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# Decision Due on Rights To Gov't-Funded Patents

WASHINGTON (FNS) — By the end of January the Carter Administration will have decided whether to tighten government policy on ownership, control and use of patentable inventions resulting from federally-funded research and development contracts and grants. Such R&D outlays currently are estimated at $26 billion a year.

The issue is being explored intensively as part of a 2-year study by the Senate Small Business Committee. Its Monopoly Subcommittee, headed by Sen. Gaylord Nelson (D., Wis.), a strong critic of U.S. R&D patent policies, extracted last week from the Justice Department assurance that the ongoing intramural dispute will be settled shortly.

John H. Shenefield, Assistant Attorney General in Charge of the Justice Department Antitrust Division, did not disagree with Chairman Nelson's assessment of what is going on in the review: "The Commerce Department wants to give it (the inventions and patents) away and Justice doesn't."

Mr. Shenefield, who described the patent policy review as "a continuing struggle in government," told the subcommittee he "anticipated that our view probably will prevail."

Justice, he explained, contends that inventions produced by expenditure of public funds should benefit the public.

"Government control of inventions deriving from such expenditures assures that they will be used to promote the public interests, rather than the not-necessarily synonymous interests of private parties," the antitrust chief declared.

### No Purpose

Mr. Shenefield said the Justice viewpoint is that no purpose is served by taxing the public for R&D and then turning the results sought by that very R&D over to the contractor, along with a right to exclude competitors from use of those results.

"Such rights," said Mr. Shenefield, "seem to be in the nature of a windfall, at public expense, to the contractor."

Senator Nelson contended that R&D-derived patents should not be given away except in exceptional circumstances, and the burden of proof that such circumstances apply should be on the contractor, rather than government review authorities.

"That is our position, too," Mr. Shenefield interposed.

Senator Nelson, hard on the heels of strong anti-patent give-away testimony from Adm. Hyman G. Rickover, lectured the Justice Department and the Carter Adminstration in these terms: "Why don't you just say 'no' to these contractors seeking patent rights and tell them further, 'If you have got a case, make it convince us'. Contractors will always ask for an exception. Just say no to all of them. They want everything they can get their hands on."

Senator Nelson also was critical of the government for "spending time giving patents away," adding: "The Justice Department has never had any guts in this area, and DOD always wants to give everything away, even though it's the public's money. What a way to do business!"

Monopoly Subcommittee counsel Benjamin Gordon said DOD "routinely allows contractors to retain patent rights, so it doesn't even know what it is giving away." Antitrust chief Shenefield agreed.

Even if patent policies are toughened, Congress may still want to legislate, Senator Nelson indicated. It was spurred on to do this by Admiral Rickover who told the Senate subcommittee that all government agencies should be required by law to retain patent rights, except in exceptional circumstances, to all inventions developed at government expense. Before a government agency could waive the government's rights to a patent, he said, the Attorney General should be required to make a written determination of work essential to the mission of the agency and that granting the waiver will not adversely affect competition or small business.

### Penalties

Admiral Rickover also proposed that all inventors be required to certify on patent applications that the invention was developed under a government contract and was duly reported, or that it was not developed. He asked for criminal penalties for individuals or contractors who file, as their own, patents that have been developed at government expense.

Mr. Rickover said many government agencies today routinely grant contractors exclusive rights to patents developed at public expense. He said this promotes greater concentration of economic power in the hands of large corporations, impedes development and dissemination of technology, is costly to the taxpayer and hurts small business.

"In my view," Admiral Rickover said, "the rights to inventions developed at public expense should be vested in the government and made available for use by any U.S. citizen."

Under the patent laws, the holder of a patent enjoys what amounts to a 17-year monopoly. In this period, he can prevent others from using the invention; he can license the invention and charge royalties, or he can manufacture and market the invention as a sole-source supplier. Said Admiral Rickover: "If the invention is worthwhile, he is in a position to make exorbitant profits."

### Public Interest

Mr. Shenefield said there had been no convincing showing that exclusive rights in government-financed inventions need be granted to contractors in order to induce them to accept government R&D contracts. He agreed with Senator Nelson that the government's so-called "march-in" rights involving revoking the waiver "is largely an empty provision and is not particularly helpful in protecting the public interest."

# Interconnect Firm Protests NE Bell PBX Sole Source

By DAVID WILLIAMS

WASHINGTON — A New England interconnect company, backed by one of its primary suppliers, Rolm, has protested to the General Accounting Office against a Commerce Department sole-source PBX procurement from AT&T's New England Bell Telephone Co.

Commerce's National Oceanic & Atmospheric Administration (NOAA) procured a Dimension-400 PBX from New England Bell on a sole-source basis (although it was specifically forbidden to do so by the General Services Administration, according to International Business Telephone, Inc., of Watertown, Mass.

The dispute involves a PBX which NOAA wanted for its Northeast Fisheries Center at Woods Hole, Mass. The National Marine Fisheries Service ordered a Dimension-400 from New England Bell on a sole-source basis last June 30, according to documents sent to the GAO by Robert J. Fabbricatore, president of the interconnect company.

However, GSA did not grant the agency procurement authority until July 19 and the first of four limitations in the grant said it "does not constitute approval for the sole-source procurement of the PBX."

Furthermore, GSA told the Commerce Department it would have "to comply with the requirements of the appropriate Federal Procurement Regulations in seeking competition to the maximum extent possible. . ."

### Voided

If the Commerce Department failed to follow the limitations, the procurement authority could be voided, according to the letter signed by Michael Muntner, an assistant commissioner in GSA's Automated Data & Telecommunications Service.

In addition to the procurement authority, Mr. Fabbricatore sent copies of other GSA papers relating to the procurement. A June 28 internal GSA memorandum, for example, concluded that NOAA's request "does not justify a sole-source award to the telephone company" and "there are numerous alternatives for meeting NOAA's . . . requirements at Woods Hole."

Another GSA memo, dated July 1, said "It appears from the documentation in this case that NOAA has only one single intention — that is to procure a Dimension touch-tone PBX from the telephone company on a sole-source basis regardless of cost!" It added that "The sole-source justification in our opinion has no validity."

Among other things, GSA wanted to study the possibility of consolidating the telecommunications requirements of all federal installations in the Woods Hole area, as it does in other areas. This study would take 60 days, GSA pointed out. GSA also opposed touch-tone capability in the system.

The General Accounting Office has forwarded the protest to the Commerce Department, which has until late

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