U. S.

National Patent Planning Commission

Second Report on Government-Owned Patents and Inventions of Government Employees and Contractors

1945
GOVERNMENT-OWNED PATENTS
AND INVENTIONS OF GOVERNMENT
EMPLOYEES AND CONTRACTORS

MESSAGE
FROM
THE PRESIDENT OF THE UNITED STATES
TRANSMITTING
THE SECOND REPORT OF THE NATIONAL
PATENT PLANNING COMMISSION

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NATIONAL PATENT PLANNING COMMISSION

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LETTER OF TRANSMITTAL

To the Congress of the United States:


THE WHITE HOUSE,
January 9, 1945.

FRANKLIN D. ROOSEVELT.
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EXECUTIVE ORDER ESTABLISHING THE NATIONAL PATENT PLANNING COMMISSION

Whereas both American industrial development and our people generally have greatly benefited by the products of American inventive genius;

And whereas it is essential even in time of war to plan for a full utilization of the Nation's expanded industrial capacity with the return of peace, a problem to which the inventive genius of our citizens can be applied at this time and which also requires a study to be made of our existing patent laws and procedure, together with other appropriate action, by a commission familiar with the problems of science, industry, agriculture, labor, and the consumer;

Now, therefore, by virtue of the authority vested in me as President of the United States, I do hereby order, as follows:

1. There is hereby established the National Patent Planning Commission consisting of five members to be appointed by the President.

2. The Commission is authorized, in conjunction with the Department of Commerce, to conduct a comprehensive survey and study of the American patent system, and consider whether the system now provides the maximum service in stimulating the inventive genius of our people in evolving inventions and in furthering their prompt utilization for the public good; whether our patent system should perform a more active function in inventive development; whether there are obstructions in our existing system of patent laws, and if so how they can be eliminated; to what extent the Government should go in stimulating inventive effort in normal times; and what methods and plans might be developed to promote inventions and discoveries which will increase commerce, provide employment, and fully utilize expanded defense industrial facilities during normal times.

3. The Commission may appoint such officers, committees, and subcommittees as it may deem necessary to carry out its functions.

4. The members of the Commission and of such committees and subcommittees as may be formed by it shall serve as such without compensation but shall be entitled to actual and necessary transportation, subsistence, and other expenses incidental to the performance of their duties.

5. The Commissioner of Patents and his office will assist the Commission, which is also authorized to call upon other offices and agencies of the Government for such aid and information as may be deemed necessary for its work.

6. The Commission shall report the results of such investigations and studies to the President, together with its recommendations.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
December 12, 1941.

(No. 8977)

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GOVERNMENT-OWNED PATENTS AND INVENTIONS
OF GOVERNMENT EMPLOYEES AND CONTRACTORS

I. Introduction

In its first report on the American patent system, the National Patent Planning Commission directed attention to certain aspects of the general operation of the patent laws. The present report deals with the administration of patents which have come to be owned outright by the Government and also with the respective rights of the Government and its employees and contractors in inventions evolved during the employment or contract relationship. Practically all of the patents normally owned by the Government have come to it through inventions of its employees or contractors, although in many cases the employment or contract relationship does not result in the Government's complete ownership of the patents.

In canvassing the problems presented, an investigation has been made of existing practices in the various Government agencies as set forth in reports by their representatives. The Commission has studied previous legislative proposals, congressional hearings and reports, papers and articles published in trade and law journals and other periodicals, and the practices in some foreign countries. Numerous suggestions by individuals, in and out of the Government, have had consideration. As a result of its studies the Commission has reached the conclusions and recommendations contained in this report.

Until recently, information as to the patents or rights under patents held by the Government was confined to the several Government agencies which acquired them. Realizing that there existed among these and other agencies a need for an adequate central source of information, the Commission recently recommended that a complete record of all rights and interests of the Government in or under patents and applications for patents be maintained in the United States Patent Office. The establishment of such a register was directed by Executive Order No. 9424 of February 18, 1944, and the work of registration is nearing completion. This factual record, however, leaves untouched the questions of policy and administrative procedure to which this report is directed.

