

The American Presidency Project

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• **Richard Nixon**

Memorandum About Government Patent Policy.

August 23rd, 1971

Memorandum for Heads of Executive Departments and Agencies:

On October 10, 1963, President Kennedy forwarded to the Heads of Executive Departments and Agencies a Memorandum and Statement of Government Patent Policy for their guidance in determining the disposition of rights to inventions made under Government-sponsored grants and contracts. On the basis of the knowledge and experience then available, this Statement first established Government-wide objectives and criteria, within existing legislative constraints, for the allocation of rights to inventions between the Government and its contractors.

It was recognized that actual experience under the Policy could indicate the need for revision or modification. Accordingly, a Patent Advisory Panel was established under the Federal Council for Science and Technology for the purpose of assisting the agencies in implementing the Policy, acquiring data on the agencies' operations under the Policy, and making recommendations regarding the utilization of Government-owned patents. In December 1965, the Federal Council established the Committee on Government Patent Policy to assess how this Policy was working in practice, and to acquire and analyze additional information that could contribute to the reaffirmation or modification of the Policy.

The efforts of both the Committee and the Panel have provided increased knowledge of the effects of Government patent policy on the public interest. More specifically, the studies and experience over the past seven years have indicated that:

(a) A single presumption of ownership of patent rights to Government-sponsored inventions either in the Government or in its contractors is not a satisfactory basis for Government patent policy, and that a flexible Government-wide policy best serves the public interest;

(b) The commercial utilization of Government-sponsored inventions, the participation of industry in Government research and development programs, and commercial competition can be influenced by the following factors: the mission of the contracting agency; the purpose and nature of the contract; the commercial applicability and market potential of the invention; the extent to which the invention is developed by the contracting agency; the promotional activities of the contracting agency; the commercial orientation of the contractor and the extent of his privately financed research in the related technology; and the size, nature and research orientation of the pertinent industry;

(c) In general, the above factors are reflected in the basic principles of the 1963 Presidential Policy Statement.

Based on the results of the studies and experience gained under the 1963 Policy Statement certain improvements in the Policy have been recommended which would provide (1) agency heads with additional authority to permit contractors to obtain greater rights to inventions where necessary to achieve utilization or where equitable circumstances would justify such allocation of rights, (2) additional guidance to the agencies in promoting the utilization of Government-sponsored inventions, (3) clarification of the rights of States and municipal governments in inventions in which the Federal Government acquires a license, and (4) a more definitive data base for evaluating the administration and effectiveness of the Policy and the feasibility and desirability of further refinement or modification of the Policy.

I have approved the above recommendations and have attached a revised Statement of Government Patent Policy for your guidance. As with the 1963 Policy Statement, the Federal Council shall make a continuing effort to record, monitor and evaluate the effects of this Policy Statement. A Committee on Government Patent Policy, operating under the aegis of the Federal Council for Science and Technology, shall assist the Federal Council in these matters.

This memorandum and statement of policy shall be published in the Federal Register.

RICHARD NIXON

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