

EMBARGOED FOR RELEASE  
UNTIL AFTER THE BRIEFING  
WEDNESDAY, OCTOBER 31, 1979

October 31, 1979

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

THE PRESIDENT'S INDUSTRIAL INNOVATION INITIATIVES

BACKGROUND

The President initiated a "Domestic Policy Review" in April 1978 to identify appropriate government actions in connection with innovation. The President asked the Secretary of Commerce to lead the Review. The charge given the Commerce Department was: "What actions should the Federal government take to encourage industrial innovation?" During the course of the Review members of the Administration consulted with hundreds of groups and individuals from industry, labor, academia, and public interest organizations. Suggestions embodied in task force reports were rendered by 150 of these people. Their recommendations have been reviewed and analyzed by the President. In essence, recommendations ultimately selected by the President are designed either to develop a missing resource or influence decisionmakers in the direction of innovation.

Other industrial countries, recognizing the importance of innovation, are extending their competitive advantage through industrial policies, programs, and institutional structures aimed at selected technologies. To respond to this challenge to our economy and the competitive position of U.S. industry, the review developed policy options intended to foster the Nation's competitive capability and entrepreneurial spirit for the decades ahead.

The initiatives announced today are considered by the President as first steps in meeting the Nation's commitment to innovation and the continuing challenge to maintain the technological strength of the American economy.

The President's actions provide a signal to the private sector that innovation is valued and that it is Federal policy to preserve and promote it in the years ahead. The Administration hopes this will improve the rate of innovation and will establish, over time, a climate in which it will flourish.

There are nine areas where the President has made specific decisions regarding innovation:

- Enhancing the Transfer of Technical Information
- Increasing Technical Information
- Improving the Patent System
- Clarifying Anti-trust Policy
- Fostering the Development of Smaller Innovative Firms
- Improving Federal Procurement

more

(OVER)

- o The President will ask the Office of Management and Budget, in the course of its crosscut of regulatory activities in developing the FY 81 budget, to examine closely the nature and extent of expenditures on compliance technology and to bolster the Federal effort.

### 3. Improved Industry-University Cooperation in R&D

The scientific and technological strength of American universities has not been harnessed effectively in promoting industrial technological advance. In order to achieve this end, in FY 1978 the NSF established a program for the support of high quality R&D projects that are proposed jointly by industry-university research teams.

- o The President has decided to provide \$20 million of new funds at NSF in FY 1981 for this purpose with subsequent year support at a similar level.
- o In addition, the President plans to extend the NSF program to other agencies. NSF will work with DOD, DOE, EPA, and NASA in FY 1980 and with other agencies in subsequent years to initiate such university-industry cooperative R&D programs and to establish quality-control procedures as effective as the NSF peer review system. Each agency will formulate plans for building its support for this program with the objective of reaching an aggregate of \$150 million.

### STRENGTHENING THE PATENT SYSTEM

Patents serve several important functions in the innovation process. First, they provide an inventor with an incentive -- a monopoly limited in time. Second, the exclusive rights provided by a patent can stimulate a firm to make the often risky investment that is required to bring an invention to market. Finally, a patent provides an important method for disclosure of information about inventions and their uses to the public.

#### 1. Uniform Government Patent Policy

The Policy Review identified strong arguments that the public should have an unrestricted right to use patents arising from Federal sponsorship. These patents were derived from public funds and all the public have an equitable claim to the fruits of their tax dollars. Moreover, exclusive rights establish a monopoly -- albeit one limited in time -- and this is an outcome not favored in our economy.

Several competing considerations, however, urge that exclusive rights to such patents should be available. First, government ownership with the offer of unrestricted public use has resulted in almost no commercial application of Federal inventions. Without exclusive rights, investors are unwilling to take the risk of developing a Federal invention and creating a market for it. Thus, ironically, free public right to use patents results, in practical terms, in a denial of the opportunity to use the invention. Second, many contractors, particularly those with strong background and experience with patents, are unwilling to undertake work leading to freely available patents because this would compromise their proprietary position. Thus, some of the most capable performers will not undertake the government work for which they are best suited.

more

As a result of the strength of these considerations, most agencies have the authority in some circumstances to provide exclusive rights. But because of the difficulty of balancing the competing considerations, this issue has been unsettled for over 30 years and the various agencies operate under different and contradictory statutory guidance. The uncertainty and lack of uniformity in policy has itself had a negative effect on the commercialization of technologies developed with Federal support. As a result, there is an active interest in the Congress and among the agencies to establish a clear and consistent policy.

