

Rongpi, Dr. Jayanta (Autonomous district)  
 Saikia, Shri Muhi Ram (Nowgong)  
 Sait, Shri Ebrahim Sulaiman (Ponnani)  
 Saraswati, Shri Yoganand (Bhind)  
 Sethi, Shri Arjun Charan (Bhadrak)  
 Shah, Shri Manabendra (Tenri Garhwal)  
 Shakya, Dr. Mahadeepak Singh (Etah)  
 Sharma, Shri Rajendra Kumar (Rampur)  
 Shastri Acharya Vishwanath Das (Sultanpur)  
 Shastri, Shri Vishwanath (Gazipur)  
 Singh, Shri Brijhushan Sharan (Gonda)  
 Singh, Shri Mohan (Deoria)  
 Singh, Shri Pratap (Banka)  
 Singh, Shri Rajveer (Aonla)  
 Singh, Shri Satya Deo (Balrampur)  
 Sivaraman, Shri S. (Ottapalam)

Ahirwar, Shri Anand (Sagar)  
 Ahmed, Shri Kamaluddin (Hanamkonda)  
 Aiyar, Shri Mani Shankar (Mayiladuturai)  
 Anbarasu, Shri R. (Madras Central)  
 Arunachalam, Shri M. (Tenkasi)  
 Bhardwaj, Shri Paras Ram (Sarangarh)  
 Bhatia, Shri Raghunandan Lal (Amritsar)  
 Bhoi, Dr. Krupasindhu (Sambalpur)  
 Bhonsle, Shri Prataprao B. (Satara)  
 Bhuria, Shri Dileep Singh (Jhabua)  
 Birbal, Shri (Ganganagar)  
 Chaliha, Shri Kirip (Guwahati)  
 Chaudhary, Sqn. Ldr. Kamal (Hoshiarpur)  
 Chaudhari, Shri Narain Singh (Hissar)  
 Chavan, Shri Prithviraj D. (Karad)  
 Chavda, Shri Ishwarbhai Khodabhai (Anand)  
 Chidambaram, Shri P. (Sivaganga)  
 Chowdary, Dr. K.V.R. (Rajahmundry)  
 Dalbir Singh, Shri (Shahdol)  
 Damor, Shri Somjibhai (Dohad)  
 Das, Shri Anadi Charan (Jaipur)  
 Deka, Shri Probin (Mangaldoi)  
 Delkar, Shri Mohan S. (Dadra and Nagar Haveli)  
 Dennis, Shri N. (Nagercoil)  
 Deshmukh, Shri Ashok Anandrao (Parbhani)  
 Dev, Shri Sontosh Mohan (Tripura West)  
 Devi, Shrimati Bibhu Kumari (Tripura East)  
 Dighe, Shri Sharad (Bombay North Central)  
 Faleiro, Shri Eduardo (Mormugao)  
 Fernandes, Shri Oscar (Udupi)  
 Gajapathi, Shri Gopi Nath (Berhampur)  
 Gamang, Shri Giridhar (Koraput)  
 Ghatowar, Shri Paban Singh (Dibrugarh)  
 Giriappa, Shri C.P. Mudala (Chitradurga)  
 Gudadinni, Shri B.K. (Bijapur)  
 Handique, Shri Bijoy Krishna (Jorhat)  
 Harchand Singh, Shri (Ropar)  
 Hooda, Shri Bhupinder Singh (Rohtak)  
 Islam, Shri Nurul (Dhubri)  
 Jakhari, Shri Balarm (Sikar)  
 Jaswant Singh, Shri (Chittorgarh)  
 Jeevarathinam, Shri R. (Araconam)

Sreenivaasan, Shri C. (Dindigul)  
 Sur, Shri Monoranjan (Basirhat)  
 Swami, Shri Chinmayanand (Badaun)  
 Swami, Shri Sureshanand (Jalesar)  
 Syed Shahabuddin, Shri (Kishanganj)  
 Thakore, Shri Gabhaji Mangaji (Kapadwanj)  
 Tirkey, Shri Pius (Alipurduars)  
 Tomar, Dr. Ramesh Chand (Hapur)  
 Topdar, Shri Tarit Baran (Barrackpore)  
 Vajpayee, Shri Atal Bihar (Lucknow)  
 Vekaria, Shri Shival Nagjibhai (Rajkot)  
 Virendra Singh, Shri (Mirzapur)  
 Yadav, Shri Chun Chun Prasad (Bhagalpur)  
 Yumnam, Shri Yaima Singh (Inner Manipur)  
 Zainal Abedin, Shri (Jangipur)

