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Introduced by Mr. Ertel

NEED FOR CHANGE IN PRESENT PATENT POLICIES

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OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 23, 1981

● Mr. ERTEL. Mr. Speaker, we are all too painfully aware of the serious problems afflicting our economy today. During the last few months we have looked at several proposals designed to come to grips with our economic problems. One obvious example has been the spirited debate on Federal tax policy. In part, tax legislation has been advanced on the grounds that it is needed to spur new productivity and innovation in the economy. While tax policy is important in any effort to change this Natin's downward trend in productivity, other changes are also necessary if we are to truly advance innovation and productivity.

Today, Senator HARRISON SCHMITT and I are jointly introducing legislation in our respective bodies to improve our Federal patent policies as a part of our overall effort to boost productivity and innovation. We are joined in this effort by a number of our distinguished colleagues in both the House and the Senate. Joint hearings of the House Science and Technology Committee and the Senate Commerce, Science, and Transportation Committee have already been scheduled on these bills for September 30. During the previous Congress, both committees developed an extensive hearing record on this type of legislation. We are hopeful that we will be able to build upon that record to permit timely action on our bills by the committees and the full House and Senate.

These bills provide a greater incentive for contractors engaged in Federal research and development work to bring to the marketplace new inventions which arise in the course of federally sponsored R. & D. by granting title to those inventions, under certain conditions, to the contractors who developed the invention, and who know best how to commercialize it. We must remember that under the present Government patent policy, only about 4 percent of the 27,000 to 30,000 patents held by the Government have been licensed for development. Even fewer of these have been commercialized. The rest of these patents, developed with taxpayer money, do little more than collect dust on some shelf.

Currently, Federal patents are controlled by approximately 26 statutes applying to different agencies and programs, and by Presidential patent policies in all situations not covered by statute. Under this system an contractor's rights may differ not only from agency to agency, but from department to department within an agency. This confused situation is in itself a disincentive to firms which may be interested in commercializing a federally held patent. The legislation Senator Schmitt and I are introducing today would change this condition by establishing a uniform Federal patent policy.

In addition to this important objective, these bills achieve several other necessary goals including: Making the benefits of Federal R. & D. programs widely available in the shortest practicable time; promoting commercial utilization of inventions in order to maximize our productivity and innovation; encouraging the participation of the most qualified firms or institutions in Federal R. & D. programs; and fostering competition and preventing undue market concentration.

It is commonly recognized that in the process of bringing a product to the market, research accounts for roughly 10 percent of the cost while development makes up 90 percent of the cost. The Federal effort stops with the research part of the process. Without providing exclusive rights, a private firm is often reluctant to invest the resources needed to commercialize the invention where the economic return is unclear. Why spend the development money only to have your competitor capitalize on your investment just before you hit the market? Your competitor will be able to underprice you since he does not have to recover the development costs.

Studies have indicated that commercial utilization of federally held patented inventions is achieved at a much higher rate when, under certain circumstances, the contractor is permitted to obtain exclusive rights to the invention. For example, a NASA study has shown that contractors with exclusivity have achieved commercial utilization of patented inventions at a rate of approximately 20 times greater than that achieved by the agency itself. NASA, which generally has broader authority to grant patent rights to the contractor has one of the best records of all agencies in obtaining commercialization.

If we are to bring many of these patents, paid for by the taxpayers, to the market, where the taxpayers can enjoy the benefits of their R. & D. investments, exclusivity must ge granted to the contractor who originally develops the patent. This exclusivity is provided by granting title to the contractors as contained in the bills Senator SCHMITT and I are introducing.

Concerns have been raised in the past that by granting exclusive rights to contractors, we are allowing a private firm to profit on a patent which belongs to the American people. However, the taxpayers of this Nation derive little benefit from patents which are not commercialized.

The bill I am introducing in the House today resolves this dilemma by requiring that contractors who are granted title to inventions they develop under Federal research and development contracts, provide payments to the Government through the sharing of royalties and/or revenues in return for the original Federal investment. I believe that this provision will compensate the Government and prevent the contractor from achieving windfall profits at the expense of the taxpayers while still encouraging commercialization of the invention.

Mr. Speaker, I am pleased to have had the opportunity to work with our colleagues in both Houses of Congress to develop legislation which I am convinced that it represents an important part of those changes which are necessary to encourage greater innovation and productivity in this country. I am looking forward to working with my colleagues in the Congress and the administration in this important endeavor.●