The present report does not deal with the enemy-owned patents seized by the Alien Property Custodian. The Commission has consulted with representatives of the Custodian, but has reached the conclusion that the present administration of these patents constitutes a special wartime problem, and that their ultimate management should receive separate consideration when normal conditions are restored and war problems disposed of.
II. Government-Owned Patents

A. Ownership of Patents by the Government.

While the exact number of patents owned by the Government will not be known until the completion of the register of Government interests in patents, it appears that the Government possesses, principally as the result of inventions made by employees, approximately five hundred unexpired patents and that nearly the same number have been expressly dedicated to the public. In addition, there are approximately three thousand unexpired patents of Government employees granted under the Act of 1883 and under which the Government has a royalty-free license.

It is the general practice of the several departments, with respect to patents in their custody, to grant to anyone a nonexclusive revocable license without royalty or other charge. In some instances submission of reports or compliance with certain regulations is required. Owing to the lack of statutory authorization the Government departments do not have the power to grant exclusive licenses or otherwise dispose of patents.

It has been contended that when the Government acquires ownership of a patent, any exclusive rights conferred by the patent disappear and are effectually extinguished; that is to say, the patent in effect becomes cancelled or abrogated by a process of merger when the right to exclude is returned to the authority which originally granted it.

Administrative rulings, however, have held that the Government may own a patent and exercise rights incident thereto since patents are recognized as a species of property. Nevertheless the ownership of a patent by the Government is somewhat anomalous. The chief value and importance of a patent to its owner flow from the right to exclude bestowed by the grant. Being the only person not excluded by the patent from making, using, and selling the invention, the holder of the patent is enabled to profit from the invention by developing his own business, or by licensing others. Commercial and industrial interest in the protection of an operating business or in recovering investment costs requires the exclusive right conferred by a patent, but the Government, not operating a business, has no need for this kind of protection.

The main, if not the sole, purpose of any proprietary interest of the Government in patents has been one of protection against interference with the performance of governmental functions.

Specific statutory power (Act of June 25, 1910, U. S. C. title 35, sec. 68) now authorizes the Government to use any patented invention without license from its owner and thereby renders unnecessary, either during war or peace, the acquisition by the Government of the title to privately owned inventions and patents. However, the Commission recognizes the necessity of making inventions and patents essential to the public health and safety more generally available and made a specific recommendation on this subject in its first report (Sec. III B).

Where inventions have been evolved by the Government itself it should retain the right to use such inventions freely. This protection can be assured by the following methods:
First, by publication of the invention as soon as possible, thus making the information available to all. Prompt and effective publication of the results of Government research is generally a desired objective, except as to matters demanding secrecy for reasons of national defense. In most cases publication of the results of Government research will fulfill its obligation to the public and prevent the issuance of patents to private inventors.

Second, by applying for and obtaining patents. These patents may be entirely owned by the Government or may be expressly dedicated to the public, or on the other hand, may be owned by the inventor who produced the invention, with the Government having the unrestricted right to use it without compensation. The practice of obtaining patents should be restricted to those cases or fields in which the public interest and the protection of the Government would not be entirely satisfied by publication only.

Since the primary interest of the Government in patents is self-protection, its need for them is necessarily limited.

The general policy of the Government in the past has been not to exclude its own citizens from engaging in any commercial or industrial activities; it has not attempted to exercise the right to exclude conferred by the patents which it owns. As a rule, such patents have been open to licensing to anyone who applied, without payment of royalty or other charge and mainly on nominal conditions. Indeed, patents owned by the Government have been open to use by anyone, with or without an explicit license. Furthermore, there has been no attempt to use its patents as a source of revenue. If the Government were to charge substantial royalties for licenses under its patents, it would incur the obligation to sue for nonpayment of royalties and to protect the licensees by suing infringers of the licensed patents. Such controversies between the Government and the public should be avoided. Finally, the Government has not used its patents as a means for controlling commercial activities.

The Commission recommends that the Government as a general rule continue to pursue the historic policy of not exercising the right to exclude conferred by patents which it owns; of not attempting to exclude its own citizens from engaging in any enterprise; of not seeking to derive revenue from patents, and of not undertaking control by means of patents. Inventions covered by patents owned by the Government should be available for commercial and industrial exploitation by anyone, with, however, the recourse open to the Government to take different action in exceptional cases.

