EXECUTIVE ORDERS

NO. 10096

15 F. R. 389

PROVIDING FOR A UNIFORM PATENT POLICY FOR THE GOVERNMENT WITH RESPECT TO INVENTIONS MADE BY GOVERNMENT EMPLOYEES AND FOR THE ADMINISTRATION OF SUCH POLICY

WHEREAS inventive advances in scientific and technological fields frequently result from governmental activities carried on by Government employees; and

WHEREAS the Government of the United States is expending large sums of money annually for the conduct of these activities; and

WHEREAS these advances constitute a vast national resource; and

WHEREAS it is fitting and proper that the inventive product of functions of the Government, carried out by Government employees, should be available to the Government; and

WHEREAS the rights of Government employees in their inventions should be recognized in appropriate instances; and

WHEREAS the carrying out of the policy of this order requires appropriate administrative arrangements:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States and Commander in Chief of the armed forces of the United States, in the interest of the establishment and operation of a uniform patent policy for the Government with respect to inventions made by Government employees, it is hereby ordered as follows;

1. The following basic policy is established for all Government agencies with respect to inventions hereafter made by and Government employee;

(a) The Government shall obtain the entire right, title and interest in and to all inventions made by any Government employee (1) during working hours, or (2) with a contribution by the Government of facilities, equipment, materials, funds, or information, or of time or services of other Government employees on official duty, or (3) which bear a direct relation to or are made in consequence of the official duties of the inventor.

(b) In any case where the contribution of the Government, as measured by any one or more of the criteria set forth in paragraph (a) last above, to the invention is insufficient equitably to justify a requirement of assignment to the Government of the entire right, title and interest to such invention, or in any case where the Government has insufficient interest in an invention to obtain entire right, title and interest therein (although the Government could obtain some under paragraph (a), above), the Government agency concerned, subject to the approval of the Chairman of the Government Patents Board (provided for in paragraph 3 of this order and hereinafter referred to as the Chairman), shall leave title to such invention in the employee, subject, however, to the reservation to the Government of a non-exclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, such reservation, in the terms thereof, to appear, where practicable, in any patent, domestic or foreign, which may issue on such invention.

(c) In applying the provisions of paragraphs (a) and (b), above, to the facts and circumstances relating to the making of any particular invention, it shall be presumed that an invention made by an employee who is employed or assigned (i) to invent or improve or perfect any art, machine, manufacture, or composition of matter, (ii) to conduct or perform research, development work, or both, (iii) to supervise, direct, coordinate, or review Government financed or conducted research, development work, or both, or (iv) to act in a liaison capacity among governmental or nongovernmental agencies or individuals engaged in such work, or made by an employee included within any other category of employees specified by regulations issued pursuant to section 4(b) hereof, falls within the provisions of paragraph (a), above, and it shall be presumed that any invention made by any other employee falls within the provisions of paragraph (b), above. Either presumption may be rebutted by the facts or circumstances attendant upon the conditions under which any particular invention is made and notwithstanding the foregoing, shall not preclude a determination that the invention falls within the provisions of paragraph (d) next below.

(d) In any case wherein the Government neither (1) pursuant to the provisions of paragraph (a) above, obtains entire right, title and interest in and to an invention nor (2) pursuant to the provisions of paragraph (b) above, reserves a non-exclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, the Government shall leave the entire right, title and interest in and to the invention in the Government employee, subject to law.

(e) Actions taken, and rights acquired, under the foregoing provisions of this section, [illegible] reported to the Chairman in accordance with procedures established by him.

2. Subject to considerations of national security, or public health, safety, or welfare, the following basic policy is established for the collection, and dissemination to the public, of information concerning inventions resulting from Government research and development activities:

(a) When an invention is made under circumstances defined in paragraph 1(a) of this order giving the United States the right to title thereto, the Government agency concerned shall either prepare and file an application for patent therefor in the United States Patent Office or make a full disclosure of the invention promptly to the Chairman, who may, if he determines the Government interest so requires, cause application for patent to be filed or cause the invention to be fully disclosed by publication thereof: Provided, however, That, consistent with present practice of the Department of Agriculture, no application for patent, shall, without the approval of the Secretary of Agriculture, be filed in respect of any variety of plant invented by any employee of that Department.

