STATEMENT OF
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GOVERNMENT PATENT POLICY

The basic presumption in most laws concerning Government patents is that the Government retains title to patents developed at public expense. But, today, many Government agencies routinely grant contractors exclusive rights to these patents. I do not believe this practice is in the public interest. It promotes greater concentration of economic power in the hands of large corporations; it impedes the development and dissemination of technology; it is costly to the taxpayer; and it hurts small business. In my view, the rights to inventions developed at public expense should be vested in the Government and made available for use by any U.S. citizen.

Under our patent laws, the holder of a patent enjoys a 17-year monopoly. If the invention is worthwhile, he is in a position to make exorbitant profits.

While there are flaws in our patent system, I can see why the Government grants patent protection to private interests who invest their own time and money in making inventions. But the patent situation today is quite different. The development of patents generally involves large organizations and corporations.

Over the years I have frequently wondered whether, in this modern industrial age, patents are as important to industrial organizations as would appear from the statements made by the patent lawyers. It is probable that they are overemphasizing the present-day value of patents.

I believe that today the important factor for an industrial organization is the know-how developed by it. In many areas, the Government is in the forefront of technological development. As a result, it is actually the public that is financing development of entire new technologies. It is wrong, in my opinion, for the Government to grant a contractor exclusive rights for 17 years to inventions developed with public funds.

There are those, notably Government contractors, and patent lawyers in and out of Government, who have argued the opposite -- that the Government should grant to contractors exclusive rights to publicly financed inventions. From what I have seen, the patent lobby consists primarily of a body of shrewd, so-called experts who have been needlessly confusing the simple principles on which the patent law rests. They have been successful to the point that today many Government agencies are giving away Government patent rights.

The ERDA regulations are a good example of how the obvious intent of a Federal law can be stood on its head by a Government agency.

Under the Atomic Energy Act and the Non-Nuclear Energy Act, the Department of Energy has authority to waive the Government's patent rights. The Government patent lawyers have prepared a regulation which actually invites contractors to request waivers, and urges the agency to approve them.

With these new regulations the number of waiver requests in the energy field has increased dramatically. No doubt the number will continue to grow geometrically as the patent lobby pushes this policy.

To the extent a Government agency is not bound to the contrary by the provisions of a statute, it is supposed to be guided by the Presidential patent policy memorandum issued by President Nixon in 1971. Like most attempts to reconcile irreconcilable positions, it has failed. The wording is so broad and so vague that agencies can construe what they wish from the memorandum.

The patent lobby would have us believe that if companies are not guaranteed exclusive patent rights, they will not accept Government contracts. Very few firms would, in my opinion and from my experience, reject Government business if they were not given patent rights.

These rights are not all that important to most firms. The Atomic Energy Commission operated successfully for more than 25 years under a policy whereby the Government retained title to inventions developed under AEC contracts. That agency had little trouble finding contractors and did an excellent job of developing technology. Likewise, I have no trouble finding contractors even though they know they will not receive patent rights on my Nuclear Propulsion Program contracts.

From what I have seen, most of the people who actually run the companies are interested primarily in profits and in the technology, experience, and know-how that comes from performing the contracts.

While companies contend that they should have the right to the inventions they made at Government expense, they apply an exactly opposite principle in dealing with their own employees and subcontractors. Toward their employees and subcontractors, the companies' practice is that the one who pays for an invention should own it. But in dealing with the Government, they contend that the one who actually made the invention should own it, not the one who paid for it. It is also an example of the double-talk

which has caused the public to hold business in such low esteem.

It is nonsense to think that our technological growth will suffer unless contractors get exclusive rights to patents generated under Government contracts. From what I have seen over many years, the vast majority of patents both in and out of the nuclear industry are of little or no significance.

Obviously, there are patents that do represent useful ideas. However, even without a patent, many of these inventions would be discovered and adopted in the marketplace based on their merits. In such cases, the patent system has actually become a process for determining which of many firms first conceived an idea, and is therefore entitled to the royalty.

There may be a few inventions arising under Government contracts which, in the absence of exclusive patent rights given to the contractor, might not be disseminated and used.

Companies now want to have their marketing development costs guaranteed by having a patent monopoly on Government-financed inventions. Since the public has paid for the development of the invention, the risks of marketing it should be no different in principle from other risks that are inherent in a true free enterprise system. We would be going still further in abandoning our so-called free competitive enterprise system if we guaranteed legal monopolies for what are essentially normal business risks.

The concept of "march-in" rights sounds good in principle. But, the patent lawyers well know that this is a cosmetic safeguard; it offers no real protection for the public. To administer such a program would require a large Government bureaucracy to receive, review, audit, and act upon contractor reports throughout the life of each patent.

In the real world, no one in Government would ever undertake this task; nor should they.

Although Presidential patent policies since 1963 have required the Government to retain "march-in" rights where the principal or exclusive rights to a patent remain with the contractor, the Federal Council on Science and Technology reports that, as of December 1975, the Government has never exercised these rights.

The patent lawyers have observed that the number of patented inventions resulting from Federal funding is very small compared with the number generated by industry with their own funds.

The lower number of inventions reported under Government contracts does not show a stifling of inventions under Government

contracts.

The lower number of Government-owned patents results from other factors, such as failure of contractors to report the inventions they develop under Government contracts; the patent rights giveaway policy followed by various Government agencies; and the Government's "Independent Research and Development" program.

The relatively small number of Government patents stems from the very fact that the Government has been giving them away; they have been patented by the contractors.

Another reason for the small number of Government patents is that contractors automatically get title to patents developed under the Government's so-called "Independent Research and Development" (IR&D) programs--even though all or nearly all of these costs are paid for by the Government.

Small business, for its own advantage, should be against a giveaway patent policy.