B. Extending the Use of Government-Owned Patents.

Since the Government can grant only revocable nonexclusive licenses under patents which it owns, it is for all practical purposes restricted to (a) publication, (b) the procurement of a patent which is in terms dedicated to the public and (c) the acquisition of a patent under which nonexclusive licenses may subsequently be granted. It often happens, however, particularly in new fields, that what is available for exploitation by everyone is undertaken by no one. There undoubtedly are Government-owned patents which should be made available to the public in commercial form but which, because they call for a substantial capital investment, private manufacturers have
been unwilling to commercialize under a nonexclusive license. Accordingly, it seems evident that the Government has been handicapped in its effort to further the promotion and development of some of its inventions to the point where they are available to the public in the form of a commercial product. For over twenty years various individuals, committees and boards have called attention to this shortcoming in the Government's management of its patents. One of the clearest statements of the practical difficulties encountered is contained in a letter dated July 30, 1941, from the Under Secretary of Agriculture to the Speaker of the House of Representatives, reading in part as follows:

In recent years the activities of this Department have developed to such an extent that the present law is inadequate to enable the Department properly to cope with the problems which present themselves in the prosecution of the Department's program.

These problems while they may exist generally throughout the Government service, are of major importance in this Department, due to the varied and extensive nature of this Department's research work and to the fact that this Department must maintain a close relationship with the general public. In carrying out the activities of this Department in the field of research, it is essential that the greatest good should be obtained for the public out of the inventions arising from such research.

One source of difficulty is the fact that, under the present state of the law, the Secretary of Agriculture, when he holds title to a patent, is only authorized to grant licenses which are nonexclusive, nonassignable, and revocable. The commercial exploitation of new inventions requires, in many cases, the expenditure of large sums of money. In such a case, unless some protection or some advantage is given to enable a particular manufacturer to reap a reward as the result of the risk taken by him in investing capital in the new endeavor, he will usually refuse to enter a competitive field. No protection against competition in the commercial development of an invention covered by a patent controlled by this Department can be given to a manufacturer at the present time. As previously indicated, a license to use such a patent is subject to revocation at any time and the licensee must anticipate competition from other manufacturers who, upon request, can obtain similar licenses to use the patented invention. As a result of this, many patents, which are dedicated to the public or controlled by the Secretary of Agriculture, apparently become dormant, even though they possess decided advantages and improvements over the prior art.

Similar statements frequently have been made by high authorities regarding the necessity of protecting venture capital and the utter uselessness of certain potentially valuable inventions in the absence of such protection. Dwight W. Davis, when Secretary of War, stated:

It has come to the notice of the War Department that the private industries more and more are demanding that patents, the ownership of which is not necessary to the Government interest, be disposed of for the benefit of the public, that is, that the same may be made available to the industries so that the inventions covered by the patents may be practiced and the industries and the general public benefit thereby. The present powers of the President to issue nonexclusive revocable licenses under patents is not adequate to meet this situation, as no industry would deem it prudent to make any substantial investment for the manufacture of a patented article unless assured that its patent rights were irrevocable and also that its competitors would not be granted similar powers as to the same patent. This means that the licenses issued to industries should be exclusive and irrevocable.

Dr. Vannevar Bush, Director of the Office of Scientific Research and Development, in a letter dated October 28, 1941, stated that:

The principal difficulty lies in the fact that there is now no machinery provided by law under which the patents owned by the Government can be administered for the best interests of the public. It is not sufficient for a department merely to
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hold a patent and do nothing, or even to issue licenses freely to all comers; such action in effect often vitiates the intent of our fundamental patent law. A patent needs to be exercised in order to be effective, and many an invention cannot come into commercial use unless the protection thereby afforded makes possible the first hazardous investment which is needed to bring it into useful form. The history of the industry of this country, particularly in regard to the advent of small companies, shows this clearly. Yet, today, when a patent is assigned to the Government, its commercial benefit may be completely lost.

While it is the conviction of the Commission that the Government should continue to adhere to its traditional policy of not engaging in activities which can adequately be conducted by private enterprise, it nevertheless believes that in suitable cases the Government should have the authority and the power to depart from the general policy hitherto followed and recommended above and take steps to insure the proper commercial development of an invention covered by any of its patents whenever this course is necessary and in the public interest.

The general methods by either of which this may be accomplished are by sale (assignment) of the patent, or by the grant of exclusive licenses. Sale of any patents must be conducted in such manner as to avoid any unfairness or discrimination, as, for example, to the highest bidder in open competition. However, monetary consideration should not necessarily control but proper weight should be given to obligations assumed by the purchaser to assure effective service and benefit to the public.

