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On the basis of information that the Senate Select Committee on Small Business intended to conduct oversight hearings on Government patent policy, we contacted the staff of that Committee and were advised that such hearings would in fact be held on the 19th through the 21st of this month. To date the staff has been unwilling or unable to advise who will testify on this important subject, though staff members advised that the Association would receive no invitation, notwithstanding our indication of interest.

Through other sources we know that the Justice Department and the Small Business Administration have been asked to testify. Although these agencies have virtually no research and development responsibilities and, therefore, no operational experience to draw upon, to our knowledge no major research and development agency has been asked for its views. More extraordinary, the Department of Commerce, who chairs the Executive Branch's Committee on Government Patent Policy, has been neither contacted nor invited to attend these hearings.

On the basis of the above and additional reasons that follow, we must conclude that the Committee is being used as a forum to espouse policies that the Association considers contrary to the needs of small businesses engaged in Federally sponsored research and development and the economic health of the nation. Further, we object to the cloak of secrecy that has fallen around the organization of these hearings, which we must conclude is intended to foreclose participation of those who hold views contrary to the Justice Department.

Unfortunately, these conclusions seem unavoidable in light of the following:

1) It is well known to all who have made but a cursory review of Government patent policy that the Justice Department has maintained an unswerving view since the 1947 Attorney General Report on Government Patent Policy that the Government should retain ownership of all inventions generated, only if in part, by Government funding. This position has been maintained over a period of thirty years, notwithstanding the fact that the report was generated without the aid of any operational data at a time when Government R & D funding was measured in hundreds of millions of dollars compared to present appropriations that exceed 22 billion dollars and over 60 percent of the nations R & D budget.

2) Every major R & D agency of the Executive Branch has abandoned the rigid views of the Justice Department through regulation and/or practice on the basis that such policy encourages an adversary environment between Government, business and the non-profit sector in an era when other industrialized nations have recognized the need for collaboration between these sectors in order to assure transfer and development of technology and effective competition in the world marketplace. In order to assure an environment appropriate to compete in such a market, the Association believes that the Government must recognize the innovating organization's need to maintain ownership of its inventive ideas in order to justify and encourage its full participation in introducing new technologies which will displace

mature technologies and the status quo. Certainly, conditions deemed necessary to assure appropriate management of such ideas are acceptable to the Association.

3) Mr. Benjamin Gordon, who was identified as responsible for organizing these hearings, has been publicly and facilely associated with the Justice Department's views for over fifteen years. Attached is an article published by Mr. Gordon which supports our conclusion. This article inaccurately equates the leaving of ownership to the innovating organization of their inventive ideas generated in part with Federal funds to that of a grant of monopoly by sixteenth century British monarchs to sell commodities such as salt and coal to persons with selfish interests. There is no attempt on Mr. Gordon's part to take into consideration in this analogy the equities of the innovating organization in either making the invention or developing it at private expense for introduction into the marketplace. Further, and more serious as we believe his bias has clouded any claim to scholarship, Mr. Gordon makes no mention of the consittutional predilection of the founding fathers to permit the Congress "To Promote the Progress of Science and Useful Arts, by Securing for Limited Times to Authors and Inventors the Exclusive Right to Their Respective Writings and Discoveries" (Art. I, Sec. 8, par. 8 of the U. S. Constitution).

To suggest as Mr. Gordon does that "the free private enterprise system" can only exist in the absence of a strong patent system flies

in the face of the recorded history of this country and the Constitution. This article, his identification with the Justice Department views, and the secrecy under which these hearings were organized disqualify him in our eyes from involvement in management of hearings intended to elicit objective comment.

In conclusion, we believe the hearings as now constituted can serve no useful purpose and request that they be abandoned or reorganized at a later date in order to permit appropriate participation.