MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY

TO : Steve Weiss
OGC/HEW

DATE: August 23, 1978

FROM : Patent Counsel
OGC/HEW

SUBJECT: Review of OGC Policies on the Promotion, Selection and Transfer of Attorneys

This refers to Mr. Libassi's memorandum to all OGC attorneys dated July 19, 1978 announcing the names of OGC attorneys named to a committee to be chaired by you to conduct the subject review. One of the volunteers for your committee who was not selected is Mr. Thomas G. Ferris, a patent attorney in this office. I was disappointed that Mr. Ferris was not selected, because I feel that there are problems with current Patent Branch staffing and promotion that should be considered by your committee, and that the Department patent attorneys need an advocate on the committee. Since we will not have a voice, I would like to take this opportunity to make you aware of problems which I feel are unique in OGC, and which I hope the committee will give due consideration.

I believe that the Department Patent Attorneys are undergraded, and that they are being unjustly penalized by a system administered by people who are either unaware of or indifferent to the special problems and needs of the Department's Patent Branch. I base this opinion on the following:

1. The Department's Patent Attorneys administer the Department's patent program. We are, I believe, the only attorneys in the Department who have program responsibilities as well as the usual duties performed by general attorneys. Any of the Department Patent Attorneys could function as a general attorney in any office of OGC, but there are no attorneys in this Department outside of the Patent Branch who have the training, experience and qualifications to perform the duties that we perform.

2. Patent law is one of the few specialties recognized by the profession. Patent Attorneys are members of a special bar which has stringent qualification requirements and which requires members to pass a special examination administered by the United States Patent and Trademark Office.

3. Patent Attorneys are scientists as well as lawyers. A degree in at least one of the scientific disciplines is required. A knowledge of science is not only required for the prosecution of patent applications,

it is also necessary for the administration of the Department's patent program which involves technology transfer and the ability to discuss the technical aspects of inventions with inventors, science administrators, industry representatives, etc.

Because we are specialists with unique qualifications, we are unable to transfer to other branches or divisions within OGC without abandoning our profession, even though, as noted, we could function effectively in any office within OGC. Accordingly, we are unable to advance in grade beyond our present grade structure without either leaving patent law or leaving HEW.

I believe that the attached chart comparing the major R & D agencies of the Executive Branch for fiscal year 1975 illustrates graphically that the HEW Patent Branch is grossly understaffed and undergraded compared to the other R & D agencies. HEW, which has one of the largest R & D budgets of any agency, has only three Patent Attorneys. Because of understaffing, there is no way one of the HEW Patent Attorneys could take advantage of a detail to another division in order to advance his career, because there is no way the remaining Patent Attorneys in the branch could absorb the work he had been performing.

I believe that the foregoing evidences that there is a need to enlarge the Patent Branch staff and to increase grade levels to bring them more nearly into line with the other Federal agencies. At the present time, many Patent Attorneys in other agencies who are higher grades than HEW Patent Attorneys have much less responsibility than the HEW Patent Attorneys. Accordingly, I hope that your committee will give this matter careful consideration and will make appropriate recommendations to the General Counsel as to how these problems can be fairly and equitably resolved. If you would like additional information and/or documentation, this office is at your disposal.

Norman J. Latker

Enclosure