Science Policy

Patent Power/No ERA? No AAAS/VA Budget Cuts Threaten Research

by Judith Randal

Patent Power

Although few in academia have given the agency even a passing thought, they have a friend in the General Services Administration, which is, among other things, the supply and procurement officer for the government. The GSA has decided that universities and nonprofit institutions receiving federal grants and contracts for research and development may patent the inventions and discoveries made in the course of the work for the usual 17 years and, of course, profit thereby. According to the GSA order—which was published in the *Federal Register* in February and was to have become final in March—the policy is endorsed by the Federal Coordinating Council for Science, Engineering and Technology and its Committee on Intellectual Property and Information.

"The intent here," a GSA spokesman explained to *Change*, "is to give universities and other nonprofit institutions an incentive to develop a technology transfer capability while at the same time retaining for the government so-called 'march-in rights.' That means that if the university or other nonprofit institution in question fails to get a valuable discovery into commercial channels within a reasonable period or does so in a way that would violate the antitrust laws, it will forfeit its patent and licensing privileges which would then revert to Washington."

While institutional patent arrangements (IPA) with a number of federal agencies have been a fact of life for some time anyway, the GSA order, which would legitimize the practice across the board, has met with mixed reviews. No sooner had the matter come to his attention, for example, than Sidney Wolfe of Ralph Nader's Health Research Group fired off a letter of objection to Jay Solomon, the GSA Administrator. Gaylord Nelson, chairman of the Senate Small Business Committee, wrote his letter of protest to Lester Fettig of the Office of Management and Budget. The upshot is that those IPAs already negotiated will not be suspended, but overall implementation will be postponed, in Nelson's words, "to permit Congress to hold hearings on the history, legal basis, and implications of institutional patent arrangements."

Of concern to Wolfe, Nelson, and such like-minded others as Admiral Hyman G. Rickover, the father of the nuclear navy, and Senator Russell B. Long, are: (1) the dubious fairness of granting a contractor exclusive rights for 17 years to inventions developed with public funds, and (2) the difficulty of enforcing the government's already alluded to "march-in rights."

Although it might be easy enough to clamp down on universities dilatory about capitalizing on federally funded research, what about dealing with nonprofit institutions? The licensing arrangements they make with large corporations could have the effect of concentrating economic power in ever fewer hands. Yet critics of the GSA policy say that even if such a case could be brought and proved, years might elapse before a decision and it would be costly for taxpayers to boot. They further maintain that because the utility of a discovery is not always immediately obvious, the government cannot know the potential value of what it is giving away.

There is also the question of constitutionality, which looms larger in the light of the Carter administration's budget for the coming fiscal year. A whopping $26 billion is earmarked for federal research investment in universities—from the development of medical devices, drugs, and new life forms (through recombinant DNA technology) to discoveries that ultimately will put novel energy-saving devices, electronic equipment, and agricultural processes into the marketplace.

GSA maintains that its procurement regulations have never required the specific imprimatur of Congress. And on cursory examination the courts seem to have agreed. In 1974, for instance, a case on a related question brought and won in federal District Court by Ralph Nader's Public Citizen Organization was reversed on a government appeal to the Circuit Court. But this happened only because the plaintiffs were found to lack "legal standing"—i.e., could not show that they were personally injured by the granting of exclusive licenses to patents and inventions owned by the United States. The more fundamental matter—whether it is legal, without specific congressional authorization, to consign to other institutions the rights to inventions and discoveries which are, in effect, government property because they were developed with taxpayer dollars—that issue was never addressed by the higher court.

While the granting of patent rights to universities and nonprofit institutions is said to be for the public good, no one has proved or disproved the assumption. Conventional wisdom is that this is the best way to translate discovery into everyday technology, but the fact that penicillin was successfully marketed without the benefit of patent protection is just one indication that the theory may be flawed.

Academia will undoubtedly find the GSA policy financially inspiring and those who believe that what is good for universities is good for the country will find

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much in it to applaud. But others who question the wisdom of cementing relationships between institutions of higher learning and big business may wonder whether such a policy is good either for universities or for the country.

The best guess is that the first view will prevail. With the government in the midst of a total overhaul of its patent policy and many universities hurting for funds, it is safe to predict that the educational establishment will lobby heavily not to have this potentially lucrative applecart upset.

No ERA? No AAAS

In 1976 the American Association for the Advancement of Science broke new policy ground when it decided that its annual meetings would be held only in cities where convention facilities were architecturally accessible to the handicapped. Now the AAAS has gone one step further along the same path, this time by declaring that the association will not meet in states where legislatures have failed to ratify the Equal Rights Amendment.

Specifically, the AAAS board of directors voted in December to make this new policy effective in 1980 but in February thought better of that decision and voted to move its effective date up a year. The upshot is that the 1979 annual meeting, which had been planned for Chicago, will now be held in Houston instead.

And what if the Texas legislature should reverse its ratification of ERA, as seems a distinct possibility? Says the project director of the AAAS Office of Science Opportunities, Janet Welch Brown, "They wouldn't dare."

VA Budget Cuts Threaten Research

Whoever it was who first observed that good deeds rarely go unpunished would find the theory confirmed in the proposed Carter budget for Veterans Administration biomedical research. In 1977, two of the agency's full-time investigators—Rosalyn S. Yalow of the Bronx VA Hospital and Andrew V. Schally of the New Orleans VA Hospital—were awarded Nobel prizes in science and medicine.* What with Jimmy Carter's avowed enthusiasm for research, one would suppose that the Office of Management and Budget would be well disposed toward this sort of enterprise, the more so because many such honors have come to the VA over the years.

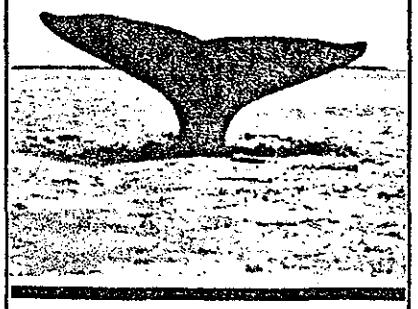
Instead, the $10.2 million increase the VA hospitals had sought for basic and clinical research in order to keep abreast of inflation is nowhere to be found in the proposed administration budget. Unless Congress restores the money, the number of these institutions with the resources to maintain a research effort will drop from 133 to about 70 in fiscal year 1979.

If push comes to shove, stars like Yalow and Schally could undoubtedly get funding from the National Institutes of Health or elsewhere, although Yalow has repeatedly refused it and Schally has received it in the past. VA officials, however, believe this is largely irrelevant. They maintain that the ability of the VA hospitals to attract able physicians largely depends on their many affiliations with medical schools and the research support they are thus able to provide.

Even doctors who are not themselves researchers apparently find ongoing research on the hospitals' premises a drawing card, if only for the prestige this lends the institutions. The VA says that without adequate research many of these hospitals will be hard put to recruit competent practitioners.

Yalow's Nobel award was in recognition of her development, with the late Solomon A. Berson, of the radio-immunoassay technique that measures minute quantities of insulin and other biological materials in tissues. (Berson was not cited in the award because Nobel prizes are never given posthumously.) Schally's award—which he shared with Roger Guillemin of the Salk Institute—was for key discoveries about the production of peptide hormones by the brain.

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