I P H

N E W S B R I E F

INTELLECTUAL PROPERTY HAPPENINGS August, 1987

IPH is a monthly news brief for technology executives, inventors and software creators. News covered includes information, behind the scenes events and insights into the development of intellectual property and its protection through patents, copyrights, trade secrets, trademarks and similar rights.

Japanese Flood Patent Office With Superconductor Inventions

Large Japanese companies have filed more than 1500 patent applications on superconductor inventions within the last year -- Sumitomo Electric alone filed 700 applications and six other companies have filed more than 50 applications. Japanese companies hope to use their patents to help dominate the emerging new technology and to obtain cross-licenses from holders of any basic patents.

The Japanese and everyone else in the field is waiting with interest for the publication of IBM's basic patent application. IPH predicts this could occur as early as October of this year.

Whether or not GOCO Labs are under Federal Technology Transfer Executive Order Still Unresolved

During the draft stage of President Reagan's Executive Order on Federal Technology Transfer (FT^2) (IPH 6/87), one provision, 1(b)(1), linked the GOCOs (government-owned contractor-operated laboratories) with the GOGOs (government-owned government-operated laboratories). This provision related to Executive department and agency heads delegating authority to the Federal laboratories "to license, assign, or waive rights to intellectual property developed by the laboratory." In the course of Executive branch negotiation, the Department of Energy took a firm position that GOCOs, which were under DOE, should not be included and they were omitted.

However, another provision, 1(b)(4), remained intact. This stated that the head of each Executive department and agency shall promote the commercialization of patentable results of federally funded research by "granting to all contractors... title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by... the Government". No distinction was made between a GOCO contractor and other government contractors. The Department of

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Energy is resisting the GOCOs coming under the provision while others in the Executive branch say they do come under the provision. A White House official involved in the preparation of the Executive Order indicates the controversy may eventually have to be resolved by William Graham, the President's Science Adviser.

Meanwhile, it is believed that a new law will be introduced shortly to provide clearly for technology transfer from GOCOs. This may be the best procedure since GOCOs, which include some of the world's leading laboratories, are not the same as ordinary government contractors and yet they are not Federal laboratories in the usual sense and the employees are not under Civil Service.

GE Buys License to British Universities' Invention - Pays Millions

GE has recently entered into an agreement with BTG (British Technology Group) for a license to advanced medical scanning devices and has agreed to pay several million dollars. Three British universities will share in the proceeds. BTG will now seek payments from Toshiba, Diasonics, Siemens and Philips.

IPH continues to be amazed at the success record of BTG which among other things, is set-up to commercialize the technology of British universities and British government labs.

Animal Patents

The halt in legislative efforts to declare a moratorium on patents on animals (IPH 2/86 & 7/87) proved to be short-lived. Congressman Charles Rose (D-NC), with six co-sponsors, introduced legislation this month putting a two-year moratorium on patenting animals modified, altered, or in any way changed through genetic engineering technology and revoking any patents previously granted. A similar bill is expected to be introduced by Senator Mark O. Hatfield (R-Ore) after the August recess.

No patents have been issued, as yet, but pending are 15 relating to such matters as introducing disease resistance; ability to adapt to different geographic locations and climates; higher meat content; more efficient growth; and use in developing new pharmaceuticals. The moratorium is supported by a coalition of a number of major national farm, animal welfare, environmental and religious groups who pledge to launch a national campaign to build further support.

Nearly all the arguments are the same emotional ones that preceded the Supreme Court's Chakrabarty decision in 1980. (This held that live, genetically altered microorganisms were patentble.)

However, agricultural organizations are arguing such patents will result in a new kind of tenant farming. They say farmers will either no longer own the new and better animals they use or will have to pay royalties on them. This situation, they claim, will lead to corporate

consolidation of the livestock industry. Agricultural groups point out that five major companies now control 120 seed companies that were formerly independent before seed patenting started in 1970. The situation brings back memories: Farmers managed to keep yellow margarine from consumers because it competed with butter. In that case, common sense finally prevailed and consumers were able to buy margarine premixed with yellow powder.

Both the emotional arguments and those based on concerns for the farmers are believed to be without merit and stem from unreined imaginations. No proposal has been made to stop research and use of new animals, only that the patent incentive be stopped.

