

FEDERAL INITIATIVES FOR INNOVATION

by
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MR. LATKER: Thank you very much, Bill.

I would like to tell you one of my favorite stories. I think I have told this a number of times; so some of you who have heard this: It relates to the state of communication or it illustrates sometimes the state of communication in Washington.

It starts with a Texas Ranger tracking a suspected bandito, bank robber, crossing over the border. He finally corners the bandit outside a small town and finds that he can't communicate with him. He doesn't speak English. So he takes him into the town and seeks out the village wiseman, who can translate, and the conversation goes something like this:

Ranger: Ask him his name.

Wiseman: What is your name?

Bandit: My name is Jose.

Wiseman: He says his name is Jose.

Ranger: Ask him if he robbed the bank.

Wiseman: Did you rob the bank?

Bandit: Yes.

Wiseman: Jose says that he robbed the bank.

Ranger: Ask him where the money is.

Wiseman: Where is the money?

Bandit: I won't tell.

Wiseman: Jose says that he won't tell.

At that point the Ranger pulls out his gun and points it at Jose's head and says, You tell him if he doesn't tell me where the money is, I'm going to blow his head off.

Wiseman: He says he's going to blow your head off if you don't tell him where the money is.

Bandit: The money is in a well in the center of the town.

Wiseman: Jose says he's not afraid to die.

(Laughter).

Sometimes messages in Washington get about as garbled.

I appreciate being invited here. I think it gives me a useful opportunity. Commerce is trying to do what industry and the private sector people want done. Unfortunately, we haven't seen many taking advantage of the present atmosphere for change. That is not meant to be a criticism. Possibly our initiatives are identified as long-range. I am convinced that they are going to be beneficial to virtually everybody in the audience, but won't necessarily provide immediate solutions.

One of Commerce's primary missions is to remove barriers and create incentives for the movement of inventions through the innovation process - from idea to the marketplace.

This mission is a response to a worldwide explosion of new technologies - foreign microelectronics, biogenetics, robotics, new materials, information sciences. All are creating stiff competition for U. S. products. Ten years ago the U. S.

with five percent of the world's population, generated 70 percent of the world's technology; currently, we generate 50 percent, and by 1990 probably will generate only 30 percent. This is despite our increasing R&D budget, both federal and private. The pie is larger, but the other 95 percent of the world is increasingly involved in dividing it up. We are losing ground in steel, automobiles, machine tools, drugs based on fermentation processes, and consumer electronics.

Part of this competition is based on the advent of targeted industry strategies, which has been pioneered by the Japanese and which others are copying. The strategy works by targeting a technology, concentrating participants, limiting imports, directing government procurement, and emphasizing R&D investment in manufacturing improvements. Goods are then exported at anticipated rather than current cost. This results in an increased market share. Then benefits from the increased market share result in costs slipping below prices.

This kind of managed economy is similar to industrial policies that some, are suggesting in Washington. It has never been acceptable to our entrepreneurial society. The government picking winners and losers has not been either successful or popular in the United States.

So how do we respond to the kind of competition that we are going to be confronted with now and in the foreseeable future?

Commerce is proposing a number of initiatives to counter the growing loss of U. S. markets. None of the

initiatives-involve intrusion into the private sector's decision making process.

First, we are encouraging private sector use of research and development limited partnerships (RDLPs) as a means of increasing risk capital availability for development of new technology. The incentive for RDLPs is created by tax law writeoffs. We think that our encouragement has resulted in an identifiable increase of RDLPs through the country.

Second, we are supporting relaxation of antitrust laws to permit a consortium of industry to collaborate on R&D projects. Even prior to passage of the antitrust law -- we see consortia like Microelectronics and Computer Corporation (MCC) starting up in Austin, Texas. There are others starting up to do research in welding, biotechnology, etc.

Three - We are also encouraging State initiatives to set up research parks where universities, industry, and hopefully federal laboratories, might collaborate on R&D projects. Major centers have already started up in North Carolina, Pennsylvania, New York, Ohio, Indiana, Tennessee. Others are beginning in Maryland and Virginia.

Last, is our effort on the commercialization of federally funded technology.

Fifty percent of all the R&D, 70 percent of the basic research, and one-sixth of all U. S. scientists in federal laboratories are supported by federal funding. Right now there is more evidence that the results of that research are being used by the Japanese than by the United States. This seems to be

confirmed by the Japanese complaint that S. 2171, the Dole Bill, which gives title to federally funded inventions to contractors, is an attempt to restrict their access to our technology (which basically it is).

(Laughter)

S. 2171 is intended to create an owner, whom the Japanese will have to deal with and receive a license from. At this time much of federally funded technology is freely available. In response, to initiatives like S. 2171 the Japanese are turning their energies to their own basic research capability so that they can tap new ideas from their own people, rather than relying on the results of our federally funded research.

It is apparent that the magnitude of the federal research investment demands that we create policies that will generate a better delivery of products and processes to the commercial marketplace.

Further, it is important to look at this area because conditions that attach to the ownership of the results of federally funded research can affect the rights to the results of a collaborative project which also involves private funding. Federal funds and its conditions have a way of seeping into the entire R&D spectrum.

Our primary goal in commercializing the results of federally funded research is protecting the inventing organization's ability to manage and benefit from its inventions. Publication alone will not create the incentive for risk development necessary to commercialize most federally originated

technology. This fact makes the right to maintain an exclusive market or transfer exclusive rights in the invention to another organization an important component of the ability to manage.

Given the inventor's better understanding of his own technology, this management should occur at the level of the organization closest to the inventor and the technology. We hold this view not only in regard to industry contractors, but also universities, and federal laboratories.

