

n U.S. Government Patent Policy

PRESENTATION BEFORE THE SOCIETY OF UNIVERSITY PATENT ADMINISTRATORS,
THIRD ANNUAL MEETING, MONDAY, FEBRUARY 6, 1978, ATLANTA, GEORGIA.

By **NORMAN J. LATKER**

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RUSSELL LONG
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United States Senate
WASHINGTON, D. C. 20510

January 13, 1978

The Honorable Jimmy Carter
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D. C. 20500

Dear Mr. President:

The Department of Commerce has recently been circulating a study that advocates giving contractors monopoly rights to inventions developed at public expense. Draft legislation to this effect has also been introduced in the House.

Recently, I testified before the Monopoly Subcommittee of the Senate Small Business Committee regarding title to publicly-funded inventions that should be retained by the Government for the unrestricted use of any U.S. citizen. I pointed out that new products and processes are the key to maintaining a healthy and viable economy; that the Government finances the bulk of research and development in this country; that the inventions developed under Government contracts must be freely available to any U.S. citizen; that giving away Government patents or exclusive rights result in the recipients receiving a 17-year monopoly; that the arguments advanced by those in favor of giving away Government patents or exclusive rights are unjustifiable and wrong; and that contractors should not enjoy monopoly benefits at the public's expense.

Congress has taken the position that the Government should, except in unusual circumstances, retain the rights to inventions developed under Government contracts. However, many Government agencies have turned this policy around by making the exception the rule and routinely giving patent title or exclusive rights to their contractors. The Department of Energy has issued patent regulations which encourages the give-away of Government Non-Nuclear Energy Act require the Government to take title to publicly-funded inventions. The Department of Defense has been giving away Government patent rights for years.

Presidential patent policy statements issued by previous Administrations have been vague and contain large loopholes which have aided this give-away practice. While ostensibly advocating Government ownership of patent rights to publicly-funded inventions, the Patent Policy Statement issued by former President Nixon in 1971 actually allows most Government contractors to take title to publicly-funded inventions. The Nixon policy statement is still in effect today.

I understand that the Executive Branch is developing a formal position on the so-called Thornton Bill now pending in the House. This is the bill that would establish a give-away Government patent policy as a matter of law.

My considered opinion is that such legislation will not be well-received in Congress. The average man on the street can readily see the folly in the Government paying for the development of new technology and then giving a corporation monopoly rights to its use for 17-years.

The area of government patents has been long abused. It is an area where this Administration can and should exercise leadership. In this regard, I recommend that you supersede the Nixon Patent Policy Statement with your own Presidential Patent Policy requiring all agencies in the Executive Branch to protect, for all U.S. citizens, the right to unrestricted use of publicly-financed inventions. The executive order should provide that exemptions to this policy should be reserved for rare use in truly exceptional cases and then only after formal review and approval of the Attorney General to ensure that the exemption will not adversely affect competition.

With warm regards, I am

Sincerely yours,

(Original signed by
U. S. Senator Russell Long)

which themselves benefits beyond the tract price."

Further, Mr. Shenefield "A major rationale policy is allegedly commercialization inventions. We do not factual basis exists In fact, we do believe able evidence is to (Emphasis added.)

It is doubtful that the member of this Society erated in the area of Co tent policy who would Mr. Shenefield's statem generally accurate. In you with the greatest perience would deem a direct conflict with fact of your very existence portant - how can it argued that Mr. She losophy will lead to partnership with the leading to economic e elimination of needless tions and paperwork the President. The an would seem obvious mentation contradict espoused. In addition field's position, there is dication emerging at elements of the Depart the Shenefield positio situations involving waiver requests, thus personal concern in de direction of policies in Nelson News Release

My office had made all the members of tr December 9, 1977 pr Senator Nelson anno tent to conduct hearin ment patent policy on 21, 1977. The release a list indicated that the result only in a co porting Government o ventions generated wa (and of course they d wonder then why the necessary if a conclus ings had already been

It is clear both fr and the testimony Nelson was well awa gress that was being policies nurtured and this Society and, in p adoption in the form (the Thornton Bill) from the release and that it was the intent ings to undermine th can be said that an known by its enemies.

(Continued on)

pic for presentation has been particular seems clear when burning policy pro-manating from dif-s in Washington.

note the following in the State of the and Assistant At-Shenefield in his re-before the Nelson Government Patent

of the Union Address indicated:

rely on the private d the economic ex-to create new jobs for or force."

realize that there is a role and function of Government can-poverty, reduce in-our cities, cure il-vide energy, or man-Only a true part-teen Government and in hope to reach these e who govern can inspire, and we can is and marshall re- we cannot be the everything and every-

ed that: ness, not the Govern-lead an effort toward ansion."

that this would be ac-ough at least:

ditional incentives for estment through ad-in corporate tax rates ements in the invest-dit."

it funded patents not

to the comments from e Union Address, the indicated himself on s a foe of needless ss and paperwork.

testimony

er from his presenta-tor Nelson how Mr. ould implement these

he would, as a general, ownership of all in-nted with Government pport of this policy he he is;

of any convincing at exclusive rights in t-financed inventions granted to contractors nduce them to accept R&D contracts,