IATA Struggles For Survival As Cartel Role Is Diminished

By Carole Shifrin
Washington Post Staff Writer

The International Air Transport Association looked and acted like a cartel last week when member airlines decided to raise international air fares by 7 percent.

But look again. Pan American World Airways—one of the two largest international airline along with Aeroflot ——dropped out of IATA this winter and said last week that it doesn't plan to raise fares by any more than the 4 percent it already has asked for. Delta Airlines and Northwest Airlines aren't members either. Neither is Aeroflot.

It's not even clear that the governments of the major airlines that do belong to IATA will go along and approve all the fare and cargo rate increases agreed upon. Although board members are unlikely to deny increases attributable to fuel and other rising costs that carriers can prove, the Civil Aeronautics Board here has been in no mood to rubber-stamp all proposed fare increases the airlines come up with. In the last few weeks, for example, it has turned down several requests from airlines for increases in regular economy fares across the Atlantic.

And there is some indication that other governments are more sensitized to their citizens' interest in lower fares as a result of the widespred publicity given recent U.S. experiences, and therefore may be looking more carefully at their airlines' fare requests. Just before agreement was reached by IATA airlines in Geneva, for instance, Great Britain's Civil Aviation Authority shocked British Airways, an IATA member, by turning down its proposed 7.5 percent increase on domestic services.

For all its trappings—its international network, working committees and traffic rate conferences—IATA's effectiveness as a cartel in the classic sense (defined in the dictionary as "a combination of independent commercial enterprises designed to limit competition") has been diminished vastly over the last few years.

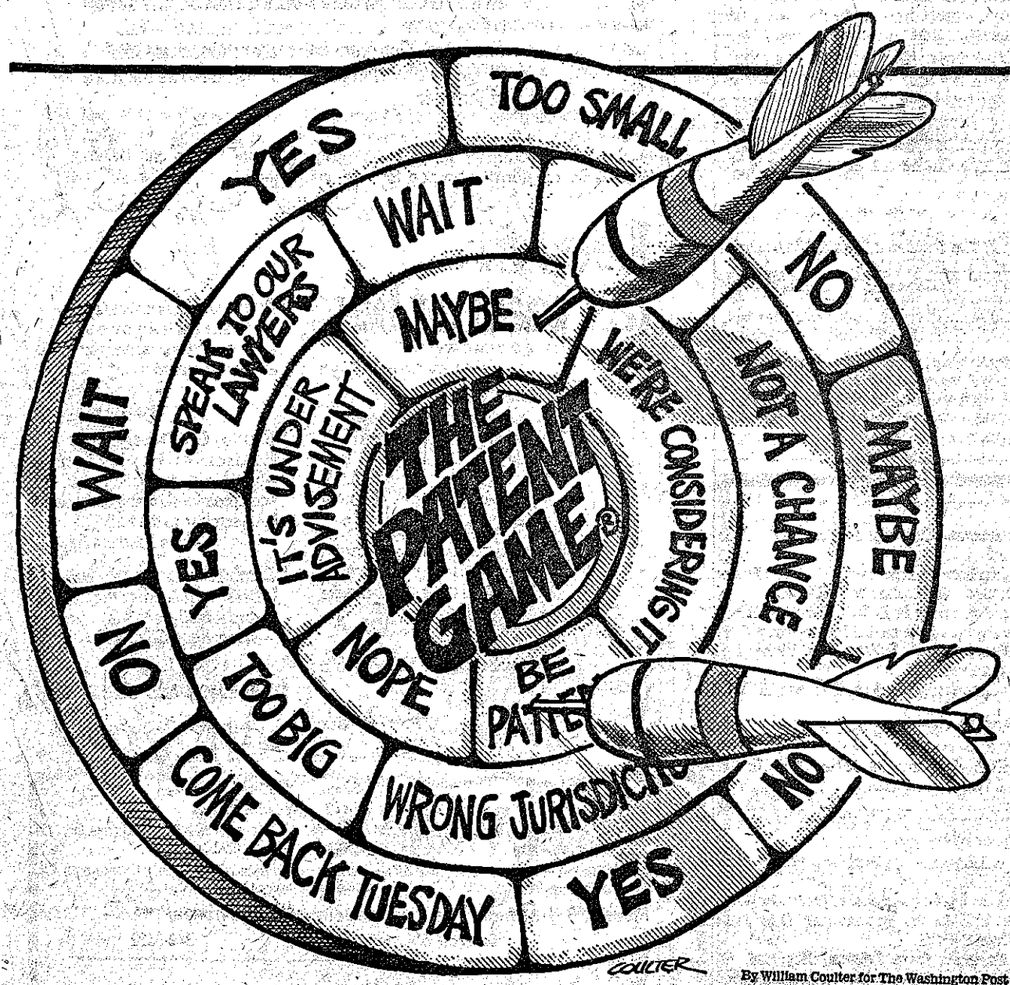
The reasons are many. For one, airlines were faced with open rate situations several times in the last fe years when they failed to arrive at the unanimous dec sions necessary for approval of rate changes, so carrier were more or less free to set their own. Even thoug they played follow the leader, they weren't sitting dow in rooms together and deciding on the fares.

