[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Revenue reduction	1.8	23.2	23.8	24.3	24.8
Net spending reduction:					
Estimated authorization level	1.9	23.8	24.8	25.8	31.8
Estimated outlays	2.4	24.7	24.8	25.8	31.8
Net budget impact[1]	−.6	−1.5	−1.0	−1.5	−7.0

[1] Negative sign indicates increased surplus or decreased deficit.

The costs of this bill fall primarily within budget subfunction 376.

6. Basic of estimate: For purposes of this estimate, it is assumed that this bill will be enacted around October 1, 1980.

REEXAMINATION OF PATENTS

H.R. 6933 would allow any party to petition the PTO to reexamine a patent for validity. The cost of reexamination would be paid by the party based on a fee structure established by the Commissioner of Patents. It is anticipated that the number of patent applications for reexaminations will be limited by the cost involved and the potential for commercial development. Based on rates currently available in foreign countries for similar procedures, as well as estimates provided by the PTO, it is estimated that the number of appeals will be approximately 500 in fiscal year 1981, increasing to 2,000 by 1982, and remain relatively stable thereafter.

Although the bill does not specifically authorize funding for this purpose, it is assumed that additional staff will be required to handle the reexamination procedures. Based on PTO data, it is estimated that the average cost per employee, including overhead and benefits, would be approximately $40,000 in fiscal year 1981. Assuming approximately 30 hours per reexamination, plus clerical support, it is estimated that approximately 55 appeals could be reviewed annually by a professional staff member. It is estimated that the cost of this procedure would be approximately $0.4 million in fiscal year 1981, which reflects six months' activity. Costs are estimated to be $1.4 million in fiscal year 1982, increasing to $2.5 million by fiscal year 1985. It is assumed, however, that the full amount required by the PTO for salaries and expenses would be recovered by fees set at the beginning of the fiscal year and adjusted annually for inflation and anticipated workload. It is assumed that fees would be included with the request for reexamination and reflected as a reimbursable to the agency, resulting in a net outlay of around zero in each fiscal year.

REVISION OF FEE STRUCTURE

H.R. 6933 would restructure the current fee structure for patents and trademarks. Currently, the PTO recovers approximately 20 percent of the cost of processing patents and approximately 30 percent of the cost of issuing trademarks. These fees are deposited in the general fund of the Treasury.

The bill would allow the PTO to recover up to 25 percent of the average processing costs and 25 percent of the maintenance costs for patents, the latter fee collected in four installments over the life of the patent. In addition, the PTO would be allowed to recover a maximum of 50 percent of the cost of issuing trademarks. All fees for patents and trademarks could be adjusted no more than once every three years and would be credited to the PTO as a reimbursable to the agency, rather than as a revenue to the Treasury.

It is assumed that the revised fee structure for trademarks would be implemented early in the second quarter of fiscal year 1981, and for patents beginning in fiscal year 1982. It is assumed that the agency costs for processing patents and trademarks from which recovery could be made would be approximately $84 million in fiscal year 1982, increasing to approximately $109 million by fiscal year 1985. It is assumed that an average recovery rate of 25 and 50 percent, adjusted ever ythird year, would be established for processing fees for patents and for trademarks, respectively. Patent maintenance fees would be collected three times in a patent's life—around the fourth, eighth, and twelfth year. Since the first payment would not be made until fiscal year 1986, it is not reflected in the table below.

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Estimated revenues: Existing fee structure:					
Patents	20.3	20.8	21.3	21.8	22.2
Trademarks	2.4	2.4	2.5	2.5	2.6
Total	22.7	23.2	23.8	24.3	24.8
Proposed fee structure in H.R. 6933:					
Estimated collections:					
Patents[1]	[2]20.3	21.2	21.2	21.2	27.2
Trademarks	3.6	3.6	3.6	4.6	4.6
Total	23.6	24.8	24.8	25.8	31.8
Net budget impact	−.9	−1.6	−1.0	−1.5	−7.0

[1] Maintenance fees would be collected beginning in fiscal year 1986, and by fiscal year 1994 would result in revenues approximately twice those estimated for processing.
[2] The current fee structure for patents remains in effect through fiscal year 1981.

