PATENT SUBCOMMITTEE OF THE ADVISORY COMMITTEE ON INDUSTRIAL INNOVATION

BY

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OTHER MATTERS CONSIDERED BY THE PATENT SUBCOMMITTEE ON WHICH NO RECOMMENDATION WAS MADE

A. COMPENSATION OF EMPLOYED INVENTORS
   1. CORPORATIONS SHOULD BE ENCOURAGED TO CONTINUE TO MOTIVATE THEIR EMPLOYEES TO MAKE INVENTIONS
   2. AWARDS, RECOGNITION, RELEASE OF UNUSED INVENTIONS SHOULD BE ENCOURAGED
   3. MOST OF COMMITTEE RECOMMENDED AGAINST LEGISLATION REQUIRING CORPORATIONS TO GIVE EMPLOYEES GREATER STAKE IN THEIR INVENTIONS
      a. VARIETY OF PRACTICAL REASONS CAUSING PROBLEMS

B. FINANCIAL STIMULUS OF INNOVATION
   1. GOVERNMENTAL ASSISTANCE IN CERTAIN LIMITED AREAS OF TECHNOLOGY (ENERGY, MINORITY) TO PROVIDE VENTURE CAPITAL OR FINANCIAL ASSISTANCE TO INDIVIDUAL OR SMALL BUSINESSES

C. INFRINGEMENT OF U.S. PATENTS BY THE U.S. GOVERNMENT
   1. THE EXECUTIVE BRANCH OF THE U.S. GOVERNMENT SHOULD ISSUE ORDERS THAT ANY GOVERNMENT AGENCY MUST RENDER ITS FINAL OPINION ON ALL CLAIMS AGAINST IT ON PATENT INFRINGEMENT IN LESS THAN SIX MONTHS AFTER THE INITIAL CLAIM IS FILED.

IF SUCH OPINION IS NOT PROVIDED, IT WILL BE PRESUMED THAT THE PATENT IS VALID AND INFRINGED.

D. DIFFERENT CLASSES OR FORMS OF PATENTS

1. INCONTESTABLE PATENTS

   A. FIVE YEARS AFTER A PATENT IS ISSUED, IT WOULD BE INCONTESTABLE WITH RESPECT TO SECTION 103 (OBVIOUSNESS UNDER THE PRIOR ART) AND, WITH RESPECT TO PRIOR ART, IT COULD ONLY BE HELD INVALID UNDER SECTION 102.

   B. AFTER CERTAIN TIME, A PATENT COULD BE HELD INCONTESTABLE AGAINST ALL ATTACKS RATHER THAN ONLY SECTION 103 ATTACKS

   C. MAKE THE PATENT INCONTESTABLE IF IT HAD BEEN USED COMMERCIALLY FOR A PERIOD OF TIME, SUCH AS FIVE YEARS.

2. GUARANTEED PATENTS

   U.S. GOVERNMENT GUARANTEES VALIDITY OF PATENTS

   A. PATENT VALIDITY CHALLENGED BY SUING THE U.S. GOVERNMENT

   B. IF COURT DECLARED THE PATENT INVALID, THE PATENT OWNER WOULD BE PAID BY THE GOVERNMENT UP TO SOME MAXIMUM ESTABLISHED BY LAW AND CONSISTENT WITH THE VALUE OF THE PATENT IF IT HAD BEEN VALID

3. ELITE OR SUPER PATENTS

   A. SIGNIFICANT ADDITIONAL FEE, SUCH AS $500, WOULD BE PAID

   B. APPLICANT WOULD STATE THAT A THOROUGH PRIOR ART AND VALIDITY SEARCH HAD BEEN COMPLETED AND SUBMITTED TO THE PTO WITHIN SOME SPECIFIED PERIOD AFTER THE PATENT APPLICATION WAS FILED IN THE PTO

