NEWS & COMMENT

BNA's
PATENT, TRADEMARK & COPYRIGHT JOURNAL

NEW BILLS WOULD GIVE GREATER PATENT RIGHTS TO BIG BUSINESS

Legislation introduced in both houses of Congress last week would permit big business to obtain patent rights in inventions arising from federal research and development contracts. The bills are designed to give big business the same rights recently accorded to small businesses, universities, and nonprofit organizations (see P.L. 96-517, 509 PTCJ A-1, 506 PTCJ E-1).

Background

The two bills introduced on September 23rd are S.1657, sponsored by Senator Harrison H. Schmitt (R-N.Mex.), and its somewhat different counterpart, H.R. 4564, sponsored by Representative Allen E. Ertel (D-Pa.). (Ed. Note: The Schmitt bill is a revision of S.1215, 431 PTCJ A-4, D-1.)

Despite the efforts of Schmitt and Ertel, big business was passed over when Congress granted patent rights to small businesses and universities late last year. See 509 PTCJ A-1, 477 PTCJ A-1, 466 PTCJ A-9. However, both men have refused to abandon their efforts to establish a truly "uniform" federal patent policy that does not discriminate against big business.

Provisions

The bills provide that title to inventions arising from federal research and development contracts would generally vest in the contractor--regardless of the contractor's size. The Government would retain a royalty-free license, however, and would also have "march-in" rights allowing it to exploit the invention if the contractor failed to do so within a reasonable period of time.

The Senate Commerce Committee and the House Science and Technology Committee were conducting a joint hearing on the bills as PTCJ went to press on September 30th.

The text of S.1657, along with introductory remarks and a section-by-section analysis (as published in the Congressional Record, 9/23/81, p. S 10346), appears at page D-1. No printed copies of H.R. 4564 were available at press time.

PTCJ COMMENT: The chief difference between the two bills is that Ertels' bill (H.R. 4564) also contains a recoupment provision(§307) that allows the Government to recover its cost from a contractor if profits from an invention reach a certain level. A similar provision was rejected when Congress granted greater patent rights to small businesses. See 509 PTCJ A-1, 477 PTCJ A-1, D-1, 417 PTCJ A-3, E-1. The present version of this provision, however, provides ample waiver authority when recoupment is unfair or impractical. Section 307 of H.R. 4564 reads as follows:

[Text]CONTRACTOR'S PAYMENTS TO THE GOVERNMENT

SEC. 307. (a) The Administrator of the General Services Administration and the Secretary of Defense shall issue regulations which will provide payment to the Government for Federal funding of research and development activities through the sharing of royalties or revenues or both with the contractor. Such regulations shall provide, to the extent appropriate, a standard contractual clause to be included in all Federal research and development contracts.

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(b) Such regulations may allow the agency to waive all or part of the payment set forth in subsection (a) above at the time of contracting or at the request of the contractor where the agency determines that--

(1) the probable administrative costs are likely to be greater than the expected amount of payment; or

(2) the Federal Government's contribution to the technology as licensed or utilized is insubstantial compared with private investment made or to be made in the technology; or

(3) the contractor is a small business, educational institution, or nonprofit organization; or

(4) the total Government funding of the technology with the contractor is less than $500,000; or

(5) the payment would place the contractor at a competitive disadvantage or would stifle commercial utilization of the technology; or

(6) it is otherwise in the best interests of the Government and the general public.

(c) Such regulations shall be promulgated within twelve months of enactment of this section, but will not take effect for a period of sixty days subject to disapproval by either House of Congress. Such disapproval resolution shall be considered a preferential resolution and may be brought up without committee approval.

(d) Until such regulations become effective, each agency shall obtain payment on behalf of the Federal Government for its research and development activities on a contract-by-contract basis in a manner consistent with the provisions of subsection (b) above. [End Text]

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REGISTER OF COPYRIGHTS DISCUSSES THREAT POSED BY NEW TECHNOLOGIES

Register of Copyrights David Ladd thinks copyright owners have good cause to be alarmed about the erosion of their rights by new technologies. In fact, he believes that the threat posed by home-videotaping is particularly severe.