Similar considerations would apply in the case of exclusive licenses. A license could be made exclusive for a specified period of time only, so that other licenses could be granted on the expiration of the term, or it could be made exclusive for a certain geographical area only.

An exclusive license or a sale should be conditioned upon the prompt and proper commercialization of the invention, in default of which the license, or the exclusive nature of the license, would be forfeited, or the ownership of the patent would revert to the Government. The conditions should be such as to insure early use and commercialization of the invention and satisfaction of the public demand at reasonable prices.

Procedure may be devised whereby upon request for an exclusive license or for the sale of a patent an investigation of the circumstances shall be conducted, and notification given to the public to present any objections or to encourage other offers, before any exclusive license is granted or any sale is made.

The Commission therefore recommends that legislation be enacted authorizing the several Government agencies, subject to the approval of the central control body described hereafter, to issue exclusive licenses in cases where it seems evident that otherwise the inventions in question will not come into general use.

Each exclusive license should incorporate the provision that the Government incurs no obligation to assist in the defense of the patent or to undertake the prosecution of infringement suits. Further, the licensee should be enabled to sue in its own name without joining the United States as the owner of the legal title. Such licenses may, depending upon the circumstances involved, be exclusive either on a countrywide basis or only for a certain restricted area so that in the latter case other licenses could be granted in different areas. A license
might also be exclusive for a specified period only, or it might be limited so that, at such time as it shall be shown that the licensee, in addition to realizing a reasonable profit from his manufacturing operations, has in fact or in effect fully amortized his investment, the exclusive license may be terminated and nonexclusive licenses made available to the general public.

The last condition mentioned contemplates a procedure whereby the original manufacturer will receive the protection essential to his exploiting of the invention, but does not permit him to reap excessive profits for the remaining life of the patent. Indeed, the larger his profit, the sooner the licensee may lose his exclusive license, since all profit over and above that deemed reasonable by the Government may be applied to amortize the investment, thereby accelerating the expiration of the license.

The Commission has likewise considered the final alternative of the sale of patents and, as previously indicated, has concluded that under certain circumstances this may prove desirable. The Commission therefore recommends that the legislation proposed should also empower the Government agencies, subject to the approval of the central control body, to sell (assign) patents when it is evident that the offering of an exclusive license will fail to insure satisfactory exploitation.

These recommendations with respect to the granting of exclusive licenses and the sale of patents are made not with the view that these practices should become commonplace, but, on the contrary, that they should be followed only in exceptional cases as the last resorts to be considered. The Government should ordinarily make its inventions available to the public by publication or by patents which are generally open to public use.

The Commission believes that the Government should not attempt to utilize its patents for profit; they should not be regarded as a making venture. The main objective should be to insure that the invention is brought into commercial channels at the earliest possible moment. It is believed, however, that there should be no objection to recovery by the Government, through sale or licensing, of all or a substantial part of public funds expended in the research which resulted in the invention.

The suggestion has been made to the Commission that such money as may be collected be allocated to the respective agencies in which the inventions originated, as special funds for research and awards to employee-inventors. The Commission, however, believes that these funds should not be automatically credited to the agencies, but that governmental research activities in general should continue under the Congressional scrutiny and control provided by existing appropriation procedure.

III. Inventions of Government Employees

In normal times the principal source of inventions and resulting patents in which the Government may have a proprietary interest is its own research work, and various problems arise in connection with inventions made by its employees, both research employees and others.

A. Law Relating to Inventions Made by Employees.

Under the Constitution and the patent laws the Government is limited to the granting of patents to inventors and the patent cannot
be issued or conveyed to another except by consent or agreement of the inventor. Consequently a patent for an invention always belongs to the inventor and must be granted to him unless he has previously agreed to its transfer. However, the courts, in certain situations, assume an agreement to exist. If the employee is specifically hired or assigned to develop a particular invention, its ownership and that of the patent may be asserted by the employer. In all other cases the invention and patent will belong to the employee, although under some circumstances the employer may have certain rights. The employer may be entitled to a non-exclusive license or shop-right—that is, the right to use the invention, if it is within the general field of the employee's research or inventive work or if it was produced on the employer's time and by the use of his facilities. Under other circumstances the employer has no right or legal interest in the invention or the patent. These three categories are variously expressed and the lines of demarcation between them are not always clear.

