NEXT



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Laboratory Counsel

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Joe Allen, Esquire
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Dear Joe,

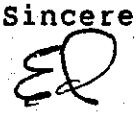
It is estimated that DOE spent almost $5 billion on research and development in 1988. The vast majority of this funding was expended at GOCO laboratories, including the nine national laboratories. Comparable but slightly lower amounts were spent in 1986 and 1987. Surprisingly little has been written in recent years about how patent rights rights in inventions arising out of this massive expenditure of R&D funds are determined. Perhaps even more importantly, no comprehensive review has heretofore been attempted concerning why DOE has adopted its patent rights policy nor has any detailed analysis been conducted with regard to the validity of that policy in today's world.

Without question, the DOE approach to allocating patent rights in subject inventions arising out of research it has funded has been--and continues to be--the most conservative of all the major agencies having a primary role in funding research in this country. Until recently DOE counsel have argued that the DOE policy and practice are mandated by law. Although Los Alamos believes that the conservative nature of the DOE approach is not required by law, the existence of four applicable statutes and an Executive Order provides a rather wide range of statutory language and legislative history on which DOE counsel may rely in making such arguments.

As the attached paper demonstrates, present DOE policy is based in no small measure on a perception of legislative intent as it existed a decade or more ago. This is perhaps not surprising because applicable organic legislation extends over four decades. Nonetheless, the result has been that despite the trend toward liberally granting patent rights in inventions arising out of government-funded research to the contractors performing such research, the present DOE policy and practice, specifically as applied at the Los Alamos National Laboratory, is substantially more restrictive than is required by existing law.

The attached paper suggests that this DOE policy and practice is not required by national security considerations and may be inconsistent with maximizing economic competitiveness and thus not necessarily in the best interests of the United States and the general public. It also shows that in a number of respects this DOE policy and practice is not in accord with the mandate of Executive Order 12,591. Finally, it argues that the interests of the country may be better served by rescinding the organic legislation involving patent rights that is specific to DOE and modifying existing government-wide patent legislation to make it specifically and uniformly applicable to all the DOE laboratories.

Sincerely,



Edward C. Walterscheid
Deputy Laboratory Counsel

ECW:rm

Att: Paper entitled, "Patent Rights Arising Out of Government-Funded Research at DOE Laboratories--A Los Alamos Perspective," authored by Edward C. Walterscheid.

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