In an address delivered September 23rd at a meeting of the International Copyright Society in Toronto, Canada, Ladd stressed that copyright law must keep pace with rapid technological changes. What is needed, he said, is "ingenuity in fashioning adaptations for copyright as ingenious as the innovations in technology itself."

Problems arising from the relationship between copyright and technology are "not new," Ladd noted. "Copyright originated in technological change [e.g., the printing press,] and at each stage in the history of copyright law, technological innovation has been a central problem to policy makers." Now, as in the past, "optimism over the prospects of new markets * * * and new sources of consumer satisfaction is tempered by anxiety over the dangers of irretrievable loss of control over copyright works because of that very technology."

As the "rate of technological change has accelerated, * * * the strains on copyright have intensified," said Ladd. Moreover, we are now facing "a new problem different in kind: how to control uses of copyrighted works which are not readily detectable, and therefore not readily policeable." In the area of home videotaping, he feels "we must decide whether we can devise and use the equivalent of the theater-era box office to collect payments for use, or whether we must throw up our hands and accept all home copying as lawless but uncontrollable, or lawful because it is uncontrollable."

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TEXT

INTRODUCTORY REMARKS AND TEXT OF S. 1657

By Mr. SCHMITT (for himself, Mr. CANNON, Mr. GORTON, Mrs. KASSEBAUM, Mr. LUGAR, and Mr. SYMMS):

S. 1657. A bill entitled the "Uniform Science and Technology Research and Development Utilization Act"; to the Committee on Commerce, Science, and Transportation.

UNIFORM SCIENCE AND TECHNOLOGY RESEARCH AND DEVELOPMENT UTILIZATION ACT

● Mr. SCHMITT. Mr. President, today I am introducing for myself and Senators CANNON, GORTON, KASSEBAUM, LUGAR, and SYMMS, the Uniform Science and Technology Research and Development Utilization Act. The purpose of this legislation is to maximize the return to the public from our national investment in research and technology development by establishing a uniform Federal policy for the management and utilization of inventions developed under Federal contracts.

This bill is a revised version of S. 1215, a bill which I introduced prior to the conclusion of the 96th Congress. The bill has been reviewed by leaders in industry, business, academia, and Government. The responses have been very helpful and supportive. The revised bill which is being introduced today reflects the many thoughtful views and suggestions of those who responded to my request for comments.

Mr. President, recent economic indicators suggest that the United States is experiencing an alarming decline in the rate of technological innovation and economic growth. Symptoms of this decline are reflected in the diminishing growth in productivity, the increasing penetration of domestic markets by our foreign competitors, and the shrinking percentage of world patents being granted to Americans. We are becoming more aware that the scientific and technological advantages which we enjoyed relatively unchallenged for much of this century can no longer be taken for granted.

My Subcommittee on Science, Technology, and Space has had a longstanding interest in technological innovation and Federal policies which adversely impact upon it. For the past 3 years the subcommittee has conducted extensive oversight hearings examining the direction of Federal R. & D. and the Federal Government's role in promoting the development, application, and diffusion of new technologies. The problems are varied and complex, but include overburdensome regulations, counterproductive tax policies, and inadequate funding of basic research. Nevertheless, there are steps which the Federal Government can and should take to reverse the downward trend of the development of new products and processes.

The influence of the Federal Government on the innovation process is extensive. For example, the Federal Government currently supports some $35 billion of research and development through grants and contracts, about half the total national investment in R. & D. This enormous investment has lead directly to such spectacular achievements as the landing of American explorers on the Moon and the new era of utilization of the extraterrestrial environment which was heralded by the successful launch of the Space Shuttle.

Less immediately apparent have been discoveries in electronics which have revolutionized our lives or that of recombinent DNA, the source of new breakthroughs in the treatment of disease and the development of food sources as examples.

The value of much of this research and development is lost unless the discoveries and inventions which result can be commercialized. This result, in turn, can best be achieved if those who perform the R. & D. have the opportunity and the incentive to effect that commercialization.

The present administration is emphasizing incentives for those willing to take the risks of innovation and commercialization, while reducing direct Government participation. As examples, this approach appears in the form of tax credits for investment in R. & D. and reduction in regulatory burdens. A related incentive lies in patent rights to inventions which result from federally funded R. & D.

