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OFFICE OF THE
GENERAL COUNSEL

September 9, 1976

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Frey:

This is in reply to your Legislative Referral Memorandum of August 25, 1976, requesting the comments of the National Science Foundation on the Department of Commerce draft bill entitled, "Federal Intellectual Property Policy Act of 1976".

As you undoubtedly know, the draft bill was prepared by the Federal Council for Science and Technology's Committee on Government Patent Policy and that Committee's Executive Subcommittee. NSF members on the Committee and the Executive Subcommittee participated in this work. The comments they made were fairly considered, and NSF did not oppose the favorable report of the Committee on the draft. Accordingly, NSF does not oppose the bill now.

On the other hand, we do still have some misgivings. Particularly considering the unlikelihood that Congress would act on the proposed bill this late in its current session, it seems to us that the new Office of Science and Technology Policy might well be given an opportunity before the next session to examine carefully a legislative proposal that has such great potential impact on United States science and technology and that apparently has implications for OSTP's own operations and role as well. We understand that the Director of OSTP has expressed interest in having the draft bill circulated further to the full Federal Coordinating Council for Science, Engineering, and Technology for additional discussion. If the Administration's schedule permits, we would favor that course.

During any such additional discussions the following issues might be further considered:

- 1) Whether the uniform Federal patent policy that has now apparently become the main thrust of the bill is necessary or desirable. The original thrust, as we understood it, was to remove doubts on the authority of several agencies

(not including NSF) to alienate patent rights. That thrust we have fully supported, and still do. We wonder, however, whether the monolithic Federal patent policy now embodied in the bill is truly preferable to the more flexible and pluralistic policy currently established by Presidential order.

- 2) Whether, assuming a uniform Federal patent policy is desirable, such a policy could be as effectively and less irreversibly established by Executive Order and appropriate implementing regulations, rather than by legislation.
- 3) Whether the considerable structure of reporting and disclosure requirements, procedures, and regulations and the "Board for Intellectual Property" that the bill would create fill a need that justifies the addition they would make to the mass of laws, regulations, directives, and procedures with which our Government and society already must cope.

Sincerely yours,



Charles H. Herz
General Counsel