This kind of management capability is of fundamental importance, not only as an incentive to the originating organization's continued involvement in further development of technology, but also because without a clear right to manage, the results cannot be used as the nucleus of a research and development limited partnership. To the extent that a federal contractor or a federal laboratory is precluded in establishing an exclusive position in inventive results which they can manage and transfer, they cannot use a research and development partnership to attract the capital necessary to continue its development.

Second, absent this kind of management, a federal contractor could not be part of a consortium made possible by relaxed antitrust laws. I would ask this question: Representing a private organization that was considering involvement in a consortium, would you agree to join with a federal contractor who has a responsibility to report the results of the consortium research to the Federal Government for its disposition? I think not. The entire investment of the consortium would be at risk if

someone in the arrangement had a responsibility to the Federal Government that was inconsistent with the consortium's agreement on disposing of the results of its research.

Finally, absent a case-by-case determination in Washington, there is no way that a federal laboratory can join in an R&D project at a State R&D center which calls for a predetermination of invention rights.

In short, unnecessary conditions on management of the results of federally funded research adds a possible disincentive to its ultimate use.

We are recommending policies that will enable the different performers of federal R&D (federal laboratories and contractors, whether industrial or university) to dispose of the results of collaborative research between themselves or other supporters without further involving Washington in the process.

I think you already know that P. L. 96-517 gives small business and nonprofit institutions the right to title to inventions resulting from their performance of federally funded research. As in the last Congress, the Department of Commerce is supporting S. 2171, which amends P. L. 96-517 so that all contractors, regardless of size, will have the same rights without discriminatory conditions.

As I have already suggested, clear ownership of patent rights in many instances is the key incentive to obtaining the necessary risk capital to bring an idea into the marketplace. Under P. L. 96-517, with its new incentives -- we are already observing large increases in invention reporting from HHS,

Agriculture, and the National Science Foundation, which are the primary agencies supporting university-based and nonprofit research.

We are also seeing a nationwide explosion of industry/university collaboration, which we believe is based on the universities' new ability to guarantee rights in future inventions.

In the meantime, until additional legislation such as S. 2171 passes, the government-wide policy will be to give to the fullest extent allowed by law all government contractors and grantees ownership of inventions arising from performance of federally funded R&D, subject to an agency license to use for mission purposes. This policy is represented in the February 18, 1983 President's Memorandum on Government Patent Policy. The Memo is implemented by Part 27 of the Federal Acquisition Regulation, which was published on March 30, in the Federal Register. The Memo and the FAR supersede previous presidential memorandums, which basically provided for agency discretion to dispose of government funded inventions in any manner that they chose. In practice, this resulted in most instances in government ownership and a government patent portfolio of 28,000 patents, of which less than four percent have been licensed. As you can see, the President's statement and its implementation in Part 27 probably represent one of the more significant changes in the Federal Acquisition Regulation.

In addition to mandating contractor ownership, the Memo also authorizes the agencies to waive any of the rights retained

by the government or the obligations of the performer if the agency determines that this is in the public interest or the contract involves a substantial contribution by the contractor to the work undertaken. So, an agency could, for example, waive its license to use for mission purposes, its reporting requirements, the march-in rights, et cetera, under the circumstances spelled out in the President's statement. I would add that this provision is also found in S. 2171.

Further, Part 27 directs the agencies to protect the confidentiality of invention disclosures submitted to the government in accord with 35 U. S. C. 205. We are hoping that the agencies will use the wide discretion that is given to them under 35 U. S. C. 205 to avoid the problems that arise under the fourth exemption of the Freedom of Information Act.

Last, the Memo provides that the principle of contractor ownership is applicable to all statutory programs, including those that provide specifically that inventions be made available to the public. This part of the Memo is aimed at reversing government ownership interpretations some agencies, such as Interior, the Environmental Protection Agency, et cetera, had placed on the so-called Long Amendments which were added to a number of appropriations bills during the 1960s by Senator Long.

Laws such as the Space Act, the Atomic and Nonnuclear Energy Act, which clearly require government ownership, are not altered by the President's Memorandum. However, S. 2171 intends to repeal these statutes and bring the entire government under

the principle of the President's Memorandum, as well as mandating it into law.

Let me briefly tell you what is in S. 2171. In addition to the contractor ownership principle, S. 2171 provides a management system that is intended to create uniformity by assuring that implementation of contractor responsibilities and government rights aren't splintered by agency regulations.

Second, there is a section that repeals all conflicting statutes which -- I have already mentioned NASA and DOE. There are about 18 others.

Three -- it amends Public Law 96-517 to enhance the university licensing opportunities. There is a five-year limitation on exclusivity attached to 96-517 that S. 2171 is intended to repeal.

In addition to S. 2171, Commerce is also involved in clarifying the authority of federal laboratories to enter into cooperative research and development arrangements with industry or other universities. In addition, to permitting such cooperative R&D arrangements our recommendations in this area provide for acceptance of funds, services, and property, as needed, by the laboratory for completion of the cooperative project.

As part of these arrangements, the laboratory would be permitted to grant patent licenses or assign future or existing ownership rights in any laboratory invention in which the government has a right of ownership.

As an incentive for involvement of laboratory inventions and the laboratory in the arrangement we are recommending that the inventor and the laboratory be able to share in royalties obtained through the licensing or the assignment of laboratory inventions. That is in addition to whatever can be negotiated as cost-sharing in the arrangement.

We envision that the laboratory share of the royalties will be used to fund additional mission-related R&D at the laboratory. Thank you. (Applause)