Unfortunately the policies of Federal agencies vary widely regarding assignment of rights to performers of federally funded R. & D. The Government's policy generally has been to retain title and rights to these inventions. As a result, the Government presently holds title to some 28,000 inventions, of which only about 5 percent have been commercialized.

We think that a better payoff from our national investment in R. & D. is possible and that reform of Federal patent policies is an important ingredient.

On such step was taken in the last Congress with passage of Public Law 96-517, the University of Small Business Patent Procedures Act. That act provides for uniform assignment to universities, small businesses, and nonprofit organizations of title to inventions developed under Federal research and development grants and contracts.

Regulations have been developed by the Office of Federal Procurement Policy and are now out for comment.

However, the majority of Federal funding for research and development goes to larger businesses, which are not covered by Public Law 96-517. We believe that the rights to the title for inventions should be extended to all contractors, regardless of size.

Our draft bill provides for the necessary uniform procedures and assigns responsibility for implementation to the Secretary of Commerce. Specific situations in which the Government would retain title are narrowly drawn to protect the public interest. where necessary. Otherwise the title would be assumed by the contractor. The Government also retains certain "march-in" rights, which can be exercised in the event that the contractor fails to take reasonable and timely steps to develop the invention.

The bill thus provides not only for proprietary rights, but also clear obligations for the recipient.

Mr. President, I ask unanimous consent that the text of my bill, together with a section-by-section analysis, be printed in the RECORD.

There being no objection, the bill and analysis were ordered to be printed in the RECORD, as follows:

S. 1657

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—POLICY

FINDINGS

SEC. 101. The Congress, recognizing the profound impact of science, engineering, and technology policy on the economic, social, political, and technological well-being, and the health and safety of the Nation as a whole, hereby finds and declares that:

(1) The United States has recently experienced a decline in the process of industrial innovation and productivity which is integrally related to, and adversely impacts upon, domestic productivity, the rate of economic growth, the level of employment, the balance of trade, and the attainment of other national goals.

(2) The national support of scientific and technological research and development is indispensable to sustained growth and economic stability, and it is in the national interest to maximize the benefits to the general public from such investment.

(3) Scientific and technological developments and discoveries resulting from work performed with Government contracts constitute a valuable national resource which should be developed in a manner consistent with the public interest and the equities of the respective parties.

(4) Current Federal policy with respect to the allocation of rights to the results of federally sponsored research and development deters contractor participation in Government contracts, delays technological progress, and stifles the innovative process.

(5) There is a need for the establishment and implementation of a flexible Government-wide policy for the management and utilization of the results of federally funded research and development. This policy should promote the progress of science and the useful arts, encourage the efficient commercial utilization of technological developments and discoveries, guarantee the protection of the public interest, and recognize the equities of the contracting parties.

PURPOSE

SEC. 102. It is the purpose of this Act to—

(1) establish and maintain a uniform Federal policy for the management and use of the results of federally sponsored science and technology research and development; and

(2) insure the effective uniform implementation of the provisions of this Act, and to monitor on a continuing basis the impact

of Federal science and technology policies on innovation and technology development.

DEFINITIONS

SEC. 103. As used in this Act the term—

(1) "contract" means any contract, grant, cooperative agreement, commitment, understanding, or other arrangement entered into between any Federal agency and any person where a purpose of the contract is the conduct of experimental, developmental, or research work. Such term includes any assignment, substitution of parties or subcontract of any type entered into or executed for the conduct of experimental, developmental, or research work in connection with the performance of that contract;

(2) "contractor" means any person or other entity that is a party to the contract;

(3) "disclosure" means a written statement sufficiently complete as to technical detail to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, or electrical characteristics of the invention;

(4) "Federal agency" means an "executive agency" as defined by section 105 of title 4, United States Code, and the military departments as defined by section 102 of title 4, United States Code;

(5) "Government" means the Government of the United States of America;

(6) "invention" means any invention, discovery, innovation, or improvement which is or may reasonably be patentable subject matter as defined in title 35, United States Code;

(7) "inventor" means any person, other than a contractor, who has made an invention under a contract but who has not agreed to assign his rights in such invention to the contractor;

(8) "made under the contract" or "made under a contract" when used in relation to any invention means the conception or first actual reduction to practice of such invention in the course of any work under the contract or under a contract, respectively;

