Statement of
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The Administration is currently reviewing its position regarding the ownership, control, and use of patentable inventions resulting from federally funded R&D contracts and grants. We expect that the Department of Justice will participate in that review.

Presently there is no general legislation that controls all federal agencies in the disposition of rights to inventions stemming from federally funded R&D. Congress has acted, however, in a number of instances with respect to particular agencies or subject matter. In these cases, the particular legislation has generally provided that title to inventions resulting from such R&D is normally to be retained by the government. Waiver of title is permitted in some situations.

In 1963 President Kennedy issued a Statement of Government Patent Policy. It adopted a sort of middle ground and described in general terms those conditions under which the government would take title and those under which it would take only a license.

The Department of Justice has traditionally supported a "title" policy.

We are not aware of any convincing showing that exclusive rights in government-financed inventions need be granted to contractors in order to induce them to accept government R&D contracts, which themselves confer many benefits beyond the simple contract price.

Even a company with a firmly established commercial position in a particular technology must think twice before refusing to bid for a government research contract, since the likely consequences of such a decision may well be to create new competitors or to strengthen old ones. In addition, during slow times contractors may be eager to utilize their personnel and plant assets productively with government contracts.

The competitive risk to the public in transferring title to the contractor may be especially high where transfer carries a danger of further entrenching the already strong market positions of many government contractors. A major rationale for a "license" policy is allegedly to facilitate commercialization of these inventions. We do not believe that a factual basis exists for the belief. In fact, we do believe that available evidence is to the contrary. Exceptional circumstances may on occasion arise when the public interest warrants a waiver of principal or exclusive rights by the government in particular inventions.