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DG

Subject: Patent Administration Study

We have carefully reviewed subject study and have the following comments. The following items are discussed first as they bear on our comments:

1. Item A - Chapter 1-901 - "Department Patent Activities" of the DHEW Organization Manual, sets out the responsibilities assigned to the Assistant Secretary for Health, General Counsel's Office operating agencies and Department Patent Board. This item would appear to require revision of your comment on page 6 (and suggested elsewhere) that "there are no clear guidelines for assigning patent responsibilities".

2. Item B sets out the Patent Branch's responsibilities in greater detail than shown on pages 14 and 15 of the study. The report does not discuss the staffed requirements necessary to service many of the responsibilities listed in this item. Further, a substantial portion of the study is devoted to the single responsibility of processing the approximately 40 annual "greater rights determinations" received by the Department. Though important and sensitive processing these requests occupied in past years less than 50 percent of the time of one paralegal and a small increment of the Branch Chief's time. Monitoring

of the processing of these requests has in the past ~~been~~ directly proportional to the value placed on them by the requester and/or funding agency and had not normally involved more than 90 days of Patent Branch time. Patent Branches have the eight months "legal" "scientific" and "administrative" designations given to Patent Branch functions listed on page 14 and ~~is a~~ ~~not~~ ~~definitive~~. All or more than one of these designations could be applied to many of the functions listed. This is important in light of your recommendations to reorganize the Department Patent Activity on the basis of such designations.

3. Item c is a flow chart which sets out the step-by-step review involved in making ^{advisory} reports of the 250 to 300 ^{advisory} reports received by the Patent Branch. No single person in the Patent Branch is responsible for bringing an invention through the entire process shown. For example much of the docketing (including monitoring) initial determinations as to whether a report should be disposed of under practice codification of employee regulations is done by the Branch's paralegal staff. In fact disposition of a report could involve ~~the~~ ~~parallel~~ ~~legal~~ ~~staff~~. However, depending ~~on~~ ~~the~~ ~~type~~ ~~of~~ ~~report~~.

Upon the complexity of facts, ^{early} information
 of an attorney may be required. The
 processing cultures, more attorney
 time is required ^{but paralegal} assistance is ~~not~~ ^{still a} necessary ^{part}.
 In short processing of most
 cases involve a number of interfaces
 between attorney and paralegal
 which would be most difficult
 if the study's recommendation
 to divide the staff were
 implemented. Further, I understand
 that this type of organization
 was attempted on three occasions
 between 1959 and 1969. Finally
 regarding the present consolidated
 staff (which is consistent
 with other public or private public
 organizations).

~~Item~~ Item D sets out comparative statistics
 (on workload reporting processing, disposition
 and promotion) for fiscal year 1975
 for the major research and development
 agencies of the Executive Branch, with
 the exception of the Number of Attorneys
 per agency all the statistics were
 derived from the "Report on
 Governmental Research Policy, Federal
 Council for Science and Technology, 1976",
~~with similar statistics are available for~~
 any year from 1965 to 1977. We
 believe that the attorney staffing
 indicated in line 2 of item D is
 revealing when compared to the
 budgets and the productivity of
 other agencies to that of the