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Bsn Gordon / Nader comments

THE UNIVERSITY AND SMALL BUSINESS PATENT PROCEDURES ACT (S.414)

The fundamental objectives of this legislation, as stated in Section 200 Policy and Objectives, are open to question. There is no evidence of a link between the patent monopoly and commercial exploitation. That it is difficult to get small businesses to accept government r & d funding, or to exploit government research commercially has not been established. Furthermore, the goal of encouraging collaboration between small business concerns and non-profit organizations may conflict with the bill's stated goal of promoting free competition. This is of special concern given the restrictive nature of the patent. Finally, this bill could encourage government r & d now successfully and competitively exploited by the private sector, to fall under monopoly control

SEC 202

Sec. 202 (a): What happens if small business that has retained title to an invention is subsequently acquired by a large firm? Under this section, retention of a patent by a small firm could create an incentive to its ultimate acquisition by a large firm with an already large patent portfolio.

Many non-profit organizations are established by corporations and a non-profit organizaiton can sell or license patents to a large corporation with a large patent portfolio Clearance by the Department of Justice should be required to protect the public adequately. (In fact, it isn't enough that the Department of Justice clear the give-away. There has to be money appropriated to pay for additional employees to do this).

In Sec. (B) (2), the Comptroller General is given the power to advise the Executive agency in patent policy. The GAD is only an auditing agency. These powers should not be delegated to the Comptroller since he does not know anything about anti-trust problems. raised by patent questions.

Sec. 202 (C) 5:

At the present time it takes an average of 2½ years for a patent application to be processed. During this period new technological and scientific information is withheld from the public and often from the government itself. Scientific and technological progress depends on the rapid dissemination of this information more than the commericalization of products resulting from Federal r & d.

The public, through the Federal agency, may require periodic reports on the research and development of inventions unless the information is considered by the Federal agency to be financial and commercial in nature, and not privilged under the Freedom of Info Act. Could this language be used to exempt information from FOIA? After all, this information is not a trade secret-so why is this language necessary?

Sec. 202 (7): This section restricts rights of non-profit organizations to transfer patent rights, but appears to permit such organizations as the National Patent Corporation to grant limited-term exclusive licenses under certain circumstances when it has given up title to grant limited term exclusive licenses to those firms having already a strong patent position in a field.

Sec. 203: This section grants the Federal governemnt March In Rights to grant licenses under certain circumstances when it has given up title to an invention. Yet the government, which has had this power for 16 years has never used it.

Sec. 204 (a): This section permits the title holder to license any subject invention. Why should the government be giving away an invention so that someone else can license it when the government could do so itself? This amounts to a subsidy.

In Section 204 (b): After ten years, the government is entitled to a share up to the actual amount of government funding under which the invention was made, if the non-profit organization or small firm receives after tax profits in excess of $2 million on sales of products manufactured by a process employing the invention. Why should the governemnt recover only its actual investment and no more while the private firm can make an unlimited amount of profits far in excess of its actual investment? In addition, to this clear distinction in treatment, there also seem to be contradiction in terms in the first sentence with regards to non-profit organizations making profits in excess of two million dollars.

Sec. 205: The standard "substantially" is unclear.

Sec. 206 Confidentiality

Under this provision the public will not have access to any information that would disclose an invention in which the government has an interest, for a "reasonable" time until the patent application is filed. The net effect of this section would be to retard scientific and technological progress by withholding such valuable information from government agencies, the business community (large and small) other than the r & d contractor, the academic community, and the general public.

SEC 208 Domestic and Foreign Protections of Federally Owned Inventions

The main objective under this section, in promoting the exclusive licensing of inventions is that there be "maximum utilization " by the public of the inventions. However, this may not be the most desirable objective. Other objectives such as maintaining competition and economic growth may be more important goals.

Section 208(3): Do the provisions of Chapter 28 adequately

describe the conditions under which exclusive or partially exclusive patents should be granted?

Sec. 210

The bill's purported intention to aid small businesses is contradicted by the transfer of title of all government-owned inventions to Commerce. Since Commerce is more interested in big business, this section undermines the hope of aiding small business, and non-profit organizations. The Dept. of Commerce has traditionally given away the fruits of inventions it controls.

Sec. 211 (c) (2)

The small business aspect is only window-dressing for a much more extensive giveaway.

In granting a license, the Federal agency is given the responsibility of determing whether competition will be adversely effected or whether an area will be overly concentrated by any line of commerce. Most federal agencies however, are in no position to make such decisions. The Department of Justice or FTC are the only ones to determine whether a license should not be granted for these reasons and should be required to pass on license grants. The standards should be: affirmatively to promote competition and to promote economic growth.

211 (d) Does the "lessen competition" language sufficiently cover conglomerates, which may not be covered by the anti-trust laws and which accumulate considerable economic power?

211 (f): Same problem as Sec. 202 (c)5. If this section mirrors the FOIA exemptions, then why include language which could give an executive agency an excuse to exempt and prove confusing to the courts.

Section 212: This section wipes out all laws providing that the federal government keep the results of its r & d and make them available to everyone.