The Supreme Court, in the case of United States vs. Dubilier Condenser Corp., decided in 1933, stated the general law to be that one who is employed to make an invention is bound to assign any patent obtained to his employer. On the other hand, if the employment is general, although it covers a field of labor and effort in the performance of which the employee conceived the invention, assignment of the patent is not required. In illustration of the latter proposition, the Court quoted from one of its earlier decisions in which it had held that a manufacturing corporation which hired a skilled workman to take charge of its works and to devote his time and services to devising and making improvements in articles it manufactured, was not entitled to the ownership of patents obtained for inventions made by the employee while so employed, in the absence of an express agreement to that effect.

The Supreme Court also decided in the same case that the relationship of the Government to one of its employees with respect to inventions made by the latter is the same as the relationship between any private employer and employee. Hence in the absence of any specific agreement the rights to an invention made by a Government employee are determined by the general rules referred to.

Many private employers stipulate in the employment contracts the allocation of patent rights.

B. Statutes Relating to Inventions Made by Government Employees.

There are no statutory provisions preventing the patenting of inventions by Government employees, except in the case of employees of the Patent Office who, by statute first enacted in 1836, are prohibited from acquiring any right or interest (except by inheritance or bequest) in any patent issued by the Office, and are hence barred from patenting or attempting to patent, while so employed, any inventions they may have made.

An Act of Congress passed March 3, 1883 (22 Stat. 625) and amended on April 30, 1928 (45 Stat. 467) provides that, under certain conditions, a patent may be granted to a Government employee without the payment of any fee. These conditions are, first, that the head of the department certify that the invention is or may be used in the public interest and, second, that the invention may be manufactured and used by or for the Government for governmental purposes without the payment of any royalty. This Act does not regulate or control
the respective rights of the Government and the employee, and, insofar as the statute is concerned the obtaining of a patent in accordance with its provisions is entirely voluntary.

The fees referred to in the Act are those payable in obtaining a patent. In actual practice, when a department is interested in an invention and certifies as required, it undertakes the preparation and prosecution of the patent application, so that the employee is not put to any expense in connection with the patent. The obtaining of a patent without expense is an inducement to employees to offer the Government a free license in instances in which they might not be obligated to do so.

The Act of June 25, 1910 (36 Stat. 851), amended July 1, 1918 (40 Stat. 705), relates to the use of patented inventions by or for the Government, without license from the owner, and provides that the owner may sue for compensation in the Court of Claims. However, the benefits of the Act are declared not to apply to any patentee who is in the employment or service of the Government when he makes the claim nor to any invention made by a Government employee. Thus a Government employee is barred from suing the Government for use of any patented invention.

The Act does not regulate the respective rights to an invention made by an employee other than to deprive the employee of a right to sue, and it does not prohibit or prevent Government departments which may otherwise have the power to do so from contracting with or compensating inventors for the use of their inventions. However, since an employee is barred from any remedy, the Government under this Act may effectuate a free license to use any invention made by an employee.

The section of the patent laws relating to the abandonment of an application for patent by reason of the applicant's failure to prosecute the same within six months from the date of an action by the Patent Office (section 4894 R. S.) contains an exception in favor of applications which have become the property of the United States. If the head of the department certifies that the invention is important to the armament or defense, the reply to an action by the Patent Office need not be made for three years. This effective three-year suspension, which may be repeated as often as necessary, is used by the departments as the means for preserving an invention in secrecy when the nature of the invention so requires.

C. General Practices of the Government Departments With Regard to Inventions by Employees.

A number of Government departments have issued regulations dealing with inventions of their employees. With minor exceptions these departments expect or require that inventions made within the specifically assigned duties of the employee shall be assigned to the Government, in conformity with the decisions of the courts regulating the matter in default of specific agreement. The departments generally assert no rights in inventions made by an employee on his own time, without the use of Government facilities, and in a field unrelated to his employment, except as may be voluntarily granted by the employee. In situations other than these two the general rule is that the invention and the patent belong to the employee in the absence of a specific agreement to the contrary, although the employer may have
the right to use the invention without payment of a royalty. Some departments follow this general rule, while others require assignment of the patent in cases where the invention is closely related to the duties of the employee and the work of the department.

In general, when research is conducted primarily for the benefit of the public as a whole, Government agencies tend to permit retention of private commercial rights by the employee in a smaller proportion of cases than when the research is aimed at improvement of governmental functions and operations. In the latter cases the direct needs of the Government are completely met by its freedom to make and use any invention which may result, or to have the invention made and used for governmental purposes, without payment of royalties or any restrictions.

