

U.S. GOVERNMENT  
SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416



July 11, 1980

MEMORANDUM TO: Milton D. Stewart  
FROM: Norman J. Latker *njl*  
SUBJECT: Amendment of S. 1250 to Substitute the  
Provisions of S. 414 for the Patent  
Provisions of S. 1250

Update

Attached as background is my June 20, 1980, memo to you on the status of S. 1250 after it passed the House Subcommittee on Science, Research and Technology on June 17. On July 2 S. 1250 was passed out to the floor by the House Committee on Science and Technology and appears to be moving toward certain enactment. A copy of the last version of the bill is attached.

S. 1250 as Passed Out by Committee and Proposed Amendment to S. 1250

As you will recall the bill established through Federal assistance from the Department of Commerce and the National Science Foundation to universities and other non-profits, a number of Centers for Industrial Technologies (CIT's). In addition to the CIT's the House amended the Senate version of S. 1250 to establish "Research and Technology Applications Offices" at all Federal Laboratories with annual budgets exceeding \$20,000,000. These offices are to be funded by diverting .5 percent of each parent agency's research and development (R&D) budget to operation of the Laboratory Applications Offices. (See Sec. 11(b), pg. 20.)

Sec. 6(a)(6) on page 9, and other provisions of the bill authorize the CIT's to do R&D for the Federal government. Since it is clear that this activity will generate patentable inventions the bill provides the terms and conditions under which disposition of these inventions must be made. (See Sec. 6(e), pg. 11.)

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The terms and conditions of Sec. 6(e) closely parallel those directed to universities and non-profits found in S. 414 but are limited to CIT's. One of the principle arguments supporting passage of S. 414 is the need to eliminate further piecemeal Government Patent Policy legislation due to the complexity of administering the approximately 22 different policies already found in legislation or administrative guidelines. The inclusion of a patent disposition section in S. 1250 aimed at a specific program violates this principle and invites amendment to substitute the government-wide patent policy provisions of S. 414.

Further, S. 1250 does not include a provision authorizing the Federal laboratories to exclusively license government-owned inventions. This is believed to make the bill fatally defective since effective technology-transfer and commercialization of such inventions cannot occur without this authorization. Staff members of Science and Technology know this and, therefore, must be hoping for passage of one of the patent policy bills (which includes S. 414) pending before the Kastenmeir Subcommittee. This again, leads to the belief that House Science and Technology may well welcome an amendment substituting the provisions of S. 414 for the patent provision of S. 1250.

Last, one of the principle purposes of the CIT's and the bill in general is stated to be aiding small business innovation. Under all of the above circumstances it does not appear that germaneness of the proposed amendment can be successfully raised as an issue on the floor.

#### H.R. 6933

Most observers of government patent policy legislation do not believe that the administration bill H.R. 6933, can pass the House due to the number of controversial provisions it includes. (This was the subject of an earlier briefing memo.) It is also believed due to these controversial provisions that the bill cannot be amended to satisfy the various groups it impacts on. This leads to the conclusion that if the judiciary passes H.R. 6933 out to the floor there will be insufficient time to retrench if it is defeated, and then pass out S. 414. Accordingly, amendment of S. 1250 should be given serious consideration.

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Most Appropriate Sponsors of an Amendment to S. 1250

Since S. 1250 is a Science and Technology bill, the Chairman of the Committee, Congressman Fuqua would be the most logical choice of possible sponsors of an amendment to S. 1250. However, because H.R. 5717 a government-patent policy bill which includes a disposition section on big business is a competitor of S. 414, before contacting Congressman Fuqua, it appears that we should have conversations with its principle sponsors Congressman Brown of California and Congressman Ertel of Pennsylvania. These Congressmen are respectively, the Chairman and a member of the Subcommittee on Science, Research and Technology which initially marked-up S. 1250 and H.R. 5715 in the House. The main problem in discussions with Brown and Ertel will probably be convincing them that amending S. 1250 as proposed will not adversely affect the progress of H.R. 5717. This may not be a serious problem in light of the fact that Science and Technology staffers do not believe that H.R. 5751 has any better chance of passage than H.R. 6933 and who also probably recognize that S. 414 must pass in some form in order to make S. 1250 an effective bill. Furthermore, it can be argued that H.R. 5715 could be amended to contain a repealer of the S. 414 provisions if H.R. 5717 reached the floor.

The most obvious alternative to Congressman Fuqua would be Congressman Neil Smith, the Chairman of the House Small Business Committee. Here, according to his staffers, the major problem would be Congressman Smith's belief that he would need Congressman Rodino's acquiescence before proceeding since the proposed amendment appears to be in House Judiciary's jurisdiction. This may also be a problem for Congressman Fuqua but Science and Technology may well believe that the amendment is a matter of patent policy rather than patent law and, therefore, justified in proceeding notwithstanding a negative recommendation from Congressman Rodino. If Congressman Fuqua agreed to offer the amendment we would most likely wish to ask Congressman Smith to join.

cc: John S. Satagaj  
Jere W. Glover  
Barry Unger