GOVERNMENT PATENT POLICY

H.R. 6933 would establish a uniform federal system for the commercialization and allocation of rights in inventions resulting from federally sponsored or supported research and development. The bill would allow contractors from small businesses and non-profit institutions to acquire title to inventions resulting from government-funded research. Other contractors could receive exclusive licenses for specific uses. The bill directs the Office of Federal Procurement Policy (OFPP) to issue regulations to implement these policy changes. According to the OFPP, the cost of revising existing regulations would be minimal. It is estimated implementation of these changes in the various federal agencies, including training, would cost approximately $650,000 in fiscal year 1981. Outlays are estimated to be 90 percent the first year and 10 percent the second year.

H.R. 6933 would revise the criteria for allocation of invention rights between the federal government and employees who produce inventions. To stimulate innovation, the bill would establish an incentive cash awards program to federal employee-inventors. The awards are to be paid from funds from royalties or agency appropriations; consequently, it is estimated that this provision would result in no additional cost to the government.

The bill also authorizes federal agencies to share income from licensing the government's patent rights with the employee-inventor. It is not possible at this time to estimate the extent which royalties will be generated or shared with employee-inventors.

OTHER

The bill would repeal section 117 of the 1976 Copyright Act, which disclaims any intent to modify the pre-existing copyright law for computer programs. This has the effect of clearly applying the 1976 law to computer programs, which is not expected to have a cost impact upon the federal government.

In addition, H.R. 6933 outlines the responsibilities of the Secretary of Commerce to assist agencies and others in promoting access to patent information. Currently these activities are being performed by the National Technical Information Service (NTIS), created in 1970. The President is requesting approximately $740,000 for these activities in fiscal year 1981, which is about the same level of funding in the current fiscal year. The bill would authorize the appropriation of such sums as may be necessary for these activities. Since current law authorizes these activities it is estimated that no additional costs would be incurred as a result of enactment of this legislation.

Finally, the PTO would be required to report within two years of date of enactment on the status of a computerized data retrieval system. Since the PTO is already planning to study and evaluate the feasibility of such a system, it is assumed that any significant costs incurred as a result of analyzing or implementing such a system would not be a direct result of the legislation. Consequently, no cost has been estimated for this provision.

7. Estimate comparison: The Commissioner of Patents has estimated that approximately 1,000 to 3,000 requests for reexaminations would be made annually, requiring from 25 to 100 additional staff members, at a cost of between $1 million and $4.5 million annually. CBO estimates approximately 500 applications will be processed beginning in fiscal year 1981 because a later date of enactment is assumed.

8. Previous CBO estimate: On August 28, 1980, the CBO prepared a cost estimate on H.R. 6933, as ordered reported by the House Committee on the Judiciary on August 20, 1980. This version of H.R. 6933 would have required the General Accounting Office to report on the desirability of merging the Patent and Trademark Office (PTO) with the Copyright Office and the Copyright Royalty Tribunal. It would also have established the PTO as an independent agency, removing it from the Department of Commerce. The difference in costs between the two versions of H.R. 6933 reflect these differing provisions.

On February 27, 1980, the CBO prepared a cost estimate for S. 1679, the Patent Law Amendments of 1979, as ordered reported by the Sen-

ate Committee on the Judiciary on February 19, 1980. The costs of S. 1679 and the costs attributed to reexamination in this bill are the same, with adjustments assumed for date of enactment.

On December 4, 1979, CBO prepared a cost estimate on S. 414, the University and Small Business Patent Procedures Act, as ordered reported by the Senate Committee on the Judiciary on November 20, 1979. The CBO estimated that no significant cost would be incurred by the government if a uniform patent procedure for small businesses and nonprofit organizations performing government-supported research and development were established.

