NEWS & COMMENT

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NEW BILLS WOULD GIVE GREATER PATENT RIGHTS TO BIG BUSINESS

Legislation introduced in both houses of Congress last week would permit big business to obtain patent rights in inventions arising from federal research and development contracts. The bills are designed to give big business the same rights recently accorded to small businesses, universities, and nonprofit organizations (see P.L. 96-517, 509 PTCJ A-1, 506 PTCJ E-1).

Background

The two bills introduced on September 23rd are S.1657, sponsored by Senator Harrison H. Schmitt (R-N.Mex.), and its somewhat different counterpart, H.R. 4564, sponsored by Representative Allen E. Ertel (D-Pa.). (Ed. Note: The Schmitt bill is a revision of S.1215, 431 PTCJ A-4, D-1.)

Despite the efforts of Schmitt and Ertel, big business was passed over when Congress granted patent rights to small businesses and universities late last year. See 509 PTCJ A-1, 477 PTCJ A-1, 466 PTCJ A-9. However, both men have refused to abandon their efforts to establish a truly "uniform" federal patent policy that does not discriminate against big business.

Provisions

The bills provide that title to inventions arising from federal research and development contracts would generally vest in the contractor--regardless of the contractor's size. The Government would retain a royalty-free license, however, and would also have "march-in" rights allowing it to exploit the invention if the contractor failed to do so within a reasonable period of time.

The Senate Commerce Committee and the House Science and Technology Committee were conducting a joint hearing on the bills as PTCJ went to press on September 30th.

The text of S.1657, along with introductory remarks and a section-by-section analysis (as published in the Congressional Record, 9/23/81, p. S 10346), appears at page D-1. No printed copies of H.R. 4564 were available at press time.

PTCJ COMMENT: The chief difference between the two bills is that Ertels' bill (H.R. 4564) also contains a recoupment provision(§307) that allows the Government to recover its cost from a contractor if profits from an invention reach a certain level. A similar provision was rejected when Congress granted greater patent rights to small businesses. See 509 PTCJ A-1, 477 PTCJ A-1, D-1, 417 PTCJ A-3, E-1. The present version of this provision, however, provides ample waiver authority when recoupment is unfair or impractical. Section 307 of H.R. 4564 reads as follows:

[Text]CONTRACTOR'S PAYMENTS TO THE GOVERNMENT

SEC. 307. (a) The Administrator of the General Services Administration and the Secretary of Defense shall issue regulations which will provide payment to the Government for Federal funding of research and development activities through the sharing of royalties or revenues or both with the contractor. Such regulations shall provide, to the extent appropriate, a standard contractual clause to be included in all Federal research and development contracts.

(b) Such regulations may allow the agency to waive all or part of the payment set forth in subsection (a) above at the time of contracting or at the request of the contractor where the agency determines that--

(1) the probable administrative costs are likely to be greater than the expected amount of payment; or

(2) the Federal Government's contribution to the technology as licensed or utilized is insubstantial compared with private investment made or to be made in the technology; or

(3) the contractor is a small business, educational institution, or nonprofit organization; or

(4) the total Government funding of the technology with the contractor is less than $500,000; or

(5) the payment would place the contractor at a competitive disadvantage or would stifle commercial utilization of the technology; or

(6) it is otherwise in the best interests of the Government and the general public.

(c) Such regulations shall be promulgated within twelve months of enactment of this section, but will not take effect for a period of sixty days subject to disapproval by either House of Congress. Such disapproval resolution shall be considered a preferential resolution and may be brought up without committee approval.

(d) Until such regulations become effective, each agency shall obtain payment on behalf of the Federal Government for its research and development activities on a contract-by-contract basis in a manner consistent with the provisions of subsection (b) above. [End Text]

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REGISTER OF COPYRIGHTS DISCUSSES THREAT POSED BY NEW TECHNOLOGIES

Register of Copyrights David Ladd thinks copyright owners have good cause to be alarmed about the erosion of their rights by new technologies. In fact, he believes that the threat posed by home-videotaping is particularly severe.

In an address delivered September 23rd at a meeting of the International Copyright Society in Toronto, Canada, Ladd stressed that copyright law must keep pace with rapid technological changes. What is needed, he said, is "ingenuity in fashioning adaptations for copyright as ingenious as the innovations in technology itself."

Problems arising from the relationship between copyright and technology are "not new," Ladd noted. "Copyright originated in technological change [e.g., the printing press,] and at each stage in the history of copyright law, technological innovation has been a central problem to policy makers." Now, as in the past, "optimism over the prospects of new markets * * * and new sources of consumer satisfaction is tempered by anxiety over the dangers of irretrievable loss of control over copyright works because of that very technology."

As the "rate of technological change has accelerated, * * * the strains on copyright have intensified," said Ladd. Moreover, we are now facing "a new problem different in kind: how to control uses of copyrighted works which are not readily detectable, and therefore not readily policeable." In the area of home videotaping, he feels "we must decide whether we can devise and use the equivalent of the theater-era box office to collect payments for use, or whether we must throw up our hands and accept all home copying as lawless but uncontrollable, or lawful because it is uncontrollable."

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