The President considered a range of options, from always vesting title in the contractor, to maintaining the status quo. In arriving at his decision, the President considered the following factors:

- Uniformity. The agencies are currently governed either by an array of different statutes or, in the absence of statute, by Presidential guidance. Indeed, some agencies have different statutory guidance on patents governing different programs. In light of this, there is substantial confusion among contractors who perform R&D for several agencies or programs.
  - Impact on Innovation. Exclusive rights to a patent may be necessary to ensure that a firm will make the often risky investment that is required to bring an invention into production and to develop a market for it. Exclusive rights provide protection from other firms that might skim the profit from the market by copying the invention after the risk and cost of introduction are reduced by the first firm's efforts.
  - Administrative Burden. Any policy that requires an agency to make decisions imposes some administrative costs.
  - Uncertainty. A clear and easy-to-apply rule is preferable to an ambiguous rule for the guidance it offers to both industry and government officials.
  - Contractor Participation in Government Programs. Firms with strong proprietary positions are unwilling to accept government contracts that would result in freely available patents.
  - Competition. Exclusive rights foreclose competition in the marketing of the invention covered by the patent and serve, in some cases, to enhance the recipient's market power.
- o The President has decided to seek legislation that would establish a uniform government policy with exclusive licenses in the field of use. Title to the patent will be retained by the Government, but the contractor will obtain exclusive licenses in fields of use that he chooses to specify and in which he agrees to commercialize the invention. There will be an exception where the agency determines that such a license would be inconsistent with either the agency mission or the public interest. In most cases, the allocation would be after the invention has been identified, rather than at the time of contracting. The Government would license in all fields of use other than those claimed by the contractor. The Government would retain march-in rights that can be exercised in the event the licensee does

- o The President also supports the retention of patent ownership by small businesses and universities, the prime thrust of legislation now in the Congress, in recognition of their special place in our society.

## 2. Other Reforms

The achievement of the objectives of the patent system depends in large part on the strength of protection a patent provides. Today a U.S. patent has less than a 50 percent chance of surviving a court challenge. Uncertainty as to the validity and continued reliability of a U.S. patent creates the threat of lengthy and expensive litigation with an uncertain outcome.

- o To improve the presumptive validity of an issued patent, and to reduce the cost and frequency of defending it in court, the President is proposing several significant steps. First, the quality of issued patents will be significantly upgraded by major improvement of the Patent and Trademark Office's filing and classification system. Second, he is urging the Congress again to establish a single court to deal with patent appeals. This court would establish nationwide uniformity in patent law, make litigation results more predictable, and eliminate the expensive and time-consuming forum shopping that characterizes patent litigation. Finally, to minimize the cost and uncertainty of litigation patent validity in the courts, the President will submit legislation to provide for voluntary reexamination of issued patents by the Patent and Trademark Office at the request of any person or the court.
- o One of the world's greatest stores of technical information is in the Patent and Trademark Office files, which include more than four million U.S. Patents. However, the current state of access to the information in these files renders their technical content inaccessible to anyone but patent examiners. The President is asking the Patent and Trademark Office to undertake efforts to provide greater ease of public access and use to these files. These reforms will be undertaken without an increase of public expenditures by adjusting the fee schedule of the patent office so that those who benefit will pay for the services they receive. Legislation supporting these reforms will be submitted to the Congress.
- o The Administrator of the Small Business Administration will establish an Office of Small Business Patent Counsel to assist inventors in the transition from invention to small business by providing the ancillary business that attorneys rarely provide. To encourage the development of technologically-based minority businesses, a similar office will be established in the Office of Minority Business Enterprise and its activities will be coordinated with the SBA. All costs will be met by reprogramming.

## CLARIFYING ANTI-TRUST POLICY

Anti-trust laws play a specific role in promoting innovation. Vigorous enforcement of anti-trust laws spurs competition -- and the pressure of competition is a stimulant to the development of innovations that provide a competitive edge. However, anti-trust laws are often and mistakenly understood to prevent cooperative activity, even in circumstances where it would foster innovation without harming competition.