Another major factor was the change in United State aviation policy which under the Carter administratio has been directed toward signing new bilateral agree ments that allow the U.S. to add competition—especiall low-fare, non-IATA competition—on routes throughou the world.

And some carriers—notably the U.S. airlines—bega to complain about the cumbersome nature of the traffi conference machinery and made it apparent that the were considering dropping out.

The changes did set into motion a move within IAT membership—now 100 airlines flying the flags of 85 na tions— to adapt the organization to this changing worl in order to survive. The real blow to IATA, however, an the action that accelerated its move to regroup, was th

See IATA, M4, Col. 1



By William Coulter for The Washington Post

Patent Bill Seeks Shift To Bolster Innovation

By Bradley Graham
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The U.S. government deals about $26 billion each year to businesses and universities for research and development, and thus provides seed money for several thousand inventions.

Just who these inventions ought to belong to has been a matter of contentious debate over the years.

On one side are the "titlists"—mostly consumer advocates and trust busters —who believe what the government pays for belongs to the people and no one producer should be granted a patent monopoly.

Opposing them are the "licensers"— mostly business people, university researchers and patent attorneys— who claim that if the titlists have their way, the inventing process will suffer. They say inventors must be allowed to profit through exclusive licenses on their inventions. Their motto: That which is available to everyone is of little value to anyone.

Neither Congress nor the president has been able to decide which bunch to side with, though not for lack of trying. Back in 1943, President Roosevelt proclaimed the need for a uniform government patent policy. This was followed by a decade or two of congressional discussion, then a couple of middle-course and elastic presidential orders, and finally more congressional discussion. But no uniform policy.

Left to themselves, federal agencies have improvised. You can guess the result. Today 22 different funding agencies dispose of patent rights on government-financed research in 22 different ways.

For government contractors, this potpourri of agency policies has led to confusion and discouragement. Federal officials, too, don't much like the arbitrariness of the current system. They'd prefer to operate under the instruction and legal protection of a congressional order.

Beginning this week, Democratic Sen. Birch Bayh of Indiana and Republican Sen. Robert Dole of Kansas will hold hearings on legislation that would tilt toward the licensers. The senators are promoting a bill to give universities, other nonprofit groups and small businesses the rights to inventions made under federal research and development contracts.

Noticeably missing from the proposal is any provision for large corporations. The bill's sponsors say that to include them would invite automatic defeat, which is what happened a couple of years ago when a similar patent licensing bill was introduced. Consumer advocates and antitrust lawyers at the time cried giveaway, monopoly and profiteering, and that was the end of that.

But it's not only the exclusion of big business this time that has the Bayh-Dole forces feeling optimistic so soon after the legislative embers from the last fight have cooled. They feel the mood of the country has swung in their favor. A heightened national concern over the wan-

See PATENTS, M2, Col. 1

Patent Ownership Question Heats Up Again

PATENTS, From M1

ing of American innovation has prompted review of all policies which touch on the inventive process.

"I think the climate is better now than it has been in years," said Arthur Obermayer, president of Moleculon Research Corp. in Cambridge and an official of the Small Business Research Association.

A White House advisory panel made up of private patent experts and headed by Robert Benson, an Allis-Chalmers Corp. lawyer, recommended to President Carter several months ago establishing a more relaxed and uniform government patent policy.

One critical problem now is that lots of inventions simply are not getting out to market. The government holds a portfolio estimated at between 25,000 and 30,000 patents. Uncle Sam's predominance in R&D since World War II has generated in the government's hands the largest number of patents in the nation.