(9) "nonprofit organization" means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute;

(10) "person" means any individual partnership, corporation, association, institution, or other entity;

(11) "practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system, and, in each case, under such conditions as to establish that the invention is being worked and that its benefits are available to the public either on reasonable terms or through reasonable licensing arrangements;

(12) "Secretary" means the Secretary of Commerce; and

(13) "small business firm" means a small business concern, as defined in section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this Act, size standards for small business concerns involved in Government procurement, contained in section 121.3-8 of title 13, Code of Federal Regulations, and in subcontracting, contained in section 121.3-12 of title 13, Code of Federal Regulations, will be used.

TITLE II—IMPLEMENTATION

RESPONSIBILITIES

SEC. 201. (a) The Secretary shall coordinate, direct, and review the implementation and administration of the Federal policy set forth in this Act with respect to the ownership of inventions resulting from federally sponsored research and development, and promote the efficient and effective utilization of the results of federally sponsored research and development.

(b) With a view to obtaining consistent application of the policies of this Act, the Secretary is authorized and directed—

(1) to consult and advise with Federal agencies concerning the effective implementation and operation of the policies, purposes, and objectives of this Act;

(2) in consultation with the Office of Federal Procurement Policy, to formulate and recommend to the resident such proposed rules, regulations, and procedures as are necessary and desirable to assure the consistent application of the provisions of this Act;

(3) to accumulate, analyze, and disseminate data necessary to evaluate the administration and effectiveness of the policies set forth in this Act;

(4) to determine with administrative finality, in an expeditious manner without unnecessary delay, any dispute between a Federal agency and an aggrieved party arising under title III of this Act; and

(5) to perform such other duties as may be prescribed by the President or by statute.

(c) For the purpose of assuring the effective management of Government-owned inventions, the Secretary is authorized to—

(1) assist and coordinate agency efforts to promote the licensing and utilization of Government-owned inventions;

(2) coordinate and advise the Federal agencies in seeking protection and maintaining inventions in foreign countries, including the payment of fees and costs connected therewith;

(3) consult and advise Federal agencies as to areas of science and technology research and development with potential for commercial utilization; and

(4) receive funds from fees, royalties, sales, or other management of Government-owned inventions authorized under this Act: *Provided, however*, That such funds will be used only for the purpose of this Act.

(d) The Secretary shall submit to Congress an annual report of activities pursuant to this Act. Such report shall include (1) relevant statistical data regarding the disposition of invention disclosures resulting from federally funded research and development, including those inventions disclosed by small businesses and nonprofit organizations; (2) any legislative or administrative recommendations to better achieve the policy and purposes of this Act; and (3) an analysis of the impact of Federal policies on the purposes of this Act.

EXPIRATION

SEC. 202. The authorities conferred upon the Secretary under this title shall expire 7 years following the effective date of this Act. unless renewed by action of Congress.

TITLE III—ALLOCATIONS OF RIGHTS—GOVERNMENT CONTRACTORS

RIGHTS OF THE GOVERNMENT

SEC. 301. (a) Each Federal agency shall acquire on behalf of the United States, at the time of entering into a contract, title to any invention made under the contract of a Federal agency if the agency determines that—

(1) the services of the contractor are for the operation of Federal research and development centers, including Government-owned research or production facilities;

(2) following a finding by a Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counterintelligence activities, the restriction or elimination of the right of the contractor to retain title to any subject invention is necessary to protect the security of such activities;

(3) in exceptional circumstances, restriction or elimination of the right of the contractor to retain title to any subject invention will better promote the policy and objectives of this Act; and

(4) the principal purpose of the contract is to develop or improve products, processes, or methods which will be required for use by Goverment regulations: *Provided, however*, That the Federal agency may subsequently waive all or any part of the rights of the United States under this section to such invention in conformity with the provisions of section 303.

(b) The rights of the Government under subsection (a) shall not be exercised by the Federal agency unless it first determines that at least one of the conditions, identified in paragraphs (1) through (4) exist and it files with the Secretary a statement stating such determination.