#### NOES

Kale, Shri Shankarrao D. (Kopergaon)  
 Kamble, Shri Arvind Tulshiram (Osmanabad)  
 Kanithi, Dr. Viswanatham (Srikakulam)  
 Kaul, Shrimati Sheila (Rae Bareilly)  
 Khursheed, Shri Salman (Farrukhabad)  
 Krishnaswamy, Shri M. (Vandavasi)  
 Kuli, Shri Balin (Lakhimpur)  
 Kumaramangalam, Shri Rangarajan (Salem)  
 Kuppaswamy, Shri C.K. (Coimbatore)  
 Lakshmanan, Prof. Savithri (Mukundapuram)  
 Malik, Shri Dharampal Singh (Sonapat)  
 Mallikarjun, Shri (Mahbubnagar)  
 Manphool Singh, Shri (Bikaner)  
 Marbaniang, Shri Peter G. (Shillong)  
 Mujahid, Shri B.M. (Dharwad South)  
 Murthy, Shri M.V. Chandrashekhara (Kanakapura)  
 Naik, Shri A. Venkatesh (Raichur)  
 Nandi, Shri Yellaiah (Siddipet)  
 Nawale, Shri Vidura Vithoba (Khed)  
 Nayak, Shri Mrutyunjaya (Phulbani)  
 Odeyar, Shri Channaiah (Davangere)  
 Padma, Dr. (Shrimati) (Nagapattinam)  
 Palacholla, Shri V.R. Naidu (Khammam)  
 Panigrahi, Shri Sriballav (Deogarh)  
 Patel, Shri Uttambhai Harjibhai (Bulsar)  
 Patil, Shrimati Pralibha Devisingh (Amravati)  
 Patil, Shrimati Surya Kanta (Nanded)  
 Patil, Shri Uttamrao Deorao (Yavatmal)  
 Patra, Dr. Kartikeswar (Balasore)  
 Pattanayak, Shri Sarat (Bolangir)  
 Pawar, Dr. Vasant Niwruitti (Nasik)  
 Potdukhe, Shri Shantaram (Chandrapur)  
 Prabhu Zantye, Shri Harish Narayan (Panaji)  
 Pradhani, Shri K. (Nowrangpur)  
 Rahi, Shri Ram Lal (Misrikh)  
 Rai, Shri Ram Nihor (Robertsganj)  
 Ram Babu, Shri A.G.S. (Madurai)  
 Ram Badan, Shri (Lalganj)  
 Rao, Shri J. Chokka (Karimnagar)  
 Reddy, Shri A. Indrakaran (Adilabad)  
 Sai, Shri A. Prathap (Rajampet)  
 Sangma, Shri Purno A. (Tura)

Sayeed, Shri P.M. (Lakshadweep)  
 Selja, Kumari (Sirsa)  
 Sharma, Shri Chiranji Lal (Karnal)  
 Shastri, Shri Rajnath Sonkar (Saidpur)  
 Shivappa, Shri K.G. (Shimoga)  
 Shukla, Shri Vidyacharan (Raipur)  
 Shukla, Shri S.B. (Belgaum)  
 Singh Deo, Shri K.P. (Dhenkanal)  
 Singla, Shri Sant Ram (Patiala)  
 Sodi, Shri Manku Ram (Bastar)  
 Solanki, Shri Surajbhanu (Dhar)  
 Sukhbans Kaur, Shrimati (Gurdaspur)

Tara Singh, Shri (Kurukshetra)  
 Thakur, Shri Mahendra Kumar Singh (Khandwa)  
 Thorat, Shri Sandipan Bhagwan (Pandharpur)  
 Tindivanam, Shri K. Ramamurthee (Tindivanam)  
 Tiriya, Kumari Sushila (Mayurbhanj)  
 Topno, Kumari Frida (Sundargarh)  
 Upadhyay, Shri Swarup (Tejpur)  
 Urs, Shrimati Chandra Prabha (Mysore)  
 Verma, Shri Bhawani Lal (Janjgir)  
 Verma, Kumari Vimla (Seoni)  
 Wasnik, Shri Mukul (Buldana)  
 Williams, Maj. Gen. R.G. (Nominated Anglo-Indian)

SHRI SOBHANADREESWARA RAO VADDE (Vijayawada): The votes have not been recorded properly. The voting machine is not working properly.

