

THE WHITE HOUSE

WASHINGTON, D.C.

(draft - OCTOBER 17, 1977 - draft)

MEMORANDUM FOR THE PRESIDENT

FROM : Bo Cutter
Stu Eizenstat
Frank Press

SUBJECT: Administration Position Concerning FEDERAL PATENT POLICY
and H.R. 8596 (originally introduced as H.R. 6249)

We have reviewed the history and present situation regarding government patent policy, as well as the positions of the various Federal agencies regarding proposed legislation on patent policy.

Congressman Ray Thornton has introduced a bill (H.R. 8596) which would establish a comprehensive Government-wide patent policy regulating the disposition of grantee and contractor inventions, employee inventions, and the licensing of Government-owned inventions. The objective of the bill is to utilize Government patent policy as a tool that will maximize economic growth, job expansion, and the international position of United States industry. The bill would accomplish this by establishing a statutory framework which will allow and promote the commercialization and utilization of inventions developed by Government contractors and grantees and by Government laboratories. There is considerable evidence and concern that the present maze of agency regulations and piecemeal legislation is hampering and, in many instances, discouraging private investment in the commercial development of Government-financed inventions.

Congressman Thornton's bill has been favorably supported by most Federal agencies and is co-sponsored by 14 Congressmen, including the Chairman of the Committee on Science and Technology. Presently, there is no competing legislative proposal and hearings on the Thornton bill are expected in January or February 1978.

While patent policy is obviously not the only factor affecting the rate at which new products and technologies are introduced into the marketplace, there is no doubt that it can be a significant factor in private investment decisions. Because the introduction of new products and processes is a necessary ingredient to economic growth, it is important that the Government adopt policies designed to encourage the introduction of new technology. Given the fact that the Government is responsible for more than half of total United States investment in R&D, it becomes essential that Government R&D dollars be made to produce economic dividends as well as social and national security benefits. On the international side, policies that discourage investment by United States industry in Government-

if state controlled or subsidized, to capitalize on these inventions to the detriment of American jobs and industry.

H.R. 8596 gives contractors and grantees the initial option to retain title to inventions, subject to the right of the Government to require licensing in situations where the contractor has not undertaken reasonable efforts to commercialize an invention. There are many reasons for believing that this approach will maximize the commercialization of inventions. Conversely, there is no reason to believe that alternative approaches (such as the use of deferred determination or title-in-the-Government clauses) would be more effective in promoting utilization. In fact, it is difficult to escape the conclusion that these alternative approaches have already achieved the opposite effect. Moreover, it is abundantly clear that such approaches greatly increase administrative costs, while simultaneously discouraging many well qualified firms from participating in specific Government contracts and subcontracts.

Despite the fact that H.R. 8596 is designed to achieve greater utilization of Government-sponsored inventions, its provisions concerning grantee and contractor rights will be controversial. The issue of ownership of inventions made by contractors has been debated and discussed for over thirty years. Essentially, two main bodies of thought have been in evidence throughout the debate. One group has argued that the best way to promote utilization is to allow contractors to retain rights subject to the right of the Government to force licensing in some situations. This is the H.R. 8596 approach. The other group, while recognizing the under-utilization of Government-financed inventions, has nevertheless favored a policy of title-in-the-Government. This group has advanced a number of superficially appealing arguments such as "what the Government pays for it should own." It also has raised the specter that leaving title in contractors will result in "windfall" or "monopoly" profits, will lead to concentration in industries, or will allow the suppression of inventions.

The attached issue paper discusses the arguments on both sides and contains other additional background information. We are convinced that the arguments of the opponents of the H.R. 8596 approach cannot withstand objective analysis. If these arguments are allowed to hold sway, the result will be detrimental to the best interests of American taxpayers, workers, consumers and industry. Therefore, we recommend that the Administration support H.R. 8596.

Attachment:

As stated