



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20201

February 1, 1978

OFFICE OF THE  
GENERAL COUNSEL

Mr. Raymond Woodrow  
President  
Society of University Patent Administrators  
Princeton University  
P. O. Box 36  
Princeton, New Jersey 08540

Dear Ray:

I had to smile when I read your December 21, 1977 letter, since it touched on a point that I have been reminded of repeatedly recently.

About 3 or 4 years ago a few of us on the Government Patent Policy Committee recommended that each agency that permitted contractors to retain patent rights obtain an annual report from such contractors on commercialization. We believed that such statistics over a long period of time would clearly evidence the superiority of a title-in-the-contractor policy over that of title-in-the-Government. The 3 members of the committee from the Department of Defense, the primary agency of the Executive Branch utilizing a title-in-the-contractor policy, vigorously opposed obtaining such information on the basis of added administrative burden. Accordingly, on the motion to obtain such reports, it was defeated in committee 6-5, with 3 of the Department of Defense members making up the 6 votes that defeated the motion.

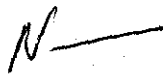
If you have been following the Nelson hearings or any other statements made by the Department of Justice, they invariably begin and end on the premise that there is no evidence that supports that a policy of title-in-the-contractor enhances the possibility of utilization. I think your suggestion is a variant of what we attempted to accomplish through the above motion. What is so ironic is that the agency which would have benefitted most from gathering these statistics was the agency that fought the hardest to insure that they would not be obtained.

I am enclosing a copy of the last annual report on Government Patent Policy where I believe you could gather the statistics you suggest. However, having these statistics would not give you any information on whether utilization of the inventions covered by the patents

Page 2 - Mr. Raymond Woodrow

involved had occurred. In other words, title in the Government agencies could be filing patent applications for defensive purposes or merely to keep their staffs busy without evaluating commercial potential. Accordingly, the statistics would be skewed by variables that could not be accounted for. It seems to me this leads back to the recommendation to track commercial utilization of all Government funded inventions whether title was in the Government or not, which is a statistic that can be obtained now only in regard to future invention or by case-by-case review of existing inventions.

Sincerely,

A handwritten signature in black ink, consisting of a stylized capital letter 'N' followed by a horizontal line extending to the right.

Norman J. Latker  
Patent Counsel

Enclosure