MR. SPEAKER: Subject to correction the result of the division is:

Ayes: 112

Noes: 109

*The motion was adopted.*

16.10 hrs.

STATUTORY RESOLUTION RE: DISAPPROVAL OF THE PATENTS (AMENDMENTS) ORDINANCE (NEGATIVED) AND

PATENTS (AMENDMENT) BILL—CONTD.

MR. SPEAKER: The Minister may now speak.

THE MINISTER OF STATE IN THE MINISTRY OF INDUSTRY (DEPARTMENT OF SMALL SCALE INDUSTRIES AND AGRO AND RURAL INDUSTRIES) (SHRI M. ARUNACHALAM): Sir, in continuation of my reply yesterday I would say this.

One of the obligations under the TRIPS agreement was to provide means for filing of applications for product patents in the areas of pharmaceuticals and agricultural chemicals with effect from 1st January, 1995, and on fulfilling certain conditions, grant exclusive marketing rights till the expiry of a period of five years or until the patent is granted or rejected, whichever is shorter.

Coming to the Patents Act, 1970, this Act does not provide for grant of product patents in the above mentioned areas. As per the TRIPS agreement, we have time till 2005 to amend the Act for grant of such patents. Therefore, we are required to make the arrangement in the intervening period.

The Amendment has been made to provide a statutory provision for filing of applications for product patents in the field of agricultural, chemicals and pharmaceuticals. The Amendment also provides for grant of exclusive marketing rights for the applicants after a set of conditions have been fulfilled. In order to be eligible for grant of these rights subsequent to 1st January, 1995: the applicant has to file an application in India for grant of patent; secondly, he has to file an application and obtain patent for identical inventions in any Convention country; thirdly he has to obtain marketing approvals from the same Convention countries and fourthly he has to obtain marketing approvals from the appropriate authority in India. However, for inventions made in India, the applicant does not have to

necessarily obtain a product patent and marketing approvals in some other countries. He has to option of obtaining a process patent for an identical invention in our country. This measure has been taken to provide an incentive for inventions to be made in the country.

It has always been our endeavour to encourage research and development activities in the country and to provide incentives to inventors. It is expected that this step will provide a boost to setting up research and development facilities within the country. The Government has also taken care to ensure that the facility is not used to extend the life of existing patents. Obtaining in other countries which are non-patentable under the Act. It is for this reason that Section 24A (1) (2) of the Bill provides for a Controller of Patents to examine the applications before grant of exclusive marketing rights to ascertain whether there was a *prima facie* violation under the relevant Sections of the Patents Act.

We have given sufficient safeguards while making these Amendments. We have also incorporated several provisions to protect the public interest. They are: (1) in the event that the existence of exclusive marketing rights is against public interest or in any other circumstances of extreme urgency the Government may either on its own or through any other authorised person exercise the said rights;

(2) The Government may, in the public interest and for reasons to be stated in writing, direct any substance which is the subject of an exclusive marketing right to be sold at a price, to be determined by an appropriate authority designated by it; and (3) The provisions of compulsory licensing under the Patent Act with appropriate modifications have been extended to exclusive marketing rights also.

There is an amendment which is made to facilitate the inventors resident in India. We have also taken this opportunity to delete a provision in the Act which places restrictions on applications made by persons resident in India. Under Section 39 of the Indian Patents Act, no person resident in India could make an application outside the country for grant of a patent unless an application for a patent for the same invention was made in India, not less than six weeks before it was made outside India. The applicant could, however, obtain prior permission of the Government to get a waiver of this condition. It would be seen that this Section was a handicap for persons resident

in India as they could not file a patent application outside the country, without either filing the same within the country and waiting for specified period or obtaining prior approvals of the Government. Such a delay was liable to affect the priority accorded to the application. With the amendment now made to delete this Section, inventors resident in India can make an application outside the country for grant of a patent without any restrictions. This is bound to encourage inventors in India to get their patents registered abroad.

