

HARVARD UNIVERSITY

ELIZABETH C. WIDEKOPF
VICE PRESIDENT FOR FINANCE

MASSACHUSETTS HALL
CAMBRIDGE, MASSACHUSETTS 02138

June 17, 1997

Harold Varmus, M.D.
National Institutes of Health
Building One, Room 126
9000 Wisconsin Avenue
Bethesda, MD 20892

Dear Dr. Varmus:

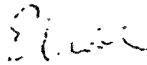
I am writing to you in my capacity as chair of the Harvard University Committee on Patents and Copyrights, the body responsible for oversight of the University's technology licensing program. I understand that CellPro, Inc. has filed a petition to exercise "march-in" rights under the Bayh-Dole Act in order to utilize stem cell selection technology patented by The Johns Hopkins University and licensed by Hopkins to certain pharmaceutical companies. This petition is the outgrowth of a patent dispute between CellPro, on the one hand, and Johns Hopkins and its licensees, on the other. I am advised that a federal court recently determined that CellPro willfully infringed the Hopkins patents.

While I do not presume to be familiar with all the nuances of the CellPro -- Hopkins dispute, I am very troubled by the ripple effect that the granting of CellPro's "march-in" petition would have on development of university-based science and technology nationwide, with consequent adverse effects for society generally. Because I know that CellPro, Hopkins, and other education and research organizations have communicated extensively with you concerning this matter, it is not necessary to go into great detail here concerning the facts of this case and the Bayh-Dole Act. Suffice to say that "march-in" rights were included in the Bayh-Dole Act to address situations where a recipient of federal research funds has failed to move forward in making its inventions and technology available to the public. One of the reasons that the Bayh-Dole Act has achieved its objectives is that "march-in" rights have been confined to those rare instances where there is a compelling public health need. If a less demanding standard were utilized, no licensee would have the incentive to make the substantial investment necessary to bring university-owned inventions to development. In the end, new technologies would remain undeveloped and patients would be the losers. That is precisely the result the Bayh-Dole Act was intended to avoid.

From the facts available to me, the CellPro case does not appear to be one that warrants the extreme step of "march-in" rights. I understand that Hopkins and its licensees have agreed that CellPro may continue to market its infringing stem cell selection technology until an alternative developed by Hopkins's licensee is readily available. If this is correct, the public is assured of uninterrupted access to this treatment.

Thank you for your consideration of my views. If you have any questions, please do not hesitate to contact me.

Sincerely,


Elizabeth C. Huidekoper

bcc: Joyce Brinton
Kevin Casey
Bob Donin
Beverly Sullivan
President William R. Brody

cc: Neil L. Rudenstine