STATEMENT OF

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BEFORE THE
SUBCOMMITTEE ON PATENTS
OF THE
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Mr. Chairman and Members of the Subcommittee

American industry is in the midst of a major economic transition caused in part by a worldwide explosion in new technology. U.S. trade deficits are partially explained by new foreign technology capturing markets previously dominated by the U. S.

This challenge calls for increased efforts to deliver American inventions, whether publicly or privately created, to the marketplace as the core of new businesses and jobs.

The U.S. has been investing 110 billion dollars annually in R&D. Fifty-five billion is federally-funded; the other half private. The magnitude of the federal investment raises two questions: Does it subsidize foreign competition? Does it deliver a fair return?

The first question cannot be answered conclusively, but suggests that American industry should have first option to the practical results of such research--but while preserving open scientific communication.

As to the second question, facts suggest that we could get more from the federal investment. For example, approximately 120,000 patent applications are filed annually in the PTO. Of these, less than 3,000 cover federally sponsored research. The remainder are the result of private sector R&D--including growing numbers coming from foreign sources. Such facts have produced strong Administration resolve to increase U.S. commercialization of federally generated products and processes.

Under past policy, ownership of technology was often separated from the R&D organization that created the technology, putting it in the hands of federal managers who did not have the background to judge its value. Loss of the creator as the owner-advocate made it difficult to continue the complex process of delivering technology to the marketplace.

The Administration believes that a key element in increasing the commercialization of federal R&D results is to decentralize technology management by permitting the creating organization to own its technology. Such ownership brings with it incentives to evaluate each new technology and determine whether it should be published, patented, copyrighted, held in confidence, trademarked or some combination of these actions. The incentive of possible income, outside risk capital and royalty return produced by ownership have already prompted federally-funded universities and their publication oriented employee-inventors, to identify new patentable technologies and then assume the complex responsibility of managing them on to the marketplace.

Establishing the incentives of ownership are very important because intellectual property rights must be identified and sometimes licensed to justify the investment of private risk funding in most technologies. Failure to establish such rights in a potential marketable product by a publicly funded creating organization greatly diminishes possible private sector marketing of this product.

Public Laws 96-517, 98-620 and the President's patent policy memo combine to give universities, small businesses and all other contractors the first right of ownership to patentable inventions made with federal funds. Public Law 99-502 extends the principle of decentralized management to government operated laboratories by permitting federal agencies to delegate the management of patentable laboratory technology to the laboratory director.

The success of decentralized management of technology is important to the many states that are planning economic growth around R&D assets such as universities which can now cooperate with the private sector. Under P. L. 99-502, federal laboratories can now be included in this asset base. The leveraging of federal, state, university, and private sector resources under local leadership is essential if we are to maintain technological leadership in the world.

While the laws and memo I referred to are limited to patentable inventions, the President's Competitiveness Initiative announced the intent to extend contractor ownership to the nonpatentable results of federally-funded research by permitting federal contractors to own technical data, including software, made under federal contracts. The initiative is directed to creating an incentive to commercialize ideas that cannot be protected by patent but are, nevertheless of commercial value.

Good progress has been made in fostering the commercialization of federally-funded technology. The President's competitiveness initiative could lead to even better results. A 55 billion dollar investment demands that we search for the best ways to make it pay-off.