

aside such an order by the ITC, and in this case he must make a decision by January 25, 1986). Meanwhile Akzo appealed to the courts of the Netherlands that Dupont was infringing a Dutch patent for one of the process chemicals required to make the product (aramid fibre). The Dutch lower court ruled in favour of Akzo in February 1985, and more recently the appeals court confirmed the decision. The matter is, at the time of writing, being discussed between the EEC Commission and the U.S. authorities. This is an example of where, for the firms concerned, the patent system is trade policy.²³

One could hazard a guess that patents will increasingly be used to protect markets as between industrialized countries in high-technology sectors. The Akzo-Dupont case cited above concern the most technologically advanced artificial fibres. Another high technology case involves an action before the USITC (under Section 337 of the Tariff Act) in which a U.S. producer of floppy-disk drives is alleging patent infringement by a number of Japanese firms. The initial finding by the ITC was that the Japanese firms should post substantial bonds with customs while the inquiry proceeded. Like the Canadian Radio Patents example, this an area where patents can provide infinite protection, although for a limited period (long enough for rapidly evolving high-technology products).

We wish to do no more, in this brief comment, than to point out that trade policy and competition policy should both be concerned with the detailed operations of the patent regime. In most countries the administration, at the bureaucratic level, of competition policy and patent policy tend to operate in separate compartments, in part because administrations derive their authority from specialized statutes which confer authority and responsibility uniquely on them.²⁴

Copyright

Turning to the related area of copyright, the most important current issue is the question of whether computer software should be protected by patents or by copyright. For this key product it is either patents or copyright which are trade policy; the tariff is virtually irrelevant. The protection of artistic works, literary works etc., is, of course the usual area of operation of the copyright system; however in the United Kingdom, the existence of a copyright in drawings of industrial products may be invoked to protect the manufacture of the product so described. In other countries the implicit copyright in an engineering drawing does not extend to three dimensional objects based on such drawings. In the U.K. however, it is a principle of the present copyright provision that copyright extends to the objects based on the drawn design, although the copy may have been made by examination of the object, and not by reference to the drawing. This feature of the copyright law has, in practical terms, been important mainly in regard to the manufacture of spare parts for automobiles; it is a feature of the automotive industry that independent manufacturers make and sell copies of parts of automobiles, often at lower prices than parts made by or sold by the automobile manufacturers themselves or their supplies of original equipment. It is only in the U.K., among major industrialized countries, that such practices can constitute a breach of copyright; in effect, under this regime copyright gives protection to articles which could not be patented or the designs of which could not be registered.