WISCONSIN
ALUMNI
RESEARCH
FOUNDATION

August 13, 1986

Honorable Les Aspin
Chairman, Committee on
Armed Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

At the outset, and as a point of information, please be advised that the Wisconsin Alumni Research Foundation functions as the patent management organization for the University of Wisconsin and is the designee of the University under the provisions of Public Law 96-517 and Public Law 98-620.

It is our understanding that on July 23, 1986, the Committee on Armed Services agreed to incorporate the enclosed amendment as Section 1031 of H.R. 4428, which authorizes defense appropriation for fiscal 1987 and that the enclosed explanation will be included in the Committee's formal report.

We see this amendment as an erosion of the rights which through great effort were finally accorded the university sector with the passage of Public Law 96-517 and, later, Public Law 98-620. These laws subscribe to the policy that issues of patent ownership are most advantageously resolved at the time of contracting in favor of the contractor (it being understood that grants and contracts with universities are to be administered in like manner).

The amendment, as a practical matter, is a throwback to the situation which existed before the passage of Public Law 96-517, where ownership of inventions was determined on a case-by-case basis, a demonstratedly inefficient, unproductive, and cumbersome procedure. Further, the amendment introduces additionally cumbersome review procedures by the Military Liaison Committee and raises questions about class waivers and installation waivers.

The effect of the amendment is to introduce delay and uncertainty and supersedes the requirement that universities and small businesses be given the right to elect ownership to inventions resulting from the programs in question. Thus, contrary to the Committee report language it does change existing patent policy.

The report further describes the sophisticated, technological nature of the work performed in certain facilities but fails to explain how existing patent policies and procedures in any way compromise the nation's security. Moreover, the amendment is directed to any Government contract or

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subcontract without limitation as to the contractor or facility in which work under the contract is carried out.

Any danger to national security derives from the uncontrolled dissemination of certain new technology. This is prevented by procedures under which patent applications are scrutinized by defense agencies for matter which, if disclosed, could be detrimental to the national security (see 35 U.S.C. 181 and 37 C.F.R. Part 5). Such matters can, and are, made the subject of a secrecy order.

Controlling dissemination that can compromise legitimate security interests is best accomplished through appropriate security classification procedures. Existing law already contains sufficient exceptions to the rule of contractor ownership to protect security interests (see 35 U.S.C. 202(a)). Legislation of this sort adds little to our ability to protect ourselves from the unauthorized disclosure of sensitive information and delays the commercialization of federally-funded research. The net effect will be reduced competitiveness, lost jobs, foregone tax revenues and another gain for foreign companies and countries.

We also have, on information and belief, that the Office of Management and Budget has advised that the amendment in question is inconsistent with the President's program.

Sincerely,

Howard W. Bremer

Howard W. Bremer
Patent Counsel

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