Attachment 1

Association of American Universities

April 4, 1978

Office of Federal Relations

PATENT POLICY

Testimony for the Senate Select Committee on Small Business

This is to report on meetings held March 28 with Messrs. Edward Gleiman and Robert Gellman (Staff of the House Committee on Government Operations) and with Mr. Gerald D. Sturges (staff of the Senate Select Committee on Small Business) on March 29. Jerold Roschwalb represented NASULGC at the March 28th meeting; Newton Cattell for the AAU at both.

On February 2, the General Services Administration published regulations authorizing the use of Institutional Patent Agreements (IPA's) in all agencies of government that do not have statutes prohibiting their use. On March 24, OMB granted Senator Nelson a 120-day stay in the effective date of the regulation, so that his Subcommittee on Monopoly and Anti-Competitive Activities may hold hearings on the "history, legal basis and implications of the Institutional Patent Agreement as an implement of the Government patent policy." (The Committee is authorized to make recommendations to the Senate -- it may not report legislation.) Senator Nelson would like to conduct hearings as soon as possible, but predicts that May would be the earliest possible time.

The issue of the hearings is the IPA. It is clear that the issue is not the same as that of the earlier hearings in December. Those hearings dealt with the basic question of patent rights in federally funded research. The premise of the IPA and therefore, the premise of the May hearings, is that patent issues are different for non-profit institutions than they are for private industry.

Mr. Nelson, according to staff, does not intend to conduct adversarial hearings - "If IPA's can be justified, he will support them." The Senator will hear both sides of the question by obtaining testimony from federal agency representatives (and consumer advocates) who disagree with the university position.

Mr. Sturges raised questions that should be considered in preparation for the Senate hearings:

1) Since drugs are both patentable and profitable, is it not possible that universities are reaping unusual profits from

pharmaceutical research?

2) What do universities do with royalties they receive from patents?

3) Do patent marketing companies retained by universities make an unusual profit at the expense of the taxpayers?

4) How are principal investigators (discoverers) treated by their institutions? (The Committee staff has heard from faculty who believe they are treated unfairly.)

5) What is the relationship between the following: the IPA, tenure, peer review and the fortunes of the young investigator? (If this question and the remaining questions have significance - and they may not - it is that the hearings may open up all of the issues of federal research support, not just IPA's.)

6) Is federal support of academic research really in the best interest of the country?

7) What is the relationship between university patent rights and the misuse of grant and contract funds on university campuses? (Mr. Sturges will stay in touch with Representative Fountain on this issue. Mr. Fountain has proposed hearings for his House Subcommittee on Intergovernmental Relations that will deal with NIH contracting practices.)

8) Do certain principal investigators who form private research companies reap profits at the expense of the tax-payer?

Finally, Mr. Sturges said that Mr. Nelson wished to review the on-going debate that centers on intellectual property rights as those rights may or may not be jeopardized by the Freedom of Information Act and other federal Sunshine laws. Mr. Sturges, like Messrs. Gleiman and Gellman of Representative Preyer's staff, believes that the merits of disclosure of research proposals outweigh the merits of privacy, even if patent rights may be jeopardized. In approaching the hearings, it is clear that the burden of proof is on non-disclosure. In this context, Mr. Sturges raised a final question: on May 11, 1977 just prior to the

effective date of the Federal Advisory Committee Act, a new phrase appeared as part of the standard terminology for closing peer review meetings to the public. The phrase "patentable material" is, according to Sturges, "policy by regulatory creep." Sturges wants to investigate circumstances surrounding the coincidental inclusion of that phrase.

Newton O. Cattell

NOC/ak