(b) Under arrangements made and policies adopted by the Chairman, all inventions or rights therein, including licenses, owned or controlled by the United States or any Government agency shall be indexed and copies, summaries, analyses and abstracts thereof shall be maintained and made available to all Government agencies and to public libraries, universities, trade associations, scientists and scientific groups, industrial and commercial organizations, and all other interested groups of persons.

3. (a) A Government Patents Board is established consisting of a Chairman of the Government Patents Board, who shall be appointed by the President, and of one representative from each of the following:

Department of Agriculture
Department of Commerce
Department of the Interior
Department of Justice
Department of State
Department of Defense
Civil Service Commission
Federal Security Agency
National Advisory Committee for Aeronautics
General Services Administration

Each such representative, together with an alternate, shall be designated by the head of the agency concerned.

(b) The Government Patents Board shall advise and confer with the Chairman concerning the operation of those aspects of the Government's patent policy which are affected by the provisions of this order or of Executive Order No. 9865, and suggest modifications or improvements where necessary.

(c) Consonant with law, the agencies referred to in paragraph 3(a) hereof shall as may be necessary for the purpose of effectuating this order furnish assistance to the Board in accordance with section 214 of the Independent Offices Appropriation Act, 1946, 59 Stat. 134, 31 U.S.C. 691.[12] The Department of Commerce shall provide necessary office accommodations and facilities for the use of the Board and the Chairman.

(d) The Chairman shall establish such committees and other working groups as may be required to advise or assist him in the performance of any of his functions.

(e) The Chairman of the Government Patents Board and the Chairman of the Interdepartmental Committee on Scientific Research and Development (provided for by Executive Order No. 9912 of December 24, 1947)[13] shall establish and maintain such mutual consultation as will effect the proper coordination of affairs of common concern.

4. With a view to obtaining uniform application of the policies set out in this order and uniform operations thereunder, the Chairman is authorized and directed.

(a) To consult and advise with Government agencies concerning the application and operation of the policies outlined herein;

(b) After consultation with the Government Patents Board to formulate and submit to the President for approval such proposed rules and regulations as may be necessary or desirable to implement and effectuate the aforesaid policies, together with the recommendations of the Government Patents Board thereon;

(c) To submit annually a report to the President concerning the operation of such policies, and from time to time such recommendations for modification thereof as may be deemed desirable;

(d) To determine with finality any controversies or disputes between any Government agency and its employees, to the extent submitted by any party to the dispute, concerning the ownership of inventions made by such employees or rights therein; and

(e) To perform such other or further functions or duties as may from time to time be prescribed by the President or by statute.

5. The functions and duties of the Secretary of Commerce and the Department of Commerce under the provisions of Executive Order No. 9865 of June 14, 1947 [14] are hereby transferred to the Chairman and the whole or any part of such functions and duties may be delegated by him to any Government agency or officer: Provided, That said Executive Order No. 9865 shall not be deemed to be amended or affected by any provision of this Executive order other than this paragraph 5.

6. Each Government agency shall take all steps appropriate to effectuate this order, including the promulgation of necessary regulations which shall not be inconsistent with this order or with regulations issued pursuant to paragraph 4(b) hereof.

7. As used in this Executive order, the next stated terms, in singular and plural, are defined as follows for the purposes hereof:

(a) "Government agency" includes any executive department and any independent commission, board, office, agency, authority, or other establishment of the Executive Branch of the Government of the United States (including any such independent regulatory commission or board, any such wholly-owned corporation, and the Smithsonian Institution), but excludes the Atomic Energy Commission.

(b) "Government employee" includes any officer or employee, civilian or military, of any Government agency, except such part-time consultants or employees as may be excluded by regulations promulgated pursuant to paragraph 4(b) hereof.

(c) "Invention" includes any art, machine, manufacture, design or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States.

The White House
January 23, 1950

Harry S. Truman

12. 31 U.S.C.A. 691

13. U.S. Code Cong. Service 1947, p. 2062

14. 5 U.S.C.A. 599 note.

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