

RUSH-PRESBYTERIAN-ST. LUKES MEDICAL CENTER

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PATENT BRANCH, OGC
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December 16, 1977

The Honorable Gaylord Nelson
Chairman, Senate Monopoly Subcommittee
of the Senate Select Committee on Small Business
221 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Nelson,

I am writing to object to the concepts implied in the press releases from your office dated December 9th and December 13th, 1977 concerning ownership of patent rights resulting from government sponsored research. In the private not-for-profit sector, as in the private industry sector, the government purchases research because these sectors possess the capability, expertise, and frequently the equipment to carry out the research. The government does not possess this capability, and it would be foolishly extravagant to try to duplicate the expensive private (non-profit and industrial) research resources which now exist; indeed it would probably be impossible to duplicate such resources, at any cost. The ownership of patent rights resulting from such research is essential for the prompt movement of a technical invention to the market place.

In the health care sector most inventions developed involve highly complex technology or complicated medicinal materials. Following the reduction to practice of such inventions, millions of dollars of additional development are frequently required before a marketable product can be made available. These expenditures are necessary for further testing and manufacturing development. In those cases where a device or chemical is to be used in human treatment, the expense may be as high as ten million dollars to complete all necessary development and testing procedures. If, as suggested by the then-Atty. Gen. Rogers in 1958, the government were to undertake these expenses in order to preserve a non-exclusive license situation, there would be a significant negative effect on the amount of money for research itself. Such an undertaking would not only lead to this reduction in research money, but would place the government in an adversary position of competing with private enterprise.

It is important to bear in mind that the U.S. Government is construed as an instrument of, and a representative for, the people, not as an adversary to the people. The group known as the people is dependent upon all the elements which make up the group for continued healthy survival.

The institutional patent agreement which organizations such as this one

December 16, 1977

have with the Department of Health, Education and Welfare allows for prompt development of a marketable product in the best interests of the public. The royalties from such inventions under this agreement go, in small part, to the inventor, and, in large part, to the institution for further investment in research and education. The capability of granting an exclusive license under the institutional patent agreement makes possible the prompt development of marketable products which is essential for the royalties which make possible further research.

In summary, this institution would like to voice support for the present patents policy as carried out by the Department of Health, Education and Welfare and to emphasize the adverse consequences which the suggested changes in the federal patents policy would lead to.

Sincerely,

W. Randolph Tucker

W. Randolph Tucker, M.D.
Director
Research Administration

WRT/deh

cc: Senator Floyd Haskell
Senator Lowell Weicker
Senator Charles Percy

bcc: James A. Campbell, M.D.
Mr. Donald R. Oder
William H. Roach, Esq.
Mr. Norman J. Latker (DHEW) ✓