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Please return to  
Patent Branch, DHEW/GCC  
c/o National Institutes of Health  
Room 5A-03, Westwood Building  
Bethesda, Maryland 20014

SEP 22 1976

Mr. William C. Bartley  
Executive Secretary  
Federal Coordinating Council for Science  
Engineering, and Technology  
Executive Office of the President  
Washington, D. C. 20500

Re: Federal Intellectual Property Policy Act of 1976

Dear Mr. Bartley:

Thank you for your memorandum of September 1, 1976.

Enclosed is the Department's comments on subject bill which take into consideration all the previous comments of others made available to the Department.

We have carefully considered your request for comments on the merits of the proposed utilization of a Board to deal with compulsory licensing versus having the head of each agency determine whether such licensing is appropriate. It is our understanding that the draft bill makes provision for the Board in order to assure that when licensing is deemed appropriate, it will be required under consistent fact situations. Allowing these determinations to be made by agency heads with the right of affected parties to appeal to an ad hoc Board does not appear to be the equivalent of an original Board determination, since it is improbable that agencies will consistently interpret these provisions, and less probable that an ad hoc Board could resolve differences on a timely basis, if at all, since appeals may not necessarily be taken to such Board.

During any period when inconsistent interpretations were outstanding, prospective contractors or contractors dealing with the Government would necessarily have to assume when determining whether to contract or commit capital toward development of an inventive result that the interpretation least favorable to their interest would prevail. Accordingly, a single agency decision could undermine the certainty of ownership nurtured by the bill and the results expected from such certainty.

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It appears that the alternative to the Board is being offered in order to avoid the establishment of an operational office in OSTP. However, it does not appear that the language of the bill precludes establishment of the Board outside OSTP, nor would we necessarily have any objection to the Board being outside OSTP. If the Board were to be established outside OSTP, we would prefer creation of a new Board designed to implement the special purposes of the bill, rather than an existing Board having no previous experience with the subject matter of the bill.

/s/

Lowell T. Harrison, Ph.D.  
Special Assistant to Assistant  
Secretary for Health

Enclosure

bcc: Dr. Betsy Ancker-Johnson  
HEW/OS/GCB NJLatker/ack 9-14-76