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May 31, 1977

Mr. Raymond J. Woodrow
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Dear Ray:

I finally have reduced to typewritten form the comments that I prepared for the SUPA meeting on the Case Western Reserve conference. I am sending six copies because I thought you might wish to distribute them to the trustees; however, I have no particular desire to urge you to do that unless it is your feeling it would be a constructive effort.

Best regards.

Sincerely yours,

Roger G. Ditzel

RGD:bh
Encs.

CASE WESTERN RESERVE REVISITED:

WHAT HATH CWRU WROUGHT?

On October 15 and 16, 1974, 118 people concerned about university technology transfer in general, and patentable subject matter in particular, met at Cleveland, Ohio, under the auspices of Case Western Reserve University for presentation of papers and discussion of common problems.

Larry Gilbert, the program chairman of this meeting, asked me to briefly review the program that was presented at Case Western Reserve University (CWRU) and comment on certain developments since that date.

In retrospect, the greatest significance of the CWRU conference is simply that it was convened. Further, the proceedings published after the meeting have become a valuable addition to the literature on the subject of university patent administration. I know you join me in extending very sincere thanks to Allen Moore, in particular, for organizing and hosting the conference, and for the tremendous amount of time and effort necessary to publish the proceedings.

The real question before us now, two years later, is "What hath CWRU wrought?"

This present meeting of SUPA is a valuable updating of the CWRU conference. But we, as members, during the next year, must address the questions of: what is SUPA for? what will be its contribution? how is it unique? who are we?

Returning to the post-mortem of the conference, you will undoubtedly recall the keynote speaker at Cleveland was Dr. Betsy Ancker-Johnson, Assistant Secretary of Commerce for Science and Technology. She discussed the need for university involvement in the legislative process, in the context of the then current (1974) status of the ERDA contract patent provisions, which provided title in the Government but with waiver provisions. Two years ago, the battle had been joined; two years later it is not settled. In the interim, ERDA held hearings in November, 1975, on what their patent policy should be. Several university representatives presented papers in person, and for groups including COGR (and SUPA?), asking for institutional patent agreements in contracts and grants to universities. ERDA's report on those hearings issued in May, 1976, and was some six inches thick, in two volumes. There was no apparent change in ERDA's position as a result of those hearings. If the bill to which Mr. Eden referred is passed, the question will be moot.

Last month (January, 1977) ERDA held a colloquium at Germantown relative to mandatory patent licensing of contractor-developed technology under ERDA funding. Of the six speakers at the colloquium, 5 were adamantly opposed to such mandatory licensing provisions. They believed it would discourage those companies with the most needed skills from accepting ERDA money. Two of the six were from industry; two from private patent practice; and two from universities. The only one speaking for mandatory licensing was Dr. Scherer from Northwestern University, an economist.

While this battle will be fought by industry, it should be of concern to universities, who often need to be able to offer a limited exclusive license to cause a potential licensee to invest the substantial funds needed for development.

ERDA is still accepting written comments from the public relative to mandatory licensing, if you wish to write before February 28.

The total university community, however, should continue to appreciate Dr. Ancker-Johnson's, Mr. Latker's, and Mr. Eden's efforts in continuing to work to obtain the use of an equitable, manageable, and standard institutional patent agreement by all Federal agencies in grants and contracts with universities, as part of their total effort to preserve the vitality of our system of technology development.

Turning now to the papers presented at the conference, you will recall that many were purely educational in nature.

Two surveys of university patent management practices were discussed. These were by Mark Owens of the University of California system, and Earl Freise of Northwestern University. Results of those surveys have been a great help to the large number of universities which have since set up or reorganized their patent-related activities. Now, two years later, a new survey is underway by the SUPA organization. Questionnaires were forwarded to each SUPA member in December, 1976, by Ray Woodrow. This current survey will provide a valuable addition to our knowledge of how a larger number of universities handle patent matters, and the direction of changes.

Three major topics constituted the major segment of the conference dealing with the details of university patent administration and technology transfer.

The topic "Fundamentals of Patent Policy" was covered by Lee Stam of Cal Tech, Will Fornell of the University of Minnesota, and Wally Treibel of the University of Washington. The papers they presented are as valuable today as they were two years ago. They are worth reviewing once again.

The internal administration of technology transfer was discussed by Mark Owens of the University of California, myself, Joe Keeley of the University of Michigan, and Larry Gilbert of MIT. Those papers represent a further insight to how different universities view patent administration. Many of the differences are based on varying state laws and historical practices. It was clear from the discussion that no one methodology is appropriate to the whole university community. Each university must develop and gain faculty acceptance for its own internal procedures, but sharing of experience is important.

The interface with industry was discussed in the session entitled "Mechanism for Technology Transfer". The speakers were experts: Clark McCartney from the University of Southern California, Niels Reimers from Stanford University, and C. W. Martin from the University of Utah. For those new to the practice of patent administration in the university, these papers presented a most useful insight into university practices relating to licensing of university-owned technology or know-how to the industrial sector. I am sure that the people who spoke realize they have learned much themselves about this process in the last two years. It is an area that is ever-changing; not only because universities try to continually improve their performance, but also because of changing Federal regulations and industrial needs. University licensing has even begun on an international basis, as foreign companies seek to capitalize on the results of research, over 70 percent of which is funded by U.S. tax dollars. But there are two sides in technology transfer, and the other side for us is industry, which was well represented at Cleveland.

