PATENT SURVEY

At the request of the ad hoc patent committee (before it was created by the ad hoc science committee), Nan Nixon, Sheldon Steinbeck and Newton Cattell conducted interviews with staff of the principals engaged in developing or reacting to patent legislation. The persons interviewed include:

William Gibb	-	Minority Staff, Senate Commerce - Sen. Schmitt
Robert Allen	-	Chief, Intellectual Property Section, Anti-trust Division, Department of Justice
Thomas Williamson	-	Associate Administrator for Acquisition Law, OMB
Joseph Allen Senator Birch Bayh Nels Ackerson	-	Senate Judiciary Subcommittee on Constitution
Brenda Levinson	-	Senator Dole's staff
Jerry Sturgess	-	Senator Nelson's staff

The purpose of the survey was to determine the status of various bills and to discover plans, if any, of the administration and Senator Nelson.

At this time (January 29) Dole-Bayh is the only force that seems to have its act together. Senator Schmitt is having second thoughts and the administration is still seeking a government-wide position. For now the momentum seems to favor those who seek a government-wide policy of title in the contractor.

The Justice Department is moving toward a more liberal position but the presumption is title in the government. That move is perhaps off-set by the assumption of a more conservative position by Commerce and perhaps HEW.

A draft report of the Advisory Subcommittee on Patent and Innovation Policy of the Advisory Committee on Industrial Innovation supports the position of universities:

> "In the case of the university or private contractor work sponsored by the government, the members of this subcommittee recommend that title to the patents should go to the university or private contractor..."

Tom Williamson (OFPP) believes that the administration will be unable to reach a government-wide position and, therefore, the time is right for legislative initiatives supporting title in the contractor. (Despite his support for Dole-Bayh, Williamson does not think the nature of the contractor (Dole-Bayh) should determine patent rights. The purpose of the transaction (Schmitt) should determine whether or not the presumption is with the government or with the contractor.)

Senator Schmitt who, according to Bill Gibb, had no problem with the Thornton Bill, is rethinking his position because of the criticism that his own bill has received. Schmitt dislikes Dole-Bayh provision for pay-back and because Dole-Bayh excludes big business. Schmitt would like suggestions from the universities on improving his bill - especially Title II.

It is significant that Senator Nelson apparently agrees that, under certain circumstances, title may be vested in the contractor. (This assures that Jerry Sturgess properly characterizes Senator Nelson's position.) Sturgess could support title in the contractor providing there is an acceptable pay-back provision. He cited Connecticut which requires a pay-back in the amount of five times the size of the grant. Joe Allen of Mr. Bayh's staff had reported earlier that Sturgess has three objections to Dole-Bayh: 1) there is no required proof of technology transfer capability; 2) the legislation does not deal properly with foreign patent rights; and 3) Sturgess has problems with provisions in the legislation relating to the Freedom of Information Act.

On the House side, Senator Bayh reports that Representative Rodino, Chairman of the House Judiciary Committee will introduce the Dole-Bayh bill. Further, Bruce Lehman, aide to Rep. Kastenmeier (Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice), reports that Kastenmeier will conduct hearings on the legislation but that the Congressman may wish to exclude small business.

Considering the apparent disarray in the ranks of the administration and Senator Schmitt, Dole-Bayh is the only viable bill and certainly deserves the active support of the universities. Support for Dole-Bayh, however, should not preclude support for other initiatives. The universities should offer Senator Schmitt the help he requested (perhaps they should recommend the Thornton bill). Finally, support for the administration should be available if good legislation is forthcoming.

It appears that the antagonists are moving toward the center. A compromise bill that meets the minimum requirements of the universities may be a welcome outcome of current discussions.