9. Estimate prepared by: Mary Maginniss.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis).

COMMITTEE ESTIMATE OF COST

A number of provisions in the bill do not come within the jurisdiction of the Committee on Government Operations. These have not been considered in depth by the committee and, therefore, the committee has no basis upon which to make an estimate of cost for the entire bill.

INFLATIONARY IMPACT

The committee has insufficient evidence available on which to determine whether this legislation will have a significant inflationary impact on prices and costs in the operation of the economy.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

The bill, as reported by the Committee on Government Operations, provides no new budget authority and tax expenditures.

REVIEW OF EXISTING LAW

In compliance with Subdivision (A) of Clause 2(1)(3) of House Rule XI, the Subcommittee on Legislation and National Security reviewed the application and administration of the laws relating to patent policy and organization.

OVERSIGHT FINDINGS

No oversight findings or recommendations were made, other than the legislation recommended in this report.

CHANGES IN EXISTING LAW

The bill was referred to the Committee on Government Operations for a period ending not later than September 23, 1980, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that Committee under clause 1(i)(2), rule X. The changes made to existing law by the bill as reported by the Committee

on the Judiciary are shown on pages 33 through 81 of House Report 96–1307, Part 1.

For the information of the Members of the House of Representatives, the changes made by the Committee on Government Operations strike out the amendments made to title 35 of the United States Code in sections 1, 3(a), 3(b), 3(c), 6, 7, 31, 181, and 188; and section 12(c) of the Act of February 14, 1903 by the bill as reported by the Committee on the Judiciary. Consequently, these existing provisions of law are not changed in the bill as reported by the Committee on Government Operations.

ADDITIONAL VIEWS OF HON. JACK BROOKS

The major problem I have with H.R. 6933 is that it violates a basic provision of the unwritten contract between the citizens of this country and their government; namely, that what the government acquires through the expenditure of its citizens' taxes, the government owns. Assigning automatic patent rights and exclusive licenses to companies or organizations for inventions developed at government expense is a pure giveaway of rights that properly belong to the people.

The argument is made by proponents of the bill that it will spur productivity, a goal that is both necessary and desirable if the United States is to regain its position in the world economy. But that argument ignores the fact that the Federal Government is already paying half the costs of research and development in the United States at an annual cost of $30 billion. No companies or nonprofit organizations that I know of have been turning down that money because they are not now receiving automatic patent and exclusive licensing rights. So unless it is the intent of the supporters of H.R. 6933 that the government greatly increase this already enormous public investment in research and development, I fail to see how enactment of the bill will lead to increased production.

It is also argued that this legislation will increase competition in industry and thereby spur production. But again the connection is hard to establish. Under current practice, inventions, new products and technological advances developed under government contracts—unless awarded to a specific contractor under existing permissible arrangements—are available to all. That approach would seem to offer far greater potential for increased competition and productivity than handing over exclusive rights to one company. In the latter case the company might even choose to reduce production with the aim of increasing its profits.

Admiral Hyman G. Rickover testified at the hearings by the Legislation and National Security Subcommittee that:

> Based on 40 years experience in technology and in dealing with various segments of American industry, I believe the bill would achieve exactly the opposite of what it purports. It would impede, not enhance, the development and dissemination of technology. It would hurt small business. It would inhibit competition. It would promote greater concentration of economic power in the hands of large corporations. It would be costly to the taxpayer.

I do not overlook or underestimate the importance of patents in developing and maintaining a thriving economy. My concern is simply the role of the government and the rights of the people in the patent process. When a private company risks its own money to develop new products and procedures it deserves and receives

the profits that may result. There should not be a different standard applied when it is the government that risks the taxpayers' money. The rewards of successful research and development conducted at government expense should go to all the people.

I agree wholeheartedly with the establishment of a U.S. patent policy that encourages the development and production of new products, that will reward those who take risks, and that will inspire increased confidence in our economy. My comments above deal only with the very special issue of government-funded research and development activities. (A fuller explanation of my views can be found in the report of H.R. 6933, as reported by the House Judiciary Committee, H. Rept. 96–1307, Part I, pp. 29–32.)