Instead of hurting the farmer, the potential for helping the farmer (as well as improving the lot of mankind) is great. Encouragement should be given to development of animals that will help the food problems of Africa -- such inventions as domestic animals for food and milk that can survive in hostile regions. Tobacco farmers could switch to aquaculture if a fast-growing fish tolerant of temperate zones was developed. Beef raisers, too, might benefit from aquaculture. Fish has passed beef as entree of choice in restaurants. Since such inventions will come from the Department of Agriculture and numerous universities and foundations in addition to private industry, it is hard to see that any corporation will have a lock on these new technologies, and such inventions should be encouraged by a viable patent and not discouraged, as the opponents would prefer.

Instead of declaring a moratorium, why not allow the patents to come out? If an actual trend proves to be negative, address the problem at that time. A moratorium would avoid ever determining if there is indeed a real problem.

Electronic Companies Change Strategies to Emphasize their Intellectual Property -- Take Hard Line on their Rights

IPH has already reported TI's chip war that netted them $268 plus million (IPH 4/87), IBM's multimillion-dollar secret settlements with Japanese infringers (IPH 1/86 & 2/87), Intel's winning fight (so far) with NEC on important chip circuits (IPH 2/87) and Apple Computer's restriction against anyone using the Mac-type of interface with competitor's products (the look-and-feel theory of copyright law) (IPH 2/87).

Other examples of the hardening attitudes: IBM's enforcement of its rights against clones of its new PS/2 computer line; Corning's victory against Southern New England Telephone stopping its optical fiber joint venture with SpecTran; Intel's refusal to second source its 32 bit technology to AMD (now in hot contract dispute); and likewise, Motorola's refusal to second source its 32 bit technology to Thompson-CSF (dispute settled); National's lawsuit against United Microelectronics and also against Toshiba on its universal receiver-

transmitter chips; Unison's settlement with Broderbund by a payment of cash and cessation of infringing production on a "look-and-feel" copyright suit, and Valid Logic's prompt settlement of the patent lawsuit brought against Teradyne for CAD hardware modeling (expected to cost Teradyne millions plus in royalties). These cases are all only the tip of the iceberg.

The new change of attitudes can best be summed up by Larry Tesler, Apple Computer's Vice-President for Advanced Technology who recently said, "In the past Apple had few patents, but our rate of applying for patents is increasing rapidly. The feeling is shifting here, from an emphasis on getting products out fast to an emphasis on inventing things along the way. It's a move toward new and unique developments to give our products more differentiation."

--And the Chemical Industry is Doing the Same Thing

Witness DuPont's so far mostly successful world-wide battle to protect Kevlar from infringement by Akzo. DuPont flatly states that without patent protection there would be no Kevlar -- they would not have spent the $500 plus million dollars in development costs.

Other examples are: (1) Electro-Biology winning $9.8 million dollars in damages from American Medical Electronics (AME) for a bone growth stimulator -- AME says they could not continue as a going business if the judgment is affirmed on appeal; (2) NL Chemical's suit against United Catalysts on printing ink viscosity enhancers; (3) Monsanto's world-wide battle against Stauffer Chemical on herbicides (Roundup versus Touchdown, Monsanto recently won in Japan); (4) Merck's fight against Mylan (indomethocin for arthritis); and (5) GE's battle with Mitsubishi on its modified polyphenylene oxide patent in Japan. These are also only tips of the iceberg.

DuPont's suit to block Allied Signal's Petra line of thermoplastic polyester resins and its victory against Phillips on melt-processable ethylene copolymer resins further indicate DuPont's strong strategic use of the patent laws.

The stronger and more dependable patent system is partly responsible for the increased R&D spending of chemical manufacturers -- 5% increase to $9.3 billion versus only a 2% increase last year. This compares to a mere 1.9% for all businesses (percentages adjusted for inflation).

Research Corporation Reorganizes -- Becomes More Involved in Commercialization

The granddaddy of university invention management organizations has transferred its technology development and licensing activities to a new company, Research Corporation Technologies. The new company has taken over the agreements to evaluate, patent and license the inventions of 300 universities and will expand into new activities. These new activities include investing in and assisting new companies to exploit inventions and joining with state economic development groups and private investors to develop technology.

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