22, 23, 24, 25, and 26 moved by Prof. R.R. Pramanik to clause 34 to the vote of the House.

The amendments Nos. 1,2,21,22,23,24,25 and 26 were put and negatived.

MR. CHAIRMAN: The question is:

"That clause 34 stand part of the Bill."

The motion was adopted.

Clause 34 was added to the Bill.

Clause 35 Term of office of Chairperson

Vice-Chairperson and Members

PROF. R.R. PRAMANIK : Sir, I beg to move:

Page 12, line 30,-

for "sixty-two years"

substitute "sixty-five years" (27)

MR. CHAIRMAN: I shall now put Amendment No.27 to clause 35 moved by Prof. R.R. Pramanik to the vote of the House.

The amendment no. 27 was put and negatived.

MR. CHAIRMAN: The question is:

"That clause 35 stand part of the Bill."

The motion was adopted.

Clause 35 was added to the Bill.

Clauses 36 to 55 were added to the Bill.

Clause 56 Penalty for infringement of layout design

SHRI G.M. BANATWALLA : Sir, I beg to move:

Page 17, lines 6 and 7,-

for "knowingly and wilfully any of the provisions of section 18. "

substitute "any of the provision of section 18, save where such person does not possess any knowledge or has no reasonable ground to know that his act involves infringement of a registered layout-design. " (8)

MR. CHAIRMAN: I shall now put amendment No.8 to clause 56 moved by Shri G.M. Banatwalla to the vote of the House.

The amendment no. 3 was put and negatived.

MR. CHAIRMAN: The question is:

"That clause 56 stand part of the Bill."

The motion was adopted.

Clause 56 was added to the Bill.

Clause 57 was added to the Bill.

SHRI G.M. BANATWALLA : Sir, I beg to move:

Page 17,-

after line 27, insert-

"(57A) The owners of a registered design shall be entitled to such compensation as may be prescribed from the person held guilty under the provisions of sections 56 and 57. " (3)

MR. CHAIRMAN: I shall now put Amendment No. 3 for insertion of a New Clause 57A moved by Shri G.M. Banatwalla to the vote of the House.

The amendment no. 3 was put and negatived.

MR. CHAIRMAN: The question is:

"That clauses 58 to 96 stand part of the Bill."

The motion was adopted.

Clauses 58 to 96 were added to the Bill.

Clause 1 Short title, extent and commencement

PROF. R.R. PRAMANIK : I beg to move:

Page 2, line 3 and wherever it occurs in the bill, -

omit "Semiconductor" (13)

MR. CHAIRMAN : I shall now put amendment No.13 to clause 1 moved by Prof. R.R. Pramanik to the vote of the House.

The amendment no. 13 was put and negatived.

MR. CHAIRMAN: The question is:

"That clause 1 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

The Enacting Formula and the Preamble were added to the Bill.

The Title

PROF. R.R. PRAMANIK : I beg to move:

Page 1,-

for "semiconductor integrated circuits layout-designs"

substitute "Integrated Circuits Layout Design" (12)

MR. CHAIRMAN: I shall now put amendment No.12 to the Title moved by Prof. R.R. Pramanik to the vote of the House.

The amendment no. 12 was put and negatived.

MR. CHAIRMAN: The question is:

"That the Title stand part of the Bill."

The motion was adopted.

The Title was added to the Bill.

SHRI PRAMOD MAHAJAN: I beg to move:

"That the Bill, as amended, be passed."

MR. CHAIRMAN: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.
