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June 20, 1997

Barbara M. McGarey
Deputy Director
Office of Technology Transfer
National Institutes of Health
6011 Executive Blvd.
Suite 325
Rockville, MD 20852

Re: Petition of CellPro, Inc.

Dear Ms. McGarey:

On June 6, 1997, CellPro's counsel sent you a copy of CellPro's proposal to "resolve its petition under the Bayh-Dole Act." We are enclosing, for your information, a copy of our response, which is self-explanatory.

Mr. Wilson's letter indicates that CellPro wishes to make a further submission to NIH in response to Hopkins' June 2, 1997 filing. Hopkins objects to the NIH's receiving any further submissions from CellPro.

In our view, the regulations under the Bayh-Dole Act contemplate that when a march-in petition is filed the patent owner — here, Hopkins — will have a full and fair opportunity to respond prior to the agency's making any decision to initiate a march-in proceeding. Dr. Baldwin's letter dated May 27, 1997, gave Hopkins until July 2, 1997 to respond to CellPro's submissions, based upon CellPro's having made a further submission on May 19.

In setting the July 2 deadline for comment, Dr. Baldwin plainly did not anticipate that CellPro would continue to make additional submissions. In fact, CellPro submitted the declaration of Larry Culver in the last week of May, and now it proposes to make a further submission the last week of June, just before Hopkins' July 2 deadline. This will not give Hopkins a full and fair opportunity to respond.

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We believe that any decision to initiate a march-in proceeding based upon information submitted by CellPro to which Hopkins has not had an adequate opportunity to respond would be inconsistent with the regulations and administrative due process. Such a decision would force Hopkins to incur substantial costs and would have profound consequences for the future of university technology licensing. It should not be made on the basis of CellPro's last-minute submissions. Either NIH should refuse to accept additional submissions from CellPro, or it should extend the period for Hopkins to make responsive filings beyond July 2.

Sincerely yours,



Donald R. Ware

DRW/kaw
Enclosure

cc: Robert B. Lanman, Esq.