Federal officials are quick to cite examples of government inventions that have been developed for commercial use. The list includes granular fertilizer, the aerosol dispenser, dehydrated potato flakes and frozen orange juice concentrate. But studies show that all of their examples add up to less than 4 percent of the government's whole portfolio.

"Experience has shown that the government is not in a position to take advantage of its ownership of patents to promote enterprise," the advisory panel reported to Carter. "Private companies, on the other hand, who are in a position to use the patent grant are ordinarily unwilling to take a nonexclusive license under a government-owned patent and commit the necessary funds to develop the invention, since it has no protection from competition."

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The Bayh-Dole bill is a sort of testimonial to Norman Latker, a hero among university researchers and licensing proponents. Latker was patent counsel at the Department of Health, Education and Welfare until his unceremonious firing in December for what officials say was conduct and judgment not up to the department's professional standards. Latker's fans say he was let go for doing his job too well.

Latker, now in private law practice, is not your usual firebrand. He spent 22 of his 48 years in government service and from that acquired an appreciation for authority and a strong sense of working within the system. But even stronger was his zealousness for spurring innovation.

He is credited with developing an elaborate arrangement at HEW, called an Institutional Patent Agreement, which easily transferred patents out of the government. That was fine with the Republicans in the Nixon and Ford years. But to the Carter people it appeared Latker was giving away the store.

Senior officials at HEW ordered an extra step to review all Latker's decisions. As a result, the decisions on pending patent requests were delayed. The universities were miffed. They started complaining to Congress. Latker complained, too.

That's when Bayh and Dole stepped in. Dole charged HEW with "pulling the plug" on biomedical research by holding up action on important new drugs and medical devices. HEW responded quickly. It released some patents—and it also let go of Latker.

The upcoming debate over the bill Bayh and Dole subsequently introduced promises to raise questions of importance to the structure and inventive strength of the U.S. economy. Some key issues will be:

- Between the titlists and licensers, which approach encourages the greatest dissemination of new information? The government's record of commercialization is certainly poor, but the contractors' isn't much better. Several studies have shown that no more than 13 percent of patents obtained by contractors ended up in commercial use.
- Would giving away patents to government contractors result in the build-up of undue monopoly powers? There is little sure evidence either way.
- Won't contractors who get patents enjoy windfall profits? The licensers answer no, but if not, then why are they so insistent the government give away its patents as an incentive to inventors? The licensers say it is to build a protective moat around their inventions, to make sure competitors don't take advantage of them. Their attitude on this might best be summed up as "what have we got to lose" or "better safe than sorry."

But just in case excessive profits do result from a patent giveaway, Dole-Bayh includes a pay-back provision requiring inventors who make large profits to reimburse federal agencies for the support they received in creating the innovation.

- Will companies really stop taking government work if there's no change in patent policy? They haven't yet, at least not in great hordes. And it isn't simple patriotism that keeps them bidding on contracts. Money, ideas, skills and training still flow with government sponsorship. On the other hand, it is generally agreed that the current system tends to favor large corporations with the time and legal staff to wade through the agencies.

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Whether government officials even have the right to give away patents for federally financed inventions is subject to dispute. Nader's Public Interest Inc. challenged the practice several years ago, claiming Congress never has granted legislative authority. But the challenge was dismissed on the grounds that Nader's group lacked standing, and the merits of the case never were decided.

White House officials have taken no formal position yet on the patent question. And critics of the Bayh-Dole proposal are sure to make themselves heard before the administration takes sides.

But a sign that the times indeed have changed is suggested by the muted response so far from traditionally staunch titlists. An aide to Sen. Russell Long (D.-La.), a veteran apostle of government-held patents, has told Bayh's staff that the senator won't "actively oppose" the licensing bill. (Another Long aide, however, said publicy that Long hasn't made up his mind. The Justice Department's antitrust lawyers, normally hostile to anything smacking of monopoly, say they're reassessing their position on government patents.

Trouble still may come from such licensing opponents as consumer advocate Ralph Nader, Admiral Hyman Rickover, and Sens. Edward Kennedy (D-Mass.) and Gaylord Nelson (D-Wis.). In this regard, it may not help that big business, though excluded, has thrown its support behind the bill. General Electric, which next to the government files the most patents each year, calls the measure a step in the right direction.