STATEMENT OF
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The legally protected monopoly which is conferred by a patent can create a formidable barrier to entry, raising substantially the cost to new entrants who seek to compete with the patent holder. Because of this serious anticompetitive potential, we must closely examine the need for patent protection.

In the case of government-financed R&D that need is far from clear. The firm which performs research for the government is typically well rewarded even in the absence of a patent. Not only is the firm paid for its efforts -- often on a cost-plus basis -- but, in addition, it winds up with technical know-how, specialized research facilities and a pool of highly trained scientific personnel.

Let me focus on the energy area by way of example. Because a very large portion of DOE's R&D funding goes to giants of the energy industry, a system which gives all patent rights to the contractor would raise substantially the likelihood of higher concentration.

Fortunately, from a procompetitive viewpoint, DOE's patent policies are controlled by a statute which presumes retention by the government of patent rights.

Has private industry been inhibited from accepting ERDA R&D contracts because patents are not routinely granted to contractors? The available evidence makes it quite clear that this has not occurred.

We find that ERDA R&D grants are regarded as profitable, require little investment by the contractor, and can lead to competitive advantages -- even if the contractor is denied patent rights.

There may be specific circumstances in which exceptions are justified. Any such exceptions should be reluctantly granted and narrowly limited. The presumption should always be that more competition is preferable to more monopoly power or concentration.