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UNITED STATES DEPARTMENT OF COMMERCE  
STATEMENT OF  
DR. JORDAN J. BARUCH  
ASSISTANT SECRETARY OF COMMERCE  
FOR SCIENCE AND TECHNOLOGY  
BEFORE THE SUBCOMMITTEE ON MONOPOLY AND  
ANTICOMPETITIVE ACTIVITIES OF THE  
COMMITTEE ON SMALL BUSINESS, UNITED STATES SENATE  
ON  
INSTITUTIONAL PATENT AGREEMENTS  
JUNE 26, 1978

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, THANK YOU FOR INVITING ME TO PARTICIPATE IN YOUR HEARINGS ON THE HISTORY, LEGAL BASIS, AND IMPLICATIONS OF INSTITUTIONAL PATENT AGREEMENTS (IPAs) AS AN IMPLEMENT OF GOVERNMENT PATENT POLICY.

IN PRESENTING MY TESTIMONY, I WILL BE SPEAKING IN MY ROLE AS CHAIRMAN OF THE INTERAGENCY COMMITTEE ON INTELLECTUAL PROPERTY AND INFORMATION OF THE FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY. THE COMMITTEE, CIPI, IS SUCCESSOR TO THE COMMITTEE ON GOVERNMENT PATENT POLICY OF THE FORMER FEDERAL COUNCIL FOR SCIENCE AND TECHNOLOGY. CIPI'S SIXTEEN MEMBER AGENCIES INCLUDE AMONG OTHERS, THE DEPARTMENTS OF DEFENSE; JUSTICE; COMMERCE; AND HEALTH, EDUCATION, AND WELFARE; AND THE NATIONAL SCIENCE FOUNDATION.

IN MY VIEW, DISCUSSION OF FEDERAL POLICY FOR IPAs IS ONLY ONE SMALL PART OF OUR CONSIDERATION OF THE ENTIRE QUESTION OF THE ALLOCATION OF RIGHTS IN PATENTABLE INVENTIONS RESULTING FROM FEDERALLY-SUPPORTED RESEARCH AND DEVELOPMENT WORK DONE BY NON-GOVERNMENTAL PERSONS. THERE IS NO DOUBT THAT THE CONGRESS MAY MAKE PROVISIONS FOR WHATEVER ALLOCATION IT WANTS, INCLUDING GIVING TITLE TO THE CONTRACTOR OR TAKING TITLE FOR THE GOVERNMENT. THE POLICY QUESTION IS, WHAT SHOULD WE WANT TO ACCOMPLISH THROUGH FEDERAL PATENT POLICY?

MY OWN BELIEF, BROADLY SHARED, I THINK, BY CIPI MEMBERS, IS THAT FEDERAL PATENT POLICY SHOULD STRIVE TO:

1. OBTAIN THE BEST CONTRACTOR EFFORT FOR THE GOVERNMENT;
2. ENCOURAGE TECHNOLOGICAL INNOVATION;
3. PROMOTE COMPETITION AND ECONOMIC EFFICIENCY WITHIN THE PRIVATE SECTOR;
4. RECOGNIZE THE PUBLIC'S EQUITY IN THE PRODUCTS OF FEDERALLY-SUPPORTED RESEARCH AND DEVELOPMENT; AND
5. STRENGTHEN THE RESEARCH BASE OF THE NATION.

IN ADDITION, I BELIEVE THAT FEDERAL PATENT POLICY SHOULD:

6. BE UNIFORM IN THE SENSE THAT LIKE CASES SHOULD BE TREATED ALIKE NO MATTER WHICH GOVERNMENT AGENCY PROVIDES THE SUPPORT;
7. BE FLEXIBLE IN THE SENSE THAT DIFFERING CASES SHOULD BE TREATED APPROPRIATELY, THAT IS, NOT NECESSARILY ALIKE; AND
8. BE AS CLEAR AND AS SIMPLE AS POSSIBLE BOTH IN DESCRIPTION AND ADMINISTRATION.

AS CIPI'S CHAIRMAN, IT HAS BEEN MY VIEW THAT WE NEED A NEW LOOK AT THE PERFORMANCE OF CURRENT FEDERAL PATENT POLICIES WITH REGARD TO THESE GOALS AND CHARACTERISTICS. RECOGNIZING THEIR GENERAL NATURE AND THE FACT THAT DIFFERENT PEOPLE CAN AND DO ASSIGN DIFFERENT WEIGHTS TO PARTICULAR ELEMENTS, I HAVE FELT IT IMPORTANT TO TRY TO ARRIVE AT A CLEARER AGREEMENT WITHIN THE EXECUTIVE BRANCH WITH REGARD TO FEDERAL PATENT POLICY. I AM PLEASED TO BE ABLE TO REPORT THAT THIS VIEW IS SHARED BY OTHER CIPI MEMBERS. I WOULD LIKE TO NOTE, IN PARTICULAR, THE CREATIVE INTEREST ASSISTANT ATTORNEY GENERAL JOHN SHENEFIELD, OF THE ANTITRUST DIVISION, IS TAKING

IN THIS PROJECT. OUR GOAL IS TO RECOMMEND TO THE PRESIDENT A SET OF OPTIONS WITH ENOUGH DETAIL SO THAT HIS CHOICES CAN BE WELDED TOGETHER INTO A COHERENT POLICY WITH A CLEAR DELINEATION OF WHO BENEFITS AND WHO BEARS THE COSTS. OUR AIM IS TO ACHIEVE A BALANCE BETWEEN TECHNOLOGICAL INNOVATION AND EQUITY.