The Federal Government has the equivalent of a fiduciary responsibility to the taxpayers of this country. Property acquired with pubic funds should belong to the public. Deviations from that fundamental principle should be allowed only where a compelling justification can be shown and where the voice of the public can be heard in protest. This legislation stands that principle on its head by automatically conveying title or the exclusive right to use public property to private entities and placing the burden on the Federal government to demonstrate that a retrieval of those rights is in the public interest.

JACK BROOKS.

ADDITIONAL VIEWS OF HON. TOBY MOFFETT

Encouraging industrial innovation and increased productivity by U.S. businesses is central to retaining our commercial primacy in the world marketplace. For that reason, the goals of H.R. 6933 and its sponsors are easily shared and properly applauded by all of us.

Unfortunately, the approach taken by H.R. 6933 appears to be seriously flawed. I share the general view expressed by Chairman Jack Brooks in fearing that the bill constitutes a "giveaway of rights that properly belong to the people." Sections 6 and 7 of the bill go too far in favoring the commercial rights of contractors doing research with government—that is, taxpayers'—funds. And it does so without adequate demonstration that the stated lofty goals of increased innovation and productivity will in fact result from shifting the law for the benefit of these contractors.

To pursue that point, let me turn one of the proponents' arguments on its head. It is said that we need "uniformity" in this area, and it is pointed out that there are now "26" different statutory schemes affecting this question of the commercial rights to inventions and discoveries generated under government research grants and contracts. The fallacy of that argument can be seen by looking more carefully at some of those 26 specific arrangements established by statute. The fact is that each statutory enactment was rooted in specific events, specific cases or situations examined by the appropriate Congressional Committees. In each instance, the considered opinion of the Congress was that the results of the research being promoted in that case could best be preserved for the benefit of the public by the commercial licensing arrangement sanctioned at that time. Some of those Congressional determinations, moreover, are quite recent, such as the Federal Mine Safety and Health Act of 1977 and the Water Research and Development Act of 1978.

In my judgment, those statutes demonstrate that the case can be made for diversity rather than uniformity. It would appear more appropriate for the Judiciary Committee to have produced a bill which precisely assessed the arrangements in each of the 26 cases, in consultation with the Committees having jurisdiction in each of those areas, and to have produced a bill creating the best arrangement for each of those areas. Such a bill would not seek uniformity for its own sake, but would analytically design the best arrangement with regard to commercial use for each of the many areas in which the Federal government sponsors research. Such a bill might produce uniformity, but it might also reflect the fact that different cases sometimes deserve different treatments.

That observation leads to an additional compelling reason why this legislation should not be passed by this Congress at this time. I fully respect the extensive efforts of the Judiciary Committee. I am well aware of the hard work involved in holding numerous days of hearings

and in drafting a large piece of legislation. Nevertheless, I believe it can fairly be said that not all of the Committees whose jurisdictions would be significantly affected by this legislation have been adequately consulted. Their judgment and experience is vitally needed to assure that this bill's approach is indeed a sound one for all the diverse areas which it will affect, as its sponsors take great pride in pointing out.

For that reason, I urge my colleagues to opt for further consideration of this measure. I specifically urge that all Committee Chairmen whose substantive jurisdictions will be affected by the impact of this bill on government-sponsored research in their areas be given adequate time to assess this bill and to consult with one another before the House takes action. I am aware that genuine consultation of this sort probably cannot be achieved in the waning hours of this Congress. If not, I believe the long-term implications of this measure are far too important to go forward at this time.

As with so many of our problems as a Nation, we did not get into this problem of lowering productivity and declining ingenuity overnight. It is a complex problem reflecting many developments over many years. There is thus no need to rush out a bill now without being certain that we are doing the right thing, based on the full and deliberate consultation among our colleagues with the greatest knowledge of the potential effects of this legislation.

TOBY MOFFETT.

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