PATENTS, COPYRIGHTS AND RIGHTS IN DATA

Committee: Thomas E. Stelson, Chairman; Winifred R. Widmer; Howard W. Bremer, University of Wisconsin; Lawrence Gilbert, Boston University; Roger Ditzel, University of California; Clark A. McCartney, University of Southern California; Niels Reimers, Stanford University; Arthur Smith, Massachusetts Institute of Technology; and Edwin T. Yates, The Johns Hopkins University

Report: Dr. Stelson, Chairman

Patent Policy

Patent Committee Meets with DHEW General Counsel

On Wednesday, October 24, 1979, members of the Patent, Copyrights and Rights in Data Committee met with DHEW General Counsel to explore the Department's position on the use of institutional patent agreements and the granting of waivers where necessary to commercialize inventions. Ms. Joan Bernstein, in office only 10 days and not yet confirmed as General Counsel, expressed a willingness to investigate and respond to concerns of DHEW's slowness in granting patent rights waivers and its inability to come to terms with some institutions in negotiating institutional patent agreements. (IPAs)

Pending action on an Administration position on patent policy and action on the Dole/Bayh Bill S. 414, COGR will continue to urge DHEW to grant necessary patent rights waivers and to move ahead with issuance of IPAs.

Patent Committee Meets with NSF General Counsel

On Thursday, October 25, 1979 members of the Patents, Copyrights and Rights in Data Committee met with NSF General Counsel, Charles Herz, to explore the NSF position with regard to Dole/Bayh, S. 414. Mr. Herz indicated that because the NSF, as opposed to other federal agencies was current in its patent dealings and usually granted title, therefore, had no desire to alter a procedure that apparently worked for the Foundation. He did say he could operate comfortably within the parameters of the Dole/Bayh Bill, but that he was of the opinion the bill was largely unnecessary, because many of the patent problems addressed by the bill could be handled administratively. Mr. Herz also said that any patent policy bill should address all contractors, not just universities and small businesses.

Mr. Herz expected an Administration position in a reasonably short time and indicated that NSF would loyally support that position. While not confirmed, it is understood that the Administration wishes to grant title to patents resulting from government sponsored research to universities and small businesses in whatever position it develops.

Federal Patent Policy Testimony

Ralph Davis, Patent Manager, Purdue University presented testimony on government patent policy before the Subcommittee on Science, Research

USDA Cooperative Agreements

The Department of Agriculture has been issuing Cooperative Agreements many years before passage of P.L. 95-224 mandated them. The Department has taken the position that USDA Cooperative Agreements will not bear indirect costs because of the "mutuality of interest of the cooperating parties."

In light of the definition of P.L. 95-224 and the revision to OMB Circular A-21, COGR will write to USDA and point out its noncompliance.

and Technology on October 17, 1979. Mr. Davis said that "philosophically, the university community believes that a uniform patent policy providing incentives for technology transfer should apply to all grantees and contractors. However as a practical matter, the greater need lies primarily with the universities, nonprofit organizations and small businesses." Mr. Davis expressed support for S. 414 as the alternative which most adequately met the needs of the universities, provided the incentives necessary to maximize the transfer of technology, and protected the government's and public's interests.

Mr. Davis presented testimony on behalf of the American Council on Education, the Society of University Patent Administrators and COGR.

Treatment of Proprietary Proposal Data - DOE

It was reported in the October meeting report that the Department of Energy is using a modified "Rights to Proposal Data" clause which, on its face, removes the proposer's right to treat certain aspects of a proposal as proprietary after an award is made.

DOE asserts that it will recognize the confidentiality of proprietary data when so indicated. Because there is at least one recent example where DOE failed to do so, institutions are advised to assure themselves that confidentiality is recognized, when appropriate, in the event DOE overlooks such a request.

Further, contracts should include a provision that excludes proprietary data from the data the government is authorized to use. If the data is not so excluded, the government may make full use of the data pursuant to the terms of the agreement.

Copyrights at Colleges and Universities

Final publication of the Copyright booklet has been delayed pending consideration of some late comments. Copies should be available for distribution by January 1980.

ATTACHMENT 1

NATIONAL SCIENCE FOUNDATION
Division of Grants and Contracts
September 13, 1979

NSF Grant Administration Features

Feature	Current Grant	"Master Grant"	Proposed	Change Required
Approvals	Few Delegated	Most Delegated	Most Delegated	Expand Current OPAS, including revision to GPM (613) and FL 118 (Article 5&6)
1. Fund "Transfers"	NOT Allowed	a. Among projects in the Master Grant only b. within the scope of individual projects c. without limitation	a. Among related grants b. within the scope of each project c. within 10% of total grant amount	Amend FL 118 (Article 1, 6) to allow costs incurred for benefit fo other grants
2. Pre Award Costs	not allowed, normally	OPAS, within 90 days before effective date of project	OPAS, within 90 days before effective date of project	Amend FL 118 (Article 1,6)
3. No cost extensions	Grants officer	once, OPAS	once, OPAS, must notify NSF	Amend FL 118 (Article 6)
4. Alterations, Renovations	OPAS, under $1,000	OPAS	OPAS	Amend FL 118 (Article 6)
5. Subcontracting	Grants officer	OPAS	OPAS	Amend FL 118 (Article 6)
6. Equipment				
a. special	Program officer	OPAS	OPAS	Amend FL 118 (Article 6)
b. general	grants officer	OPAS	OPAS	Amend FL 118 (Article 6)
7. News Release Costs	Program officer	OPAS	OPAS	Amend FL 118 (Article 6)
8. Travel				
a. Domestic	OPAS	OPAS	OPAS	No change
b. Foreign	Program officer	OPAS	OPAS	Amend FL 118 (Article 6)
9. Commercial Publication	Grants officer	OPAS	OPAS	Amend FL 118 (Article 6)
Reports				
1. Technical Progress	Annual, each project	annual, each project	annual, each project	no change
2. Technical Final	Each project	consolidated 98A, except for individual technical items	each project	no change
3. Quarterly cash (FCTR)	Each project	consolidated	each project	no change
4. Final disbursement	Each project	consolidated	each project	no change