

**PATENT POLICY VERSUS
INNOVATION**

HON. MIKE McCORMACK

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, July 21, 1978

◉ Mr. McCORMACK. Mr. Speaker, in the June 29, 1978, issue of Science magazine, which is published by the American Association for the Advancement of Science, Mr. William Carey, publisher, printed an incisive and articulate appraisal of patent policies established by the Federal Government, and the effect these policies may have on innovation and the benefits arising from our investment of billions of Federal dollars in research and development.

Mr. Carey's thoughts merit careful consideration by the Members of Congress who are sincerely concerned with the need for the public to obtain even a reasonable benefit from our Federal research and development programs. Accordingly, I am taking this opportunity to insert the editorial in the CONGRESSIONAL RECORD. I hope that it may stimulate serious thought in the minds of the Members of Congress, the administration, and the general public, to the end that we may consider our patent policies and program requirements associated with research and development funding.

We have waited too long to address this matter realistically. Mr. Carey's editorial makes this plain. It should stimulate us to corrective action.

The editorial is as follows:

PATENT POLICY VERSUS INNOVATION

The United States is engaged in a massive research and development effort which, measured in current dollars, is edging close to the level of \$50 billion annually, counting outlays in both the federal and the private sector. The budget for R & D in government calls for more than \$28 billion in the next fiscal year. There is no doubt that the R & D input is strong. The output side may be a very different story.

We support R & D to learn something that we do not know, and to make use of what we learn. Like any other type of investment, R & D is expected to yield returns. In the case of government-financed R & D the question arises, Are the investors getting full and timely return? Are the results of federally funded R & D finding their way into the market?

The evidence, as usual, seems mixed. About 8000 inventions are said to be generated each year from government-financed R & D, many of which are patentable. Not enough of these apparently reach the market. Some 30,000 government-owned patents are piled up awaiting takers. To that extent, the national economy is not being enriched and utilization is forestalled. It is a badging situation until one realizes that the blockage occurs largely in the government's patent policy.

The government operates on the proposition that the economic rewards from federally funded R & D should be captured by the government, or shared only grudgingly with others, since public funds were used. The view prevails that if rights to the discovery were released to private developers on an exclusive basis unreasonable private enrichment could occur. There is scant evidence to

support these apprehensions, but the doctrine is slipped into the government's thinking. The effect is that the market incentive to develop government-financed discoveries is circumscribed and inventions are isolated from normal risk-taking and pursuit.

It is not hard to see how this can inhibit the prospects for pass-through of discoveries from biomedical research or energy-related R & D. We see a prodigious R & D enterprise, fueled by tax dollars, constrained from diffusing its results because of a public policy barrier. Throughout the enterprise, discoveries sit stranded and aging. Meanwhile, we search for clues as to what is wrong with U.S. technological innovation, and how it is that foreign industry can undercut American competitiveness and employment.

As usual, public policies are muddled, conflicting more often than complementing one another. In the new study ordered by President Carter of the problems assailing industrial innovation, a fresh opportunity is provided to reexamine both the premises and the consequences of government patent policies. There is ample evidence that the costs of producing and marketing an invention are many times as great as the outlays on the R & D that led to the invention. Not many developers will take these risks with inventions resulting from federal R & D, in the absence of clear ownership.

It begins to appear that we have thought of "science policy" too much in terms of stimulating R & D and too little in terms of liberating its results. The benefits of federally funded R & D are hard enough to realize without the added drag of a dubious policy on patents. A public which is regularly lectured on the promise and performance of science may not be grateful to learn that government's rules are blocking research applications. That could be far more harmful to science than the Golden Fleece awards.

Public policy, if wisely designed, can stimulate economic pursuit of government-financed inventions while at the same time minimizing the risk of abuses. What is clear is that the present patent policies will not get us innovation, nor health and energy benefits, nor economic growth, nor trade competitiveness. We can hardly make the case that R & D contributes significantly to the nation's economy if, at the same time, we isolate its results from utilization. Here is a notable "Catch 22" in federal R & D policy, and it is time to bring it into the open.

RECOGNITION OF RITA WHITTAKER

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

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◉ Mr. LAGOMARSINO. Mr. Speaker and distinguished Congressman, I would like to take this opportunity on behalf of myself and that of my late colleague, the Honorable Bill Ketchum, to recognize the great contributions of his constituent, Mrs. Rita Whittaker, for her 30 years of loyalty, devotion, and dedication as Administrative Assistant to the superintendent of the Panama Union School District. She is considered by her colleagues as one of the most highly esteemed and universally loved individuals in the field of education in Kern County, Calif. Mrs. Whittaker is not only recognized for her contributions to education but also for her selfless contribution of time and energy to innumerable commu-

nity projects. Currently, a petition is being circulated to name a school in her honor. So I ask my fellow colleagues to help me give thanks to such an outstanding citizen. We wish her a very long, healthy, and relaxing retirement.

