Patents: Proposal to Change NASA Regulations Draws Attack From Senate Small Business Committee

The Subcommittee on Monopoly of the Senate Small Business Committee last week became the forum for a renewed debate on the patent system—a subject that draws on some of the deepest springs of American social and economic theory. The matter before the committee was a proposal last fall by the National Aeronautics and Space Administration to extend to its contractors patent rights to inventions discovered in the course of government-sponsored research.

The patent changes NASA is seeking would involve a shift from its present system (delineated by Congress in the Space Act of 1958), where the government owns rights to inventions discovered while a firm is under contract to NASA, with waivers granted in exceptional cases, to a system where the rights are presumed to belong to the contractor except in cases where (i) the field is one exclusively developed by the government; (ii) the invention is likely to be required by law for public use; and (iii) the invention is in the nature of a public utility.

These changes would bring NASA policy into closer line with policies of the Department of Defense, which generally awards patent rights to the contractor.

NASA's efforts come at a time when a move to harmonize the patent policies of all government departments is gaining some headway, and when the feeling is growing in both the Senate and the administration (particularly in the Justice Department) that these moves should be in the direction of broader use of the fruits of government-financed research. The Monopoly Subcommittee, whose chairman, Senator Russel Long (D.-La.) has long wanted the government to retain rights to inventions made at the expense of the public, persuaded NASA not to take final action until his committee had held hearings. Long was concerned both about the principle behind the policy changes NASA was proposing and about the right of the agency to alter the patent policies laid down for it by Congress.

The testimony of James Webb, NASA administrator, before the Small Business subcommittee last week did little either to reveal NASA's actual motives in seeking the changes or to rescue the debate from the abstractions in which it became enveloped, and nothing at all to prevent the committee's latent skepticism from turning into overt hostility. To old-time champions of the "public interest," such as Senators Long and Wayne Morse (D.-Ore.) the traditional "private enterprise" arguments offered by Webb—that patent rights would provide incentives and encourage investment and fuller utilization of new discoveries—remained unconvincing rationalizations. They condemned this argument as a smoke screen behind which major contractors receiving public funds could withhold from the public the fruits of their research.

Public Interest

The two Senators said they were fed up with "the race to the moon" being used to justify what they regard as large-scale "give-aways" of the public interest and to permit administrative encroachment on legislative areas. "Too many administrative officials are running wild," Morse said, "and it is up to Congress to put you in check. Congress is still responsible to the ballot box." And he dismissed Webb's response, "I may not be responsible to the ballot box, but I am responsible to the launching pads and to the men in the nose cones of the rockets," as another of the "hysterical arguments used to justify the police state." Morse has committed himself to opening a "historic debate" in the Senate to prevent Webb's proposals from going through. Webb insisted that the space effort could only suffer as a result.

The intensity and the abstract quality of last week's debate underscored the observation made by Jerome Wiesner, the President's science adviser, in his testimony to the committee, that "there is regrettably little fact on which to formulate policy in this difficult area of public administration." But even Wiesner's presentation of a compromise proposal that would permit industry to retain patent rights in certain circumstances (principally where the firm had a previously established commercial interest) met with antagonism from the committee.

The committee is now in a mood where it would like to end all private rights to inventions stemming from government-sponsored research. Senator Long offered legislation in the last Congress to create a Federal Inventions Board to hold, for the government, the patent rights to all inventions stemming from government contracts. The Judiciary Committee held hearings on the bill, but it never came to the floor. The Senator is considering reintroducing his proposal this year, and a similar bill has already been introduced in the House.

The committee would like to go beyond government ownership of the rights to inventions, however, and seek active government promotion of new inventions stemming from the government's research programs. These, it feels, are now too often lost to the public because of the narrow commercial interests of the contracting firms. NASA and the Defense Department, on the other hand, believe that the commercial rights of its contractors must be protected if they are to put their most strenuous efforts and most talented personnel to work on government projects. NASA is understood to feel that the present discrepancies between the policies of the two agencies may put it at a disadvantage in this respect, since many of the firms who do contract work for both may find the Pentagon's system slightly more attractive.

NASA Dissatisfied

The facts in this tenuous area are difficult to establish. There is no evidence that NASA has been dissatisfied with the work done by its contractors or that its contractors are actively dissatisfied with the agency's policies. Very few of them, under the present system, have petitioned NASA for waivers. Nor is there evidence that the contractors of the Defense Department have been able to exploit for commercial purposes any substantial number of the inventions they discovered while doing contract research, despite the fact that they have retained rights to them. This may be, as the committee suspects, because, lacking the stimulus of competition, they are simply sitting on valuable inventions; or it may be, as others imagine, that few of the inventions discovered for the specialized needs of the Department of Defense and NASA really have potential commercial uses. In any event, the argument is by no means settled. The new proposals have not yet been promulgated in final form, and last week's uproar may have persuaded the agency to hold off. If it does not, the "historic debate" promised by Senator Morse will begin, and there may be attempts at regulatory legislation as well.

—ELINOR LANGER