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United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION
WASHINGTON, D.C. 20510

PATENT BRANCH, OGC
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May 1, 1978

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Mr. Lester A. Fettig
Office of Federal Procurement Policy
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Fettig:

It has come to my attention that your office recently directed the General Services Administration to withdraw for 120 days an amendment to the Federal Procurement Regulations which would have clarified the authority of and encouraged federal agencies to follow an approach to government patent policy vis-a-vis universities and other nonprofit organizations similar to that now followed by DHEW and NSF. It is my understanding that while regrettably these regulations were not made subject to formal rulemaking procedures, that it has been GSA practice for many years not to subject any amendments of its FPR to formal rulemaking.

I have the impression that the action you have taken at the expense of the university community may have resulted from a failure to distinguish between the larger issue of overall government patent policy as it pertains to industrial contractors of the government and the application of patent policy to universities and nonprofit organizations. It appears to me that whatever conclusion one reaches as regards industrial contractors, the situation of nonprofit organizations is much different than and involves considerations that are unique to the university community. There seems to be a very strong case for following a policy vis-a-vis universities at least as liberal as that authorized in the regulations that you have temporarily withdrawn. The Report of the Ad Hoc Subcommittee on University Patent Policy which I understand was endorsed by a vote of 11 for and 2 abstentions by the Committee on Government Patent Policy of the Federal Council for Science and Technology sets forth a persuasive argument. So does, in fact, an earlier General Accounting Office report (b-164031(2), August 12, 1968) which while limited to the Department of Health, Education, and Welfare makes it abundantly clear that without such policies serious public health problems would be raised. Indeed, it should not be lost sight of that a substantial percentage of the medical research in this country is performed by universities with government support, and it would be tragic if patent policies which did not encourage university-industry collaboration in the development of new drugs and medical instrumentation were adopted.

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In addition, officials of Purdue University have indicated to me that without such a policy not only would it be largely impossible for Purdue and other universities to obtain private investment in the further development of their inventions, but it would also severely handicap their efforts to obtain funding for research from non-federal sources (i.e. private industry) quite apart from any licensing efforts. The State of Indiana has a heavy investment in Purdue University and other state-supported institutions. I must question the wisdom of any policy which would insist on federal control over inventions made at those universities to the detriment of those universities, the States, and probably ultimately the American public that will be effectively deprived of the development of new products and processes that might otherwise stem from university research.

Accordingly, I urge you to reinstitute the recent amendments. Indeed, I think you might even consider revising them to make them mandatory.

Sincerely,

Birch Bayh
United States Senator

cc: Mr. Joel Solomon
Mr. Stuart E. Eizenstat
Mr. Frank Press
Mr. Richard C. Atkinson
Mr. Joseph A. Califano, Jr.