



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

file *DS*
Memorandum

Date 17 July 1985

From Mr. Ferris

Subject GALLO et al, "Serological Detection of Antibodies to HTLV-III in Sera of Patients with AIDS and Pre-AIDS Conditions", U. S. Patent No. 4,520,113.

To The File

Mr. Rowland called and advised that, upon instructions from his client, Genetic Systems, he is cancelling the meeting that was scheduled for 23 July to discuss the subject patent and whether French collaborators should be included as coinventors. Mr. Rowland stated that his clients are not prepared for the kind of meeting that is developing. He originally envisioned an informal meeting with administrative and legal representatives, but not a full blown meeting with scientists present.

Mr. Rowland advised that the patent examiner in the U.S. Patent Office will probably declare an Interference between a pending French application and the subject issued patent before the end of this year. He expect that the examiner will act on the French application in about a month and that this will result in the examiner declaring an Interference on her own volition. The French and their U.S. licensee are also contemplating whether other legal action should be initiated at this point.

Genetic Systems will continue to explore the facts surrounding the development of the AIDS technology by Dr. Gallo et al and the French investigators. He stated that an official of Genetic Systems, Bob Nowinski, is a friend of Dr. Fischinger's and that Mr. Nowinski will probably contact Dr. Fischinger regarding this matter in the near future.

Mr. Rowland asked me what I thought the Government's position might be regarding enforcement of the subject patent should Genetic Systems attempt to enter the market without having obtained a license from the Government. I told him that I did not know what action the Government might take against an infringer. Mr. Rowland has seen the licenses that NTIS negotiated with the five licensees and is aware that the license provides that if the Government does not enforce the patent against infringers the licensees are relieved of the obligation to pay royalties to the Government.

I called Dr. Harmison and relayed the information about cancellation of the meeting at Mr. Rowland's request because Mr. Rowland has been unable to reach Dr. Harmison by telephone.