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Why patent publicly supported research discoveries?

One of the most generally misunderstood issues involves the practice of patenting some research discoveries which have resulted from the studies made by scientists at publicly supported educational institutions and federal laboratories. Quite understandably questions by members of the public and some of their state and federally elected representatives are raised about the wisdom and even the ethics of patenting research discoveries made by scientists and engineers employed by public funds. A prevailing view among many people is that if patenting is desirable for these kinds of discoveries, then the patents should be issued as public interest patents so that no single firm or business can control the discovery.

I must agree that there appears to be a certain degree of superficial logic in that view and it is consistent with the intended use of the vast majority of discoveries resulting from the research of the many scientists and engineers at our public universities and in federal laboratories. Information derived from the work of the individuals in these public institutions is the property of the public. And indeed, most of the information is published in one form or another in publications which are available to anyone anywhere.

Then why is it necessary to patent some discoveries and copyright some books or other written works? Because it requires the additional investment of significant amounts of money to manufacture and distribute them into the hands of the ultimate user. Public institutions are not manufacturing plants or distribution centers. The additional investment required for the preparation of these kinds of discoveries for consumer use must come from the private sector. Whether it is an individual's personal investment or a corporation's business investment, everyone wishes to be assured that this investment is protected to the extent that is possible. If an invention or discovery which requires further financial investment before it can be made available for general use is unprotected by a patent holder and subsequent authorized and licensed manufacturing agreements, then the discovery frequently never becomes available for public use.

It may seem ironical to most that some public discoveries require private protection in order to make them available to the public. The logic supporting this statement, however, does make sense, and it applies as well to the use of copyrights for the many books and written works which result from the scholarly activity of our University personnel.

Federal law still requires the use of public patents for discoveries arising from federally funded research. Proposals have been made to change to a licensing arrangement similar to that which I've described above. There is ample evidence to show that many potentially useful discoveries are languishing on the shelves of libraries and in public patent files because they cannot be protected by a guarantee of an exclusive license for a limited period.

I am hopeful that careful reasoning by those who are skeptical of changing the present federal patent policy will understand why a change would really be in the public's best interest. This change in patent policy would demonstrate the value of cooperation between government and business in fulfilling a public need.

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Correction

In my editorial concerning the future of public versus private research in agriculture in the October, 1979 issue of California Agriculture, *it was stated that "The private sector will be required to solve more of the problems associated with their specific products, while public agricultural research programs will be required to address problems of products, crops, and animal lives." The last part of this statement should have read: "... address problems* which cut across *product, crop, and animal* lines."

-JBK