

An interference determination settles not only the claims made, but all that could have been presented.

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Whether the second proceeding is an interference, a reissue, a suit to obtain letters patent, or other type of action, the first proceeding is res judicata on all claims that were made or could have been made therein. (Footnotes omitted). [End Text].

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#### WHITE HOUSE ANNOUNCES INNOVATION INITIATIVES

Declaring that innovation "is an essential element of a strong and growing American economy," President Carter has launched a new program designed to develop "the Nation's competitive capability and entrepreneurial spirit in the decades ahead."

At a White House Press Conference October 31st, Carter announced several major "initiatives" dealing with the following "critical areas."

[Text]

- Enhancing the Transfer of Information
- Increasing Technical Knowledge
- Strengthening the Patent System
- Clarifying Antitrust Policy
- Fostering the Development of Small Innovative Firms
- Opening Federal Procurement to Innovations
- Improving Our Regulatory System
- Facilitating Labor/Management Adjustment to Technical Change
- Maintaining a Supportive Climate for Innovation. [End Text]

The patent process, said Carter, though "a vital incentive for innovation," has become "expensive, time-consuming, and unreliable." Therefore, the Patent and Trademark Office will be directed to undertake a "major effort to upgrade and modernize its processes." Moreover, the White House will push for legislation authorizing reexamination of patents as a way of reducing the need for expensive litigation.

Carter also pledged to support legislation aimed at establishing uniform patent policies in federal agencies. Such legislation, though generally requiring the Government to retain title to patent rights, would authorize exclusive licenses of Government-owned patents and permit small businesses and universities to retain rights to inventions arising from federally-funded research and development contracts.

Commerce Secretary Juanita Kreps, who will be leaving office shortly, praised Carter for announcing this program. "Every president," she said, "has studied the problem of fostering innovation but none has acted." Carter, in turn, praised Kreps for the fine service she has rendered during her tenure as Secretary.

Jordan J. Baruch, Assistant Secretary of Commerce for Science and Technology, stated that he does not believe the U.S. has lost its lead in technology and innovation. However, he acknowledged that this leadership cannot continue absent changes of the sort proposed by President Carter.

Summing up, Carter stated:

[Text] Innovation is a subtle and intricate process, covering that range of events from the inspiration of the inventor to the marketing strategy of the eventual producer. Although there are many places in the chain from invention to sale where we have found modification of Federal policy to be appropriate, there is no one place where the Federal government can take action and thereby ensure that industrial innovation will be increased. We have therefore chosen a range of initiatives, each of which we believe to be helpful. In aggregate, we expect them to have a significant impact. Nonetheless, they represent only an early skirmish in what must be a continuing battle to maintain the technological strength of the American economy. I pledge myself to this task and ask the Congress to join me in meeting our common challenge. [End Text]

The text of a White House "fact sheet" on the innovation initiatives appears at page F-1.

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#### RIGHTS UNDER PATENT LICENSE DO NOT INURE TO PURCHASER OF PORTION OF LICENSEE'S BUSINESS

Interpreting a patent license, a U.S. Court of Claims trial judge rules that a defendant did not become a "successor" entitled to patent rights simply by purchasing one segment of a licensee's business. In this case, says Trial Judge Browne, it is "evident that the parties did not intend that the license would inure to the benefit of any entity over which the licensed party had no control." (Potter Instrument Co., Inc. v. U.S., 10/4/79)

#### Background

Potter brought an action against the Government in the Court of Claims under 28 U.S.C. §1498, seeking "reasonable and entire" compensation for patent infringement. The Government's supplier, Sperry Corporation, though named as a third-party defendant, insisted that it was licensed under the patents by virtue of its purchase of a computer business from RCA -- a Potter licensee.

In August 1967, Potter had granted a patent license to Radio Corporation of America (RCA) and its subsidiaries. The license stated that it would inure to the benefit of "the successors" of either party but was not "otherwise assignable by either party, in whole or in part, without the prior written consent of the other party." The license defined a subsidiary as "a corporation" which RCA or Potter "controls."

Claiming that the purchase of RCA's computer equipment business rendered it RCA's "successor" -- and conferred upon it a paid-up license under the patent -- Sperry moved for partial summary judgment.

#### Decision

Interpreting the license agreement in a manner he deems consistent with the intent of Potter and RCA, Trial Judge Browne denies Sperry's motion.