(c) Each contract entered into by a Federal agency shall include appropriate provisions to—

(1) require periodic written reports at reasonable intervals in the commercial use of other forms of utilization or efforts at obtaining commercial utilization made by the inventor or contractor or their licensees or assignees: *Provided*, That any such report shall be treated by the Federal agency as commercial or financial information obtained from a person and privileged or confidential and not subject to disclosure under the Freedom of Information Act (5 U.S.C. 552); and

(2) reserve to the United States at least an irrevocable, nonexclusive, nontransferable, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the United States and States and domestic municipal governments, unless the agency determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

RIGHTS OF THE CONTRACTOR

SEC. 302. (a) Whenever a contractor enters into a contract with a Federal agency other than in those circumstances identified in section 301(a), the contractor or inventor shall have the option of retaining title to any invention made under the contract. Such rights shall be subject to the limitations set forth in section 304 and the provisions of section 305. Such option shall be exercised by notifying the Government at the time of disclosure of the invention or within such time thereafter as may be provided in the contract. The Government shall obtain title to any invention for which this option is not exercised.

(b) When the Government obtains title to an invention under section 301, the contractor shall retain a nonexclusive, royalty-free license which shall be revocable only to the extent necessary for the Government to grant an exclusive license.

WAIVER

SEC. 303. A Federal agency may at any time waive all or any part of the rights of the United States under this title to any invention or class of inventions made or which may be made by any person or class of persons under the contract of the agency if the agency determines that the condition justifying acquisition of title by the Government under section 301 no longer exists or the interests of the United States and the general public will be best served thereby. The agency shall maintain a record, which shall be made public and periodically updated, of determinations made under this section. In making such determinations, the agency shall consider the following objectives:

(1) encouraging the wide availability to the public of the benefits of the experimental, developmental, or research programs in the shortest practicable time;

(2) promoting the commercial utilization of such inventions;

(3) encouraging participation by private persons in the Government-sponsored experimental, developmental, or research programs; and

(4) fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

MARCH-IN-RIGHTS

SEC. 304. (a) Where a contractor has elected to retain title to an invention under section 302 or 303, the Federal agency shall have the right, pursuant to regulations and subject to the provisions of subsection (b), to grant, or require the contractor to grant, a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, if the agency determines such action is necessary—

(1) because the contractor has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the invention;

(2) to alleviate serious health or safety needs which are not reasonably satisfied by the contractor, or its licensees;

(3) to meet requirements for public use specified by Federal regulation which are not reasonably satisfied by the contractor or its licensees; or

(4) because the actions of the contractor beyond the exercise of the exclusive rights in the invention have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates, or to create and maintain other situations inconsistent with the antitrust laws.

(b) The rights of the Federal agency under subsection (a) shall be subject to the prior approval of the Secretary, who shall make a determination after a formal hearing with affected parties present and conducted in accordance with rules, regulations, and procedures adopted by the Secretary.

GENERAL PROVISIONS

SEC. 305. (a) Each contract entered into by a Federal agency shall employ a single patent rights clause containing such terms and conditions as the agency deems appropriate for the protection of the interests of the United States and the general public, including appropriate provisions to—

(1) require the timely disclosure by the contractor or inventor to that agency of any invention made under the contract: *Provided*, That Federal agencies are authorized to withhold from disclosure to the public, information disclosing any invention made under the contract of an agency for a reasonable time in order for a United States or foreign patent application to be filed;

(2) require an election by the contractor within a reasonable time after disclosure as to whether the contractor intends to file a patent application on any invention made under the contract;

(3) require a declaration by the contractor within a reasonable time after disclosure of the contractor's intent to commercialize or otherwise achieve the widespread utilization of the invention by the public.

(4) an obligation on the part of the contractor, in the event a United States patent application is filed by or on its behalf or by any assignee of the contractor, to include within the specification of such application and any patent issuing thereon, a statement specifying that the invention was made with Government support and that the Government has certain rights in the invention; and

(5) allow deviation to the minimum rights acquired under section 301 on a class basis in—

(A) contracts involving cosponsored, cost sharing or joint venture research when the contractor is required to make a substantial contribution of funds, facilities, or equipment to the work performed under the contract;

(B) special contracting situations such as Federal price or purchase supports and Federal loan or loan guarantees; and

(C) no deviation under this subsection shall waive in whole or in part, the minimum rights to be secured for the Federal Government set forth in section 304(a)(4).

