



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 96<sup>th</sup> CONGRESS, FIRST SESSION

Vol. 125

WASHINGTON, THURSDAY, NOVEMBER 1, 1979

No. 152

## House of Representatives

### NEED FOR CHANGE IN PRESENT PATENT POLICIES

**HON. ALLEN E. ERTEL**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 1, 1979

• Mr. ERTEL. Mr. Speaker, 1979 has been a year when the problems of declining productivity and diminishing innovation have become so acute that they can no longer be ignored. These problems threaten our way of life, the economic preeminence of the United States, and the very standard of living which has been the measure by which all other societies are judged.

Yesterday the President presented his recommendations to improve innovation and productivity in the Nation. I was pleased to see that the President recognizes the need for action over a broad front. While I was disappointed that the proposals do not address the need for tax measures to encourage innovation, nor do they come to grips with the problems associated with Federal regulations, a number of important other issues were addressed, especially the need for change in our present patent policies.

The President has strongly emphasized the need for a uniform Federal patent policy which provides incentives for the private sector to commercialize inventions developed under Federal contract. I agree with this position and have introduced legislation, H.R. 5715, the Uniform Federal Research and Development Utilization Act of 1979, which accomplishes these goals.

Currently, Federal patents are controlled by approximately 20 statutes applying to different agencies and programs, and by President patent policies in all situations not covered by statute. Under this "system" an inventor's rights may differ not only from agency to agency, but from department to department within an agency. This confused situation is in itself a disincentive to firms which may be interested in commercializing a federally held patent.

In addition to creating a uniform Federal patent policy, H.R. 5715 achieves several other important objectives identified by the President including:

Making the benefits of Federal R. & D. programs widely available to the public in the shortest practicable time;

Promoting commercial utilization of inventions in order to maximize our productivity and innovation;

Encouraging the participation of the most qualified firms or institutions in Federal R. & D. programs; and

Fostering competition and preventing undue market concentration.

It is commonly recognized that in the process of bringing a product to the market research accounts for roughly 10 percent of the cost while development makes up 90 percent of the cost. The Federal effort stops at the research end of the process. Without some form of exclusive rights, a private firm is often reluctant to

invest the resources needed to commercialize the invention. Why spend the money only to have your competitor pick up the process just before you hit the market? Your competitor will be able to underprice you since he does not have to recover the development costs.

Studies have indicated that commercial utilization of patented inventions is achieved at a much higher rate when, under certain circumstances, the contractor is permitted to retain exclusive rights to the invention. For example, a NASA study has shown that contractors have achieved commercial utilization of patented inventions at a rate approximately 20 times greater than that achieved by the agency itself.

H.R. 5715 provides that the Government will retain title to federally developed patents except where it is deemed more beneficial to permit the contractor to retain exclusive rights. In cases where exclusive rights are granted to the contractor, the Government reserves a free license to use the invention and the rights to insure that the contractor is, in fact, working toward commercialization.

Concerns have been raised that by permitting an exclusive license, we are allowing a private firm to profit on a patent which belongs to the American people. It is clear that the taxpayers of this Nation funded the research which results in a patent; however, unless that patented invention is brought to the marketplace, the American people derive very little benefit from the research they paid for. H.R. 5715 resolves this dilemma by requiring that contractors who are given exclusive rights provide payments to the Government through the sharing of royalties and/or revenues in return for the original Federal investment. I believe that this provision will compensate the Government and prevent the contractor from achieving "windfall profits" at the expense of the taxpayers while still encouraging commercialization of the invention.

As chairman of the Task Force of Federal Patent Policy of the Subcommittee on Science, Research and Technology, I intend to move forward with legislation in this area. I believe that H.R. 5715 best addresses the need to create a uniform Federal patent policy which will bring the fruit of federally funded R. & D. to the marketplace. It also greatly reduces the burden on the Federal Government for administering Federal patent policy.

This legislation represents an important part of those changes which are necessary to encourage greater innovation and productivity in this country. I am looking forward to working with my colleagues in the Congress and with the administration in this important endeavor. •