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The Honorable Gaylord Nelson
Chairman
Select Committee on Small Business
United States Senate
Room 424, Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Nelson:

I note with great interest releases 77-167 and 77-168 from your office announcing that the Monopoly Subcommittee is holding hearings on the federal government's patent policies. I would hope that your subcommittee will air the subject fully and not be limited by the short and selective testimony of the few witnesses announced in release 77-168. Many other viewpoints and facts on this subject are essential for a full understanding by the public of how its interests would best be served in the management of inventions arising during performance of government sponsored research.

From my personal experience in this area I would offer the following for your subcommittee's consideration:

- (a) The overriding consideration in invention management is availability of the invention in the form of products which requires the voluntary investment and support of the commercial sector. No government agency can deliver the benefits of such inventions to the public - only the private enterprise system can do this.
- (b) Our Constitution established our patent system to avoid suppression of technological advances so that they would become available to the public. This patent system provides the basic incentive, property rights, for the operation of the free enterprise system in this area. Failure to establish at least limited ownership in the hands of industry is a renouncement of the value of our patent system as well as the similar systems which every advanced nation in the world maintains.

- (c) Inventions derived from government sponsored research are a minute fraction of inventions being developed daily by industry for public sale. Widespread abuse of patent rights is not in evidence and we have adequate laws to attack such abuse should it develop. Special restrictive controls on government inventions have no positive benefit to the public in any way and instead act to suppress such inventions from reaching the public through the commercial sector.
- (d) A careful study of inventions on which the government holds title and those which the government has refused to secure or allow others to secure patent protection will show a dismal record of any subsequent development and public availability in product form.
- (e) Patent protection for a company is essential to provide the incentives for such a company to take the high risk investment in development, testing and clearance with regulatory agencies of new products. Within the last two years we have licensed several "sure" new inventions to industrial concerns. In one case the company invested (and lost) \$2 million in development work before proving that insurmountable technical problems made a practical product infeasible. In another case a second company lost \$1 million in development work before being forced to abandon the project by the problems of converting concepts to the reality of a product safe for consumer use.
- (f) Rarely does a patent convey any practical sustaining monopoly to its owner but rather simply excites others to improve competitive products, develop new non-infringing products, "get around" these patent rights by cleverness, etc. Such is the vitality of our free enterprise system and the value of our patent system.
- (g) The primary purpose of government sponsored research is expansion of scientific knowledge, not the creation of patent rights, for the government or others. If, in fact, knowledge is expanded and disseminated full value to the public has been achieved in the expenditure of their money. Inventions are generally a by-product bonus to be managed in such a manner that they too benefit the public as available products from industry.
- (h) Experience has shown that universities which produce inventions under government research contracts and grants can be encouraged by liberal agency patent policies to seek patent protection, search for responsible industrial licensees and to manage these patent rights for public benefit. The alternative is disinterest in commercialization, publication in scientific journals and technical reports to the sponsoring agency, but not public availability of the invention in usable (product) form.

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There are many who are better informed than I on this subject such as Mr. Raymond Woodrow of Princeton University and president of the Society of University Patent Administrators; officials of the Licensing Executives Society; officials of the Patent and Trademark Office; and especially executives of high technology industries. I would hope that your subcommittee would give these informed individuals "equal time" in front of the subcommittee.

In summary, the greatest service a government agency can render to the public in the invention management area is to provide the necessary positive incentives, i.e. the essential patent protection, to industry so that the risk investment will, in fact, be taken and new products will, in fact, be delivered to the public under our free enterprise system. If abuses should arise I am confident our Justice Department will pursue them vigorously and successfully.

Respectfully yours,

Edward L. MacCordy
Associate Vice Chancellor
for Research

cc: Senator Thomas Eagleton
Senator John Danforth

bcc: Mr. Norman Latker ✓
Mr. Robert Blackburn

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