

Gatorade and patent policy

Patent law, a complicated business, becomes even more complex when universities, researchers, big business and Government get into the act. This has happened in the Gatorade case.

Dr. Robert E. Cade, a renal researcher at the University of Florida in Gainesville, worked under a National Institutes of Health grant from 1962 to 1967. In 1965 he began studies on salt and water metabolism and used university athletes in some of his research. By December 1966 he had developed the thirst quencher now known as Gatorade, and he requested forms to file a statement of invention. But all did not go smoothly. Because Dr. Cade was on the faculty and used university students and facilities, the university and the state of Florida thought they should have the rights to the invention. Because Dr. Cade was working under a Federal grant, the U.S. Government thought it should have the rights. Dr. Cade, who claims that he developed Gatorade on his own time, thought he should have the rights of ownership and disposition. Because Dr. Cade and the Gatorade Trust he founded gave Stokeley Van Camp Inc. permission to bottle and sell the bev-

erage, that company thought it should have rights.

So, after four years and as many lawsuits, there is still no solution to the problem. But D. H. McVey, senior vice president of Stokeley Van Camp, says his company will continue to market the product and let everyone else fight it out—even though he says the company has made no money on the product to date.

In a move designed to simplify and clarify such matters, President Nixon last week issued a revised statement of Government patent policy for cases involving the disposition of rights to inventions made under Government-sponsored grants and contracts. Experience under the previous guidelines, issued in 1963 by President Kennedy, indicated a need for revision and modification. A Patent Advisory Panel was thus established under the Federal Council for Science and Technology to make recommendations on the use of Government-owned patents. And in 1965 the Federal council established the Committee on Government Patent Policy to assess how the policy was working in practice and to acquire and analyze additional information that could help reaffirm or modify it. James H. Wakelin of the Commerce Department chairs the committee.

The President's new policy, based in

part on the committee's recommendations, allows private commercial developers to obtain exclusive licenses to Government-owned patents (previously considered to be in the public domain). Commercial developers have been unwilling to buy licenses for the use of inventions since they had no guarantee of exclusive rights. Now the head of a Government agency will be empowered to grant greater rights to Government-financed inventions to private contractors if the agency head determines it a necessary incentive for commercialization. Where principal or exclusive rights to an invention are retained by the Government, the new policy says the Government may grant the contractor an irrevocable nonexclusive royalty-free license throughout the world. The President's statement that "a single presumption of ownership of patent rights . . . in the Government or its contractors is not a satisfactory basis . . . and that a flexible, Government-wide policy best serves the public interest" may clarify policy for executive department heads and the agency heads who will be making the final determinations. But it still does not make clear what will be the disposition in the Gatorade case or what will be the impact on other patents resulting from billions of dollars of Government-financed research and development. □

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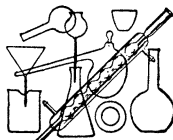
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