

Senate Battles Over Patents Rights

by Frank Sartwell

A "brass-knuckle fight" over the ownership of patents developed with government money faces the new session of Congress.

Two Democratic Senators, Russell Long of Louisiana and John L. McClellan of Arkansas, will introduce opposing bills amid threats of filibuster and intricate backroom maneuvering.

The McClellan bill would follow present Presidential policy by keeping government title to any patent affecting the public health, welfare or safety, or if the invention grows out of a field of research in which no party has an investment except the government.

In other cases, federal agencies would be allowed to waive patent rights to industry, particularly where a company has an established position in the field.

Sen. Long calls this a "giveaway." His bill would require that the government take title to all patents that grow out of federally-financed research and development.

Although the McClellan forces feel

that two-thirds of the Senators favor their stand, they know they face an uphill struggle. Sen. Long in the past has held up the McClellan bill, after it was approved in committee, by talk of "extended discussion"—filibuster—should it reach the floor. Also, as assistant majority leader of the Senate, he has influence on which pieces of legislation are called to the floor.

Although the number of patent waivers by the Department of Defense and the National Aeronautics and Space Administration has been small, and no one is getting rich from them, the Long forces feel that waiver of a possible major breakthrough might create a rich private monopoly based on government research money.

Sen. McClellan feels his plan would give more incentive, both to inventors themselves and those who might use the innovations in industry.

Some other agencies besides Defense and NASA, including the Atomic Energy Commission and the Federal Aviation Agency have restrictive patent clauses written into their organic laws and therefore cannot waive rights as NASA and DOD do. The McClellan bill would give them this power, which many don't want despite White House endorsement.

Another possible tactic open to Sen. Long is applying restrictive riders to bills setting up research. He has successfully done this many times, including last season's automobile safety bill.

While this struggle is developing on Capitol Hill, two George Washington University economists have been taking a long look at NASA's patent policies and their results. They found that "no business firm has earned substantial profits by acquiring patent rights from R&D funded by NASA or any other government agency."

NASA is trying hard to get more civilian "spin off" from its programs. Its Office of Technology Utilization had a \$4.8-million budget this fiscal year. It has published some 1,200 "Tech Briefs" describing technology and innovations, and expects to distribute another 1,200 this year.

Since NASA was founded in 1958, some 9,700 inventions have been reported by contractors or employees, of which 2,900 have been patented or are under consideration for patents.

So far, NASA has granted 140 non-exclusive licenses. The holders can use the invention free, but anyone can get

a similar license. Three exclusive licenses—the holders get free rights and agree to spend money in development—have been granted.

Of the three exclusive licenses, one has been abandoned—the Union Carbide Corporation gave up its license on a nickel alloy when a better material was developed. In other cases, the Avco Corporation was given exclusivity on a missile development to settle conflicting claims, and the Exactel Instrument Co. agreed to put \$5,000 a year into development of a machine tool.

At the time the George Washington study was made, by Donald S. Watson and Mary A. Holman, NASA had granted waivers of commercial rights on 246 individual inventions, and given 108 blanket advance waivers on any inventions that might result from a contract—a particularly sore point for Sen. Long.

The most important, believed likely to gross more than \$100,000 a year, were found to be a portable planetarium, an ionization gauge, and a magnetic flow meter. Some 11 percent of the waived inventions, the team found, were in commercial use, and a number of other hold "high promise."

These include an improved butterfly valve for breweries and an alkali silicate paint developed for spacecraft and found to be a durable lining for steel kettles in a paint plant.

A method of attaching electrodes to astronaut's chests with an aerosol spray is being applied to private cardiac patients. Handicapped earthlings may someday move about in a modified lunar walker, if current tests are satisfactory.

"None of the inventions coming out of NASA programs could be called a major invention," the team writes. "Those in commercial use are all minor devices or improvements. One or two belong to a group of inventions associated with what might in the future turn out to be a major innovation—fuel cells."

The report urges NASA to start a new system of incentive to get more inventions from the 400,000 persons working for its 20,000 contractors. More liberal provisions for exclusive licenses on patents it owns and faster action on waivers granting commercial rights to contractors are also suggested. Thus the George Washington report gives ammunition to the McClellan forces—but the battle has only begun.

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