(b) When it is determined that the right to require licensing or the right of the Federal agency to license should be exercised pursuant to section 304, the Federal agency may specify terms and conditions, including royalties to be charged, if any, and the duration and field of use of the license, if appropriate. Agency determinations as to the rights to inventions under this title shall be made in an expeditious manner without unnecessary delay.

BACKGROUND RIGHTS

SEC. 306. Nothing contained in this Act shall be construed to deprive the owner of any background patent or to such rights as the owner may have thereunder.

GOVERNMENT LICENSING AUTHORITY

SEC. 307. A Federal agency may grant exclusive or partially exclusive licenses in any invention to which the Government has acquired title if the agency determines that—

(1) the desired practical application has not been achieved, or is not likely to be achieved within a reasonable period of time by the granting of a nonexclusive license;

(2) exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital to bring the invention to practical application; and

(3) the proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application.

TITLE IV MISCELLANEOUS

REPEAL OF EXISTING STATUTORY RESEARCH AND DEVELOPMENT AUTHORIZATIONS

SEC. 401. The following Acts are hereby amended as follows:

(1) Section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a); 60 Stat. 1090), is amended by striking out the last sentence thereof.

(2) Section 501(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 951(c); 83 Stat. 742) is amended by striking out the last sentence thereof.

(3) Section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c); 80 Stat. 721) is repealed.

(4) Section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360) is repealed.

(5) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182; 68 Stat. 943) is repealed.

(6) The National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.; 72 Stat. 426) is amended—

(A) by repealing section 305 thereof (42 U.S.C. 2457): *Provided, however*, That subsections (c), (d), and (e) of such section shall continue to be effective with respect to any application for patents in which the written statement referred to in subsection (c) of such section has been filed or requested to be filed by the Commissioner of Patents and Trademarks prior to the effective date of this Act;

(B) by inserting the following new section 305:

"INVENTIONS AND CONTRIBUTIONS BOARD

"SEC. 305. Each proposal for any waiver of patent rights held by the Administrator shall be referred to an Inventions and Contributions Board which shall be established by the Administrator within the Administration. Such Board shall accord to each interested party an opportunity for a hearing, and shall transmit to the Administrator its findings of fact with respect to such proposal and its recommendations for action to be taken with respect thereto.";

(C) by repealing section 306 thereof (42 U.S.C. 2458);

(D) by inserting at the end of section 203 (c) thereof (42 U.S.C. 2473(c)); the following new paragraph:

"(14) to provide effective contractual provisions for reporting of the results of the activities of the Administration, including full and complete technical reporting of any innovation made in the course of or under any contract of the Administration."

(E) by inserting at the end of section 203 thereof (42 U.S.C. 2478) the following new subsection:

"(d) For the purpose of chapter 17 of title 35 of the United States Code, the Administration shall be considered a defense agency of the United States."; and

(F) by striking out the following in section 203(c)(3) thereof (42 U.S.C. 2473(c)(3)) "(including patents and rights thereunder).".

(7) Section 6 of the Act of July 7, 1960 (30 U.S.C. 666; 74 Stat. 337), is repealed.

(8) Section 4 of the Helium Act Amendments of 1960 (50 U.S.C. 167b; 74 Stat. 920) is amended by striking out both proviso clauses at the end thereof.

(9) Section 32 of the Arms Control and Disarmament Act (22 U.S.C. 2572; 75 Stat. 634) is repealed.

(10) Subsection (e) of section 302 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 302(e); 79 Stat. 5) is repealed.

(11) Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908; 88 Stat. 1887) is amended by striking all after "hours" the second time it appears therein, and inserting in lieu thereof a period.

(12) Section 5(i) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831d(i); 48 Stat. 61) is amended by striking both proviso clauses at the end thereof.

(13) Section 5(d) of the Consumer Product Safety Act (15 U.S.C. 2054(d); 88 Stat. 1211) is repealed.

(14) Section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191), is repealed.

(15) Section 8001 of the Solid Waste Disposal Act (42 U.S.C. 6981; 90 Stat. 2892) is repealed.

(16) Sections 200 through 209 and section 211 of title 35, United States Code, are repealed.

(17) Section 6e (1) and (2) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3705(e) (1) and (2); 94 Stat. 2313) is repealed.

