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Panel of experts reportedly ruins intent of new patent law

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WASHINGTON — In disregard of White House goals and despite the intent of Congress, a panel is meeting behind closed doors to draft guidelines that critics insist are meant to cripple a landmark patent reform law scheduled to go into effect July 1.

That law, passed by Congress four months ago, is supposed to wipe out 26 complicated, often-conflicting regulations so that major problem-solving and even life-saving inventions no longer will be blocked by bureaucratic red tape from reaching the American public.

But in a recent, private communique to Reagan budget director David Stockman, Sen. Strom Thurmond (R-S.C.) angrily said "much of the original intent" of the new law "is being ignored or written out of the guidelines" by the panel of patent experts from 21 federal agencies.

A former Carter administration energy official, Thomas Stelson of Atlanta, described the panel's secretive actions more bluntly.

Members of the panel "are opposed to what the new law stands for," said Stelson, vice president for research at Georgia Tech. To have them draw up the guidelines "is sort of like inviting the fox into the hen house."

The stakes are high for Georgia Tech, which hopes to reap profits from inventions developed under federal grants. Tech ranks second in the nation, behind the Massachusetts Institute of Technology, in technical research grants — about $43 million in current-year federal grants and another $7 million from U.S. industry.

Meanwhile, the Reagan White House seems to be unaware of the behind-the-scenes dilemma that has been caused by the patent panel actions.

The new law calls for the president's science adviser to make recommendations on the guidelines. But there is no science adviser. None has been named by President Reagan, and he is not expected to make such an appointment soon.

By allowing the nation's research universities and innovative small businesses to own rights to inventions developed with research money from federal grants, the reform law ends some 30 years of patent policy debate.

One result will be billions of dollars in revenue to business, non-profit and campus research institutions.

In the current year, for instance, U.S. universities and non-profit centers hold $5 billion and small businesses retain $1.2 billion in federal research grants.

Another result will be that control of patents resulting from those grants no longer routinely will be impounded by federal agencies that issue the grants.

For example, of 28,000 patents controlled by the government, less than 4 percent were actually licensed so that the public could benefit from the inventions. The Senate Judiciary Committee reported in December 1980 that the problem stemmed from 26 different, cumbersome federal patent policies.

That same month Congress passed long-awaited remedies to the problem with a law providing for establishment of a simple, uniform patent policy.

The procurement policy division of the Office of Management and Budget was to draft the guidelines.

But the Carter administration was on the way out, Congress was in a lame-duck session and OMB let control of the drafting process get away. It wound up — in disregard for the new law — in the procurement division of the General Services Administration.

A GSA official managed to get a formerly disbanded inter-agency group of patent policy officials reconstituted, with James E. Denny installed as chairman of the panel.

Denny has been a government patent counsel for 22 years at various federal agencies and is now based in the Department of Energy.

By Jan. 8 — less than a month after Congress passed the new law — Denny called the first meeting of representatives from 21 federal agencies together to produce mandatory guidelines.

The public is barred from these meetings.

Meanwhile, Sen. Charles Mathias (R-Md.), ranking majority member of the Senate Judiciary Committee, which produced the new law, has charged that the OMB dumped the guideline-writing job into the hands of the Denny task force that "includes the same agencies whose past failures made the law necessary."

"Instead of having a uniform patent policy they are coming up with exactly what the Reagan administration says it wants to do away with," said Joseph P. Allen.

Allen this month became executive director of Intellectual Property Owners Inc., an organization of patent and trademark owners.

"This is a perfect example of government gone bonkers," Allen said of the guideline writers, who, according to several insiders, are adding more red tape by the week to what had been a simple law.

Allen was a chief aide to former Sen. Birch Bayh (D-Ind.), who with Sen. Bob Dole (R-Kans.), sponsored the patent reform act.

Bayh and Allen got involved in 1978 when they were notified by Purdue University at Lafayette, Ind., that a corn-based gasohol fuel product had been developed as a result of federally funded basic research.

The invention came after the Department of Energy had gotten its money's worth out of the basic research grant, but the DOE was refusing either to make the invention available to the public or to let Purdue license its use.

Allen and Bayh quickly learned that the Purdue problem was being repeated throughout government.

For instance, they learned that Dr. Salmon Hamburger had invented a simple blood test to determine the levels of chemotherapy treatment a cancer patient could tolerate.

The Hamburger test was an outgrowth of federally funded research at the University of Arizona and it would replace agonizing, hit or miss methods that often caused needless suffering among patients.

Hamburger had been hounding government corridors for months, unable to get a necessary waiver to make his invention available to cancer patients, or to get the bureaucracy to make it available.

"The problem is immense," said Tech's Stelson, who was assistant secretary of energy in the Carter administration and now serves as chairman of the Council on Governmental Relations for the 120 largest research universities in the nation.

