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UNITED STATES DEPARTMENT OF COMMERCE  
The Assistant Secretary for Productivity,  
Technology and Innovation  
Washington, D.C. 20230  
(202) 377-1984

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Dr. John F. Due  
Chair, Senate Committee  
on Honorary Degrees  
University of Illinois  
496 Commerce West  
1206 South Sixth Street  
Champaign, Illinois 61820

Dear Dr. Due:

I would like to nominate Mr. Norman J. Latker for an honorary doctorate from the University of Illinois in recognition of his leadership and success in modifying federal policies to achieve results that are of first magnitude importance to the national interest.

His work relates primarily to giving organizations that make inventions with federal funds, the same exclusive rights to their discoveries that other inventors receive under federal patent laws. The intent of these laws, which are mandated by the Constitution, is to provide exclusive ownership and protection to entrepreneurs for a time sufficient to establish a commercial enterprise. In return, full disclosure is required in order to build the public pool of knowledge that could stimulate further invention.

Unfortunately, when the authors of the Constitution provided for a patent system for inventors, nobody dreamed of a day when the Federal Government would pay for half the research and development and seventy percent of all the basic research performed in the country. Little attention was given to the ownership of inventions resulting from federal funding until 1947, when the Attorney General issued a report recommending government ownership for antitrust reasons. The concept of government ownership was also consistent with the populist idea that the results of tax supported research should be freely available to all.

Under a policy of government ownership, however, very few of the results of the close to \$50 billion of federal research annually performed ever have been commercially developed. The government owns about 28,000 patents of which only about four percent ever have been licensed, and even fewer ever used in products.

The theory that the government should own the results of its research dominated federal patent policy until Mr. Latker started questioning its effects. He reasoned that since patents are primarily to protect manufacturers from those who would copy inventions and since the government manufacturers almost no products, government owned patents led to a serious waste of technology that might be used to create new products, new jobs, and even new industries for the country.

Mr. Latker was one of the first to recognize that the presumption of government ownership plus the conflicting laws, policies, and procedures, which had evolved for determining the rights to government funded inventions effectively, resulted in a barrier to developing them for commercial use. Since making this observation, he has consistently worked for removing these barriers and creating incentives for their use. The concepts he pioneered are now law and Presidential policy and are having a profound effect on helping expand the technological base of the national economy.

As Patent Counsel for the National Institutes of Health and later the Department of Health, Education and Welfare, Mr. Latker observed that the results of important department research were not reaching the public because firms would not invest to manufacture, test, and market new pharmaceuticals or medical equipment without the protection of strong patent rights. Further, he saw that the case-by-case procedures used by some federal agencies to determine invention ownership or to grant licenses created uncertainties that discouraged firms from even seeking rights or investing in further development. Finally, he decided that the universities, where most of the National Institute of Health (NIH) funded research was performed, were in a much better position to promote and license inventions resulting from their work than the government.

To overcome these problems, Mr. Latker developed and implemented the Department's Institutional Patent Agreement Policy. Under this policy, universities and nonprofit organizations signed an agreement which gave them the right to own any inventions they produced with Health, Education and Welfare (HEW) funds so long as they maintained a management capability to pursue invention development. With a clear title to the inventions, the research organizations were in a position to obtain patents and seek licensees. The government, of course, retained the right to use the inventions without charge for its own purposes. About eighty universities and nonprofit organizations signed these agreements before Congress passed and the President signed Public Law 96-517, which extended the principle of contractor ownership of inventions to all small business and nonprofit organizations receiving federal research and development funds.

Mr. Latker was a principle architect of P.L. 96-517 which repealed 22 formerly conflicting statutes. He also led development of the instructions that the Office of Management and Budget issued to the agencies for implementing the law. Both the law and the instructions (OMB Circular A-124) provided strong incentives for universities and their inventing staffs to report, evaluate, and promote government funded inventions. The use of incentives to cause desired actions by inventors and their employers has eliminated the adversarial relationships between government and universities that had developed under Government ownership policies.

He anticipated that university ownership of the fundamental inventions coming out of basic research would be particularly important for both the universities and the economy. He was right. The new law came at a time when university budgets were tight due to changes in federal funding priorities and two recessions. Many universities, seeing inventions as a new source of income, created special patent licensing offices to increase their promotional efforts. During license negotiations, these offices frequently found that businesses were interested in supporting additional research or developmental work of those who had produced the original inventions. The patent licensing offices thus became conduits for private sector funding and university/business collaboration on a scale never before experienced. The new biotechnology industry, for example, is a direct result of Mr. Latker's Institutional Patent Agreements and the law whose development and implementation he led. Virtually every major research university in the country is benefiting from his achievements.

Large and intermediate size businesses that perform federally funded research and development are also an important source of new technology. Mr. Latker has helped congressional staffs develop bills that would extend the contractor invention ownership principle to all contractors. Thus far, these bills have not been enacted due to opposition by a few special interests. When he saw that legislation was stalled in Congress, Mr. Latker developed and coordinated a Presidential Patent Policy Memorandum directing agencies to allow contractor invention ownership to the degree permitted by their individual statutes. President Reagan signed the Memorandum in February, 1983.

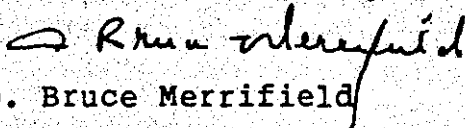
At this writing, he is working to extend the lessons learned in the universities to the federal laboratories where over 250,000 professional researchers and scientists account for about one sixth of the country's research and development expenditures. As a result of his leadership there is growing agreement that the country needs to make basic changes in the way these laboratories relate to universities and industry. As before, the questions of who has what rights, authorities, and incentives are fundamental to the changes.

The twenty years have not been easy. There have been strong and honest differences of opinion over the issues of contractor invention ownership. There has been resistance from some who believed that their jobs depended on old ways. An example of this was the set of government wide procurement regulations drafted last year that contained serious violations of current law and policy, but were designed to perpetuate the role of some agency staff. Mr. Latker and his staff eventually had to bring this problem to the attention of the Vice President who directed the draft regulations to be rewritten.

He has dedicated many years of effort to a principle of government based on open and honest evaluation of the effects of its policies. This principle has led him to reform a portion of law that effects the lives and wellbeing of millions of people, though most will never know it. I believe it is particularly important for others to honor Mr. Latker because he has not sought personal acclaim. He just quietly made it possible for most of us to have new levels of health, products, and for some, even jobs that without his accomplishments, would never have become available.

Attached is a copy of Norman Latker's vitae and five supporting letters.

Sincerely,

  
D. Bruce Merrifield

Attachments