The last major speaker at the conference was Norman Latker, Patent Counsel for the Department of Health, Education and Welfare. His talk on "Intellectual Property--Private Rights and Public Use" reviewed the erosion of private property rights over the last 200 years. Mr. Latker presented some very cogent quotations to remind us of the development of our patent laws and the heritage we have in private property rights. His presentation was just one year prior to our bicentennial year. Now that the bicentennial year has passed, Mr. Latker will be our luncheon speaker today. Perhaps he will venture a guess as to where private property rights will stand two years, 20 years, and 200 years from now. Probably the most difficult prognostication for him will be the next two years, due to the presence in our nation's capitol of a new administration. Mr. Latker called on us to be active at the legislative level, as he quoted, "The price of liberty (and property) is eternal vigilance."

The last formal session in the conference dealt with available corporate assistance. Will Marcy, from Research Corporation; R. F. Dickerson, from Battelle; Al Johnson of A. D. Little; and Lloyd Patterson of Dvorkovitz, each described how their respective organization works with universities relative to the definition of

patentable subject matter, prosecution of applications, and licensing of technology. Each is unique and each fills a specific need. Each of these organizations is still healthy and would appreciate the opportunity to talk to any university representative.

Dr. Dvorkovitz' World Technology Fair is in its fourth year. It has come a long way from the first university-industry exchange in 1973, and has far outgrown the founder's original thinking.

These speakers reminded us of our need for an industry interface-technology transfer.

You will also recall in 1974 that Will Marcy discussed the Patent Awareness Program being conducted by Research Corporation under a grant from the National Science Foundation, Research Management Improvement Program. Much has been learned as a result of that research grant. It is my understanding, however, that the final report will not be available for some months yet. We look forward to its receipt. This research activity relates to education and the technology transfer process.

Having reviewed the detailed presentations, let us turn our attention to the stated objectives of the conference. The objectives were:

1. To promote an increased interest among university administrators in the technology potential of their respective institutions;
2. To develop a more acute awareness of the need for more effective management of university technology resources;
3. To assemble university representatives with considerable experience and expertise in the management of faculty discoveries and inventions to encourage them to communicate with one another and to a broad university audience details relating to their policies, procedures, methodology, etc.;
4. Through an effective program format to maximize effective communication between all institutional representatives relating to pertinent problems now impeding the flow of "technology" into the market place; and
5. To compile and publish a detailed report on the information deriving from the meeting for the benefit of participating institutions as well as others who may be interested in the future.

Taking these objectives in reverse order and reflecting upon them,

1. The last objective, that of publishing a detailed report, has, as I have already indicated, been accomplished.

2. There is no doubt that the program format was effective in maximizing communication between institutional representatives. Many instances of discussion of common problems and impediments to the flow of technology into the market place took place.

3. There is no way to calculate the total amount of experience and expertise in the management of university patents that was represented among the representatives attending the conference. However, communication certainly resulted.

4. A more acute awareness of the need for more effective patent management of university technology resources certainly resulted.

5. A significantly increased interest among university administrators in the technology potential of their respective institutions resulted. Many individuals who had not, to the best of my knowledge, previously attended other meetings dealing with university patent matters were in the audience in Cleveland. Most of them have subsequently become members of SUPA.

In my opinion, the most noteworthy benefit of the Case Western Reserve University conference was that it catalyzed the formation of SUPA, an organization which holds promise of providing a means by which many universities' patent officers can find willing associates to help them in solving problems related to patent and technology transfer matters.

And so to the title, What hath CWRU wrought?

Among those attending that meeting at Case Western, late in the day of October 15, 1974, there was not a unanimity of opinion as to:

- a) The need for another organization, or
- b) What the new organization, if formed, should have as its reason for existence --
 - 1) education,
 - 2) interfacing with the Federal agencies or Congress,
 - 3) promoting the transfer of university technology to industry.

As evidenced by the discussion last night, there is still an apparent lack of a common understanding of what SUPA is.

I make these comments for constructive purposes--to build, not to tear down--to cause a clarification of common purpose. Your officers need guidance from the membership on this.

Therefore, I will pose some questions, to stimulate discussion, because I am convinced this organization must clarify its objectives or cease to exist as a separate entity.

1. Should SUPA
 - a) Limit its activities to patentable subject matter or intellectual property?
 - 1) Extend to computer programs?
 - 2) Extend to books?
 - 3) Extend to plant patents?
 - 4) Extend to plant variety protection with USDA?
 - 5) Extend to unpatented know-how?
 - b) Should the activity of SUPA
 - 1) Be purely educational/exchange of experience?
 - 2) Be a forum for expression of views?
 - 3) Include influencing legislative activity?
(Associated tax problems?)
(Can SUPA officers speak for all of us?)
 - 4) Relate to the industry interface?
 - 5) Be a Federal executive branch interface?
(With a staff at One DuPont Circle?)
2. How can SUPA be distinguished from
 - NACUBO/COGR (number of common members?)
 - NCURA
 - SRA
 - LES
3. If SUPA can be distinguished, what is the nature of cooperative relationship, or are we going it alone?
4. Should we be taking independent positions on:
 - Indirect costs
 - Freedom of Information
 - Human subjects research
5. Should we take positions as a group (and, if so, by what mechanism?), or should we attempt to discuss, define and clarify issues that we can individually work for to obtain our institutions to take positions (as institutions) with congressional delegations?

After two years, we may have a valuable baby in SUPA. We now need to throw out the bath water, but we had better look carefully lest we throw out the baby and keep the bath water.

I again ask--What hath CWRU wrought?