From Lacken 7/28/86

H.R. 4428

Sec. 303 (103rd)

Dear Mr. Chairman:

I understand that the Commmittee is considering the enclosed amendment to H.R. 4526, a bill authorizing appropriations for the Department of Energy's (DOE) national security programs. The amendment would require the Secretary of Energy to make decisions "within a reasonable time" as to whether to assert title to any invention resulting from DOE's atomic energy defense contracts. The amendment would also require the Secretary to consider the written recommendations of the Military Liaison Committee and to consult with a number of specified officials.

The prosposed report language states that this amendment does not change existing patent policies. This is not so. Current patent policy is designed to encourage commercialization of federally-financed inventions. It does this by ensuring that issues of ownership are, to the extent possible, resolved (a) at the time of contracting and (b) in favor of the contractor. Thus, Public Law 98-517 established the uniform policy of allowing small businesses and universities to own the inventions they produce; Public Law 98-620 extended the principle to GOCOs; and the President directed agencies to apply the same principle to large, for-profit contractors, to the extent their laws permit them to do so.

This amendment takes a very different approach. It's practical effects are to require that issues of patent ownership be determined on an invention-by-invention basis, to introduce cumbersome review procedures, and to preclude the use of "class waivers" and "installation waivers." As such, it introduces delay and uncertainty. It supersedes the requirement that that small businesses and universities be given the right to elect ownership to inventions resulting from the programs in question. It gives the Secretary of Energy far less flexibility than that official now has under Section 5908 of Title 42 to waive Federal ownership rights for classes of inventions under these programs.

The amendment appears to be based on the assumption that these programs deal with high technology, that the uncontrolled dissemination of information pertaining to such technology may compromise the nation's security, and that improper dissemination can best be avoided by making it very difficult for anybody but the government to exercise ownership rights. Controlling dissemination that can compromise legitimate security interests is best accomplished through appropriate security classification procedures or through finely-tailored exceptions to statutes permitting contractor ownership. A good example is Section 202(a) of title 35 which permits agencies to withhold ownership rights from universities and small businesses when the contractor may be subject to foreign control, when necessary to protect the security of certain intelligence operations, or when the contract involves DOE's GOCO operations insofar as they pertain to naval nuclear propulsion or weaponry.

Overbroad legislation of this sort adds little to our ability to protect ourselves from the unauthorized disclosure of sensitive information while delaying the commercialization of federally-funded research. The net effect will be reduced competitiveness, lost jobs, and foregone tax revenues. We urge that the amendment be defeated.