



PATENT BRANCH, OGO
VETERANS ADMINISTRATION
 OFFICE OF GENERAL COUNSEL
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Dr. Betsy Ancher-Johnson
 Chairman
 Federal Council for Science and Technology
 Committee on Government Patent Policy
 U.S. Department of Commerce Building
 Washington, D.C. 20230

OFFICE OF
 THE ASSISTANT SECRETARY
 FOR SCIENCE & TECHNOLOGY

Re: Omnibus Administration Bill, "National Intellectual Property Policy Act of 1976"

Dear Dr. Ancher-Johnson:

In a memorandum dated July 12, 1976, you requested comments from this office regarding the Omnibus Administration Bill which concerns the allocation of rights to inventions arising from Federally-sponsored research and development, and the protection and licensing of Federally-owned inventions. You asked for comments by July 20, 1976. Our copy of the memorandum was received well beyond the date specified for responding. This office does have several comments about the Bill, and we ask that you give them consideration.

Generally, we find the proposed Bill to be a positive step towards establishing a uniform Federal policy in matters of intellectual property. As you may know, the Veterans Administration Research Program provides extensive funding and support to the research efforts of our employees and contractors throughout the United States. Oftentimes, these research efforts result in the discovery of new art, methods, processes, machines, manufactures, designs, compositions of matter, and new and useful improvements thereof. The great majority of these discoveries are in the field of medicine and medical devices, an area of invention that, by its nature, requires prompt action in determining ownership rights, securing patent or other protection, and bringing the product to the public.

In the past, and presently, this agency has experienced difficulty in assuring that inventions, in which a Government interest has been asserted in accordance with Executive Order 10096, as amended, are effectively made available to the public. The Bill, which would establish a legislative basis to promote the licensing of inventions covered by Federally-owned patent applications, patents or other forms of protection, has the objective of maximizing utilization by the public of such inventions. More extensive licensing will, in our opinion, aid in realizing that objective.

Section 102 of the Bill includes, as a purpose of the Bill, the following:

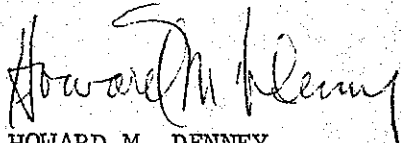
"(c) To allocate rights to Federal employee inventions in an equitable manner;"

Under Executive Order 10096, as amended, and under the provisions of the proposed Bill, we find little problem in equitably allocating rights to an invention as between an employee and this agency. However, it is not unusual to encounter a situation where there has been a co-sponsored effort in the research from which the invention derived. In most instances the co-sponsor is an institution such as a university which would, by virtue of its support in the research, have an interest in the invention that is not recognizable by either Executive Order 10096 or the provisions of the Bill. The Veterans Administration has, in such cases, followed the Executive Order and determined ownership rights exclusive of any equitable interest that may exist in a third party co-sponsor. This has had the effect of creating a certain amount of antagonism towards the agency from the co-sponsors, as well as affecting the extent of research our employees may be able to enter into, in light of the co-sponsors' reluctance to provide support to a research effort where their equitable interest goes unrecognized.

We suggest that the Bill be amended to provide a solution to the problem created when a Federal employee's research is being supported by any entity outside the Government, which creates a third party interest in an invention. Equity would suggest an evaluation of the respective contributions of the parties involved in supporting the research, as well as a determination of the employment status of the inventor. The Federal agency involved could make these evaluations and thereafter determine which party, either the agency or other co-sponsor, would be in a better position to administer the patent. It is our fear that, if such a provision is not included in the Omnibus Administration Bill, employees of the Veterans Administration may become increasingly isolated from the mainstream of research. The close ties that this agency has established through sharing agreements with numerous universities and university medical schools across the Country would also benefit from such a provision.

Your consideration of these comments is appreciated.

Sincerely yours,


HOWARD M. DENNEY
Deputy General Counsel