ONE CANNOT OVEREMPHASIZE THE IMPORTANCE OF EQUITY, AND PARTICULARLY THE IMPORTANCE OF ECONOMIC EFFICIENCY AND ITS HEAVY DEPENDENCE UPON COMPETITION. I WOULD SUGGEST ONLY THAT WHAT WE MEAN BY EQUITY IN THE CONTEXT OF PATENT POLICY IS A VERY COMPLEX QUESTION. MANY CONSIDERATIONS APPLY. THEY ARE DIFFERENT FOR SMALL AND LARGE COMPANIES, FOR EXAMPLE, IN TERMS OF THE INCENTIVES NEEDED AND THE CONSEQUENCES FOR COMPETITION AND ECONOMIC CONCENTRATION. THEY ARE DIFFERENT FOR UNIVERSITIES, WHICH MAY NEED SPECIAL INCENTIVES TO ENCOURAGE PARTICIPATION IN THE TECHNOLOGY TRANSFER PROCESS.

I MIGHT ADD THAT VERY DIFFERENT CONSIDERATIONS WILL MAY BE APPLICABLE TO RESEARCH AND DEVELOPMENT PROGRAMS FOR THE NATIONAL DEFENSE, FOR HEALTH RESEARCH, FOR BASIC SCIENCE, AND FOR GENERAL INDUSTRIAL INNOVATION.

A FEW WORDS ALSO SHOULD BE SAID ABOUT THE GENERAL QUESTION OF INDUSTRIAL INNOVATION. INNOVATION, THE DEVELOPMENT AND USE OF NEW INVENTIONS, IS A PRIMARY MEANS FOR ACHIEVING NONINFLATIONARY ECONOMIC GROWTH, JOB CREATION, AND A STRONGER INTERNATIONAL POSITION FOR AMERICA AND FOR AMERICAN INDUSTRY. TECHNOLOGICAL INNOVATION ALSO PROMOTES COMPETITION WITHIN THE PRIVATE SECTOR OF THE ECONOMY.

INDEED THE PRESIDENT HAS COMMISSIONED AN INTERAGENCY STUDY, CHAIRED BY THE SECRETARY OF COMMERCE, TO EXAMINE THE RELATIONSHIP BETWEEN GOVERNMENT POLICIES AND THIS LARGER ISSUE OF INDUSTRIAL INNOVATION.

THERE ARE MANY WAYS IN WHICH WE CAN ALLOCATE RIGHTS IN PATENTABLE INVENTIONS WHICH RESULT FROM FEDERALLY-SUPPORTED RESEARCH AND DEVELOPMENT WORK. TITLE CAN BE GIVEN TO THE CONTRACTOR. THE CONTRACTOR CAN BE GIVEN AN EXCLUSIVE OR A NONEXCLUSIVE LICENSE TO PRACTICE THE INVENTION. THE GOVERNMENT CAN TAKE TITLE ITSELF OR SIMPLY PUT THE INVENTION IN THE PUBLIC DOMAIN. IN THE CASE OF UNIVERSITIES, IPAs CAN BE ESTABLISHED WITH ALL OR RESTRICTED TO THOSE POSSESSING A SUITABLE TECHNOLOGY TRANSFER CAPABILITY.

AS YOU CAN SEE, THE IPA IS ONLY ONE SMALL ELEMENT IN FEDERAL PATENT POLICY CONSIDERATIONS. MY UNDERSTANDING IS THAT THE DISPOSITION OF THE STAYED IPA FEDERAL PROCUREMENT REGULATION WILL BE ADDRESSED BY THE ADMINISTRATOR OF THE OFFICE OF FEDERAL PROCUREMENT POLICY.

OUR PRESENT TASK IS TO ADDRESS THE QUESTIONS WHICH NEED TO BE EXPLORED TO TRY TO ARRIVE AT RECOMMENDATIONS FOR THE PRESIDENT. DEFENSE, JUSTICE, COMMERCE, AND THE OTHER CIPI MEMBERS NEED TO ASK, AND ARE ASKING:

- O HOW DOES FEDERAL PATENT POLICY AFFECT COMPETITION AND ECONOMIC CONCENTRATION WITHIN THE PRIVATE SECTOR?
- O HOW CAN FEDERAL PATENT POLICY BETTER PROMOTE TECHNOLOGICAL INNOVATION?
- O WHAT ADMINISTRATIVE AND BUREAUCRATIC BURDENS WOULD DIFFERING FEDERAL PATENT POLICIES PLACE ON THE GOVERNMENT AND ON INDUSTRY?
- O WHAT ARE THE GOALS AND CHARACTERISTICS GENERALLY OF A DESIRABLE FEDERAL PATENT POLICY AND HOW CAN THEY BEST BE ACHIEVED?

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED TESTIMONY. I  
WOULD BE HAPPY TO ANSWER ANY QUESTIONS THAT YOU AND THE  
SUBCOMMITTEE MEMBERS MAY HAVE AT THIS TIME.