The main issue which many hon. Members including Shri Ram Kapse have raised while discussing this Bill is about the impact which the amendments will have on the drugs currently marketed in India or anywhere in the world. I would like to clarify that all the drugs which are presently marketed either in India or anywhere in the world will not be affected by the Agreement. The domestic industry will continue to be able to manufacture and market such drugs. The provisions of the Agreement will affect only those drugs which are invented after the 1st January 1995 and for which patents are obtained after the 1st January 1995. Further these drugs will have an impact in the market in India only if they are granted exclusive marketing rights on fulfilment of the conditions. However, even for such drugs several safeguards have been provided in the Bill to control practices which will affect the interests of the consumers. This also includes directions to sell the drugs at a price to be determined by specified authority.

Some of our hon. Members have raised certain issues and I would like to deal with them. Shri Ram Kapse has said that corruption in patent office would prevail. I would say that measures are being taken to strengthen and modernise the offices. However, as patent rights are restricted to geographical borders of the country, a person will have to obtain patent in some other country, if he wants protection over here. He has also raised a point about the rise in prices of medicines. I have just now replied to that. He has also said that we may be succumbed to world pressure. There is no question of succumbing to world pressure. We have accepted the World Trade Organisation Agreement, as it is in our interest and as has been discussed at length in this House earlier. He has also expressed a point that knowledge is freely available and it should not be patented.

Technology should also be available everywhere.

Patents are granted for inventions and not for the discoveries. With the grant of patent, the patentee has exclusive right to make use, sell or distribute the invention. However, with the grant of such rights, the patentee is obliged to reap the fruits of the inventions available to the public on reasonable terms within a reasonable time. Patent rights are, therefore, bestowed on the patentee to encourage him to put the knowledge available with him to the use of the people.

Providing protection to the inventions through patents also facilitates transfer of technology. Therefore, patents are concerned only with applied knowledge and not time.

My distinguished friend, Mr. Chavan has suggested

many things. One of his suggestions is deletion of Section 39. The Government will not be aware of inventions relating to Defence, Atomic Energy, etc., as the information will be sent outside the country. This Section has been deleted in order to remove restrictions on applications made by persons resident in India. It is not that with such a deletion, it will be possible to pass on classified information to other countries. This can still be prevented under the provisions of law. I also thank Mr. Chavan for his valuable suggestions.

My hon. friend, Mr. Lodha, said that with these amendments, foreign companies will be able to come to India and obtain patents on our seeds. I would like to tell him that the Bill does not cover patenting of seeds. Plant varieties are not patentable under Patents Act, 1970 and the position remains unchanged even with the amendments.

Shri Rasa Singh Rawat has raised a question whether patenting of *Neem* will be compulsory. This Bill does not make any change which would enable companies to obtain patents for *Neem* etc. *Neem* is a constituent of plants. Therefore, it will not come under patents. Farmers' rights are not being affected and the seeds, etc., used by them are not being brought within the scope of patents. The same issue has been raised by other hon. Members like, Dr. Ramkrishna Kusmaria, Mr. Ashok Anandrao Deshmukh, Dr. Laxminarayan Pandeya and Mr. Vijoy Kumar Yadav.

The hon. Member, Mr. Pratap Singh, has talked about reciprocity and asked whether foreign products are going to be tested in India. Yes, of course, marketing approvals are required in India before the product enters a market. This applies in the case of both indigenous as well as imported products. The amendments proposed in the Bill do not affect our interests adversely. The TRIPs Agreement has provided us with a transition period of ten years to amend the Patents Act, 1970, to provide for product patents in areas of technology not covered so far. During this period, we expect that Indian companies will step up their research and development activities and upgrade the facilities available with them for development. It is imperative that we make our efforts to ensure that we obtain the latest technology available on the subject in the world.

The technology will be made available to us only after protection is offered. It is with this view that we have initiated an exercise to amend our laws to make them more responsive to the dynamics of change. While making these changes in the law, we are also seized of the fact that the administrative machinery available with us is also strengthened and streamlined. The project is already under way to modernise our patent information services. We are also taking steps separately to strengthen our offices.

To conclude, I would like to reiterate that the Bill attempts to strike a balance between two objectives, that is, fulfilment of our obligations and protection of our interests.

These objectives have been met with and I would urge

upon the hon. Members to extend their support for passing the Bill.

