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APR 29 1985

April 26, 1985

Mr. Norman Latker
Director, Federal Technology
Management Policy Division
Office of Productivity,
Technology and Innovation
Department of Commerce
Room H4837
Washington, DC 20230

Re: Comment on Proposed Regulations Implementing Public Law 98-620, as Published in the Federal Register Vol. 50, No. 65, of Thursday, April 4, 1985, Beginning at Page 13524

Dear Norm:

I think an excellent job was done by you and your staff with regard to the proposed rules implementing Public Law 98-620. The following comments that I have are relatively minor:

1. It is noted that the co-mingling instructions from A-124 were not included in these proposed rules. I would recommend they be included in the introduction of the actual regulations when published.

2. Section 401.5 in Paragraph [f] included the clause to be used if the contract is for operation of a government-owned facility. In that clause, it notes "the licensing of subject inventions shall be administered by contractor employees on location at the facility" [underlining mine]. The Stanford Linear Accelerator Center is considered on campus here and we routinely handle the licensing of inventions from SLAC just as we do for other laboratories including the Medical Center which are located at other ends of the campus. We trust this clause would not be interpreted so as to require that we have a licensing person physically located at SLAC; that would be a great waste of funds given that the volume of invention there is relatively small, and we can easily handle it from our location on campus.

3. Clause [h] Reporting on Utilization of Subject Inventions covers invention utilization reports to the "agency." The introductory comments covering this clause note that it generally follows Part 10 of OMB Circular A-124. I presume that will continue the practice of the Department of Commerce acting as the central focus for such invention utilization reports. I think the intent of the Congress would be circumvented (insofar as uniform rules) if each agency developed separate utilization forms with separate times of reporting and separate formats. The rules when published could be more explicit as to this point to avoid ambiquity.

4. But even sending in utilization reports to any single agency is of questionable utility, at least for larger technology licensing offices such as ours. We have a resident government contract administration office on campus and they could be periodically empowered to assess our compliance with government patent regulations in actual practice. Indeed, we were subject to something called a Total Business Systems Review by the government a year or so ago covering all policies, procedures, and practices of the University dealing with government contracts and grants, including patent and licensing. I suspect the interest of the public and the government are better satisfied through such reviews than the time consuming preparation of reports which nobody reads.

5. As a final comment, I believe the small business preference clause, as any preference requirement, is inappropriate. As a practical matter, we work very closely with small business and we often are involved in licensing start-up companies. However, employees and stockholders of large companies also pay taxes that support research at universities and such companies should not be discriminated against. We should choose which company will be most likely to bring the particular technology forward to the public in the most adequate and rapid manner. That will often be a small company but also often could be a large company.

Again, all in all, I think the proposed rules are a very competent implementation of Public Law 98-620. I appreciate the opportunity to comment on these proposed rules.

Very truly yours,

Niels Reimers
Director, Technology Licensing

cc: Roger Ditzel (UC)
Milt Goldberg (COGR)

NJR:kla