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United States Senate

WASHINGTON, D.C. 20510

January 13, 1978

The Honorable Jimmy Carter
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D. C. 20500

PATENT BRANCH, OGC
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Dear Mr. President:

The Department of Commerce has recently been circulating a study that advocates giving contractors monopoly rights to inventions developed at public expense. Draft legislation to this effect has also been introduced in the House.

Recently, I testified before the Monopoly Subcommittee of the Senate Small Business Committee regarding title to publicly-funded inventions that should be retained by the Government for the unrestricted use of any U.S. citizen. I pointed out that new products and processes are the key to maintaining a healthy and viable economy; that the Government finances the bulk of research and development in this country; that the inventions developed under Government contracts must be freely available to any U.S. citizen; that giving away Government patents or exclusive rights result in the recipients receiving a 17-year monopoly; that the arguments advanced by those in favor of giving away Government patents or exclusive rights are unjustifiable and wrong; and that contractors should not enjoy monopoly benefits at the public's expense.

Congress has taken the position that the Government should, except in unusual circumstances, retain the rights to inventions developed under Government contracts. However, many Government agencies have turned this policy around by making the exception the rule and routinely giving patent title or exclusive rights to their contractors. The Department of Energy has issued patent regulations which encourages the give-away of Government Non-Nuclear Energy Act require the Government to take title to publicly-funded inventions. The Department of Defense has been giving away Government patent rights for years.

Presidential patent policy statements issued by previous Administrations have been vague and contain large loopholes which have aided this give-away practice. While ostensibly advocating Government ownership of patent rights to publicly-funded inventions, the Patent Policy Statement issued by former President Nixon in 1971 actually allows most Government contractors to take title to publicly-funded inventions. The Nixon policy statement is still in effect today.

I understand that the Executive Branch is developing a formal position on the so-called Thornton Bill now pending in the House. That is the bill that would establish a give-away Government patent policy as a matter of law.

My considered opinion is that such legislation will not be well-received in Congress. The average man on the street can readily see the folly in the Government paying for the development of new technology and then giving a corporation monopoly rights to its use for 17-years.

The area of Goverment patents has been long abused. It is an area where this Administration can and should exercise leadership. In this regard, I recommend that you supersede the Nixon Patent Policy Statement with your own Presidential Patent Policy requiring all agencies in the Executive Branch to protect, for all U.S. citizens, the right to unrestricted use of publicly-financed inventions. The executive order should provide that exemptions to this policy should be reserved for rare use in truly exceptional cases and then only after formal review and approval of the Attorney General to ensure that the exemption will not adversely affect competition.

With warm regards, I am

Sincerely yours,

Russell Long