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TESTIMONY

of

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on

H.R. 5715, Uniform Federal Research
and Development Utilization Act of 1979

and

Administration's Proposed Bill,
Government Patent Policy Act of 1980

before

Subcommittee on Science, Research and Technology

Committee on Science and Technology

House of Representatives

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I would like to add some details to the previous testimony, dealing particularly with the proposal for "Contractor's payments to the Government" and the need for uniform treatment of all contractors.

On the subject of contractor's payments, or recoupment, I would urge that such payments are a disincentive to the very commercial activities which the legislation is intended to promote. Payments to the government for commercial products are nothing more than a charge or tax on such products. At best, they could result in the price of the product being raised, or at worst, in the product never reaching the marketplace because of the additional cost. If the government is sponsoring research to help bring forth commercial products, it seems illogical to increase their costs.

In the case of military products which can be transitioned into commercial products, the same holds true. Moreover, in this circumstance the commercial products even lead to better and cheaper military products. If the contractor has a broader base over which to spread its fixed costs, the prices of the military products are likely to come down. But recoupment acts as a drag on transition particularly in the early stages if the transitioned products must compete against other preexisting products which are already down the experience and pricing curves.

Thus, although recoupment, on its face, may sound appealing, it will raise the cost of the new products and make it harder for them to compete,

particularly against foreign competitors in the world market. Also, as has been pointed out, recoupment on a patent-by-patent basis, or even on a contract-by-contract basis, could be an administrative nightmare.

The next point on which I would like to comment is the exclusive licensing approach adapted for most contractors under the Administration's proposed bill. This approach requires the contractor to provide a list of fields of use in which the contractor intends to commercialize the invention. At the time most inventions are first conceived, it is impossible to say whether or not they will be used. They must first be reduced to practice, then they must be tested, and next they must be evaluated in competition with many other ideas. Also, where inventions are capable of multiple uses, not all those uses are necessarily foreseeable in the beginning. Thus, it is not realistic to require contractors to state immediately the fields of use in which they will commercialize an invention. They can't do it and they should not be placed in a position where they need to speculate, if not over-commit, in order to keep an adequate patent position.

Alternatively, the exclusive license approach may lead the contractors to concentrate on one application of an invention rather than thinking in a broader scope. And it is likely to be an administrative jungle, again detracting from the very incentives which the overall government patent policy is intended to support. Patent ownership will help commercialization, but the contractor must be given title, not just a half right.

Finally, the deviation and waiver provisions of the Administration's proposal are an avenue for the continuance of the bureaucratic procedures which now impede the commercialization of inventions. This provision provides that an agency may deviate so the barn door is not even closed, let alone locked. The Congress should not leave a loophole like this if it legislates that patent ownership for government contractors is in the national interest.