

cc. Mr. Norman J. Latker ✓

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Ray E. Snyder

COUNSELLOR AT LAW
518 CAN-DOTA AVE.
MT. PROSPECT, ILLINOIS 60056

312/392-4392

December 30, 1977 PATENT BRANCH, OGC
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The Honorable Gaylord Nelson
United States Senate
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Sir:

I have read with great interest and concern your news release 77-167 dated December 9. I agree with many of your statements, particularly "that the American people are being robbed blind" and that the "the American taxpayers...are forced to pay through the nose ...for the grossly-inflated prices these companies charge for their products...."

I wish to take issue with your identification of the government "giveaway" of patent rights as being culprit. The truth is that the "giant corporations", which are the primary beneficiaries of government research grants and contracts, don't give a damn about patents. These companies are interested in receiving the government money, period.

It is true that the prices they charge are exhorbitatnt, but it is also true that the government frequently is the only buyer. For products such as missiles, high performance aircraft, nuclear ships and submarines, which is where the bulk of the money goes, patents simply do not mean much. In the free market economy, where patents do have a meaning, these companies have by and large been dismal failures.

I submit further that the government's taking title to the inventions is not going to solve these problems and is not going to correct any of the inequities that seemingly exist because of existing government patent policies. I had the pleasure of sitting in and testifying at the hearings on the ERDA patent policy in November 1975. At that time it was repeatedly pointed out that the federal government already owned more than 27,000 patents and that less than 5% were licensed to anyone. Even these figures were misleading because in many cases the only license was a license back to the inventor to use his own invention. It is difficult to concieve of how a still more restrictive government patent policy would improve this situation.

Quite apart from the above, there are some fundamental difficulties relating to the government ownership of patents. The government has tried to insist on the free licensing or granting of only non-exclusive licenses. This is in spite of the Constitutional provision that these rights should be exclusive and should somehow encourage inventors.

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In addition, only the federal government is empowered to grant patents. When it turns around and takes title to patents, this is a little like you or me writing checks to ourselves on our own account, and makes about as much sense.

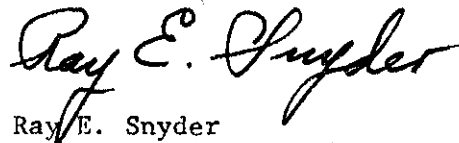
A far more important consideration that arises regarding government sponsored inventions is the fact that most of them have to be developed and marketed before the public will realize any benefit at all. Without some incentive to some firm to undertake these tasks, who is going to make it available to the public? The principles involved are elementary. For example, the FHA insures home mortgage loans. Suppose the FHA were to require that anyone proposing to build a home under a FHA guaranteed loan must agree that any hippie or derelict could move in and live in that dwelling at his choice and without paying anything. Who would undertake to build and maintain a home with those restrictions? The same rationale applies to the development of inventions.

Instead of tightening up existing government patent policies, I believe your committee could be far more productive by concentrating on means to encourage inventions rather than to stifle them. To this end I recommend that you try to eliminate the discrepancies that exist between the patent policies of the various governmental agencies. After all, it is only one government of which we all are a part. Why any one agency should be considered a more trusted keeper of the public conscience than another boggles the mind.

Beyond that, I believe your committee could well consider some means of implementing the intent of the Constitution by offering greater incentives to the inventors and innovators of the country. This is the only way the little guy has a chance. To this end I have an extensive list of recommendations which I should be pleased to proffer if you so desire.

The above statements are offered with due respect and in the spirit of promoting what I sincerely believe to be the best interests of the public.

Very truly yours,



Ray E. Snyder

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