EFFECTIVE DATE

SEC. 402. This Act shall take effect 6 months after the date of enactment of this Act.

SECTION-BY-SECTION ANALYSIS—UNIFORM SCIENCE AND TECHNOLOGY RESEARCH AND UTILIZATION ACT

SECTION 101. FINDINGS

In this section Congress finds and declares that the United States has recently experienced a decline in innovation and productivity; that scientific and technological developments resulting from Government contracts constitute a valuable national resource; that current Federal patent policy deters contractor participation, delays technological progress and stifles innovation; and there is a need for a flexible, government-wide policy for the management and utilization of the results of Federally-funded research and development.

SECTION 102. PURPOSE

This section states that the purpose of this Act is to maintain the effective implementation of a Federal policy for the management and use of the results of Federally-sponsored science and technology research and development.

SECTION 103. DEFINITIONS

This section states several definitions, including "contract" and "practical application".

SECTION 201. RESPONSIBILITIES

Subsection (a) directs the Secretary of Commerce to coordinate, direct and review the implementation of the policy set forth

TEXT

in this Act. For the purpose of assuring uniformity in the administration of this Act, the Secretary is directed to develop proposed regulations, accumulate and analyze relevant data, determine with administrative finality any dispute arising under Title 3 of this Act, and monitor the "march-in" rights of the Government under Section 304. For the purpose of assuring the effective management of Government-owned inventions, the Secretary is directed to assist and coordinate agency efforts to promote the licensing and utilization of Government-owned inventions, including the explicit authority to accept custody of any Federal agency invention, protect U.S. inventions in foreign countries, and receive funds from the management of these inventions. Subsection (d) requires the Secreary to submit an annual report of his activities under this section to Congress. There is no authorization provided for the Secreary to carry out these provisions.

SECTION 202. EXPIRATION

The authorities conferred upon the Secretary under this title shall expire in seven years unless renewed by an Act of Congress.

SECTION 301. RIGHTS OF THE GOVERNMENT

Subsection (a) specifies those situations in which it would be presumed the Government should take title to any invention made under Federal contract. The determination as to the Government's rights would be made at the time of contracting. These Government rights would not be assumed by the agency unless it determines thta one of the enumerated criteria exists, and files a determination statement with the Secretary.

SECTION 302. RIGHTS OF THE CONTRACTOR

Subsection (a) states that in all other situations not specified in Section 301, the contractor or inventor shall have the option of retaining title to any invention made under the contract. The Government shall retain title when this option is not exercized by the contractor.

Subsection (b) specifies that when the Government takes title to an invention under this section, the contractor will retain a nonexclusive, royalty-free license.

SECTION 303. WAIVER

To assure flexibility in the implementation of the policies, this section would authorize the Government to waive rights to inventions when deemed to be in the public interest.

SECTION 304. MARCH-IN RIGHTS

This section would authorize the Government to require the contractor to license an invention or assign title to the Government if the contractor fails to take reasonable steps to develop the invention or the Government determines such action is necessary in the public interest.

SECTION 305. GENERAL PROVISIONS

This section authorizes Federal agencies to include Federal research and development contract provisions necessary to protect the public interest, including appropriate provisions, to require the timely disclosure by the contractor of any invention made under a Federal contract, to require the contractor to file a patent application within a reasonable time after disclosure, and to require the contractor to declare his intent to commercialize the invention. Additional provisions allow deviation to the minimum government rights when a contractor makes a substantial contribution of funds or facilities. If the agency determines it necessary to license pursuant to Section 304, the agency may specify the terms and conditions thereby.

SECTION 306. BACKGROUND RIGHTS

This Act shall not be construed to deprive the owner of any background patent.

SECTION 307. GOVERNMENT LICENSING AUTHORITY

In this section the Government is expressly authorized to grant exclusive licenses in any invention to which it has acquired title.

This Act shall take effect six months after the date of enactment of this Act.●

SECTION 401. REPEAL OF EXISTING STATUTORY RESEARCH AND DEVELOPMENT AUTHORIZATIONS

SECTION 402. EFFECTIVE DATE

This section repeals various agency research and development statutes which are inconsistent with the provisions of this Act.

-- End of Section D --