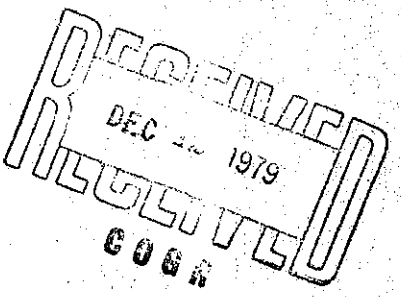
AMERICAN COUNCIL ON EDUCATION
ONE DUPONT CIRCLE
WASHINGTON, D. C. 20036

DIVISION OF GOVERNMENTAL RELATIONS
(202) 833-4736

Rec'd 12/7

December 3, 1979



The Honorable Robert W. Kastenmeier
Chairman, Subcommittee on the Courts,
Civil Liberties & the Administration of Justice
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the American Council on Education, representing over 1,600 colleges, universities, and associations in higher education, I am writing to urge your subcommittee to hold hearings on H.R. 2414, the University and Small Business Patent Procedures Act.

H.R. 2414 would establish a uniform, government-wide patent procedure for small businesses and nonprofit organizations performing government-supported research and development. The bill would automatically grant small businesses and universities title to inventions arising from government-supported research unless the contracting agency could justify, through specified procedures, holding title to the invention. The small business or university would be required to commercialize the results, and return a percentage of profits to the government. We believe the bill represents a positive step toward a federal patent policy which will lessen administrative burdens on the agencies as well as on universities and small businesses.

Generating inventions is almost never the main objective of research conducted by universities; rather, an invention is generally an incidental by-product of the research university, largely attributable to serendipity, to the personal creativity of the investigator backed by his years of professional training and experience, and to the scholarly environmental and research resources provided by the university. In making a decision about where the primary rights to an invention developed on campus should be vested, one consideration should be paramount: where primary rights should be vested to transfer invention technology to the public for its use and benefit most quickly and economically.

Educational institutions are, of course, not organized to manufacture, produce, or market a patentable invention. Accordingly, if university-generated inventions are to be used, such institutions must interest those in the industrial world who have the commercial capability for invention and market development, which the university lacks. University-based inventions tend to be in the early stages of development, therefore require substantial capital in order to prepare for market. If universities cannot furnish an exclusive license to developers for a limited period and thereby secure the investment of necessary capital, inventions are less likely to be developed to the point of marketability, and thus the public is less likely to receive the benefits from such inventions. H.R. 2414 provides the essential degree of exclusivity, that will provide private sources with sufficient incentive to develope a product or process.