# Coherent federal patent policy taking shape

**Patent reform legislation by which contractors could retain title to inventions developed with federal funds has Administration support**

Congress has been making stabs at developing a coherent federal patent policy for years, but things never quite seemed to jibe. If the appropriate Congressional committees were for it, the Administration in power was against it. If the Administration favored the idea, Congress didn't. But this year, apparently the two sides have converged.

At joint hearings before the House Committee on Science & Technology and the Senate Commerce, Science & Transportation Committee, Administration representatives voiced strong support for both houses' patent reform legislation sponsored by Rep. Allen E. Ertel (D.-Pa.) and Sen. Harrison Schmitt (R.-N.M.).

Although they differ slightly in some respects, in general the two bills, H.R. 4564 and S. 1657, set forth uniform procedures for federal agencies by which contractors could retain title to inventions they develop using federal R&D funds. Specific situations in which the government would retain title are narrowly drawn: for example, when it would be necessary to protect national security. But the government also would retain "march-in" rights, which could be exercised in the event a contractor fails to take reasonable and timely steps to develop an invention. (Congress last year enacted similar legislation allowing universities and colleges and small businesses to retain title to their inventions. These bills would extend that right to all contractors, including large companies.)

"This legislation is clearly complementary to the Administration's approach to strengthening this country's R&D enterprise," said George A. Keyworth II, director of the Office of Science & Technology Policy, at the hearings. By permitting and encouraging the retention of patent rights, it removes a major disincentive to the participation by a broad array of highly skilled industrial scientists and engineers in important national R&D efforts. In addition, Keyworth says that by encouraging the commercialization of patents the legislation will serve to stimulate the increased availability and use of new concepts, processes, and technologies and will have the added benefit of broadening and strengthening industrial R&D capabilities.

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*Keyworth: strengthening R&D*

The Department of Commerce, represented by its general counsel Sherman E. Unger, also registered enthusiastic support for the legislation on the grounds that it would help reverse the trend of recent years of decline in the rates of U.S. invention, innovation, and productivity. One step in the direction of getting the U.S. economy on track and encouraging investment in new technology development, Unger contends, is "to ensure we are not wasting the valuable resources of government-generated technology."

One strongly dissenting voice at the hearings was that of Admiral Hyman G. Rickover, long-time head of the Navy's nuclear propulsion program. Speaking for himself, Rickover said, "I cannot comprehend why Congress should change our laws so that the large defense contractors could more effectively establish monopoly positions in their fields of technology."

He says that "after more than 40 years of dealing with contractors, as well as R&D work in high-technology areas, I am convinced that contractors—particularly large companies—should not be given title to government-financed inventions. I believe that enactment of this bill would constitute a subsidy of large government contractors and reduce competition.... If we carry this idea to its logical extension, companies should give their employees the rights to inventions developed in the course of their employment. Few do."

If Congress ultimately decides that granting exclusive rights will promote the use of worthwhile technology, Rickover suggests that it should set up a system to dispense these rights by public sale through competitive bidding.

However, Sen. Schmitt feels that the legislation is necessary because, as he points out, although the federal government currently supports some $35 billion of R&D through grants and contracts—about half of the total national investment in R&D—the value of much of this is lost unless the discoveries and inventions which result can be commercialized. And the government's record of commercialization is not good.

Currently, federal patents are controlled by about 26 statutes applying to different agencies and programs, and by Presidential patent policies in all situations not covered by statute, Rep. Ertel explains. Under this system a contractor's rights may differ not only from agency to agency, but also from department to department within an agency. But in general, the results are the same—the government retains titles and rights to inventions. The government presently holds title to some 28,000 inventions, of which only about 5% have been commercialized.

Ertel predicts that "with the President's endorsement I believe this bill has a strong chance of passing both the House and the Senate and becoming law." He expects the legislation to be marked up soon in final form by the appropriate House and Senate committees, with floor action possible by the end of the year. □