ARE NUCLEAR PLANTS SAFE?

HON. GEORGE MILLER

OF CALIFORNIA

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Friday, July 21, 1978

◉ Mr. MILLER of California. Mr. Speaker, time and time again, in my work on the House Interior Subcommittee on Energy and the Environment, I have seen the Nuclear Regulatory Commission provide less than full and candid information to our subcommittee, despite repeated requests to the contrary. The accompanying articles illustrate that they have succeeded in this case. I will not repeat or summarize what the following articles say, for they do a fine job of laying out a picture of what appears to be a serious lack of strict safety regulation by a former Atomic Energy Commission official who is now the Chairman of the Nuclear Regulatory Commission. This type of incident is not new to our subcommittee, and we will be investigating it thoroughly. I hope that by placing these articles in the Record, that other Members become aware of one of the main stumbling blocks to the further advancement of nuclear power: The apparent actions to protect the nuclear power industry by an agency charged with the protection of the public health and safety. It is a lack of confidence in the NRC that is a contributing factor in the Congress declining support of nuclear power as an energy option for the future. I hope that this confidence can be restored, and am heartened by the recent appointment of Dr. Alcarene as the fifth NRC Commissioner. This is a step in the right direction.

The articles follow:

[From the Washington Star, June 24, 1978]
HE FOUGHT SAFETY PLAN IN '72, NRC HEAD SAYS

(By John J. Fialka)

After prodding from Congress, the head of the Nuclear Regulatory Commission has released a document showing he opposed a suggested major change in the design of nuclear power plant safety systems in 1972.

In the memo, released yesterday, the NRC's current chairman, Joseph M. Hendrie, said that although the proposed design change "is an attractive one in some ways," implementing it would conflict with "conventional wisdom" in the nuclear power field.

"Reversal of this hollowed policy, particularly at this time, could well be the end of nuclear power. It would throw into question the continued operation of licensed plants... and would generally create more turmoil than I can stand thinking about," the memo states.

Key portions of the memo and others showing that the NRC's predecessor, the Atomic Energy Commission, may have been pressured not to release information about the design problem, had been withheld from an anti-nuclear group, the Union of Con-

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We support R & D to learn something that we do not know, and to make use of what we learn. Like any other type of investment, R & D is expected to yield returns. In the case of government-financed R & D the question arises, Are the investors getting full and timely return? Are the results of federally funded R & D finding their way into the market?

The evidence, as usual, seems mixed. About 8000 inventions are said to be generated each year from government-financed R & D, many of which are patentable. Not enough of these apparently reach the market. Some 32,000 government-owned patents are piled up awaiting others. To that extent, the national economy is not being enriched and utilization is forestalled. It is a baffling situation until one realizes that the blockage occurs largely in the government's patent policy.

The government operates on the proposition that the economic rewards from federally funded R & D should be captured by the government, or shared only judiciously with others, since public funds were used. The view prevails that if rights to the discovery were released to private developers on an exclusive basis unreasonable private enrichment could occur. There is scant evidence to

support these apprehensions, but the doctrine is plastered into the government's thinking. The effect is that the market incentive to develop government-financed discoveries is circumvented and inventions are isolated from normal risk-taking and payment.

It is not hard to see how this can inhibit the prospects for pass-through of discoveries from biomedical research or energy-related R & D. We see a prodigious R & D enterprise, fueled by tax dollars, constrained from diffusing its results because of a public policy barrier. Throughout the enterprise, discoverers of structural and aging. Meanwhile, we search for clues as to what is wrong with U.S. technological innovation, and how it is that foreign industry can undercut American competitiveness and employment.

As usual, public policies are amended, conflicting more often than complementing one another. In the new study ordered by President Carter of the problems assailing industrial innovation, a fresh opportunity is provided to reexamine both the practices and the consequences of government patent policies. There is ample evidence that the costs of producing and marketing an invention are many times as great as the outlays on the R & D that led to the invention. Not many developers will take these risks with inventions resulting from federal R & D, in the absence of clear ownership.

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HE FOUGHT ENERGY PLAN IN '72, NRC HEAD SAYS

(By John J. Plutka)

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