Close control and suitable provisions for maintaining secrecy are enforced in connection with inventions of a military nature which must be kept secret in the interests of national defense.

Except in the case of inventions requiring secrecy the departments are not generally concerned with patents which their employees obtain in foreign countries, and the matter is ordinarily left entirely with the employee.

Various departments of the Government have arrangements whereby employees who make valuable suggestions resulting in benefit to the Government are given some reward or special recognition similar to the award systems of private employers. These plans are not limited to ideas of the type capable of resulting in patentable inventions and find their greatest success and value in the field of small improvements promoting economy and efficiency.


In the absence of legislative compulsion, such uniformity in policy and practice as exists between the several Government agencies results from recognition of the common law. Two principles, established by numerous court decisions, which operate in the absence of a contract to the contrary are:

(a) Inventions made within the specifically designated duties of the employee shall be assigned to the employer since he has only produced that which he was employed to invent;

(b) Inventions made by an employee on his own time, without the use of his employer’s facilities, and in a field unrelated to his employment, shall be the exclusive property of the employee, who shall be entitled to all patent rights.

These principles are so equitable, so firmly established in the common law, and relatively so readily susceptible to administrative adoption and enforcement, that the Commission recommends they be made uniformly applicable throughout the Government service.

It is in the area not covered by (a) and (b) above that the least uniformity exists in Government practice because of the many variables involved. Within this area it does not seem practicable to devise a uniform law or order which could equitably apply to the many combinations of circumstances which can, and do, arise. The conditions of employment under which the inventions may be developed; their relationship to Government work; the character of the contribution of the inventor; the needs of the agencies and of the Government as a whole, and the probable contribution to the public welfare—all are
variable factors, and a great degree of flexibility is necessary. According-ingly, the Commission concludes that it should be left to the agencies initially to determine the action which will best serve the interests of the public, the Government as represented by the agency, and the encouragement of inventiveness by the employees. The Commission recommends, however, that policies and regulations adopted by any agency be submitted to a central control body for approval before they become effective, and that this body also serve as an appellate tribunal with power of final decision as regards appeals which employee-inventors may desire to take from agency decisions.

The proposal that employee-inventors be granted special awards for unusually meritorious services is regarded with favor by the Commission, but it is of the opinion that it would not be judicious to introduce such a system by blanket order or to make it dependent upon any particular fund. Any agency which is genuinely interested in an award system should negotiate for it in the regular manner, first consulting with the Bureau of the Budget, which has collected useful information on this subject, and next justifying the resulting proposal before the appropriate Congressional committees. The Commission recommends that agencies which qualify under this procedure should be authorized independently to make individual awards up to a specified amount, awards above this amount and up to a specified maximum to be approved by the central control body.

IV. Government Sponsored and Aided Inventions

A considerable amount of governmentally subsidized research in connection with the war is now being conducted by educational institutions and by private concerns under Government contracts. The Government also sponsors research during times of peace but on a more limited scale. There is no way of calculating how many patents will result from war research, nor what proportion of the inventions will have application outside of purely military fields.

Inventions made by Government contractors working on research and development contracts present important, and sometimes difficult, problems. The time, circumstances, and conditions under which the Government makes contracts for the pursuit of research or development work by private agencies vary greatly. The contract may be on a profit or nonprofit basis, and, if the latter, the Government may bear all or part of the expenses involved. The contractor may be an educational institution, or may be an industrial firm or corporation. A particular contractor may be selected because of an accumulation of knowledge, experience, and special facilities of peculiar value in a certain field. Existing private research facilities may be utilized, thereby avoiding their duplication by the Government at considerable expense. In some instances the effort involved may be only a further development and refinement of work already done by the contractor, while in others the contractor may be breaking entirely new ground.

Under these varying conditions patent rights resulting from Government-sponsored research have been disposed of in accordance with any of the following methods:
1. The Government has retained the blanket power to determine at its discretion the disposition of all patentable discoveries or inventions which may be made under the contract.

2. The Government has taken complete ownership of patents which may result, with a license back to the contractor.

3. Ownership of patents has been left with the contractor, while the Government receives a royalty-free license.

4. Ownership of patents has remained in the contractor, with the Government receiving, in addition to a royalty-free license, the power to require the licensing of others.

