

Notable 1984 amendments to Section 202 and 203 of the Bayh-Dole Act

KEI Briefing Note
2024:5

Topic	1980 (PL 96-517)	1984 (PL 98-620)
<p>Section 202(c)(7)(B) of the 1980 Act was eliminated in 1984. This provision provided a conditional cap on exclusivity of eight years from the license or five years from the first commercial sale.</p>	<p>(c)(7)(B) a prohibition against the granting of exclusive licenses under United States Patents or Patent Applications in a subject invention by the contractor to persons other than small business firms for a period in excess of the earlier of five years from first commercial sale or use of the invention or eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance unless, on a case-by-case basis, the Federal agency approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use shall not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention shall not be deemed to end the exclusive period to different subsequent products covered by the invention;</p>	<p>a prohibition against the granting of exclusive licenses under United States Patents or Patent Applications in a subject invention by the contractor to persons other than small business firms for a period in excess of the earlier of five years from first commercial sale or use of the invention or eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance unless, on a case-by-case basis, the Federal agency approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use shall not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention shall not be deemed to end the exclusive period to different subsequent products covered by the invention</p>
<p>Section 202(c)(5). The records exempt from FOIA now include the information from periodic reporting on utilization, as well information</p>	<p>'(5) The right of the Federal agency to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or his licensees or assignees: Provided, That any such information may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code</p>	<p>'(5) The right of the Federal agency to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or his licensees or assignees: Provided, That any such information <u>may as well as any information on utilization or efforts at obtaining utilization obtained as part of a proceeding under section 203 of this chapter</u> shall be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code</p>

Topic	1980 (PL 96-517)	1984 (PL 98-620)
<p>Section 203(2). The automatic stay of a march-in proceeding “pending the exhaustion of appeals or petitions.”</p> <p>1984—Pub. L. 98–620 designated existing provisions as par. (1) and added par. (2).</p> <p>1992—Par. (2). Pub. L. 102–572 substituted “United States Court of Federal Claims” for “United States Claims Court”.</p>		<p>(2) A determination pursuant to this section or section 202(b)(4) shall not be subject to the Contract Disputes Act (41 U.S.C. §601 et seq.). An administrative appeals procedure shall be established by regulations promulgated in accordance with section 206. Additionally, any contractor, inventor, assignee, or exclusive licensee adversely affected by a determination under this section may, at any time within sixty days after the determination is issued, file a petition in the United States Court of Federal Claims, which shall have jurisdiction to determine the appeal on the record and to affirm, reverse, remand or modify, as appropriate, the determination of the Federal agency. In cases described in paragraphs (a) and (c), the agency's determination shall be held in abeyance pending the exhaustion of appeals or petitions filed under the preceding sentence.</p>