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## Patents

Since the administration of President John F. Kennedy, Congress has deliberated periodically over the acquisition of patent property by the government. The enactment of general legislation, setting forth a definitive policy for the management of government-owned patent rights, has not been realized. Senate Majority Leader Robert J. Dole has now introduced legislation that may finally accomplish this longtime objective.

That inventors should be rewarded for their creativeness is a belief that was written into our Constitution. It is the basis of our federal patent system. The government is not in the patent business, and it is no secret that of the thousands of patents that the government owns, after decades of title-taking, few have been put to productive use. Evermore in this age of onrushing technology it is being recognized that private industry is better equipped than government to promote the commercial application and development of inventions, stimulate new ideas, increase industrial productivity, and improve the international competitiveness of U.S. goods. Let us take a look from Kennedy to Dole.

On 10 October 1963, President Kennedy directed a memorandum to the heads of all executive departments and agencies that said:

From the extensive and fruitful national discussions of government patent practices significant common ground has come into view. First, a single presumption of ownership does not provide a satisfactory basis for government-wide policy on the allocation of rights to inventions. Another common ground of understanding is that the government has a responsibility to foster the fullest exploitation of the invention for the public benefit.\*

In the U.S. Senate on 3 January 1985, Senator Dole submitted a bill "to amend Title 35 of the United States Code for the purpose of creating a uniform patent policy and procedure concerning patent rights and inventions developed with federal assistance," and then said:

For a quarter of a century—just about as long as I have been in this city—efforts have been underway to develop a comprehensive uniform government patent policy. In this Congress we have the opportunity to take the final major step by enacting this proposal which simply helps the free enterprise system to do what it does best: produce new products the public seeks; create new jobs the public requires.†

The Kennedy-Dole advocacy for a uniform patent policy is best expressed through specific legislation making such a policy mandatory. The Kennedy memorandum forced government to think of alternatives to federal title-taking. As a result, much of government has come to recognize that it is not necessary to retain the rights to inventions beyond those needed to use the inventions for government purposes. There is no present reason or justifiable need for the government to hold anything beyond a nonexclusive royalty-free license on inventions derived from federal research and development contracts.

These years have seen an onslaught of new technologies and a shrinkage in the time that it takes for knowledge to be turned into application. New government-industry-university relations have forced new institutional arrangements. Antitrust barriers are being lowered so that industry joint ventures in basic research are no longer barred, and private industry is recognized increasingly as the place where commercial application and the development of inventions thrive.

The challenge that President Kennedy initiated through executive action has obvious limitations. An executive memorandum is no substitute for legislation. The Dole proposal would, in the senator's words, "eliminate the hodgepodge of agency patent requirements built up over the years." That appears to have been President Kennedy's view as well.—EMILIO Q. DADDARIO, *Wilkes, Artis, Hedrick & Lane, Washington, D.C. 20006*

\*"Government patent policy," *Fed. Reg.* 28 (No. 200), 10943 (12 October 1963).  
†*Congr. Rec.* 131 (No. 1, part II), 5186 (3 January 1985).