A common feature of the several types of contracts mentioned is a clause by which the Government has the option of obtaining licenses on reasonable terms under patents for inventions relating to the subject of the contract, which the contractor may have made before the contract was entered into.

It has been urged with considerable theoretical justification that there should be a uniform patent clause in all Government research and development contracts. The Commission has concluded that a single uniform practice would be unfeasible and undesirable from the standpoint of the Government. The ownership of inventions resulting from such contracts cannot be fairly determined by an arbitrary or fixed rule but should be established in each situation in accordance with the applicable circumstances. The Commission believes, however, that, since the Government has no need of the right to exclude conferred by a patent and does not enter into ordinary commercial enterprises in competition with its citizens, full ownership of patents should not ordinarily be asserted by the Government. An exception to this policy would be the situation in which private ownership of the patents would conflict with national interest. In those cases in which the Government does not acquire ownership of the patents, it should ordinarily receive as a minimum a royalty-free license. All negotiations in connection with research and development contracts, as well as the drafting of the contracts themselves, should be performed as now by the agencies involved.

V. Control Over the Administration of Government Patent Policies and Practices

Up to the present, the absence of any form of central control over the patent policies and practices of Government agencies has probably not been of special significance because of the lack of any substantial, clearly defined authority to take affirmative action. But with the adoption of the more positive policies and practices advocated by the Commission, the establishment of a central body vested with certain authority to review and approve important agency proposals becomes almost essential.

A central control body should therefore be created to perform the following functions:

1. To prepare, promulgate, and enforce such general policies concerning the administration of Federal intragovernmental patent matters as may be uniformly applicable and desirable, subject to the approval of the President of the United States.
2. To review and approve all existing or proposed agency policies and regulations relating to the acquisition of inventions and patents evolved by Government employees.

3. To serve as an appellate tribunal with final powers of decision as regards any disputes which may arise between employee-inventors and their respective agencies.

4. To approve such individual cash awards exceeding a specified amount which agencies may propose to give to their inventor-employees.

5. To review and give prior approval to any action which any agency may propose to take with respect to patents owned by the Government.

6. To serve the agencies as an educational, advisory and consultative medium, and as a clearing house for the interchange of information and plans. Appropriate studies and investigations could be conducted from time to time with the purpose, for example, of determining the actual extent of utilization of Government-owned patents and the most effective ways of handling special problems. By keeping informed of changing conditions and developments in Government patent matters the central body would be in a position to determine the need for executive action or for legislation.

The Commission recommends the establishment of a central control body empowered to perform the indicated functions.

The central control body should be composed of men of known and outstanding ability and should be independent of any existing Government agency whose functions and activities might reasonably be expected to result in inventions. After careful consideration the Commission is led to the conclusion that the central control group should be placed under the Executive Office of the President, preferably within the Bureau of the Budget and under the supervision of the Director.

VI. SUMMARY OF MAJOR CONCLUSIONS AND RECOMMENDATIONS

1. Enemy-owned patents seized by the Alien Property Custodian are outside the scope of the present report. The ultimate management of these patents should be left until the return of normal conditions and the disposal of war problems.

2. The general policy of the Government should be that of making its patented inventions available for commercial and industrial exploitation by anyone, but the Government should have the power to grant exclusive licenses or otherwise dispose of patents under appropriate conditions and safeguards whenever it is determined that such action is necessary to assure the commercial development of an invention of a Government-owned patent.

3. The policy regarding the respective rights in employee inventions should not be governed by rigid rules prescribed in advance for all departments and all cases but should be a matter primarily for departmental treatment. With respect to the two extreme cases, first, when an employee is hired to invent, and second, when an employee makes an unrelated invention, by use of his own time and facilities, the rule of the general law should be followed. General regulations should be maintained or promulgated in departments confronted with substantial patent problems.
4. The ownership of inventions resulting from research contracts cannot be determined in advance by an arbitrary or fixed rule but must be decided in each instance in accordance with the facts involved.

5. There should be a central control body, in the Executive Office of the President, having the following principal powers, functions, and duties:

   (a) Promulgating general policies and supervising and approving departmental policies regarding employee inventions, and determining disputed cases.

   (b) Supervising and approving the manner of disposing of patent rights by the individual departments, including granting exclusive licenses and selling Government-owned patents.

   (c) Instructing and advising departments and agencies, collecting information, conducting investigations, and making appropriate recommendations.