National Patent Council
INCORPORATED
2001 Jefferson Davis Highway
Arlington, Virginia 22202

Eric P. Schellin, Executive Vice President

TELEPHONE
703/521-1669

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U R G E N T U R G E N T

Re: HEARINGS ON GOVERNMENT PATENT POLICY

Dear Counsellor:

You are being contacted as you, as the head of a corporate patent department, are in a position of leadership.

As undoubtedly you will know, considerable effort has been expended to establish by statute a uniform Government patent policy as opposed to twenty-two different agency policies. One salutary result has been HR 6249 which affords contractors the opportunity of retaining title to inventions made by the contractor and at the same time secures appropriate rights to the Government and the public to assure the use of such patented inventions.

We have learned that the Senate Select Committee on Small Business intends to conduct oversight hearings on Government patent policy on the 19th through the 21st of this month. From conversations with the staff of the Committee we have come to the conclusion that the hearings will be used as a forum to espouse policies that are antithetical to the type of philosophy found in HR 6249. We have asked for an invitation but have been denied access to the forum with the comment that only Government agencies would be testifying.

We now know that the Justice Department and the Small Business Administration have been asked to testify. Although these agencies have virtually no research and development responsibilities and, therefore, no operational experience to draw upon, to our knowledge no major research and development Government agency has been asked for its views. Even the Department of Commerce, who chairs the Executive Branch's Committee on Government Patent Policy, has been neither contacted nor invited to attend these hearings.

We object to the cloak of secrecy that has fallen around the organization of these hearings, which we must conclude is intended to foreclose participation of those who hold views contrary to the Justice Department.

Unfortunately, these conclusions seem unavoidable in light of the following:

1) It is well known to all who have made but a cursory review of Government patent policy that the Justice Department has maintained an unswerving view since the 1947 Attorney General Report on Government Patent Policy that the Government should retain ownership of all inventions generated, only if in part, by Government funding. This position has been maintained over a period of thirty years, notwithstanding the fact that the report was generated without the aid of any operational data at a time when Government R & D funding was measured in hundreds of millions of dollars compared to present appropriations that exceed 22 billion dollars and over 60 percent of the nations R & D budget.

2) Every major R & D agency of the Executive Branch has abandoned the rigid views of the Justice Department through regulation and/or practice on the basis that such rigid policy encourages an adversary environment between Government, business and the non-profit sector in an era when other industrialized nations have recognized the need for collaboration between these sectors in order to assure transfer and development of technology and effective competwtion in the marketplace. In order to assure an environment appropriate to compete in such a market, the NPC believes that the Government must recognize the innovating organization's need to maintain ownership of its inventive ideas in order to justify and encourage its full participation in introducing new technologies which will displace mature technologies and the status quo.

3) At least one of the individuals seemingly responsible for organizing these hearings seems to have been publicly associated with the Justice Department's views for over fifteen years. In an article published in the FEDERAL Bar Journal, Vol. 25, pp. 24-31, Winter 1965, Issue 1, this individual as author begins by saying:

> "The practice of some Government agencies in giving patents of monopoly to private contractors on the results of publicly financed research and development suggests a similarity to the type of economic system, namely, mercantilism, which existed in England before the establishment of what we call the free, competitive enterprise system".

This article inaccurately equates the leaving of ownership to the innovating organization of their inventive ideas generated in part with Federal funds to that of a grant of monopoly by

sixteenth century British monarchs to sell commodities such as salt and coal to persons with selfish interests. There is no attempt to take into consideration in thie analogy the equities of the innovating organization in either making the invention or developing it at private expense for introduction into the marketplace.

To suggest that "the free private enterprise system" can only exist in the absence of a strong patent system flies in the face of the recorded history of this country and the Constitution.

In conclusion, we believe the hearings as now constituted can serve no useful purpose and request that they be abandoned or reorganized at a later date in order to permit appropriate participation by all parties.

Support this conclusion by writing or telegraphing the following Senators who are members of the Committee:

Gaylord Nelson, Chairman, Wisconsin
Thomas McIntyre, New Hampshire
Sam Nunn, Georgia
William D. Hathaway, Maine
Floyd K. Haskell, Colorado
John C. Culver, Iowa
Lowell Weicker, Connecticut
Dewey S. Bartlett, Ohio
Bob Packwood, Oregon

also William Chirkasky, Executive Director of the Committee.