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July 13, 1946.

Honorable George B. Schwabe,
Patent Committee,
House of Representatives,
Washington, D. C.

Dear Sir:

Re: Science Bills S. 1850
H.R. 6448 and H.R. 6672

I should like to place before you the following views on the patent provisions of the above legislation.

The science bill, S. 1850, passed by the Senate July 3rd, and the companion bill, H.R. 6672, contain patent provisions that are highly objectionable because they will defeat the purposes of this proposed legislation to a very considerable extent.

Subsections (c) and (d) of section 8 of S. 1850 and the corresponding subsections of H.R. 6672 should be replaced by a subsection similar to subsection (a) of section 9 of the Mills Bill, H.R. 6448, which is as follows:

"Each contract executed by the Foundation which relates to scientific research or development shall contain provisions governing the disposition of inventions produced thereunder in a manner calculated to protect the public interest and the equities of the individual or organization with which the contract is executed. Such objectives may usually be accomplished, within the discretion of the Foundation in particular cases, by making freely available to the public or, if patented, by freely dedicating to the public, inventions produced in the course of basic or fundamental scientific research or scientific

research or development completely financed by the Foundation, and by providing for the United States to receive an irrevocable, non-exclusive, royalty-free license for governmental purposes under inventions produced in the course of applied scientific research or development financed by the Foundation but to which the contractor contributes substantially through past or current research or development activities financed by it."

The Secretary of War and the Acting Secretary of the Navy have expressed objection to the patent provisions of S. 1850 in letters to the Chairman of the Senate Committee on Military Affairs (Senate Report No. 1136, pages 48-55).

The Secretary of War and the Acting Secretary of the Navy, at the hearings before a subcommittee of the Committee on Interstate and Foreign Commerce on May 28 and 29, 1946, each expressed approval of the patent provisions of the Mills Bill, H.R. 6448.

The patent provisions of any science legislation should be designed to stimulate active cooperation on the part of private research organizations. The patent provisions of S. 1850 would have the opposite effect. They ignore the equities of the individual or organization with which a contract may be executed and sanction coercion by the government agency to force the research organization to dedicate to the public not only inventions financed entirely by the government but also inventions financed to a large extent by the research organization.

The exercise of exclusive rights under a patent is a powerful stimulant to the progress of science and the useful arts. Such patent rights acquired by one private research organization pursuant to science legislation providing for the enjoyment thereof subject to a free, nonexclusive license to the government for government purposes would inspire others to seek government aid under such legislation to produce a better non-infringing substitute for the patented invention.

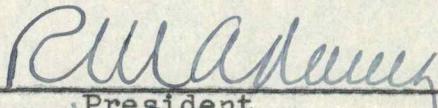
In testifying before the subcommittee of the Committee on Interstate and Foreign Commerce on H.R. 6448, the Acting Secretary of the Navy stated:

"The importance to Navy research of preserving an incentive to research through wise handling of the patent rights cannot be over-emphasized: Our experience has shown that a lack of discretionary power in dealing with patent rights would seriously interfere with the obtaining of the services of scientists uniquely competent for specific tasks. The constitutional provision in regard to patents clearly recognizes the necessity of preserving the incentive of limited monopoly to the inventor in satisfying the social purpose of encouraging the progress of the sciences and useful arts.

"The Navy experience with research work has provided ample evidence showing the great practical value of the incentive factor in the encouraging of scientific progress. Therefore, it is important to balance the objective of any proposed dedication policy with the incentive objective which is at the base of the patent law.

"The patent provision of the present bill H.R. 6448 would not as a practical matter seriously hamper the Navy in the pursuit of its policy of stimulating research work through a fair and equitable handling of the patent rights."

Very truly yours,



President
New York Patent Law Association