3

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M. D. Woerpel May 3, 1965

Subject: Foreign Rights of Government-Owned Inventions

The recent discussions concerning the inventions of Dr. Sih have raised again the question of foreign rights to inventions which are unquestionably owned by the government through its support of research work done on this campus. The attached letter from Schering AG in Berlin confirms the more than casual interest of a foreigh company in a particular research result. It also suggests several logical reasons why our government should be interested in having some organization take the responsibility for the development of the commercial utilization of such inventions outside the United States.

Sometime ago, we questioned whether the government, particularly the Surgeon General, might be more easily convinced to give up foreign than U. S. rights to inventions arising out of government supported research. We discussed one possible arrangement under which WARF would promptly file U. S. patent applications, thereby establishing a convention date which in most instances would provide a year in which to make decisions concerning foreign applications. During this year the Surgeon General could make his determination concerning the disposition of U. S. rights, but would have, by prior agreement given WARF, the freedom to secure whatever foreign patent position it might consider desirable.

Under this plan, WARF might expend considerable monies developing U. S. patent positions on inventions which it would not ultimately own. In return for this investment, however, it would secure the corresponding foreign rights. As a variation, WARF might file an English or Canadian patent application immediately thereby establishing the convention date. Such an application would never need to be surrendered to the U. S. government. The U. S. application could follow a favorable determination by the Surgeon General. (My feeling is that this might be less acceptable to the Surgeon General, however.)

Some reasons why such a proposal might now be well timed:

1. While many critics of the government patent policies, including Senator Long, state that the results of tax supported research should be made freely available to benefit all the people, there seems to be no opinion that the same freedom of availability should accrue to all 3.5 billion of the world's population. Long and others frequently speak in terms of those who paid for the research.

2. With the present monetary problems faced by our government, particularly in regards to out-flow of gold, it would appear that any mechanism which would develop an in-flow of dollars would be highly desirable. Licensing of U. S. inventions would, at the same time, export knowledge, which is also consistent with our present world attitude. Furthermore, the royalty income would principally be from the more highly developed countries, those most capable of paying.

3. It appears that the government officials would be much less sensitive to criticisms which might develop out of a licensing policy adopted in a foreign country than to criticism of similar handling of the same invention in the U. S.

In summary, it would appear that foreign rights should be more easily obtained than U. S. rights. The logic of the incentive system would still apply. This Foundation would undoubtedly be required to give the U. S. government certain freedoms in relation to the use of such patent rights for treaty purposes. Communication and transportation possibilities today are so good that a licensing operation based on foreign rights can be interesting and productive of income.

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