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# Congress of the United States

## Committee on the Judiciary

House of Representatives

Washington, D.C. 20515

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Honorable Henry S. Reuss  
 Chairman  
 Committee on Banking, Currency and Housing  
 Washington, D.C.

Dear Mr. Chairman:

I understand your Committee on Banking is considering H.R. 12112, a bill to fund loan guarantees for synthetic fuel plants. I wish to declare my support for subsection 18(r) of the version which passed the House Science Committee. This section reconfirms Congressional intent to apply the patent safeguards of section 9 of the Nonnuclear Energy Research and Development Act to loan guarantees.

I support subsection 18(r) for several reasons. First, it is consistent with patent and antitrust policy. As I stated in my letter to the House Science Committee on October 23, 1975, it is inconsistent with the public interest if the owners of synthetic fuel plants, sheltered from the substantial risk of loss by federal loan guarantees, do not share with the public any of the technological progress underwritten by the public treasury. Second, the policy justifying the patent monopoly is that the monopoly will be sufficient to reward those who undertake a risk. However, where the government, and not the patent monopoly, serves as the impetus for the innovator to enter the market, the fruits of the patent monopoly should not be fully retained by the patent holder. To do otherwise would be to create a legal monopoly without reason or benefit.

In its Report to the House Science Committee, the Department of Justice noted "with favor" the provisions of H.R. 12112 dealing with patents and technology. The Department of Justice observed that "By insuring that the Government and competing companies will be able to gain access to technology associated with the loan guarantee these provisions tend to diminish the anticompetitive potential of particular loan guarantees." I fully agree with the conclusion of the Department of Justice.

PATENT BRANCH, OGC  
DHEW

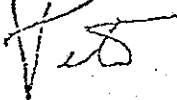
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Section 9 of the Nonnuclear Act contains sufficient flexibility to permit ERDA to waive its right to patents resulting from loan guarantees. Among the factors ERDA may consider in granting a waiver are the degree of government involvement, the willingness of the contractor to participate, and the small business status of the contractor. Some have argued that vesting patents in the government would deter participation in the loan guarantee program. However, I believe the waiver provision of section 9 is flexible enough to meet these concerns. The House-Senate Conference on the Synthetic Fuel Loan Guarantee bill of last year noted in their report that waiver provisions are to be exercised appropriately by ERDA in consideration of the special nature of loan guarantees.

Subsection 18(r) has been intensely debated within the House Science Committee, both this year and last year, and before the House-Senate Conference on last year's Synthetic Fuel Loan Guarantee program. Each time the committees have seen fit to apply the patent safeguards of section 9 to loan guarantees. I urge your Committee to do likewise.

Sincerely,



PETER W. RODINO, JR.  
Chairman

PMR:wsp