Mr Latker

THE FOX CHASE CANCER CENTER

7701 BURHOLME AVENUE • PHILADELPHIA, PENNSYLVANIA 19111 • 215/342-1000

H. DONALD PUTNEY
SENIOR VICE PRESIDENT
215/728-2719

January 18, 1978

PATENT BRANCH, OGC
DHEW

JAN 27 1978

Honorable Dewey S. Bartlett
Senate Select Committee
on Small Business
Senate Office Building
Washington, D. C. 20000

My dear Senator Bartlett:

This Center has been advised by Mr. Norman Latker, Patent Counsel, DHEW, that certain pending Federal patent legislation (Bill HR-6249) is being subjected to hearings by the Monopoly Sub-Committee of the Senate Select Committee on Small Business.

It is our understanding that if the proposed legislation should become law it would apply to Federal grants to universities and colleges and to nonprofit institutions engaged in research. This is a matter of concern for, in my opinion, it would have a deleterious effect on the patent system, which is basic to the free-enterprise fundamentals on which our nation is founded.

Speaking from my own background of training and experience - that of research administration - it is hard for me to conceive of a situation involving a research grant by the Federal Government to a grantee institution wherein the Federal Government is the sole supporter of the respective project.

The designation of a grant is a "grant-in-aid" and in keeping with that concept, the institution must demonstrate cost sharing capability. Cost sharing also manifests itself in several other ways. Many institutions are state-supported, and it is the state that provides the support of the research endeavor by providing much in the way of direct operating costs, buildings, and research resources to support the research effort.

In addition, many institutions, such as ours, strive continually to obtain funding from foundations and the public to support research programs. Funds are also obtained from the voluntary granting agencies such as the American Cancer Society. Thus, there is a great comingling of funds for the support of the research program in the nonprofit setting.

Thus, it would seem inappropriate that title to a patent should be retained by the Federal Government only by reason of partial fiscal support.

To criticize is one thing - to recommend is another. It seems to me that in the examination of the patent policy, as is presently being done, consideration should be given to a procedure whereby the Federal Government could either share in the proceeds from royalties which might result from the invention of a process or product, or could be directly reimbursed for its costs incurred in the support of the program from which the patent emanated - a "pay back" procedure.

You are, I believe, well aware of the current DHEW policy on inventions generated under Federal Grants. The procedure involves an institutional agreement and one of its purposes is to stimulate and encourage the development of patent applications.

We look upon this procedure as being one promulgated for the best interests of the American public. It would, in my opinion, be retrogressive to destroy this policy which has evolved over years of painstaking work on the part of many dedicated public servants and members of Congress.

Sincerely yours,

lmc.
cc: Dr. T. R. Talbot, Jr.
Dr. A. G. Knudson
Mr. G. Willing Pepper
Norman Latker, Esq.

This letter was also sent to:

Mr. William B. Cherkasky
Executive Director of the Committee

Honorable John C. Culver

Honorable Floyd K. Haskell

Honorable Thomas McIntyre

Honorable William D. Hathaway

Honorable Gaylord Nelson
Chairman of the Committee

Honorable Sam Nunn

Honorable Bob Packwood

Honorable Lowell Weicker