

The University of Wisconsin System



VICE PRESIDENT AND CONTROLLER

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December 19, 1977

The Honorable Gaylord Nelson
United States Senate
221 Senate Office Building
Washington, D.C. 20510

Dear Senator Nelson:

It is our understanding that your Subcommittee on Monopoly and Anti-competitive Activities will be holding hearings on December 19, 20 and 21 on the subject of government patent policy. We have also just received a copy of the press release relative to those hearings, and based upon your remarks to the press, and in looking at the scheduled group of witnesses, we are concerned about the general tenor which may surround those hearings.

The university sector, and of course the University of Wisconsin, receives a substantial amount of federal monies to support various and many research projects and opportunities. Consequently, government patent policy, whether applied piecemeal or uniformly, is of great interest to us. With this in mind, various representatives from the university sector have offered to give testimony at the scheduled hearings but have been repulsed on the basis that such testimony would not be appropriate since the hearings would be confined to government agencies having no direct interest in grants and contracts. We now note, however, that two members of industry are scheduled to testify.

We do not believe that the scheduled hearings will provide a forum where a full and fair understanding of the impact of government patent policy on the rights of individuals and, in general, upon the transfer of technology from the university sector to the commercial market can be generated.

The transfer of technology from the university to the public is a little, or poorly, understood function, and this vital aspect of utilizing to full advantage the expenditure of federal funds has been largely ignored in proposed and passed legislation involving government patent policy. University generated inventions tend to be embryonic in nature and, therefore, require a great deal of development. Many universities, among which is numbered the University of Wisconsin, have been successful in transferring such inventions into use for the benefit of the public by attracting the private capital necessary to the development of the inventions under appropriate patent licensing arrangements. Such arrangements are made within the purview of certain rules and policies which amply protect the interests of the public as well as the government while utilizing to the fullest the incentives which are available under the patent system. The University of Wisconsin has long been recognized as being among the leaders in the success of its efforts to transfer technology for the public benefit and the returns to the State of Wisconsin resulting from such activity, and to the public in general, are incalculable.

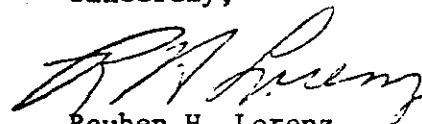
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It is also imperative in this situation that one look at the record in order to evaluate what effect various kinds of government patent policy can have on the transfer of technology. There is little question that successful technology transfer has occurred with much greater frequency where the policy of the federal agency involved has been less restrictive and has recognized the incentives which can be afforded under the U.S. patent system. In other words, the more "title" oriented the agency is toward invention and patents generated under its funding, the less likelihood there is that the technology will be transferred for the public benefit. The low incidence of the transfer of technology to the public sector under the inventions of the thousands of government owned patents speaks strongly against the proposition that the public interest will best be served by making those inventions freely available to all.

Our concern is further heightened by the reference in your news release to the commentary in 1958 by the then Attorney General William Rogers to the effect that the government should engage in whole or in part in demonstrating or proving the commercial value of an invention. That kind of activity is not compatible with the selectivity by the market premise of the free enterprise system and would serve, along with a "title in the government" policy, which you apparently espouse, to trammel the freedom of scientific inquiry.

Inasmuch as there will be no opportunity at the scheduled hearings to give oral testimony on behalf of the university sector, I am enclosing, for the record, a copy of a tutorial paper prepared by Mr. Howard W. Bremer for the National Academy of Sciences relating to some of the issues at stake here. Although the content of the paper was addressed primarily to the development of medical technology, the commentary in the paper is fully as applicable to the development of other types of technology.

Sincerely,



Reuben H. Lorenz
Vice President and Controller

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Enclosure