   C. THE PTO WOULD MAKE A MORE COMPREHENSIVE SEARCH THAN USUAL

4. PETTY PATENTS

   A. REQUIRE NOVELTY BUT NOT UNOBVIOUSNESS

   B. LIMITED IN SCOPE TO EXACT COPIES AND CLOSE VARIATIONS OF INVENTIONS

   C. LIFE OF LESS THAN TEN YEARS, PREFERABLY 6-8 YEARS

   D. CANNOT BE REJECTED FOR OBVIOUSNESS UNDER SECTION 103

E. OTHER PROPOSALS FOR MODIFICATION OF PATENT TERM

   1. EXTEND PATENT TERM IN CERTAIN INSTANCES

   2. PATENT TERM TO RUN TWENTY YEARS FROM EARLIEST EFFECTIVE U.S. FILING DATE

F. IDEAS FOR REDUCING THE COST OF LITIGATION

   I. EXPERT PANEL TO DECIDE PATENT LITIGATION

   II. AMEND SECTIONS 102A AND B TO PROVIDE THAT PRIOR USE MENTIONED IN THESE TWO SECTIONS WOULD HAVE TO BE A SUBSTANTIAL AMOUNT, SUCH AS SELLING PRICE OF THE PRODUCTS INVOLVED BEING AT LEAST $10,000, OR THE PRODUCTS BEING SOLD IN A QUANTITY OF AT LEAST 1,000 UNITS. PUBLIC USE BY THE INVENTOR, ON THE OTHER HAND, WOULD CONTINUE AS PRESENT LAW PROVIDES.

   III. REVISE SECTIONS 102A AND B SO THAT ANY USE NOT OBVIOUS TO THE PUBLIC ON INSPECTION OR ANALYSIS OF THE PRODUCT SOLD OR AVAILABLE TO THE PUBLIC IS NOT A BAR TO PATENTABILITY

   IV. CERTAIN PATENT INFRINGEMENT CASES BE GIVEN PRIORITY IN THE COURTS

   APPLIES WHERE A PATENT OWNER IS AN INDIVIDUAL, A SMALL BUSINESS, A UNIVERSITY OR A NON-PROFIT ORGANIZATION

   V. ALL PATENT TRIALS IN FEDERAL COURTS CAN ONLY BE BEFORE A JUDGE WHO IS A PATENT EXPERT

G. IMPACT OF ANTITRUST LAWS ON INNOVATION

1. ADOPT RECOMMENDATION OF 1966 PRESIDENT'S COMMISSION ABOUT CLARIFYING LICENSABLE NATURE OF RIGHTS GRANTED BY PATENT
2. ANTITRUST DIVISION OF THE DEPT. OF JUSTICE WOULD BE REQUIRED TO CONDUCT "INNOVATION IMPACT STUDY" AND A "COMPETITIVE IMPACT STUDY" BEFORE BRINGING ANY ACTION AGAINST A PATENT OWNER ALLEGING ANTITRUST VIOLATION
3. 35 U.S.C. 262 SHOULD BE ADDED TO AS FOLLOWS:
   "THE LEGALITY OF JOINT OWNERSHIP OF PATENTS UNDER THE ANTI-TRUST LAWS SHALL BE DETERMINED BY THE RULE OF REASON"

H. MISCELLANEOUS

1. NEGOTIATIONS CONDUCTED BY THE U.S. GOVERNMENT RELATING TO INTERNATIONAL TECHNOLOGY TRANSFER
   a. ALL U.S. DELEGATIONS TO INTERNATIONAL NEGOTIATING MEETINGS MUST INCLUDE PEOPLE FROM PRIVATE SECTOR WHO ARE EXPERT ON THE SUBJECT MATTER OF MEETING
2. STRENGTHEN PROTECTION OF UNPATENTED TECHNOLOGY SUBMITTED TO GOVERNMENT SO THAT IT IS NOT MADE AVAILABLE TO COMPETITOR BY THE ACTIVITY OF GOVERNMENTAL REGULATIONS OR OTHER DISCLOSURES
3. MAKE IT A CRIME FOR ANYONE TO KNOWINGLY INFRINGE A VALID PATENT
4. FIRST-TO-FILE SYSTEM