SHRI TARIT BARAN TOPDAR (Barrackpore): Sir, in brief, I would like to submit that the Minister did not explain any of the vital points raised in the course of discussion despite the pipeline protection which had been mentioned yesterday which is very much there in the GATT Agreement. The Government, in a hurry, brought this Bill and prior to that, the Ordinance. I do not find any reason as to why this was found to be imperative on the part of the Government in spite of this protection given in the main body of the Agreement. Sir, we have seen the budgets one after another. We have seen the budget suddenly opted to suit the GATT obligations before the GATT Agreement was signed and the other four successive budgets to adapt to the WTO requirements. The Finance Minister, in his splendour of diction in his speech, could not conceal the fact of price rise, inflation and only dependence in the interdependent economy. It has been said 'interdependent economy in the world'. But for our country, it is meant only dependence, destroying the beat of self-reliance which the country could achieve over the years. It has been told by the Finance Minister on the floor of the House that there is nothing against India in WTO as if all other countries strove for eight years only for the well-being of India and not for their well-being. America or the European countries put their heads together only for the well-being of India and not for their well-being although Mr. Peter Sutherland, the Secretary-General told just the day after the Agreement was signed that we are entering an era of trade war.

16.29 hrs.

[SHRI TARA SINGH in the Chair.]

In this era of trade war—it has been said by the Finance Minister and all other Ministers here—that there is nothing against India in WTO.

I want to know whether the Finance Minister, his colleagues and his supporters in his actions want to say that by this, all the member—countries have surrendered their interest to the interest of India. It sounds that they are more American than the Americans themselves. Our erstwhile Secretary, Commerce, Shri Anwarul Hoda gave sermons that stealing of technology is not dignified. Then, Japan is a very undignified nation. Yesterday, some of our friends from that side also echoed their voice. I do not know whether Shri Anwarul Hoda has obtained the *eenam* by getting the service in WTO. What the other people will get, I do not know. You are saying that we must go against all protections. Patent itself is a protection. So, in the garb of the slogan of liberalisation, product patenting is the broadest protection given to a company or a person or a country. In the course of reply, Mr. Minister only mentioned that discoveries are not patentable, and inventions are patentable. Yes, there is a certain difference between discoveries and inventions. But I want to know whether DNA is a discovery or an invention. As far as my knowledge goes regarding science, DNA, is not an invention but it is a discovery. Then how DNA—it is the name of some acid—is going to be patented? The hon.

Minister says that this is not included just now in the Bill. This is an interim arrangement. The Bill is just an interim arrangement. Can the Minister say, this is once for all, and no more change of Patent Act will be made within 10 years or 15 years to come? No, because this is the interim arrangement which the Bill seeks to do.

Before the Patents Act is changed, instead of products patenting they sold marketing right. Sold marketing rights are given to them instead of product patenting. It is somewhat like that of product patenting.

Now, the protection made by this patent, product patent is actually equivalent to patenting of knowledge. Patenting of Science cannot be done. Yesterday, I made this point that Science can never be patented. Technological aspects, methods and devices can be patented for the time being. But the theory of knowledge the development of knowledge, the development of society through knowledge, brushes aside all these barriers.

Nobody can put a barrier when it comes to access of people to knowledge, whether it be science or technology. Therefore, as far as science is concerned, there is nothing to be patented; whereas for technology, it can be patented for certain period. But for that it cannot be maintained. That is why it has to be patented for some time. Because of this reasons only, it has got a time period.

Therefore, in the course of enacting a law on this aspect, we must take into consideration the natural laws concerning the development of society and the natural laws concerning the development of knowledge and the theory of knowledge itself.

Now, charging the Opposition has become a common refrain of the Government. These charges are always and almost frivolous. The entire Opposition is opposed to this Bill. I also understand that a good number of Congress people as well as opposed to this Bill. In order to maintain their Government with the slender majority that it has, they are not coming out in the open to oppose the Bill.

Sir, within a very short time, elections are going to be held. Elections are due within less than a year. Till that time, this type of change is not necessary and in my view it should not be done. There is nothing imperative on the part of our country to enact such a law in respect of product patenting instead of process patenting in such a manner and so hurriedly. Provisions mentioned in Chapter 16 regarding compulsory licensing have been diluted in this amendment. The articles, paragraphs, sections and subsections providing for compulsory licensing were meant for stoppage of misuse of patenting and stoppage of misuse of permission obtained. By way of diluting the provisions in this manner, the Government wants the patent. Under these provisions, they have got authority only to sell, distribute, etc. This amendment will have great scope for wrecking havoc and causing incalculable damage to our interests.

Therefore, without further elaborating, I want to conclude with these remarks.

Sir, our good friends have made a claim that the